

**MINUTES**  
**Legislative Finance Committee**  
**State Capitol, Room 322 - Santa Fe, NM 87501**  
**December 5 - 9, 2016**

**Monday, December 5<sup>th</sup>**

The following members and designees were present on Monday, December 5, 2016: Chairman John Arthur Smith; Vice Chairman Jimmie C. Hall; Senators Carlos R. Cisneros, Stuart Ingle, Steven P. Neville, William F. Burt, Howie C. Morales, George K. Muñoz, and Pete Campos; and Representatives Larry A. Larrañaga, Luciano “Lucky” Varela, Nick L. Salazar, Paul C. Bandy, Jason C. Harper, George Dodge Jr., and Roberto “Bobby” J. Gonzales. Guest legislators: Senators Lee S. Cotter, Mary Kay Papen, James P. White, and Pat Woods; and Representatives Sharon Clahchischilliage, Doreen Gallegos, Miguel P. Garcia, Antonio Maestas, Debbie A. Rodella, Tomas E. Salazar, Jim R. Trujillo, and John L. Zimmerman.

**FY17 and FY18 General Fund Revenue Projections.** Secretary Demesia Padilla, Taxation and Revenue Department (TRD), stated recurring revenues for FY16 were down 7.8 percent from FY15 and revenues for FY17 are down \$109 million from FY16 despite the actions taken in the 2016 special session. The New Mexico economy has struggled due to continued weakness in the extractive industries, as well as lower-than-expected employment and weak personal income and wage and salary growth since the August 2016 forecast.

Elisa Walker-Moran, chief economist at TRD, stated revenue estimates were revised downward in the December forecast for FY17-FY21. Ms. Walker-Moran pointed out that gross receipts tax (GRT) revenue estimates declined by \$85 million for FY17 and \$108 million in FY18. The consensus revenue group suspects weakness in GRT was largely due to declines in the oil and gas industry, large medical deductions, weaker wages and salaries and employment, and subsequently weaker retail sales.

Reporting personal income tax (PIT) revenues, Ms. Walker-Moran said losses were largely due to a loss of high wage jobs, namely in the oil and gas sector, which have been replaced by lower paying jobs in other industries. Losses in corporate income tax (CIT) revenues were noted to be on par with outcomes in other major oil and gas production states, and TRD suspects that current weakness in CIT could be due to overpayments of tax liabilities (where actual tax due was less than the amount collected, resulting in significant refunds).

In discussing the extractive industries, Ms. Walker-Moran noted severance taxes were slightly stronger for the forecast period, due to higher oil volumes and gas prices than in the August estimate. Although there are fewer active rigs than at the peak of oil production, rig counts have increased from 13 in March 2016 to 32 in October, and increases in extraction technologies may offset the effects of fewer rigs.

Duffy Rodriguez, secretary designate of the Department of Finance and Administration (DFA), discussed the macroeconomic context for the changes in the revenue forecast, including

historically low inflation, rising interest rates, declining commodity prices and reductions in oil exploration. Secretary Rodriguez noted that GRT losses in the northwest and southeast parts of the state, particularly Eddy and Lea counties, overwhelmed growth in the remainder of the state, and oil producers increased efficiencies have led to extraction generating less GRT per rig.

Secretary Rodriguez stated that, of the consensus revenue group's projected GRT increase of 7.5 percent from FY17 to FY18, only 3.5 percent is due to economic growth factors. The remaining 4 percent growth is due to noneconomic factors, as high-wage credits and medical deductions are expected to be significantly lower than in FY17 and will contribute to the FY18 growth rate.

On the outlook of the oil and gas industry, Secretary Rodriguez said oil production in New Mexico has more than doubled in the past five years, and production in FY16 was a record. Despite high volumes, the price drops severely impacted oil and natural gas revenue. Additionally, the energy sector's reduction in spending, employment, and profits also led to severe direct and indirect impacts to sales and income revenue.

Secretary Rodriguez lastly discussed New Mexico's job growth. Private employment growth in the state has slowed since the August forecast. However, New Mexico is seeing increasing diversification of the employment base in other industries, becoming less reliant on the federal government and the energy sector.

Referencing employment charts in the accompanying LFC consensus revenue brief, Jon Clark, chief economist at LFC, discussed changes in the December forecast when compared with August, namely reductions in employment growth estimates and a trending decline in average weekly hours per worker in the state. New Mexico currently has the second highest unemployment rate in the nation, around 6.7 percent, and employment in the state has not regained pre-recession total employment levels as far back as 2005. Average weekly earnings in the state are no longer tracking with growth in the United States, and the gap between national- and state-level average weekly earnings has been increasing since the recession.

Mr. Clark discussed declines in GRT revenues, with amounts for July and August 2017 being the lowest amounts received for those months in six years. For September the revenues were the lowest they have been in four years. The fixes made to medical deductions and high-wage jobs tax credits during the 2016 special session will save tens of millions of dollars in FY18 compared with FY17.

Regarding personal income tax (PIT) revenues, Mr. Clark noted that the only growth in PIT for FY17 is a result of special session actions that changed distributions from PIT to the legislative retirement fund and the Retiree Health Care Act fund. Moving on to corporate income taxes (CIT), Mr. Clark noted the volatility of CIT revenues and the consensus estimating group's uncertainty of why they are appearing so low for FY17.

Mr. Clark noted that for insurance premium tax revenues, the consensus estimate only covers recurring revenue but at some point there will be a nonrecurring amount of about \$200 million in back payments owed as a result of the recent audit of premium tax revenues. Mr. Clark pointed out the funds are unlikely to hit in FY17 but pose an upside risk to the FY18 forecast.

Mr. Clark discussed recession risks, noting that although the country is experiencing one of the longest expansions in its history, none of the major forecasting agencies are calling for recession in the forecast.

Mr. Clark referenced a chart in the brief on general fund investment pool end-of-month balances, stating balances have been gradually declining since FY15, and the balance for November 2016 is down 34 percent, the lowest it has been in years. It is unclear if the trend reached bottom and will start to pick back up or if it will continue trending down. There is significant uncertainty in the overall revenue forecast, and the members of the consensus revenue group should track and analyze the revenue sources closely over the next few months and prior to the next quarterly estimate. Lastly, Mr. Clark noted general fund reserves are predicted to be negative \$69 million in FY17.

Following the presentation, the panel asked for the questions from the committee. Senator Cisneros noted the panel had not offered suggestions for how to fix revenue shortfalls and asked if the panel had any suggestions. Secretary Padilla stated the focus of the consensus group was on revenue forecasting only; however, she also noted that TRD's tax policy group is actively looking for loopholes to close, increasing efforts in audits and compliance, shifting resources into collections and maximizing call center efforts. Secretary Rodriguez stated that DFA would assemble a packet for consideration for the legislative session and would look at items left on the table from the recent special session, such as the \$120 million in cash balances for public schools.

Senator Cisneros followed up to ask if the panel was considering working with the superintendent of insurance to recover the funds owed due to the audit. Secretary Padilla said she welcomes the superintendent to contact TRD to discuss the data analytic tools the department is using to try to recover those funds.

Senator Cisneros again asked the panel if there are ideas for a solution to the revenue problem. Mr. Clark responded the revenue problem is highly correlated with the state's economic problems; however, some tax expenditures make it worse. For example, despite rapid growth in the healthcare industry it remains largely untaxed and provides very little GRT growth as a result. Senator Cisneros pointed out that the Legislature needs to analyze the benefits of tax expenditures to the state.

Senator Cisneros asked the panel how the downward revenue projections could affect the state's Moody's bond rating. Secretary Rodriguez stated the Moody's and S&P ratings only dropped the state one notch, and the state still has good bond ratings to date. She noted DFA talked with its financial advisor and does not anticipate any rating changes until after the service is able to see what happens during the legislative session.

Senator Cisneros asked where the state is in terms of litigation with Pojoaque and when the state can expect a resolution on the gaming compact and receive revenue from the casino. Secretary Padilla responded the state can expect roughly \$5.5 million if the litigation goes through. An LFC analyst also responded that the litigation is now with a 10<sup>th</sup> U.S. Circuit Court in Denver and there is not yet an anticipated end date.

Senator Burt asked if the consensus group includes the military bases in their analysis, noting the significant contribution of both the military and associated civilian activity to the state. Ms. Walker-Moran responded the group does not specifically include military bases in the analysis; however, the forecasts from UNM's Bureau of Business and Economic Research (BBER) and IHS Global Insight do consider the military in their forecasts for employment and wages and salaries, and those are considered in the consensus group's revenue forecast for the state.

In response to Representative Bandy's question on taxing Internet sales, Secretary Padilla said the state is currently bound by the Quill decision (Quill Corp v. North Dakota), but there may be federal legislation to deal with this issue. If the state were to proceed with taxing Internet sales then it would likely face litigation until the Quill issue is resolved. Secretary Padilla iterated the risk of having to refund any revenue it collects.

Representative Bandy asked about taxing gasoline at the rack. Frank Crociata, director of tax policy at TRD, responded the issue would not be as significant as one would expect, noting taxing at the rack eases compliance and reporting. Mr. Crociata noted the state would need to deal with the same issues of importing and exporting, crossing Indian country, etc. While it would not be a massive revenue windfall for the state, it would be relatively easy to administer once the state revamps its revenue collection system to accommodate the change.

Representative Bandy asked about the possibility of some companies in the southeastern part of the state paying GRT in Texas as opposed to New Mexico. Secretary Padilla responded communities are taking a closer look at who is or is not showing up on their tax reports, and it is otherwise difficult for the department to know if companies are missing from the reports.

Representative Larrañaga noted other external factors affecting the state's economic outlook, such as education, public defenders, and food stamps, and asked if the consensus revenue group had looked at these. Secretary Rodriguez replied that the focus of the discussion was on the revenue forecast itself, not on expenditures.

In response to Representative Larrañaga's question regarding negative reserves, Mr. Clark stated \$130 million was taken out of the FY17 and FY18 revenue projections, and the difference between revenue and appropriations is \$222 million, resulting in a projected ending reserve balance of negative \$69 million. Secretary Rodriguez clarified this estimate is projected, not actual or audited.

Representative Garcia said health care is a growing industry creating increases in payroll, employment, construction, and property taxes, stating it is a benefit to the state despite reduced GRT from the industry.

Regarding declines in corporate income tax revenue, Representative Garcia asks if TRD has become wary of CIT collections due to overpayments. TRD economist James Kaminsky discussed the complexity of CIT revenue collection and the difficulties in analysis, including the roughly one quarter of taxpayers who typically file late and the fact that CIT final settlements extend across two years or more.

Regarding CIT, Representative Salazar asked how large CIT is as a percentage of the general fund. Ms. Walker-Moran responded CIT collections are smaller than some other taxes and is harder to analyze because of its volatility. However, other revenue streams like GRT tend to be more predictable and make up a greater percentage of general fund revenue. Representative Salazar asked if it would be a “budget-buster” if the worst-case scenario for CIT played out. Secretary Rodriguez responded it would not, because CIT is such a small percentage of overall revenue.

In response to Representative Trujillo, Secretary Padilla stated tax professionals should minimize tax liability for their clients, and the department’s responsibility is to ensure the state collects every dollar to which it is entitled. Any time the law changes, tax professionals spend a lot of time looking for the most favorable outcome for their clients.

Representative Zimmerman discussed the state’s heavy reliance on the oil and gas industry and asked if it would be prudent to level the playing field in tax collections across years by setting an average for collections and any excess collections would go into a reserve. Secretary Rodriguez responded DFA is looking into this option and confirmed DFA is considering recommending legislation on the issue during the upcoming session.

Senator Smith iterated the need for “now money” for FY17, and referencing the budget for FY18, discussed the need to rebuild reserves. Senator Smith also stated the need for the legislative and executive branches to work together to resolve the revenue and deficit problems.

The next revenue forecast can be expected by the 25<sup>th</sup> day of the 2017 legislative session.

