Legislative Finance Committee
Meeting Minutes
Truth or Consequences/Socorro, New Mexico
July 13-15, 2011

Wednesday, July 13

Elephant Butte Inn

The following members were present on Wednesday, July 13: Chairman John Arthur Smith, Vice Chairman Luciano "Lucky" Varela, Representatives Don Tripp, William "Bill" J. Gray, James P. White Edward C. Sandoval, Patricia Lundstrom (for Nick L. Salazar), Larry A. Larrañaga, and Henry "Kiki" Saavedra; and Senators Steven Neville (for Carroll Leavell), John M. Sapien, Cisco McSorley (for Mary Kay Papen), Howie Morales (for Pete Campos), Carlos Cisneros, and Rod Adair (for Stuart Ingle). Senators Mary Kay Papen and Bernadette Sanchez attended as guests.

Spaceport Authority Business Plan and Capital Outlay Update. Christine Anderson, director, Spaceport Authority, introduced Rick Holdridge, chairman of the Spaceport Authority Board. Chairman Smith introduced Jimmy Bason, a Sierra County rancher and cattleman of the year, as the "father of the New Mexico Spaceport" for introducing the idea of a spaceport in Southern New Mexico. Ms. Anderson provided a report and discussed how Spaceport America is becoming more relevant with the retirement of the space shuttle program and the increased level of investment in commercial spaceflight activity by the military and civilian industry. To increase the use of the spaceport, the department is working with Armadillo Aerospace to launch vertical rockets and with Boeing to carry out tests of a helicopter avionics system and has increased the number of student-based launches. Ms. Anderson discussed the growing interest in the visitor experience and the release of a request for proposals (RFP) to further develop the plan for the visitor experience at the spaceport. Ms. Anderson noted that phase one construction is 87 percent complete while phase two is only 15 percent complete and presented an overview of the $209 million construction budget. Ms. Anderson discussed the challenging FY12 operating budget, possible fixes to the projected revenue shortfall and the need for additional revenue for FY13. After FY13, the department expects to be fully self-funded. A five-year business plan was presented to the committee with economic development, budget, business development, tourism, and educational outreach goals and with objectives, risks and strategies identified for each category. In conclusion, Ms. Anderson asked for committee support on legislation to expand the limited liability statute to manufacturers.

Lockheed Martin. Slater B. Voorhees, senior staff engineer, Human Space Flight Advanced Programs, and Doug Lain, director, Corporate Business Development, presented information on Lockheed's joint venture with Boeing and XCOR Aerospace on the development of lower-cost rocket booster engines. The venture is part of a new $250 million U.S. Air Force plan to develop a spacelift system called reusable booster system (RBS). RBS is a reusable rocket with an expendable upper stage that launches vertically but lands horizontally.

Lockheed plans to continue to build on its close relationship with Spaceport America for future development and flight testing of launch system technology for new spacelift architectures and approaches. Mr. Voorhees said Spaceport America provides a very attractive commercial spaceport approach to a "clean slate" test range with many attractive features to develop next generation spacelift and launch system, including "buy-by-the-drink" flight tracking, range safety support from White Sands Missile Range, and flexible support services in an austere environment to support low-cost development testing approaches.

Virgin Galactic Update. George Whitesides, president, Virgin Galactic, updated the committee on the $400 million private investment Virgin Galactic has committed to developing the spaceflight system, the $58 million collected as deposits for 440 passenger reservations, and the status of the various test flights of the spacecraft. Virgin Galactic signed a 20-year lease on the Terminal Hangar Facility at Spaceport America and is in the process of leasing office space in Las Cruces. Virgin Galactic expects the local communities will benefit indirectly through hotel, transportation services, and supply chain development, and will benefit directly from employment at Spaceport America. Mr. Whitesides stressed the importance of proposed legislation to extend limited liability to manufacturers, not just the current provisions that protect launch operators. Virginia and Texas have extended informed consent or limited liability protection to manufacturers. Mr. Whitesides also stressed the importance of completing the spaceport on time, including building the southern road, extending the main runway to include a safety zone, and getting the remaining operational service contracts completed.