**Office of the State Engineer.** Tom Blaine, state engineer, and Deborah Dixon, Interstate Stream Commission (ISC) director, presented the FY18 budget request. Mr. Blaine noted slightly less than half of the agency’s operating revenue is from the general fund and the declining balances in the irrigation works construction (IWCF) and improvement of the Rio Grande income fund. The agency projects the IWCF will reach a zero balance by FY19 at current expenditure levels.

The agency also requested a \$2.05 million special appropriation to support Rio Grande compact litigation and a \$2 million deficiency appropriation to address an audit finding.

Senator Cisneros asked about the state’s settlement obligation in the Aamodt adjudication, and Mr. Blaine responded that \$9 million is needed for the next fiscal year and \$72 million overall, including for indexing, which will continue until construction begins. Senator Cisneros then asked about obligations under the Navajo water rights settlement. Mr. Blaine responded the agency is awaiting findings on claims for in-kind contributions. If all of the claims are honored by the Bureau of Reclamation (BOR), the state’s balance will be fulfilled. Senator Cisneros asked about the most pressing dam needs and Chuck Thompson, Dam Safety Bureau chief, stated that 12 dams are under order from his office and three of these are unsatisfactory, including Power Lake Dam, San Mateo Lake Dam, and Gardner Dam.

Senator Neville asked for an update on San Juan River adjudications, including the need to re-adjudicate the Echo Ditch decree. Greg Ridgeley, general counsel, explained that while the

agency had submitted a motion to avoid re-adjudication, federal officials were opposed and the motion was withdrawn due to a lack of resources at this time. However, Mr. Ridgeley said the effort would be pursued when the Aamodt and Taos adjudications are completed.

Representative Bandy asked what New Mexico's interest in the Colorado River was. Ms. Dixon responded that New Mexico is party to the Colorado River Compact. New Mexico and other upper basin states must deliver a certain amount to Lake Powell for lower basin states and for Mexico under an international treaty. Ms. Dixon explained that guidelines for operation of Lake Powell and Lake Mead would require shortage sharing if reservoir levels drop below a certain level. ISC continues to engage in negotiations regarding Colorado River Compact compliance.

Representative Nick Salazar asked for an update on the Rio Chama adjudication. Mr. Ridgeley noted the Ohkay Owingeh Pueblo water rights are the last remaining major issue to be addressed, but that progress is slowed by constrained resources and the focus on completing the Aamodt adjudication.

Senator Morales asked how much of the New Mexico unit fund had been expended and committed to date. Ms. Dixon responded the fund's balance is \$38 million and \$6.5 million had been expended. Additionally, \$9.1 million is committed for non-diversion projects and \$4.4 million is committed to federally required environmental reviews of a diversion project. Senator Morales asked if any of these funds had been approved through the legislative appropriation process. Kim Abeyta-Martinez, ISC's budget director, responded the agency's FY18 request includes the New Mexico Central Arizona Project Entity's (NMCAPE) operating budget but does not include anticipated capital expenses, which have been funded through budget adjustment requests. Senator Morales asked if the Legislature would be excluded from these decisions and noted concern with the agency's use of budget adjustment requests. Jonas Armstrong, LFC fiscal analyst, noted the staff recommendation was for all expenses to be budgeted through the legislative process, with capital expenses from the New Mexico Unit fund included in the capital outlay bill. Ms. Abeyta-Martinez explained ISC did not have specific figures for federal environmental reviews to inform capital outlay requests by the July deadline. Senator Morales concluded by emphasizing his concern funds that could be used for projects today will be used for planning, design, and legal costs for projects that will not be completed.

**General Services Department.** Ed Burckle, secretary, General Services Department (GSD), presented the agency's FY18 request. The request was \$501 million, which included a transfer from Department of Public Safety (DPS) to assume oversight of its headquarters in Santa Fe. Other revenues include health, risk, and enterprise funds that account for 94 percent or \$472 million of GSD's total request. General fund totals \$14.1 million or 3 percent of the total request. Secretary Burckle commented that since FY15, sweeps to risk, capital and operating funds total \$29.8 million and impact personnel, risk funds and Facilities Management Division's (FMD) ability to finish master planning, space-use assessment and land reconciliation efforts.

In the personal services and employee benefits category, Secretary Burckle discussed the application of vacancy rate factors to accommodate fiscal constraints. For FY18, the overall agency FTE count will be reduced by 23 FTE. In the other category, the increase for health benefits is \$9.6 million, or 2.7 percent, over the FY17 operating budget, due to projected

increases in health benefit costs. Next, Secretary Burckle referred to a graph that compared operating costs by division over the prior three-year period.

For FMD, Secretary Burckle said the request is \$61 thousand less than FY16 actual spending but \$381 thousand higher than the adjusted FY17 operating budget for personal services and employee benefits. Secretary Burckle also said the Public Regulation Commission increased the cost of utilities 10 percent and GSD pays 100 percent of utility costs for state buildings in Santa Fe. Property insurance has also gone up, increasing to \$1.7 million from \$500 thousand in FY15. Preventive maintenance schedules are 97 percent achieved, 94 percent of capital projects are either under cost or ahead of schedule, and better leasing management has reduced space by 10 percent and total annual costs by \$3 million annually.

For State Purchasing, Secretary Burckle said the program has two sources of funding; GF and fees. The FY18 general fund request was \$353 less than actual spending. The special legislative session sweep of \$2.6 million from the fees fund means the program will no longer have funds to upgrade the procurement module in SHARE. Secretary Burckle said the state continues to make progress through the governor's Procurement Reform Task Force (PRTF). When evaluating procurements, GSD looks at factors other than price. As for procurement violations, the program saw a reduction from 33 in FY14 to 16 in FY16.

For Transportation Services, Secretary Burckle said the special legislative session sweep of \$500 thousand from the motor pool fund will impact the state's ability to buy fleet vehicles. Therefore, the program is replenishing the fleet with leased vehicles. The program has installed 917 GPS units in the state fleet, expected to reduce fuel and maintenance costs by 20 percent. To support five agencies in Albuquerque, GSD opened a short-term "rapid ride" kiosk. For the Surplus Property Bureau, store front sales and the govdeals online auction site have generated a 20 percent increase in revenue. For the Aviation Services Bureau, funding sources include the GF for maintenance and enterprise funding for fuel. CMS is the primary customer. The request for the jet includes \$548.6 thousand from the general fund.

For Risk Management operations, Secretary Burckle said the program continues to focus on loss prevention and control trainings. Anticipated expenses are 3.5 percent higher than actual due to increased DoIT charges and costs associated with planned upgrade to the risk management information system. For State Printing, Secretary Burckle said the program continues to operate more efficiently with less staff. The number one source of revenue is printing for the legislature which has declined 43 percent. However, sales generated per employee are \$165 and the private sector industry average is \$123 per employee. As for the agency's primary program support functions, increases are for information technology renewals.

Lastly, Secretary Burckle provided a graph showing appropriations to the six risk funds over the past three years. The request for FY18 is \$87 million. The request for health benefits is \$373.2 million. Savings are expected from a new employee assistance program and greater use of the employee health clinic.

Representative Gonzales asked about vehicle mileage and safety of vehicles. James Chavez, deputy director of Transportation Services, said mileage is assumed to be 13 thousand per year.

Secretary Burckle said the team does a 100 percent hands-on safety inspection once per year of every vehicle statewide.

Representative Varela expressed concerns regarding use of sole source and emergency procurements and will GSD propose legislation to correct issues that arose in the 2016 LFC study of procurement. One recommendation was to publish all sole sources on one website. Secretary Burckle said the department is waiting to see if LFC recommendations will be part of an omnibus bill, and most of the recommendations would be supported by GSD. In the meantime, through rule change, GSD is doing what it can to improve the process. Representative Varela emphasized the state needs to look beyond state purchasing to make sure local governments are complying with the procurement code. Representative Varela also asked about the sweep of the fund that would have implemented the procurement module in SHARE. What is being done in the meantime to automate procurement? Secretary Burckle said that, in light of the sweep, the state may need to wait for funding. Secretary Burckle said Sci-quest is the interim electronic procurement system.

Senator Morales asked who is responsible for upkeep of Fort Bayard until a plan is developed. Secretary Burckle said site operation and maintenance funds are appropriated to the Department of Health. However, the mayor of the village of Santa Clara has helped with potholes and random security checks. Secretary Burckle said a private-public partnership may be needed to maintain and restore the site to its place in history. Chairman Smith said that a lot of buildings were privately developed with a long-term lease to the state and asked if any agencies were having difficulty making these lease obligations. Secretary Burckle responded he was unaware of any agencies not making their lease payments. If a lease needed to be broken, lack of an appropriation is adequate reason.

**New Mexico Corrections Department.** After introductions were made, David Jablonski, Acting Secretary of the New Mexico Corrections Department (NMCD), provided an overview of the state prison system, explaining the state operates 6 public prisons and 5 private prisons with a population of 6,350 men and 702 women as of the date of the hearing with an additional 17 thousand people on probation and parole statewide. The acting secretary informed the committee the department has begun hosting satellite academies around the state to recruit more correctional officers in an effort to combat high vacancy rates. The acting secretary thanked the legislature for supporting the correctional officer pay plan last legislative session and increased costs for hepatitis C drugs.

Acting Secretary Jablonski stated the department recently transitioned 700 women inmates from a private prison in Grants to two public prisons in Springer and Grants. Additionally, NMCD renegotiated per diem rates from \$68 per inmate per day to \$55 per inmate per day at the private facility in Grants. The department awarded a health services contract to Centurion this year and expanded services provided by the University of New Mexico's Project ECHO for hepatitis C treatment and HIV. The department continues to analyze its contracts to achieve cost-savings, including \$1.2 million in noncompliance credits from private prisons so far this year.

Phillipe Rodriguez, acting administrative services director, said of the department's \$332 million request, \$302.5 million is from the general fund, a 1 percent request over the unadjusted FY17

operating budget. Mr. Rodriguez stated the agency's presentation does not reflect 2016 special session reductions. Mr. Rodriguez explained significant amounts of funds from all the department's programs were reprioritized to the Inmate Management and Control (IMAC) program; the department's request for the program is \$275.8 million, \$5.6 million greater than the FY17 unadjusted operating budget. The additional funding will be used to pay for healthcare contracts, relieve pay compaction resulting from the correctional officer pay plan, increased Department of Information Technology radio communication costs, and increased county jail holds for parole violators. Mr. Rodriguez stated the department plans to treat 75 inmates for hepatitis C for a total cost of \$6 million. Mr. Rodriguez also detailed an expansion within the Corrections Industries program, adding 24 new positions to expand food services, a personnel cost increase of \$937 thousand.

In response to Senator Muñoz, Mr. Rodriguez confirmed the agency's presentation does not reflect reductions made in the 2016 special session. Mr. Rodriguez stated in response to Senator Muñoz approximately \$2 million was saved by renegotiating prices at the private prison in Grants. Mr. Rodriguez explained NMCD issued three separate requests for proposals for management of the prison, but CoreCivic was the only respondent all three times. Acting Secretary Jablonski explained savings from the renegotiated rates are a long-term savings; NMCD sustained high overtime and transportation costs due to transferring women inmates and faces costs due to upgrades at the facility to accommodate male security classifications.

Representative Garcia commended the department for working with Project ECHO. Acting Secretary Jablonski stated working with the program has been very beneficial and hopes obtaining special federal drug pricing agreements through 340B will help to further reduce drug purchasing costs.

Senator Morales asked about the vacancy rate at the department; Acting Secretary Jablonski explained the average is about 23 percent historically but varies by location. Senator Muñoz expressed the belief many of the private facilities and healthcare services could be better operated by NMCD and asked the department to consider taking on more of the responsibility.

In response to Senator Cisneros, Anna Martinez, health services administrator at the department, explained the Corrections Industries program is working to train inmates on safe body art practices to slow to rate of HIV and hepatitis C infection among the inmate population. The department has put out an initial bid on body art equipment.

In response to Representative Varela, Mr. Rodriguez explained the department prepares their own financial statements for the year-end audit. Representative Varela asked to see a copy of the finalized audit.

Representative Tomás Salazar asked the department to follow-up on the return on investment for correctional programs detailed in a 2012 LFC and Pew Research Center report *Reducing Recidivism, Cutting Costs and Improving Public Safety in the Incarceration and Supervision of Adult Offenders*.

Senator Smith asked about a large reduction in the contract amount at the Otero County Prison Facility contained within the department's request. Acting Secretary Jablonski stated the department will be revisiting contract reductions at the facility to determine the feasibility of the reductions. Senator Smith asked the department to provide the results of the analysis before the start of the legislative session.

Senator Smith asked about austerity measures the department has taken, to which Acting Secretary Jablonski responded an analysis of overtime costs, recruitment, lease rates, and vacancies are being performed to identify cost savings. Senator Smith stated emergency austerity plans are needed. Mr. Rodriguez stated \$4.4 million in special session cuts are difficult to make but the department is analyzing spending habits and trying to consolidate costs.

**Taxation and Revenue Department.** Demesia Padilla, secretary of the Taxation and Revenue Department, explained the agency request is flat and the agency is hoping for no more reductions because it is approaching critical levels. She continued to explain the employee request reduces full time employees by 12.2 percent. Additionally, there are no more money to be swept, including from the weight distance tax, often used to supplement general fund reductions.

The secretary said many resources are being shifted to the Audit and Compliance Division of the department because they are the primary revenue collector. There is over \$800 million in outstanding collections and the secretary states these can be turned into "today dollars" if efforts are focused on this division for collection.

This year TRD rolled out two major IT initiatives back to back. The first was Tapestry and the second was REAL ID. Due to the initiation of REAL ID licenses, wait times in Motor Vehicle Division (MVD) offices have increased. The division has done its best to educate the public of necessary documents needed to receive either a REAL ID or a driver authorization card.

Representative Bandy asked about a letter sent by the department explaining insurance would be canceled soon on a trailer. Representative Bandy continued to explain it seemed to have been sent by mistake. In response, the field office director, Jerry Valdez, explained some information did not completely transfer to the new Tapestry system and many glitches are being worked out since the switch.

Secretary Padilla responded to Senator Muñoz, stating kiosks and completely self-service locations will be a reality soon. Additionally, they are capable of every type of transaction except titling a vehicle for the first time and driver's license renewal. Secretary Padilla said that any protested tax may be collected at 100 percent but the department sometimes will settle for less.

Secretary Padilla responded to questions posed by Senator Cisneros regarding REAL ID requirements. She explained all requirements are shown on the TRD website and a major difference is that individuals who cannot prove lawful citizen status will need to be fingerprinted, at an extra cost, for the first time applying for a driver authorization card. Other issues being faced by New Mexicans are mismatching documents, especially for women who change their names for marriage purposes. To be eligible for REAL ID all "linking" documents must be brought to the MVD office. Linking documents include marriage license, divorce certificate,

bills, and other. If these cannot be provided, the individual will have to change their name legally to reconcile the person to one specific name.

### **Tuesday, December 6<sup>th</sup>**

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**Higher Education Institutions and Higher Education Department.** Secretary Barbara Damron, Higher Education Department (HED), reminded the committee of the department’s top three efforts – common course numbering, development of meta-majors, and review of the general education core. Secretary Damron emphasized in further detail the work necessary to complete these initiatives. For example, Secretary Damron stated courses cannot just be renumbered; HED staff must review each course syllabus to ensure parity in courses among institutions. Secretary Damron also discussed the department’s development of a statewide strategic plan. As part of this plan, education stakeholders recently gathered in Albuquerque to suggest a statewide postsecondary attainment goal. The goal, Secretary Damron said, is for 66 percent of working-age (25-64) adults to have a postsecondary credential of some kind by 2030. By setting this attainment goal, New Mexico joins over 30 other states that have set a postsecondary attainment goal.

Secretary Damron pointed out the high number of institutions in the state. She said New Mexico has 29 state-funded colleges and universities, tribal colleges, and special schools, with about 75 points of access through branch campuses, learning centers, or other facilities. For state-funded colleges and universities, Secretary Damron said, instruction and general (I&G) funding is determined through a performance-based funding formula that, according to Complete College America, follows best practices. As a result, according to Secretary Damron, the formula has led to more degree awards in recent years. For the department’s FY18 request, Secretary Damron noted the difficulty of the FY18 fiscal landscape. As a result, HED requested no “new money” for the I&G funding formula, with 4 percent of I&G funding, or \$22.8 million, to be redistributed to reward performance. Further, HED recommends combining certain research and public service project appropriations that relate to instruction or student services with I&G appropriations. The HED request would combine 67 research and public service project appropriations with I&G appropriations, totaling nearly \$17 million.

After providing an update on the Legislative Lottery Scholarship Program, which may see award amounts decline by 20 percent to 30 percent in FY18 due to the loss of liquor excise tax revenue, Secretary Damron discussed HED’s FY18 appropriations request. Noting the challenges in maintaining staffing levels due to the inability to offer pay increases, Secretary Damron stated HED currently has 32 positions funded through the general fund. Secretary Damron noted the difficulties in filling vacant positions and, as such, HED still has several vacancies. Recognizing the current fiscal environment, HED is requesting a flat FY18 general fund appropriation.

Secretary Damron stated the department's initial request reflected different amounts; however, the request submitted on September 1, 2016, was before the special legislative session, and HED's updated request is consistent with adjusted FY17 operating levels.

Garrey Carruthers, chancellor of New Mexico State University (NMSU) and chair of the Council of University Presidents (CUP), noted higher education has received general fund reductions totaling 7.3 percent in FY16 and FY17, resulting in a total \$61.6 million cut. Institutions are managing the cuts in different ways while continuing to serve over 133.5 thousand students and working to improve attainment rates in the state. Chancellor Carruthers cited a study by Georgetown University stating 65 percent of jobs in the United States will require postsecondary education by 2020. This compares with New Mexico's newly established 66 percent goal by 2030. To achieve this goal, Chancellor Carruthers noted, CUP requests any further FY17 cuts and FY18 cuts be kept to a minimum, if reductions become necessary.

For the I&G funding formula, Chancellor Carruthers said CUP's request for FY18 is 2 percent "new money" and 2 percent of I&G funding reallocated to reward performance. Chancellor Carruthers said when the formula was developed in 2012, it was designed to be "fully run" with new money and redistributions of base budget dollars. Without new money, the formula is not being fully run, he said. In addition to running the formula as it was initially intended, the new money would offset negative impacts on some institutions and eliminate the need for soft-landing appropriations included in prior years. Chancellor Carruthers noted investment in higher education is important to improving the quality of life in New Mexico, and for every 1 percent of I&G funding reductions that occur at four-year institutions, the institutions have to raise tuition 1.5 percent.

With the most recent reductions of 5 percent in FY17 and possible additional reductions of 1.6 percent in FY18, Chancellor Carruthers calculates institutions may have to raise tuition by 10 percent to break even. Chancellor Carruthers further noted New Mexico institutions are among the lowest in western states for tuition rates. Chancellor Carruthers said CUP supports some research and public service projects being combined with I&G appropriations, but certain appropriations should not be combined, including nurse expansion funds. Chancellor Carruthers concluded his remarks by stating CUP recommends reauthorization of liquor excise tax funding to support Legislative Lottery Scholarship awards for one year so that a task-force can develop data and give recommendations to the governor and Legislature for lottery tuition fund solvency.

Becky Rowley, president of Clovis Community College and chair of New Mexico Independent Community Colleges, said her association is aware of the fiscal situation and requests state appropriations for higher education not be reduced unless necessary. President Rowley also emphasized her support for running the I&G funding formula. Despite the over 7 percent appropriations reductions over the last year, President Rowley emphasized, higher education institutions have continued to achieve significant accomplishments. President Rowley provided some examples of these accomplishments, such as Central New Mexico Community College and San Juan College recently being recognized as the top two colleges in the nation for awarding degrees to Native American students.

President Rowley said the 7.3 percent reduction in the last two fiscal years has hindered institutions ability to expand programs and help the most vulnerable students at risk of dropping out. The current budget environment has made institutions more lean and efficient, but institutions are having to reduce operations, which impacts the number of students community colleges can serve. President Rowley said community colleges play an important role in economic development and middle skills training and she asks the Legislature to keep this role in mind as it moves forward with solvency measures.

Clayton Alred, president of Eastern New Mexico University-Ruidoso and chair of the New Mexico Association of Community Colleges, echoed other college presidents in recognizing the difficult financial situation facing New Mexico. President Alred said the institutions in his association serve a wide variety of clientele and offer a diverse curriculum. President Alred stated he understands soft-landing money in the I&G funding formula, not included in the FY18 HED request, were temporary, but he noted removal of these soft-landing measures will harm institutions. President Alred stated some circumstances in the formula cause institutions to lose funding despite improvements in performance, and the soft-landing funds offset losses in those instances.

President Alred explained the lack of funding for salary increases is a drain on morale and inhibits the ability of a college to compete for talent. Although President Alred understands FY18 may not be the year in which salary increases become a reality, he asks the Legislature keep this in mind for future years.

In response to a question from Representative Hall about HED's annual audit, Secretary Damron said HED is hiring a separate firm to help the department get into compliance. Secretary Damron said HED has until March 10, 2017, to come into compliance with audit requirements. Secretary Damron noted challenges in the department's administrative services division in recent years.

Representative Zimmerman asked about program quality in aligning courses among institutions. Secretary Damron stated HED is working to maintain quality standards by working with accrediting bodies and reviewing each course syllabus from each course at New Mexico's colleges and universities. Representative Zimmerman asked how New Mexico compares nationally in terms of state support for higher education, to which Secretary Damron responded HED has not looked at New Mexico's per-student funding for higher education compared with other states. She said New Mexico should also look at funding per student who completes his or her degree program.

In response to Representative Larrañaga's question concerning college affordability, Secretary Damron stated the importance of college savings plans. Secretary Damron stated a lottery scholarship worth 60 percent of tuition is still significant.

Concerning a question from Representative Larrañaga about research and public service project appropriations being combined with I&G appropriations, Chancellor Carruthers acknowledged the logic behind HED's request; however, he noted some programs may lose federal funding if appropriations are not kept separate.

Senator Morales asked about recently proposed changes to dual credit, and Secretary Damron explained several issues have been reported concerning dual credit, including LFC's 2012 program evaluation on dual credit. Secretary Damron said HED and the Public Education Department are seeking feedback on potential changes to dual credit, with updates to the rule occurring after the 2017 regular legislative session. Chancellor Carruthers added high schools are requesting more dual credit, but funding to higher education institutions for these programs is minimal. Chancellor Carruthers said more guidelines for dual credit are necessary; however, he disagrees with some proposed measures such as a minimum grade-point average of 3.0.

Representative Lundstrom asked about how community colleges track their impact on local economies without laborshed analysis. President Rowley reported it depends on the job sector and varies from college to college, but community colleges rely on relationships with local employers rather than responding to laborshed analysis. President Rowley gave the example of health care in Clovis. Clovis Community College works with regional healthcare facilities to tailor its licensed practical nurse program to the needs of the area.

Senator Neville asked about distance education and cost-savings associated with it. Chancellor Carruthers said NMSU's College of Business has awarded college degrees to students who never set foot on campus and other programs have done the same. Secretary Damron noted the benefits of distance education but "the college experience" is also important for some students.

Senator Papen raised concerns about nursing programs being combined with I&G funding. Chancellor Carruthers said the prospects for expanding nursing appropriations would be slim if nursing appropriations are combined with I&G funding.

Representative Salazar stated the need to communicate the importance of higher education in New Mexico. He added his concerns about English language learner preparation, noting funding is limited given the need.

Representative Maestas discussed the Department of Corrections' request for an 8 percent increase while higher education institutions are asking to be limited in funding cuts. He said priorities should be placed on education not incarceration.

Senator Smith asked who would serve on the proposed Legislative Lottery Tuition Scholarship task force proposed by Chancellor Carruthers, who said membership would be determined by Secretary Damron. Senator Smith noted the last task force on the scholarship included too many members, which hindered the group's progress.