Tour of Spaceport Authority. Committee members reserved questions for the spaceport presenters for the bus ride out to the construction site. Chairman Smith inquired about the spaceport taxing district's gross receipt tax and requested LFC staff to analyze the revenue collected and expenditures. Vice Chairman Varela asked if Otero County is benefiting from activity at the spaceport even though it decided not to be a part of the taxing district. Vice Chairman Varela also asked whether there is coordination across the entire state on the educational component that is benefiting from the taxing district's gross receipts tax (GRT). Ms. Anderson discussed the recent student launch at the spaceport and how schools outside of the taxing district participating in the launch. Ms. Anderson was asked how communities will benefit from the tourism effect of spaceport activities; she described plans to coordinate marketing to include local attractions such as the Large Array, UFO Museum in Roswell, the Space Museum in Alamogordo, and the development of a "space trail." The committee asked about spaceport facilities in other states, to which Mr. Whitesides responded that Florida and Texas have authorized spaceport facilities but not a purpose built facility. When asked about the future of the spaceport, Rick Holdridge commented that the current generation passed the taxing district initiative so that future generations will benefit from their foresight and that he frequently tells people "don't fault small beginnings." The committee asked about the cost of the land leases, both from the Land Office and from the nearby ranchers. Aaron Prescott, business operations manager, Spaceport Authority, responded that ranchers receive $87.5 thousand each and the Land Office receives about $28 thousand per year. Mr. Prescott added that the ranch land leased is roughly about 722 acres while the public land is almost 18,500 acres.

Update on State Parks -- Elephant Butte State Park. John Bemis, secretary, Energy, Minerals and Natural Resources Department (EMNRD), provided an overview of New Mexico State Parks Division's operating budget from FY08 through FY12. The parks have had over 51 million visitors annually. The operating budget consists of 31 percent general fund dollars and has experienced a decline in appropriations. Revenues are self-generating; however, state parks have experienced an increase in operating costs.

Tommy Mutz, director, State Parks, highlighted vacancies within the division and said seven parks have closed due to fire exposure. Mr. Mutz also provided an overview of recently completed projects, projects currently under construction, and projects slated for FY13.

Department of Health, Veterans' Center, 992 South Broadway, Truth or Consequences

Tour of Veterans' Center. The committee toured the New Mexico State Veterans' Home (NMSVH) and visited the dining room, patients' rooms, the therapeutic swimming pool, and the library. A presentation was made by NMSVH staff regarding the expansion of NMSVH. Phase one is a 39-bed Alzheimer's unit for residents with low to moderate levels of dementia and phase two is a 20-bed skilled nursing unit for residents requiring either physical rehabilitation or higher levels of nursing care. The U.S. Department of Veterans Affairs is funding 65 percent of the project costs with the remaining 35 percent coming from the state of New Mexico's capital outlay authorizations. Linda Kehoe, principal analyst, LFC, noted Senate Bill 218, had contained $6.5 million in capital funds for the final remaining soft costs for phase one of the construction project. The federal funds matching the $6.5 million might expire at the end of the federal fiscal year, or September 30, 2011.

Progress Report on LFC Performance Review of State Hospitals. Catherine Torres, secretary, Department of Health (DOH), reported that she plans to establish a "corporate compliance office" within the Office of General Counsel. Secretary Torres indicated DOH plans to do centralized billing for the state hospitals out of the Office of Facilities Management. Secretary Torres went through DOH's goals and noted the facilities' fiscal accomplishments, which included no requests for the last two years for supplemental or deficiency appropriations for the facilities; increasing third-party revenue at the Behavioral Health Institute (BHI); and pursuing certification for Veterans' Administration per diem at the Fort Bayard Medical Center (FBMC). The secretary indicated facilities had installed a timekeeping system as a means to limit overtime costs and noted information technology upgrades ongoing at facilities and their costs. The secretary highlighted operating capacity beds were filled at or above targeted levels and noted that uncompensated care at facilities was within targeted levels. The DOH will propose some new performance measures for facilities for FY13.