**Special Schools: New Mexico School for the Deaf, New Mexico School for the Blind and Visually Impaired, and New Mexico Military Institute.** Linda Lyle, superintendent of the New Mexico School for the Blind and Visually Impaired (NMSBVI), discussed a program in which students who live in the opposite corners of the state from the NMSBVI, such as Farmington, are flown home over the weekends. She noted funding for the initiative was restored in FY17; however, NMSBVI was told it would no longer be able to use state-owned aircraft. Superintendent Lyle stated the school is in contract negotiations with NMSU for use of its plane

as well as a private aviation contractor. She said she hopes students eligible for the program will be receiving the service by the beginning of 2017.

Superintendent Lyle then discussed recent developments at the Albuquerque campus for NMSBVI. One of the initiatives at that campus was a research project in partnership with the MIND Institute to conduct magnetic resonance imaging on children to understand learning outcomes over time. She said the first publication on the program is coming out soon along with a presentation in Canada at a cerebral palsy conference.

Turning to the low-vision clinic at NMSBVI, Superintendent Lyle said the school contracts with three doctors – one in Albuquerque, one in Artesia, and one new doctor who is finishing a stint with the Veterans Administration and will work in various rural areas. Superintendent Lyle also highlighted a partnership with the Texas School for the Blind and the Perkins School for the Blind offering Internet-based instruction to help 80 blind or visually impaired students conceptualize science, technology, engineering, and math.

Rosemary Gallegos, superintendent of the New Mexico School for the Deaf (NMSD), reported on the school's progress on early intervention programs. Her handout showed the various areas of the state the report serves. Superintendent Gallegos said the school relies heavily on Medicaid and general fund revenues for these services. NMSD does not charge for its services, and the school has frozen vacant positions and cut back on administrative costs to make up for appropriations reductions. Superintendent Gallegos noted class sizes at NMSD have grown to the highest in six years. She completed her remarks by noting challenges in recruiting staff, especially because NMSD is competing on a national level for teachers and staff.

Jerry Grizzle, president and superintendent of New Mexico Military Institute (NMMI), said the institute centers its efforts on three areas – academics, athletics, and leadership. Regarding academics, NMMI passed its community college accreditation requirements at the highest level. He said the secondary school at NMMI also passed its accreditation check. Superintendent Grizzle also noted ACT scores of NMMI students, along with several other academic factors exceed national averages. Superintendent Grizzle added that all 112 General Knowles scholarships were awarded in the most recent year. Superintendent Grizzle informed the committee 19.2 percent of cadets at the school are female, and those female cadets often fill leadership roles. Finally, Superintendent Grizzle noted the high number of international and out-of-state students who attend NMMI, highlighting the value it adds to the experience for cadets.

Representative Varela suggested improving recruiting efforts in northern New Mexico, particularly Espanola, Santa Fe, and Pojoaque. Representative Varela requested how many students received scholarships under the Knowles Scholarship for his legislative district.

Senator Muñoz asked NMSD how the school recruits for students on the Navajo Nation. Superintendent Gallegos responded NMSD has a federal grant in early intervention and strong ties with organizations who are currently working in the Navajo Nation. NMSD also works with the Indian Health Service.

Representative Larrañaga asked about the enrollment of the NMSBVI Albuquerque campus and the main campus. Superintendent Lyle said the Albuquerque campus has about 62 students year-round and 43 students at the main campus, a number limited by bed space.

In response to a question from Representative Larrañaga concerning air transportation for certain students at NMSBVI, Superintendent Lyle said the governor's office would not approve NMSBVI's use of the General Services Department plane; however, the governor's office has not responded to the school's request for an explanation. Senator Smith noted if the executive branch did not wish for NMSBVI to transport students home by air, that particular appropriation should have been vetoed.

**University of New Mexico Health Sciences Center.** Paul Roth, chancellor of the University of New Mexico (UNM) Health Sciences Center (HSC), provided the committee with an update of UNM HSC's finances and certain programs. Chancellor Roth said revenues and expenses were adjusted downward for FY17 compared with HSC's original operating budget. This is partially due to appropriations reductions, and if the current fiscal situation remains UNM HSC will need to eliminate over 500 jobs – 33 physicians, 13 residents, 174 nurses, 167 other hospital staff, and 132 academic staff. Chancellor Roth said HSC has implemented aggressive operational efficiencies, but under the current circumstances HSC will need to cut access to services and will not be able to expand its nursing program.

Chancellor Roth provided a graph showing funding for indigent care has remained constant since FY14, while the cost to deliver indigent care was reduced by half. The shortfall caused by providing such care has likewise been reduced by half. Chancellor Roth highlighted, however, there is a difference between indigent care and uncompensated care. Turning to the topic of healthcare insurance revenues, Chancellor Roth said FY17 has experienced a \$40 million, or 4 percent, net reduction in clinical revenue. This was caused by a \$70 million reduction in contract changes but was offset by a \$30 million backfill in revenue. Chancellor Roth reported several ongoing issues that HSC will need to continue to address, such as contracting issues with the Medicaid program.

Next, Valerie Romero-Leggott, vice chancellor for diversity, discussed a program that combines undergraduate and medical doctorate curriculum to allow a seamless transition, commonly known as the BA/MD program. Chancellor Roth noted 41 students have graduated with a medical doctorate in the program's 10-year history, with 40 of those students currently in residency throughout the country, including 18 in New Mexico.

Finally, Richard Larson, UNM HSC executive vice chancellor, discussed the status of New Mexico's healthcare workforce. As of December 31, 2015, New Mexico has 9,382 licensed physicians, 57 percent of which are currently practicing in New Mexico, and nearly 2,000 nurse practitioners, 65 percent of whom are currently practicing. Vice Chancellor Larson presented a map showing primary care provider levels are below national benchmarks in the southern and northwestern portions of the state. Vice Chancellor Larson concluded his remarks by noting challenges with the physician survey implemented by the Regulation and Licensing Division, asking that future consideration be given to the survey and asking the division fix current glitches in the survey.

Senator Neville asked why no BA/MD residents were in San Juan County, and Chancellor Roth responded residency requirements are strictly regulated, so there may be regulatory reasons why residents were not placed in that county.

In response to a question from Senator Muñoz on the proposed replacement of the adult hospital, Chancellor Roth said HSC is moving forward with planning; however, planners on the project are predicting the hospital may cost more than initially thought. As such, the planning team is working to propose a first phase of the project, with plans to seek State Board of Finance approval in March 2018.

Senator Muñoz asked how often UNM Hospital is unable to take on new emergency department patients due to capacity. Chancellor Roth said this occurred five times in October 2016, an improvement over the 25 occurrences in February 2016. Senator Muñoz emphasized the importance of adequate hospital facilities to provide stable health care for New Mexicans.

In response to a question from Representative Lundstrom about UNM HSC's contribution to Medicaid solvency, Chancellor Roth said UNM HSC contributed \$21 million in FY16 to Medicaid.

**Tribally Controlled and Administered Colleges.** Robert Martin, president of the Institute for American Indian Art, said the consortium of tribal colleges has several priorities for the upcoming legislative session. First among these priorities is continued funding to reimburse the colleges for dual credit. He said the current amount is less than what is currently needed, but the tribal colleges understand the state's fiscal environment. President Martin stated the tribal colleges would like to see other state funds that have been added in previous years become recurring appropriations. Second, President Martin asked for future consideration for lottery scholarship eligibility for tribal college students. He said the estimated cost from an LFC fiscal impact report would be less than 1 percent of total lottery revenues. Finally, President Martin concluded his comments by summarizing the tribal colleges' capital outlay priorities.

**Capital Outlay.** Brandee Pacheco, fiscal analyst, LFC, reported that as of October 14, 2016, approximately \$842.8 million from all funding sources for 2,581 projects remains unexpended; this includes \$135.8 million in earmarked funds for water, colonias, and tribal infrastructure projects. The December report will include 148 projects totaling \$174.3 million funded by general obligation bonds, it will also reflect 113 local projects voided and 10 projects with funding swapped from the general fund to severance tax bond proceeds during the special session. Since the June 2016 quarterly report, 610 projects closed with approximately \$169.1 million expended or reverted. A chart in the presentation showed the number of outstanding projects and status of funds by year.

LFC staff currently tracks \$1 million or greater appropriations for 230 projects, of which \$711.5 million is unexpended. Ms. Pacheco reported 28 projects totaling \$132.5 million closed since June 2016. Ms. Pacheco further noted major projects that closed for the quarter, projects with no progress, and projects with slow or little progress.

Ms. Pacheco provided an update on the 2014 water initiative. Of the \$83.5 million authorized, \$54 million remains unexpended for 115 projects. A listing of 191 projects was presented showing the number of projects by county and the status of funds. The authorized but unissued project list totaling nearly \$19.7 million was also presented. Projects are included on the list due to various reasons -- noncompliance with audits, applications missing, or projects not ready.

Ms. Pacheco reported that \$227 million for 1,727 local projects remains unexpended. Ms. Pacheco provided a spreadsheet summarizing by county the outstanding funds authorized between 2013 and 2016. The spreadsheet noted counties with a high percentage of unexpended funds. Another spreadsheet provided the status on 192 local projects authorized between 2012 and 2016 with \$63.4 million unexpended. Ms. Pacheco reviewed projects recently completed, projects with little or no activity, and projects with no expenditures. Ms. Pacheco added the quarterly reports are posted on the legislative website.

Linda Kehoe, principal analyst, LFC, presented the committee with an overview of available capacity for capital expenditures for the 2017 legislative session. Ms. Kehoe stated that the final capacity figures will be released by the Board of Finance on January 15, 2017. She added statute was permanently amended during the special session to reduce the earmark set asides by 1 percent each starting in FY18. Ms. Kehoe stated capacity is at an all-time low due to the dramatic declines in energy-related revenues combined with spending into 2017 capacity to address solvency issues in the special session. This leaves the available capital capacity at less than \$65 million, compared with the \$1.7 billion requested to date by state and local entities. Of the total requests, \$588 million is requested for local infrastructure projects.

Ms. Kehoe stated LFC staff develops the framework for proposed capital funding for consideration and action by the full Legislature based on criteria approved by the committee, site visits, review of infrastructure capital improvement plans, monthly meetings with major departments, and testimony presented at hearings held in the interim. The staff framework proposed addresses the most critical projects impacting public health and safety, preservation of state facilities, the state's most at-risk clients, and the completion of projects in progress. Ms. Kehoe reminded members only \$41 million was available to fund 28 state agency projects during the 2016 session.

Ms. Kehoe mentioned on a positive note, the recent passage of general obligation bond issues a, b, c, and d will fund \$174.3 million for senior centers, libraries, higher education facilities, and public safety needs statewide, which eases the need to fund those state and local projects during the upcoming session.

Ms. Kehoe indicated state agencies requested nearly \$502.7 million. Ms. Kehoe highlighted the agency capital requests and noted the framework proposes \$63 million from severance tax bonds, and an additional \$12.2 million from "other state funds" for 24 of the 66 projects requested. While there are fewer projects funded, staff ensured sufficient funds were considered to make a phase of a project functional.

Ms. Kehoe provided a brief overview of the legislation the Capital Building Planning Commission endorsed for the 2017 legislative session. The legislation would further define the

commission's role and provide it reviews and makes a recommendation on the disposition of property prior to the introduction of a joint resolution relating to the disposition of property.

Ms. Kehoe added LFC and DFA staff in collaboration with executive directors of the New Mexico Association of Counties and the New Mexico Municipal League worked throughout the interim to identify and improve processes and procedures related to local capital outlay. Ms. Kehoe provided an update to the committee regarding progress that has been made in addressing administrative improvements to the process for local projects.

Senator Cisneros, after reviewing the framework, asked for clarification on whether there is an amount recommended for local projects. Ms. Kehoe confirmed the staff framework does not include funds for local projects. Director Abbey added the staff framework proposes how to use the limited capacity to address only critical state agency needs; members would have to determine if there will be any money set aside for local projects. Senator Cisneros added it would be uncontainable for members to allocate funds for local projects with the limited capacity.

Senator Cisneros asked for clarification regarding the \$19.7 million authorized but unissued projects DFA referred to in their presentation. He asked staff to analyze the projects and possibly recommend some be deauthorized. Senator Cisneros added projects that have potential issues, such as anti-donation, should be clearly noted on the request form, and staff should make members aware of such issues prior to the bill being drafted. Ms. Kehoe added the work group has made several suggestions for improvements to Raul Burciaga with the Legislative Council Service (LCS). Mr. Burciaga has taken the suggestions under advisement and will be discussing them with the new leadership.

Senator Cisneros added there is some confusion regarding the release of members' capital outlay information. He was told the release was only good for one year. Senator Cisneros asked Ms. Kehoe to follow up with the Council Service regarding their policy so members are clear on what type of authorizations they are giving related to capital outlay. Ms. Kehoe advised Senator Cisneros the best time to address his concerns would be at the next LCS meeting so all leadership is aware of the issues.

Representative Lundstrom requested clarification if "claw backs" during the special session included water project funds. Ms. Kehoe clarified the only water projects taken were part of the Governor's 2014 water initiative. If members wanted to claw back those projects it would have to be a joint effort between the governor and Legislature. Ms. Kehoe added the Legislature clawed back 24 projects totaling \$1.8 million of 2014 water initiative projects during the special session. Representative Lundstrom added there was a lot of discussion during the last New Mexico Finance Authority (NMFA) Legislative Oversight Committee (LOC) meeting regarding capital outlay. She added the NMFA LOC is going to start looking at capital outlay on a regular basis. Representative Lundstrom requested staff review and analyze the 2014 water initiative projects to see if any of those could be deauthorized.

Senator Muñoz added, to be fair, match funds should be considered when recommending projects for deauthorization so a project is not left partially funded. Senator Muñoz questioned why projects aren't vetted before they go to legislators for funding. He also asked if this is

something that can be done administratively. Ms. Kehoe mentioned one of the suggestions given to LCS was to develop an interim committee to review projects and recommend them for approval to the legislature. Senator Muñoz expressed his concern that legislators on the committee would only be concerned with funding projects in their own district, not any other. Senator Muñoz added, it would be helpful if LCS would require certain documentation before requests are given to legislators for approval. Ms. Kehoe informed Senator Muñoz sharing the information LCS receives in a web-based database would help alleviate some of the issues brought up. Ms. Kehoe advised Senator Muñoz the best way to address his concerns would be at the next LCS meeting so all leadership is aware of the issues.

### **Wednesday, December 7<sup>th</sup>**

The following members and designees were present on Wednesday, December 7, 2016: Chairman John Arthur Smith; Vice Chairman Jimmie C. Hall; Senators Carlos R. Cisneros, Stuart Ingle, Steven P. Neville, William F. Burt, Howie C. Morales, George K. Muñoz, and Pete Campos; and Representatives Larry A. Larrañaga, Luciano “Lucky” Varela, Nick L. Salazar, Paul C. Bandy, Conrad James, Jim R. Trujillo, and Patricia A. Lundstrom. Guest legislators: Senators Craig W. Brandt, Mary Kay Papen, and James P. White; and Representatives Eliseo Lee Alcon, Sharon Clahchischilliege, Doreen Gallegos, Miguel P. Garcia, Antonio Maestas, Tomas E. Salazar, and John L. Zimmerman.

**Children, Youth and Families Department.** Secretary Monique Jacobson presented agency 2016 accomplishments and work plan.

Senator Smith expressed great concern regarding stress on the general fund and stated CYFD may need to reduce expenditures. Representative Lundstrom then asked the average starting salary and educational requirements for a child protective service worker. The secretary answered the average salary was \$40.6 thousand and a bachelors degree in social work or related field was required. Representative Gallegos asked why some children receive multiple referrals before they are taken into custody and the secretary responded investigation is necessary to prove a child is unsafe to take custody. Senator Morales then thanked the secretary for her presence in rural areas and asked what plans the agency had after the federal Race to the Top funding ended. The agency responded the federal dollars were used for system and quality service building and there will be continued support to maintain the progress made as a result of the federal grant. Senator Muñoz followed up on possible cuts to the agency budget as a result of declining general fund revenues and the Secretary responded the agency would follow up with information.

**Department of Health.** Director David Abbey, LFC, read two letters from Senator Smith thanking former director Cathy Stevenson, Developmental Disabilities Support Division, and Michael Browne, Department of Health infrastructure manager, for their service. Secretary Lynn Gallagher, Department of Health, presented to the committee and ran through each of the department’s programs and each of their budgets. Secretary Gallagher introduced Lynn Carol the new Public Health Division Director and Joe Foxhood, the new Division of Health Improvement director. Secretary Gallagher spoke about improvements Ms. Stevenson made to the Developmental Disabilities Support Division (DDSD) under the Waldrop lawsuit settlement and Jackson lawsuit disengagement. The secretary pointed out that the department has been spending a lot of money on Jackson lawsuit disengagement activities including attorney fees.

The secretary spoke about a projected shortfall in the Vital Records and Health Statistics Bureau for personnel services. The secretary also spoke about special and supplemental appropriation requests for the state labs, Health Certification, Licensing and Oversight, and Program Support. The secretary stated the Public Health Division has experienced an \$11 million reduction in general fund revenue since FY16. The secretary then discussed the budget for each of the divisions and spoke about key accomplishments for the department.

Representative Varela stated he wished the Legislature would have been able to hold-harmless the department during the special session. He asked if the department was requesting to cut rural and primary health clinics. The secretary stated they are requesting a decrease. Representative Varela stated he would not like to see a cut to these clinics.

Representative Garcia asked about the Jackson lawsuit and stated that the lawsuit was a good thing in the beginning but has become a Cadillac program for a select few in the developmentally disabled program. Representative Garcia then stated that the Legislature cut Public Health \$9 million during the regular session and cut them another \$3 million during the special session. He stated that the department cut services when they closed a public health office, a school-based health center, and a dental health clinic in his district.

Representative Trujillo asked about the Vital Records and Health Statistics Bureau and the need to get a new building and digitize vital records. The secretary stated she does not think that it would be possible to expand but that they need to get a better understanding of the area.

Responding to Representative Bandy, Secretary Gallagher said the suit has been ongoing for 17 years. Department staff said DOH spent \$7 million on the Jackson lawsuit in FY16 and is on track to spend \$11 million in FY17. The department also stated its supplemental appropriation request includes \$8 million in attorney's fees for the Jackson lawsuit. Representative Bandy asked what would happen if the lawsuit activity was not funded, and the secretary stated the agency was held in contempt of court when it was tried in 2010. She said the judge is not sympathetic with the state's revenue situation. There would likely be a special master that would be appointed if the state failed to fund the lawsuit. The secretary stated disengagement has accelerated since LFC staff attended meeting, sending the signal the state is serious about disengaging. Representative Hall stated this lawsuit has gone on at the expense of other people who need these services and cannot continue like it is.

Representative Zimmerman asked about IT positions in the department. The secretary stated that they moved the IT positions from various programs and consolidated them into Program Support at a cost of \$1.5 million. Representative Zimmerman asked whether the department has gone to the Department of Information Technology (DoIT) to see if they could provide the IT support. The secretary stated that the secretary of DoIT agrees that DOH needs these positions.

Senator Morales asked about nursing shortages and said that staffing agencies do not seem to have shortages and asked why that is. The secretary stated that staffing agencies have the ability to pay well and the state does not. Senator Morales asked if the state will ever be able to get ahead on nurse salaries. The secretary stated that one way to improve recruitment and retention is to market government service and make the argument the state has good benefits, which should

help. Senator Morales stated that Pam Galbraith, former LFC evaluator, had recommended there should be an independent review of Fort Bayard and that he never saw a response from the department. Deputy Secretary Sanchez-Sandoval stated that they did do a written response and that they can forward it.

**Human Services Department.** Secretary Earnest opened with a review of the Income Support Division (ISD), noting the request was for \$25.5 million, all from federal funds. The general fund request was flat with the FY17 operating budget. The secretary noted the program is reviewing office consolidation; the expansion of online resources for beneficiaries has reduced the traffic in field offices making consolidation possible. The average Temporary Assistance for Needy Families (TANF) program caseload is approximately 13,500, with an average benefit of \$310; however, New Mexico is still higher than the national average below 7,000. The secretary next discussed job readiness activities and noted the ISD program CareerLinks was expanded to Clovis, Los Lunas and Grants in FY17 and provides wage subsidy, high school equivalency credential, and vocational training services. At 54 percent, New Mexico's work participation rate is well above the national average of 37 percent. The request for general assistance is \$10.3 million, \$7.2 from the general fund and \$3.1 million in federal recoupments; the average caseload has ticked up in the last to about 3,600 with an average monthly benefit of \$239.28. The request includes \$1.2 million from the general fund for a senior SNAP supplement. The average caseload is about 11,900 with an average benefit of \$8.53; the supplement brings the monthly SNAP benefit to \$25. Regarding the recent court-appointed special master, the secretary noted the appointment will bring an objective reviewer to the litigation but carries additional costs estimated at nearly \$2 million, including just over \$1 million in general fund revenue and about \$600 thousand in matching federal funds for court costs, special master compensation, and consultant services. Secretary Earnest noted ISD performance improved since a dip in 2014, when the federal Accountable Care Act put a strain on the program by increasing the number benefit applications; however, the department may see new declines in performance as ISD works through issues with the special master in the coming year.

In the Behavioral Health Services Division, the secretary noted the request of \$57.2 million request from general fund revenues is down 10 percent from 2013, prior to the expansion of Medicaid, and about 1 percent less than the FY17 operating budget. Performance for the program improved in some areas and this shows in a national ranking improvement where the state improved 14 spots, from 36 to 22, among states by Mental Health America. The secretary also reviewed the three pillars of reform in its current strategic plan, Implementing a two-year strategic plan, regulatory updates, finance (payment reform), and workforce development, as well as delivery system reforms and network development. Finally, the secretary reviewed the program's transition from external administrative service organization (OptumHealth) to a "hybrid" system in which the program uses some contractual services, some in-house services, and additional clinical support via expanded contract with the University of New Mexico. While a transition plan is still in the works, the secretary indicated the result is largely a shift from contractual service spending to other contracts and personnel.

Regarding the Medicaid program, Secretary Earnest noted enrollment continues to grow but at a slower pace and that cost trends in Centennial Care are significantly lower than regional and national healthcare inflation. While the FY18 projection is lower than the agency's September

request, upcoming federal rule changes could impact the budget need. The secretary noted per capita costs in Centennial Care are down 1 percent and the department is projecting only 1.5 percent price and utilization increases over 2017; these trends are indicated by increased preventive services and decreased inpatient hospital costs. Total Medicaid Program spending in FY18 is projected to be \$6.093 billion, with \$995.8 million from the general fund, a \$82.2 million increase over the FY17 operating budget. The secretary recapped the major changes from FY17 including costs for Medicare, a health insurer provider fee required by the federal government, and other cost increases, as well as over \$35 million in projected general fund savings in the next year due to a more favorable federal fund matching rate. The secretary noted priorities for the program include the renewal of the state's 1115 Medicaid "waiver," and procurement and implementation of the replacement of the Medicaid Management Information System. Turning to cost-containment, the secretary reviewed its actions in response to the recommendations of the three Medicaid subcommittees tasked over the summer with assisting the department with studying alternatives for ways to slow the growth of Medicaid. The secretary noted HSD plans to submit a draft state plan amendment to the Centers for Medicare and Medicaid (CMS) before end of calendar year to implement limited copayments as well as a plan to implement guidance on services "received through" an Indian Health Services or Tribal 638 facility, which will allow increased federal funding for certain service; the secretary noted the change could provide "significant savings" for the program in the coming year.

In response to Representative Conrad James, Secretary Earnest noted changes to federal rate-setting rules may require the department to set rates closer to the midpoint of allowed ranges while currently rates are closer to the bottom of the range. Additionally, requirements for mental health service "parity" with physical health services may bring additional costs. Regarding proposed copayments, the secretary noted actual collections would be modest but some cost savings will be realized due to a better-used health system with less inappropriate use of expensive emergency services.