Vice Chairman Varela questioned the status of vacancies at the DOH and the status of hiring the full management team, as well as who were appointed to fill these positions to date. Secretary Torres indicated she intends to keep some exempt positions vacant to reach a 10 percent savings in personal services, some of the positions will remain vacant until she finds individuals who can pass the vetting process and who will accept the positions, and other positions are filled with acting individuals. Vice Chairman Varela requested the DOH submit a revised current organizational chart by July 15, 2011. He also suggested conducting an LFC performance evaluation on the DOH's adequacy of funding, position adequacy, etc., as well as how many DOH positions are filled and vacant and how many positions broken out by facility and program are in the process of being filled. Vice Chairman Varela asked if any reductions in force were occurring with classified positions and asked the secretary to clarify what she meant by indicating she was "taking 10 percent of what was vacant." Vice Chairman Varela asked what the facilities were doing to improve their revenue collections. The administrators replied they were attacking denied claims, trying to tap into different revenue sources, expanding Medicaid and Veterans' administration-reimbursable services, and adding more clients.

Senator Morales questioned when the DOH is planning to hire a full-time administrator at the Fort Bayard Medical Center (FBMC). He indicated the patient census at the FBMC was at 120 and more staff should be added to facilitate increasing the patient census to 150 or 200 patients. He indicated Western New Mexico University has a certified nurse assistant training program and these graduates are a pool to tap from to staff the FBMC. Senator Morales also questioned when the facilities' FY13 performance measures would be available and discussed the need for funding to be considered for the old Fort Bayard Medical Center to support retention and use of the water rights, maintenance and upkeep, utilities and security at the old facility, some of which is on the national historical register.

Representative Lundstrom asked Secretary Torres to provide her reaction, as a doctor, to the conditions for patients at the New Mexico State Veterans' Home. The secretary replied she felt the patients were happy and treated well. Representative Lundstrom indicated she felt the conditions were not good for patients who had four people to a room with the bathroom situated down the hallway.

Chairman Smith asked if the Veterans' Home was required to have the $6.5 million by the end of the federal fiscal year on September 30, 2011, for the last of the capital outlay costs for the Alzheimer's and skilled nursing unit expansions. The answer was unknown, with no response forthcoming to previously inquiries made to New Mexico's congressional delegation. Chairman Smith expressed concern with the secretary being into the administration for seven months and not yet compiling her management team. Chairman Smith asked how many federally funded positions in each program area and by facility remained vacant and asked if any litigation or risk management claims had been filed due to staffing shortages or other reasons, with the information broken out by agency program and by state hospital facility.

Truth or Consequences Schools Student Performance and Financial Condition. Tom Burris, superintendent, Truth or Consequences Municipal Schools, gave a presentation on the district's budget and student achievement. He reported that T or C's school budget was very stable and this year teacher's salaries were raised 2.5 percent. Calculating level changes, the average raise for all staff was just above 5 percent. Mr. Burris stated there weren't any layoffs, furloughed days, or any cuts to athletics or student activities.

T or C Municipal Schools used Title I funds to support instruction and added a director of student achievement and data and district-level math and literacy coaches. Major construction projects were completed within the last five years along with smaller project, improving student well-being.

Referring to the hand-outs, Mr. Burris noted although none of the five schools are making "adequate yearly progress," two schools are making progress, two are at the "restructuring 2" level and one is at "restructuring 1." Also in the hand-out were student demographic statistics along with a comprehensive budget analysis from the Public Education Department. These hand-outs detailed reviews of cash balances, salaries, and cash comparison.

Mr. Burris also detailed percentages of students who are proficient as measured by the New Mexico Standards-Based Assessment (NMSBA), along with the New Mexico Annual Measurable Objectives (NMAMO). Categories included NMSBA All Students Mathematics and Reading Results, NMSBA Economically Disadvantaged Students Mathematics and Reading Results, and NMSBA Hispanic Reading Results from school year 2003-2004 to present.

For example, reading results for economically disadvantaged students at Hot Springs High School, with data from spring 2010, indicate 64 percent of students were categorized as "proficient" on the NMAMO and 50 percent on the NMSBA.

Financial Reports from Sierra County and Truth or Consequences. Juan Fuentes, finance director, Truth or Consequences, presented for Sierra County. The county experienced a 9.7 population decrease from 2000 to 2010, yet appears to be stable. Primary government expenses for

FY10 included $3 million (up 12.5 percent from FY09) for general government, with health and welfare at $2 million, down 21.4 percent from FY09.