Representative Lundstrom asked if HSD was required to take Medicaid subcommittee recommendations and the secretary stated no and explained some of the differences between the subcommittee recommendations and the department's final proposals. The secretary noted the final provider rate actions are available on the department's website. The secretary defined the subcommittee's recommendation for "financing" initiatives for Representative Lundstrom, indicating it referred to things like value-based purchasing arrangements or provider fees. Regarding a provider fee, the secretary noted he is not promoting one and that it would be up to the Legislature to decide.

Representative Larrañaga commented that cost-containment has to be a big part of how they do the budget. Secretary Earnest responded by explaining there are generally three ways to slow costs in Medicaid: rate decreases, implemented in FY17, benefit changes, and changes in eligibility, which the department has tried not to do.

Also in response to Representative Larrañaga, the secretary explained that nationally the rate of clients accessing behavioral health services is about 20 percent; in New Mexico about 18 percent are currently accessing services. The secretary indicated he was willing to work with the LFC and its staff regarding cost-containment proposals.

Finally, in response to Senator Papen, the secretary noted money withheld from behavioral health providers was being held at OptumHealth and some has been released to providers. None is in interest-bearing accounts as far as he knows. The secretary indicated the amount withheld was originally about \$10 million to \$11 million; HSD would get back with the senator regarding current balances still withheld.

**Special, Supplemental, and Deficiency Requests.** Isaac Romero, LFC fiscal analyst, provided the committee with an overview of agency requests for special appropriations and Julia Downs, LFC fiscal analyst, provided an overview of supplemental and deficiency appropriation requests. A.J. Forte, state budget director, expressed concern with the amount being requested by all agencies. Mr. Forte also highlighted the Department of Finance and Administration request for the payment card industry, noting that this affects about 23 agencies.

Mr. Forte expanded on the DFA special appropriation request regarding the payment card industry in response to questions posed by Senator Muñoz. Mr. Forte noted the state is paying \$5,000 per month for being out of compliance in security measures of payment card information. This is a contract with Visa that allows the state to use credit cards for purchases, such as when the public goes to the MVD or licensing for the Department of Game and Fish.

Senator Muñoz noted a previous LFC meeting where the Department of Information Technology (DoIT) showed cash balance of \$10 million, yet it appears the department has not paid its phone bill for three years. Mr. Forte explained that some agencies are making payments in arrears. Additionally, Mr. Forte expressed that he didn't believe DoIT has that large of cash balances due to the way equipment is depreciated; however, DFA is willing to provide a detailed explanation for making payment in arrears. DoIT has been in the same situation in past years where it pays previous year balances with current year revenue and it doesn't look like there will be a big increase in revenues so the problem will likely persist.

### **Miscellaneous Business.**

#### **Action Items.**

Senator Cisneros moved to adopt the October 2016 meeting minutes, seconded by Representative Lundstrom. The motion carried.

Senator Cisneros moved to adopt the LFC contracts, seconded by Representative Lundstrom. The motion carried.

**Review of Monthly Financial Reports and Information Items.** David Abbey, director of LFC, briefed the committee on monthly financial reports and information items.

Charles Sallee, deputy director of program evaluation for LFC, updated the committee on the program evaluation work plan and then provided a brief summary of the leveraging Medicaid progress report, an update to a 2015 program evaluation. According to the most recent projections from the Human Services Department (HSD), enrollment is expected to continue to grow to 957 thousand by the end of FY18, at a total cost of \$6.1 billion. This steady growth in Medicaid enrollment and costs continues to underscore the need to efficiently and effectively use

state funds to maximize the ability to draw down the federal Medicaid match, especially in light of uncertain state revenues. The FY17 general fund appropriation for Medicaid is \$914 million, but HSD projects a need of \$996 million in FY18. The 2015 LFC report identified potential net savings or new revenues of between \$82 million and \$103 million from various strategies to leverage federal Medicaid dollars. While some progress has been made, including \$13 million in additional Medicaid revenues to rural and primary health clinics and a \$28 million reduction in New Mexico Medical Insurance Pool tax credits claimed due to enrollees finding other coverage, a number of challenges and difficult decisions remain. However, the state has actively engaged in assessing options to better leverage Medicaid, including through the Medicaid Advisory Committee's Long-Term Leveraging Medicaid Subcommittee, which issued a list of recommendations in September 2016.

David Lucero, deputy director of LFC, reported on FY17 first quarter agency performance reports. Mr. Lucero said LFC staff and DFA staff have streamlined and improved measures. Over 600 measures considered less useful were eliminated. Reporting requirements have changed for some agencies.

Mr. Lucero highlighted key performance information. The Taxation and Revenue Department Motor Vehicle Division call center wait times to reach an agent is short of the five-minute target by nearly two-minutes. The Human Services Department (HSD) added three new measures, including "Number of managed care members enrolled in a patient-centered medical home (PCMH)," in which a team of individuals collectively takes responsibility for the ongoing care of patients using a coordinated, "whole person" approach. The Department of Health did not reach the target for eligible third-party revenue collected. It is vital during the current period of fiscal austerity for all revenue to be collected and provisions in the Affordable Care Act to be taken full advantage of. The Department of Public Safety (DPS) performed well on measures relating to criminal investigations, commercial motor vehicle safety inspections and trainings, and DWI prevention. However, the agency struggled to issue the targeted number of commercial motor vehicle citations per officer. The Corrections Department (NMCD) did not report eight of the 12 measures required by the General Appropriation Act of 2016. Missing measures include turnover of correctional and probation and parole officers, standard caseload levels, men's recovery center recidivism rates, GED attainment, recidivism rates of residential drug abuse program graduates, and recidivating inmates with new or pending charges. The Public Education Department (PED) reported increased participation in state-funded prekindergarten and a slight decrease in elementary schools participating in breakfast after the bell. Data requested for other agency initiatives has not been provided for staff review and most public school reporting is only available on an annual basis. Although higher education institutions have demonstrated improved outcomes in terms of degree awards in recent years, the wide variance in performance across New Mexico's 24 publicly funded postsecondary institutions exhibits the need for more frequent, more correlated data reporting. The Economic Development Department's performance results for FY17 were off to a slow start with low first quarter results in overall job creation, rural jobs created, and jobs created through the use of LEDA funds. The State Personnel Office reports the average time to fill vacant positions decreased from 69 days to 64.7 days, with the Energy, Minerals and Natural Resources Department, Department of Information Technology, Corrections Department, and Environment Department taking the longest to fill positions at over 80 days. Turnover also decreased from a rate of 14.8 percent to 10.7 percent, with the

Corrections Department having the highest turnover at 30 percent; however, the statewide vacancy rate grew by 2.4 percent compared with the fourth quarter of FY16. The Department of Transportation reports Rail Runner ridership continues to be down as more people instead use personal vehicles. The current low price of gasoline and diesel are rendering these transit services less competitive relative to driving.

Director Abbey said LFC staff proposes consideration of seven pieces of legislation, including five from the LFC Sunset Subcommittee. Mr. Lucero and Mr. Sallee gave a brief summary of the potential legislation. Senator Cisneros moved to adopt staff recommendations for committee-sponsored legislation, seconded by Representative Lundstrom. The motion carried.

Senator Cisneros moved to adopt staff recommendations on the framework of the capital outlay bill, seconded by Representative Lundstrom. The motion carried.

**Recommendations of Interim Committees.** Representative Eliseo Lee Alcon, designee of the Indian Affairs Committee (IAC), said IAC has endorsed a bill that essentially funds taxes owed to the Native American community that benefits Native Americans in the military.

In response to Senator Muñoz, Representative Alcon said the current fund has been depleted.

Chairman Smith said he will be sponsoring a bill in the 2017 session that increases the gasoline tax by 10 cents and distributes half percent to the local road fund and the other half percent to building general fund reserves. When reserves reach a 5 percent level, the tax revenue would then be distributed to the state road fund.

#### **Thursday, December 8<sup>th</sup>**

The following members and designees were present on Thursday, December 8, 2016: Chairman John Arthur Smith; Vice Chairman Jimmie C. Hall; Senators Carlos R. Cisneros, Stuart Ingle, Steven P. Neville, William F. Burt, Howie C. Morales, George K. Muñoz, and Pete Campos; and Representatives Larry A. Larrañaga, Luciano “Lucky” Varela, Nick L. Salazar, Paul C. Bandy, Sharon Clahchischillie, George Dodge Jr., and Patricia A. Lundstrom. Guest legislators: Senators Craig W. Brandt, Cisco McSorley, Mary Kay Papen, and James P. White; and Representatives Miguel P. Garcia, Roberto “Bobby” J. Gonzales, Jane Powdrell-Culbert, Tomas E. Salazar, Jim R. Trujillo, and John L. Zimmerman.

**Public Education Department and Public School Support.** Hanna Skandera, secretary of the Public Education Department (PED), noted New Mexico recently ranked fourth in the nation as a “top truth teller” state, second in the nation for year-over-year growth in the number of students taking an advanced placement (AP) exam, fourth for providing AP access to students from low-income backgrounds, third out of PARCC member states for average growth on grade-level and subject assessments, and first for proficiency in 11<sup>th</sup> grade English language arts PARCC scores.

Skandera acknowledged the state had “a lot of work to do” but stated 5,000 more students were reading at grade level, 7,300 more students were proficient in math, and 77 of 89 districts increased math proficiency rates from the previous school year. She also noted 30 thousand more students were attending A- and B-grade schools than in 2012.

In 2012, the U.S. Office of Civil Rights conducted a study on teacher attendance and found 47 percent of teachers in New Mexico were habitually absent. According to Skandera, teacher habitual absences decreased to 12 percent in 2016, keeping more teachers in the classroom and reducing costs for substitutes. PED attributed part of the decline in absences to the teacher evaluation system and cited a 22 percent increase in teachers earning “highly effective” and “exemplary” ratings from 2014.

Since FY11, PED’s budget has been reduced by nearly 30 percent and public school support (PSS) funding has increased by \$351 million. The department requested a flat operational budget for FY18. Between December 2010 and December 2016, PED dropped from 338 FTE positions to 278 FTE positions, with 18 FTE positions removed this December from currently vacancies.

PED’s FY18 request for public schools totaled \$2.675 billion, a \$3.5 million, or 0.1 percent decrease from FY17 appropriations. PED’s request included an increase of \$6 million, or 0.2 percent, for the state equalization guarantee distribution, and grew the share for formula funding from 92.6 percent to 92.9 percent. The department’s general fund request for categorical programs decreased \$7 million, or 7.1 percent, shrinking the share of categorical spending from 3.7 percent to 3.4 percent. However, the department’s request included \$25 million from the public school capital outlay fund, effectively increasing categorical spending by \$5.5 million, or 4.9 percent, over FY17 adjusted levels. The request for initiatives decreased \$2.5 million, or 2.5 percent, essentially leaving the share for initiative spending the same.

The department’s PSS request reflects a relatively flat budget, consistent with actions taken in the legislative special session. Skandera indicated “below-the-line” appropriation cuts amounted to \$4.5 million, or 11.4 percent of targeted initiatives, and early childhood education initiatives were kept intact. She noted \$36 million of these targeted investments affected nearly 5,000 educators receiving stipends, training, and support. PED’s request for prekindergarten and K-3 Plus funding was flat, and the department reported data showing improved results from participants in these early childhood programs. Skandera noted the Reads to Lead program’s funding distribution was revised to a competitive grant process due to the lack of results from recipient districts. The top quartile of districts showing improvements kept their Reads to Lead funding; those that did not had to reapply. The department’s request for teacher and school leader program and supports decreased to \$5.3 million, a 12.5 percent reduction. According to Skandera, preliminarily data showed teachers receiving merit pay had better retention rates than their peers.

Skandera introduced Tom Burris, superintendent of Roswell Independent School District (RISD), and Arsenio Romero, assistant superintendent of instruction at RISD, who expressed support for initiative funding dedicated to merit pay, K-3 Plus, prekindergarten, University of Virginia (UVA) turnaround programs, teachers pursuing excellence (TPE), and principals pursuing excellence (PPE). RISD did not maintain Reads to Lead funding but kept reading coaches using operational expenses. Romero indicated the TPE and PPE program helped him build relationships across districts, provide executive coaching support, and demonstrate improved school grades in 17 out of 19 schools.