Major Sierra County initiatives are the Copper Flat Mine project, with plans to produce 36 million pounds of copper annually over the first 13 years of operation with construction beginning in 2014, and Spaceport America.

Regarding the budget, Sierra County's general fund balance for FY10 was just over $641 thousand, or 12 percent of actual general fund revenues. The required general fund reserve is one-fourth of budget expenditures and the county had $1.7 million, exceeding the $948,311 requirement.

Truth or Consequences – The city has a population of just over 6 thousand, down 11 percent from 2000. General revenues from local and state shared taxes and interest income was $3.4 million, or 2.4 percent over FY09. Total general fund expenditures for FY10 were $5.2 million, 9.5 percent above budget.

Truth or Consequences' key initiative is having the Spaceport's Welcome Center in the city limits and projects completion in two years.

In FY10, T or C's budgeted general fund revenues were $2, 968,405. Actual revenues were $2,954,352. Local effort taxes were over budget by less than $60 thousand and state shared taxes were under budget by about $64 thousand. The largest increase in governmental activities expenses occurred within public works (33 percent) and culture and recreation (46.62 percent). Government activities expenses for FY10 totaled $6,452,847.

City of Elephant Butte – Mr. Briley reported that Elephant Butte was the only municipality in Sierra County to see a population increase of 2.9 percent since 2000. Property and gross receipts taxes decreased, yet lodgers tax increased by 38 percent over FY09.

The city recently completed phase three of the project to convert the city's aging septic tanks to sewer lines for a total of $2.3 million, which included federal stimulus funds and a $500 thousand loan. A wastewater treatment plant was completed in January 2009, but many city parks and residents continue to rely on an antiquated septic system. According to officials, the city is unable to take on any more loans, so it is having trouble financing the completion of its primary initiative.

Village of Williamsburg – The village's primary capital improvement goal is to purchase land and leverage its colonias designation to pursue funds to build a regional collection and transfer station, but the Village did not submit a 2010 financial audit.

The community receives gross receipts taxes from business, gasoline taxes from its three gas stations, and property taxes from just over 200 parcels of property. A balance sheet as of July 7, 2011, showed total assets and liabilities/equity of $855,523. General fund FY11 budget shows $239,547 in revenues and $172,500 in expenditures.

Thursday, July 14

New Mexico Tech – 801 Leroy Place, Fidel Center, 3rd Floor, Socorro

The following members were present on Thursday, July 14: Chairman John Arthur Smith, Vice Chairman Luciano "Lucky" Varela, Representatives Don Tripp, William "Bill" J. Gray, James P.

White Edward C. Sandoval, Nick L. Salazar, Larry A. Larrañaga, and Henry "Kiki" Saavedra; and Senators Steven Neville (for Carroll Leavell), John M. Sapien, Mary Kay Papen, Howie Morales (for Pete Campos), Carlos Cisneros, and Rod Adair (for Stuart Ingle). Senator Bernadette Sanchez attended as a guest.

Program Evaluation – Human Services Department and Office of the Attorney General: Fraud, Waste, and Abuse in Medicaid. Maria Griego, program evaluator, Legislative Finance Committee, reported Medicaid enrollment and expenditures are at their highest point in state history. In FY10, New Mexico's Medicaid program served over 460 thousand New Mexicans at a cost of $3.8 billion. Although the true amount of healthcare fraud, waste, and abuse cannot be known, estimates range from 3 percent to 23 percent of total expenditures. The impact of incorrect or illegal financial activities that occur in the Medicaid system is widespread. Fraud, waste, and abuse has the potential to increase healthcare costs for purchasers, intermediaries, and consumers and can lead to decreases in coverage as policies limit services to combat fraud and control costs. The Human Services Department (HSD) and the Medicaid Fraud and Elder Abuse Division (MFEAD) of the Attorney General's Office play a crucial role in helping reduce Medicaid fraud, waste, and abuse in challenging times of increasing Medicaid expenditures and claims.