Representative Lundstrom asked Burris to clarify his comments about not receiving Reads to Lead funding from an earlier interim hearing, noting there was a difference in what was being reported. Burris indicated he was informed about how RISD did not qualify for the funding. Representative Salazar asked Skandera if schools were targeted for having low reading scores as in the competitive application process. Skandera indicated the funds were awarded based on whether improvements or adequate plans for improvement were demonstrable. Senator Muñoz asked Burris if the district felt like it was chasing the money and whether there was any improvement in student outcomes after receiving funding. Burris said the rationale behind applying for funding was a function of opportunities offered to address diverse needs of the district. Senator Ingle voiced support for the initiatives, noting it was a relatively cheap way of improving educational outcomes. Representative Larrañaga asked about the demographic makeup of schools receiving interventions compared with other schools statewide. Romero indicated the PPE program addressed issues specific to each district or school's need. He noted that participating schools generally had higher populations of free and reduced fee lunch participants and included a range of district sizes.

Skandera noted funding for science, technology, engineering and math initiatives decreased to \$1.9 million, a 21 percent reduction, and NMPrep and NMLead initiatives decreased to \$3.2 million, a 23 percent reduction. She indicated the state had more work to do in preparing teachers and administrators for schools and suggested increasing exposure to the classroom for candidates in preparation programs. For truancy interventions, Skandera indicated, 22 thousand students in the top 75 percent of truancy and dropout prevention schools attended 40 thousand more days compared with the previous school year.

Skandera introduced Frank Chiapetti, superintendent of Gallup-McKinley County School District, who expressed support for the PPE and UVA school turnaround programs. Chiapetti noted PPE schools were outperforming UVA schools in Gallup with three out of the six PPE schools having the highest growth in the district this year. This year, Gallup had no F schools, and 500 more students scored a 4 and 5 on the PARCC exam. Skandera informed the committee that 84 schools have participated in PPE statewide, affecting 19 thousand students. According to PED, PARCC proficiency rate improvements for students in PPE schools were triple the statewide average.

Skandera also introduced Phil Valdez, deputy superintendent of Farmington Municipal Schools, and Tracey Bryan, president of the Bridge of Southern New Mexico, who both expressed support for early college high school (ECHS) models with AP and dual credit courses. Bryan encouraged the expansion of such programs using Daniel's Fund grants, noting strong graduation rates from these school models. According to Bryan, reaching the national graduation rate average would result in \$132 million of additional wage earnings for state graduates. Valdez noted Farmington schools experienced improved grades through participation in the PPE and UVA turnaround programs and teachers pursuing excellence (TPE) initiative. Since implementation in 2014, Farmington has improved school grades and no longer has any failing schools in the district. Skandera indicated student proficiency rates in TPE classrooms significantly improved after the first year of implementation.

Paul Aguilar, PED deputy secretary, discussed the emergency supplemental funding request for school districts, noting that revenue downturns could cause more schools to apply for emergency funding in FY18. He also elaborated on the two lawsuits regarding the funding formula. Trials are anticipated for the spring of next year and may extend through the fall. PED produced over 1 million documents for the plaintiffs during discovery, so the \$1.2 million FY17 special appropriation is nearly exhausted. As such, PED has requested a supplemental appropriation of \$1.3 million for FY17 and a \$2.5 million special appropriation for FY18. Aguilar indicated losing the lawsuit would allow the court to dictate funding levels for education.

Chairman Smith highlighted new revenue forecasts, noting weak revenues and a projected \$130 million deficit in FY17, and asked PED about the Department of Finance and Administration's solvency proposal to sweep cash balances by about \$110 million. Skandera indicated her department has worked closely with and is fully aligned with the executive branch.

Senator Morales expressed concern about information provided by the department, given conflicting information provided by educators around the state, and the lack of discussion surrounding teacher shortages, school grades, budget issues, national benchmarks, and the Zuni lawsuit. In response to Senator Morales's question on PED contracts, Aguilar noted most contracts were made through school districts and regional education cooperatives (REC) and not out-of-state contracts.

Senator Morales asked the department about plans to shift more revenue to schools, noting the Senate's \$25 million proposal during the special legislative session to sweep cash balances, and questioned the department's request for teacher supplies, spending levels for turnaround interventions, dual enrollment costs, and plans for a federal maintenance of effort (MOE) waiver. PED indicated teacher supplies were requested due to savings from reductions in other areas, about \$4 million of intervention funding was related to Priority Schools Bureau administration, institutions of higher education would discuss sustainability plans with the department for dual enrollment costs, and an MOE waiver would be considered. Senator Morales requested LFC staff to follow up with PED on the MOE waiver.

Senator Muñoz asked the department about cash carryovers for special appropriations; exemptions from college entrance exams for ECHS; issues related to a charter school in Navajo, NM; Indian Education fund balances; and concerns about laws preventing segregation of students with contagious health conditions. PED indicated Indian Education fund balances would be spent within the fiscal year and offered to follow up on the remaining issues.

Representative Hall asked the committee to consider consolidating or closing small, unsustainable schools. He noted that RECs could be used to help rural schools consolidate services, adding that micro size adjustments and emergency supplemental funding has created unintended consequences. Representative Hall also discussed ideas for a charter school moratorium, small school funding adjustment bill, moving early literacy initiative funding to formula funding, and giving consideration to school turnaround programs. Skandera stated students need options for good charter schools, and poor performing schools should be closed. She also recommended removing enrollment caps for good charter schools with large wait lists and apply expectations equally to all schools.

Representative Clahchischilliage noted cash balances, especially for districts like Central Consolidated Schools, are necessary to help districts waiting for federal reimbursements that sometimes take years to process. She asked that any cash balance sweep, if applied, take into consideration the situation of these districts, which typically serve Native American populations. Representative Powdrell-Culbert asked the department about STEM initiatives and funding for a black student union. PED responded that STEM involvement in the state was high and funding for the Black Student Union was a nonrecurring legislative initiative.

Representative Lundstrom asked about REC contract details, information on the department's cash balance sweep proposal, a \$15 million discrepancy in year-over-year appropriations, alternative funding options for charter schools, and legislative agency involvement in setting PED performance measures. PED indicated support for 3 percent to 5 percent carryforward school cash balances, clarified the \$15 million discrepancy as a nonrecurring reduction from FY16 solvency measures, and offered follow up on remaining issues. Representative Lundstrom asked LFC staff to follow up with PED on cash carryforward proposals and noted concern over the lack of presentation about Impact Aid issues, adequacy lawsuit updates, and other topics aside from below-the-line initiatives.

Representative Larrañaga asked about funding for ECHS, AP, and dual credit programs and where savings could be found in the funding formula. PED indicated federal funding would be discontinued for the AP program, placing fiscal responsibility on states to continue funding. Skandera offered support for identifying administrative efficiencies at the school and department level, providing data on school consolidations, and closing poor performing charter schools. Chairman Smith noted cash balances are taxpayer dollars and while consolidations or teacher quality improvements could produce savings in the long run, money would be needed from public schools, higher education institutions, and health care to immediately address solvency issues.

**Department of Transportation.** Tom Church, secretary of the New Mexico Department of Transportation (NMDOT), introduced NMDOT staff present at the hearing and presented highlights from the NMDOT annual report. Secretary Church reported NMDOT received a \$45 million severance tax bond authorization during the 2015 special legislative session for road construction projects including widening of U.S. Highway 82 from Artesia to New Mexico 529; widening of U.S. Highway 64 from Farmington to Bloomfield; improvements on U.S. Highway 68 in Taos; improvements to the New Mexico 6/Interstate 40 Los Lunas bypass; and reconstruction at the Interstate 25/Rio Bravo interchange. All projects are scheduled to be put out for bid between December 2016 and April 2017 and should all be on time and on budget.

Secretary Church reported the state road fund has minor growth of 2.7 percent, but it has taken nine years to get back to 2007 levels of revenue. Regarding federal transportation funds, Congress passed a five-year bill but will not authorize the \$4.5 billion contained in the bill until April. New Mexico is a done state and is authorized at 100 percent of its federal authorization level, but the state is only obligated to receive 90 percent of federal funds, so federal funds are projected to decrease.

Regarding debt service, Secretary Church reported NMDOT kept its Moody's AAA1 plus bond rating. NMDOT will hit a fiscal "cliff" in FY24 to FY26 due to Rail Runner and other road bonds having more debt service due at that time. NMDOT is exploring extending the debt for the Rail Runner for a longer period of time to level out the state and federal funds needed for the debt service and to gain \$50 million for use by the state road fund.

Secretary Church reported the interstate and U.S. routes are in better condition due to consistent federal funds, but the state routes are in greater disrepair, even though 89 percent of state and federal funds are used for roadway services and 10 percent is used for overhead. There is a funding gap of \$539 million for construction in the state and \$135 million gap in roadway maintenance. But New Mexico's bridges are in good condition and the state is ranked fourth in the nation for bridge conditions. NMDOT generates 30 thousand jobs and pays gross receipts taxes to the general fund ranging from \$25 million to \$45 million. NMDOT oversees a construction program totaling \$644 million with a 1 percent change order rate, and local government road projects total \$300 million. NMDOT closed out \$454 million worth of road projects and let \$494 million in projects.

Regarding transit and modal programs, Secretary Church reported Park and Ride and Rail Runner ridership is down, probably due to lower gasoline prices encouraging folks to drive. He reported 54 airports in the state receive aviation funds. Regarding traffic safety, New Mexico has cut alcohol fatalities by 50 percent. And he was glad to report NMDOT's audit received an unmodified opinion.

NMDOT staff reported the department's FY18 budget request is based on its July revenue forecast projecting \$410 million in state road fund, but the economic outlook will probably be revised downward by \$8 million indicating flat revenue for FY18. State road fund revenue weaknesses appears to be within the special fuel and vehicle registration taxes, driven by the national economic outlook and fuel efficiency in commercial trucks.

NMDOT staff reported the department's FY18 budget request totaled \$161 million in personal services and employee benefits, \$386 million in contractual services, and \$314.5 million in other costs for a total budget request of \$862.8 million. The department did not request budgeting road fund balance but expects to have approximately \$15 million in road fund balance for consideration during the legislative session. NMDOT is requesting an increase of 54 FTE for its port of entry initiative, although it might consider retaining the positions in temporary status.

Senator Cisneros questioned if the loss of federal funds would impact the status of the five major investment road projects and Secretary Church replied no but said the loss of \$17 million in federal funds would result in cutting these funds from the statewide transportation improvement program (STIP) as some projects are programmed but not fully funded. Senator Cisneros said it was a good idea to extend the Rail Runner debt service as rail has a longer life span than do roadways. He asked about the status of right-of-way acquisition in the Espanola area, and NMDOT responded there are no clear documents for the right-of-way in the Santa Clara tribal area and San Pedro area, but the department is trying to collaborate with the local entities in lieu of legal proceedings. Senator Cisneros asked about a road project in Penasco and NMDOT said it would report back on the status of the expenditure of the funds. Senator Cisneros questioned

the right-of-way acquisition for Paseo de Vulcan. NMDOT replied it has signed the second agreement for rights-of-way with more pending, but it is trying to move the project forward so there are less than 1 percent of roadway projects that have inactive obligations per federal rules.

Representative Hall questioned who operated the Rail Runner and was told the metro regional transit district did, but it had no incentive to take over the remaining debt of \$40 million, although the local government does raise \$35 million in gross receipts tax and spends \$25 million to operate the Rail Runner. Representative Hall asked about an intersection off of Tramway because it is a safety concern to his constituents and NMDOT said it could make a presentation on the status of the project to his neighborhood.

Senator Neville asked about the status of New Mexico 491 and was told it is three months behind scheduled. NMDOT reported phases one through four of the road from Bloomfield to Farmington are almost complete, and \$30 million will be needed to complete the remaining phases five and six.

Senator Muñoz asked about the debt service and operations of the Rail Runner, including upcoming maintenance needs to train controls and train cars, and NMDOT replied the average debt was \$40 million annually and \$25 million to operate. He asked about the fund balance in the state infrastructure bank (SIB) and was told there is \$13 million in federal funds that would revert to the federal government and \$7 million in state road funds that, if not used, could be re-budgeted as localities have to qualify and prove they have funds to repay SIB loans and few are in a position to use SIB funds. Senator Muñoz asked about the status of New Mexico 6 and 91 and the county road to Zuni, which needs a passing lane. NMDOT reported New Mexico 6 is progressing because it is one of the five major investment road projects.

Senator Brandt asked about the Paseo de Vulcan right-of-way and NMDOT replied it has used \$1.6 million in state road funds and \$8 million in federal funds to purchase right-of-way and combine parcels, but it still needs \$110 million for the project, including \$20 million to \$30 million for right-of-way. NMDOT said it will brief him on the Unser and Meadows intersection and he requested a traffic study be conducted regarding the intersection of New Mexico 528 and Pasilla because traffic backs up there dangerously when church services let out.

Representative Larrañaga also asked about the debt service and operational funding for the Rail Runner and was told NMDOT bears the liability for any accidents. He questioned what opportunities there are for small, local contractors and NMDOT replied there were many opportunities under state price agreements in particular. He asked about the local government road fund, which receives 20 percent of state road fund revenue and was told there are high levels of inactive projects with a fund balance of \$42 million and expenditures of \$22 million even though local roads are in poor condition.

Senator Papen asked about aviation funding for the Santa Teresa airport and was told the El Paso airport has a 10-year contract and Santa Teresa would need to get on the federal long-range plan.

Senator Burt asked why repaired roadways in his district did not have the turnoffs re-paved, and the department said it was due to cost. He asked NMDOT to look into disrepair on Highway 54 going into Carrizozo and the road by Corona.

Representative Dodge asked NMDOT to report to him on disrepair on U.S. 60 going into Canon Air Force Base.

Representative Garcia asked if NMDOT could repair local roads that local governments could not as they are impeded by environmental mitigation requirements imposed by the U.S. Environmental Protection Agency. He said it could be an opportunity to use federal Department of Energy funds for state and county roads in areas of environmental contamination. He asked about the status of the Carlsbad sink hole and the road from the Sunport to Rio Bravo, which NMDOT reported is being worked on.

Representative Lundstrom complimented NMDOT on their work. She questioned if companies are paying NMDOT to use rights-of-way. Secretary Church replied NMDOT does not charge utilities and others companies because charging would add to the department's liability regarding utility relocation during construction and maintenance. Representative Lundstrom suggested the state may wish to consider joining other states in a pilot program to accrue revenue based on vehicle miles traveled in lieu of gas tax, which is too volatile. Washington is trying this model and has found it to be revenue neutral thus far.

Senator Smith stated that small contractors in New Mexico do not have a reliable revenue stream from NMDOT projects because most are too large for these small contractors. He said utilities using the rights-of-way have an advantage in only having to deal with NMDOT instead of multiple entities and should have to pay. He indicated he will be introducing a gas tax bill targeted to help build the state's reserves, with certain limits including the revenue cannot be used for bonding, and the bill is scored at raising \$140 million. Senator Smith stated that President-Elect Trump has signaled that he would like more public and private partnerships in terms of federal funds for highways, but New Mexico is different from eastern states in that it does not have the population volumes to make viable toll roads and other types of public and private partnerships, and it is concerning that Congress has not moved forward with federal highway funding.

**New Mexico Environment Department.** Butch Tongate, acting secretary, presented the agency's FY18 budget request and highlighted recent agency activities. Addressing the Gold King Mine spill and contamination of rivers that flow through New Mexico, Mr. Tongate discussed the agency's long-term monitoring plan and reimbursements from the federal government to state and local entities. The agency is monitoring surface water, groundwater, crops, fish, and waterfowl, estimated at a cost of \$6.5 million. The federal Environmental Protection Agency (EPA) has only provided approximately \$650 thousand to support monitoring. Testing by the agency and its partners, including New Mexico State University (NMSU), have not found elevated contamination levels.

Mr. Tongate explained recent changes in the Drinking Water Bureau, including new leadership and structural changes to maximize grants from EPA. The agency's budget request for FY18 includes increased federal revenues to spend down funds remaining from prior fiscal years.

Agency staff inspected the Waste Isolation Pilot Plant (WIPP) near Carlsbad, finding minor issues that could be quickly resolved prior to resuming operations in accordance with state permits. The jet fuel plume caused by Kirtland Air Force Base is shifting to the remediation phase with three extraction and treatment wells in operation and a fourth to come online by spring 2017. These wells are creating a "cone of depression," which diverts contamination away from the city of Albuquerque's water supply wells in the area.

Senator Papen asked about the status of settlement funds expected to be directed to NMSU's Water Resource Research Institute (WRI) two years ago and whether that should continue to be expected. Mr. Tongate replied that the settlement agreement with Exxon Mobil is being disputed by the agency and the Attorney General's Office, with the agency removing WRI as a beneficiary due to concern about the special environmental project portion of settlements.

Senator Cisneros asked about stalled, or slow progress on, capital projects overseen by the Environment Department (NMED). Mr. Tongate noted that \$102 million was appropriated for such projects over the past four years, with a remaining balance of \$54.5 million. Senator Cisneros asked how much funding had been provided for Gold King Mine litigation and where the funds came from. Mr. Tongate replied that funding to date had been from the Attorney General Office's consumer settlement fund and this would continue; however, Senator Cisneros noted the attorney general had said the funds would come from NMED. Senator Cisneros also asked about the WIPP reopening. Mr. Tongate responded that federal review is complete and NMED approval would allow reopening potentially in mid-January 2017.

Senator Muñoz asked about the nearly \$150 million balance in the Clean Water State Revolving Fund (WCSRF). Mr. Tongate pointed out that it is difficult to attract communities to the available loans despite low interest rates and long repayment periods, and that NMED is looking to further lower rates. The NMED-led water infrastructure team is working to direct communities to all funding options but the availability of grants can lead to communities refusing very favorable loan terms in hopes of receiving grant funding. Most of the fund's balance is from federal contributions because EPA provides \$4 for every \$1 the state contributes.

Representative Bandy asked what damages were requested in relation to the Gold King Mine spill if monitoring efforts have not found any contamination. Mr. Tongate noted about \$130 million in claims was submitted for lost economic activity, including the value of products, such as crops and livestock watered from the Animas and San Juan rivers, and services such as fishing guides.

Senator Smith asked how many unlined legacy landfills remained. Mr. Tongate responded that this has been an NMED priority since the early 1990s. There were 40-50 total and the last seven should be closed in 2017. NMED will provide a list to LFC staff.

Senator Smith also asked about NMED penalty assessments and where the funds are deposited, noting that penalties should go to the general fund but had been foregone in the past in lieu of donations to certain organizations or projects and that this gives the state a bad reputation in the eyes of business. Mr. Tongate replied that the agency's Air Quality revised its settlement policies earlier this year to attempt to limit this practice.

**Executive Compensation Report.** Justin Najaka, director of the State Personnel Office, stated new federal Fair Labor Standards Act (FLSA) rules were implemented in 2016 requiring overtime be paid to eligible employees making over \$47,476, and this would affect approximately 400 to 500 classified state government employees. Director Najaka said the executive is not proposing any salary increases and he went over the objectives of the classification framework and compensation system. A new classification structure is being implemented with 11 new occupational groups: corrections, information technology (IT), engineering and architecture, protective services, social services, health care and healthcare support, general administration, legal, management, scientific, and trades and labor. He stated system reform was implemented for corrections and IT personnel with alternative pay bands (APBs) now used less for IT personnel. He reported engineering, surveying and architecture are currently being studied for restructuring and this will affect over 1,000 FTE, primarily within NMDOT, with changes within pay bands funded using existing budgets.

Director Najaka reported the statewide classified vacancy rate is 15.2 percent, the average new hire comp-ratio is 96.8 percent, 70 percent of new hires complete probation, turnover is at 15 percent and overtime costs over \$32 million, although this amount does not include State Police and all types of overtime pay. In FY16, he indicated in pay band (IPBs) pay increases were used to target critical positions in many agencies, particularly NMDOT, NMCD, and DPS, and cost over \$3 million; but despite these efforts, the state is still behind in recruitment and retention. Director Najaka stated SPO analyses show state workers' pay lags behind many comparator groups by six to 13 points, but the state pays health insurance at a higher rate than other national and regional comparator groups. He suggested this needs some adjustment, although no alternatives were presented.

Senator Muñoz stated paying \$42 million or more in overtime indicated too many state workers' are getting overtime, particularly at NMCD, DOH and CYFD. He stated 68 days to fill a position is too long, and was concerned the Energy, Minerals and Natural Resources Department took 76 days to hire. Director Najaka responded the city of Albuquerque takes 73 days to hire and North Carolina takes 64 days to hire, but he could look at making rules to speed up hiring.

Representative Lundstrom questioned why only three out of five positions are filled on the state personnel board and Director Najaka said it is in process. She asked why the salary increase for correctional personnel was used in a manner that created compaction, and Director Najaka replied NMCD was primarily employees with one to three years at the department, so they used the funds the Legislature appropriated to target these employees salaries and not more senior employees. Representative Lundstrom asked why Gallup Community College had vacancies and if the posted positions were actually funded and Director Najaka said the posted positions were funded. Representative Lundstrom asked Director Najaka to be prepared with recommendations to address the discrepancy in health insurance benefits claimed by SPO and to have these alternatives ready for the House Appropriations and Finance Committee if not before.

Representative Larrañaga asked about the classification and compensation study. Director Najaka replied the process included establishing a steering committee up front, determining occupational groups, reviewing vocational versus managerial contributors, conducting job evaluations, and then presenting the information for approval to the State Personnel Board. Representative Larrañaga questioned about salary adjustments for investment officers and Director Najaka answered it is problematic for these officers to determine their own compensation and their salaries should not be comparable to Wall Street investors.

#### **Friday, December 9<sup>th</sup>**

The following members and designees were present on Friday, December 9, 2016: Chairman John Arthur Smith; Vice Chairman Jimmie C. Hall; Senators Carlos R. Cisneros, Stuart Ingle, Steven P. Neville, William F. Burt, Howie C. Morales, George K. Muñoz, and Pete Campos; and Representatives Larry A. Larrañaga, Luciano “Lucky” Varela, Nick L. Salazar, Paul C. Bandy, Sharon Clahchischilliage, George Dodge Jr., and Patricia A. Lundstrom. Guest legislators: Senators Craig W. Brandt, Cisco McSorley, Mary Kay Papen, and James P. White; and Representatives Miguel P. Garcia, Roberto “Bobby” J. Gonzales, Jane Powdrell-Culbert, Tomas E. Salazar, Jim R. Trujillo, and John L. Zimmerman.

**New Mexico Legislature.** The legislative branch budget request was presented by Jeannae Leger, LFC staff. The overall request was flat compared with the FY17 adjusted budget. Budgets for the legislative branch are included in the feed bill (House Bill 1), with the exception of the legislative building services and Energy Council dues included in the General Appropriation Act.

**Final Review.** Director Abbey presented to the committee a packet of spreadsheets summarizing staff recommendations for FY18 appropriations, technical corrections to the initial staff recommendations made in the previous months, and staff recommendations for special, supplemental, deficiency, and IT requests.

**Senator Cisneros moved to adopt staff recommendations for FY18 appropriations, seconded by Representative Hall. Representative Varela voted in opposition of the staff recommendations.**

**Representative Hall moved to adopt the technical corrections to the initial staff recommendations made in the previous months, seconded by Senator Cisneros.**

**Senator Cisneros moved to adopt staff recommendations for special, supplemental, deficiency, and IT requests, seconded by Representative Hall.**

**Chairman Smith appointed Senator Cisneros and Representative Larrañaga to a technical subcommittee.**

Chairman Smith thanked LFC staff for their hard work on the budget recommendations and recognized Director Abbey for his leadership.

With no further business, the meeting adjourned at 9:51 a.m.

  
John Arthur Smith, Chairman

  
Jimmie C. Hall, Vice Chairman