New Mexico has a poor return on its investment in reducing Medicaid fraud, waste, and abuse, such that expenditures on these activities consistently exceed recoveries. Fragmented Medicaid program integrity oversight fosters jurisdictional confusion, duplication of effort, and ineffectiveness leading to a number of problems in the referral process, including weak communication among entities, an inability to tract certain types of fraud referrals, and slow referral processing and investigation. Significant opportunities exist to strengthen Medicaid fraud, waste, and abuse controls. These opportunities include following strategies outlining by the Government Accountability Office (GAO), improving HSD's management of practices used for fee-for-service and managed care organization (MCO) providers, and improving on HSD's referral database.

New Mexico spends an estimated $7.8 million across the HSD and MFEAD to root out fraud, waste, and abuse. Recoveries by these entities were approximately $6.5 million. In addition, when recoveries reported by MCOs are subtracted, the total expense falls even shorter. New Mexico's efforts do not pay for themselves, do not have adequate internal performance measures, and lack adequate oversight and performance measures on program integrity for MCOs.

MFEAD ranks next to last nationally on return on investment (ROI) despite having adequate resources. Provider fraud represents 80 percent of all healthcare fraud and the MFEAD's ability to successfully prosecute provider fraud cases is a core component in recovering taxpayer dollars and deterring fraud in the Medicaid system. However, the MFEAD does not generate enough revenue from civil or criminal recoveries to pay for itself completely. Ms. Griego noted the MFEAD also ranks 49th in total dollars recovered for federal FY10. New Mexico's ROI is 53 cents for every dollar spent and the MFEAD's expenses exceeded recoveries for the last four years. One factor limiting MFEAD recoveries is that the current state false claims act has not been approved by the federal Department of Health and Human Services (DHHS), Office of Inspector General (OIG), limiting New Mexico's share of civil settlements. Approval of a state false claims act from DHHS OIG qualifies a state for a 10 percent increase in its share of civil settlements. New Mexico has enacted a state false claims act but has not received approval.

The majority of HSD expenditures are dedicated to Medicaid in high-risk areas. However, the HSD's OIG recipient fraud recoveries account for only 2 percent of all OIG recoveries. The OIG has not generated sufficient recoveries to provide a positive return on this investment for the last two fiscal years. In addition, the HSD lacks data to calculate ROI associated with Medicaid program activities within the OIG. In FY10, the Quality Assurance Bureau (QAB) of the HSD recovered more than $2 million, or about 53 cents on every dollar spent pursuing overpayments due to abusive billing practices. Although the QAB targets overpayment recuperation efforts to only the 25 percent of Medicaid that falls under fee-for-service, it is responsible for 60 percent of total recoupments in FY10. The QAB relies on MCOs to conduct surveillance and the program integrity function for the remaining portions of Medicaid.

The MCO contracts do not provide clear guidance or adequate benchmarks to measure the success of the organization's efforts in combating fraud, waste, and abuse. While the MCOs leverage data mining to look for unusual claims behavior, insufficient guidance exists on how extensive these activities should be and whether they are sufficient to be considered a thorough fraud, waste, and abuse prevention program. In addition, there are no contract performance measures that relate to designing effective fraud, waste, and abuse programs. Only two of 10 current measures that the HSD uses to rate MCO performance and award performance pay relate to an MCO's ability to successfully guard Medicaid funds and none are specific to program integrity. The HSD does not require MCOs to report program integrity expenses or recoveries of overpayments further limiting effective oversight. As a result, none of the MCOs provide concrete evidence of the effectiveness of their programs in finding fraud, waste, and abuse. Additionally, the HSD does not provide guidance on MCO program integrity unit staffing. Combined, the seven MCO program integrity units have 10.69 full time equivalents (FTE) overseeing $1.8 billion in Medicaid funds.

Opportunities exist for MCOs to provide meaningful outcome measurements of program integrity activities. One MCO tracks "soft dollar" recoveries, identifying the savings captured by mitigating the abusive behavior and reported soft dollar recoveries for the last two fiscal years of $1.3 million. Both hard and soft dollar recoveries, as well as ROI calculations, have potential to quantify the long-term effects of program integrity activities. Without measurement parameters, the HSD will not be able to appropriately allocate resources.

John Courtney, program evaluator, LFC, said the fragmented Medicaid program integrity oversight fostering jurisdictional confusion, duplication of effort, and ineffectiveness. Among the entities responsible for combating fraud, waste, and abuse for Medicaid, gaps exist in communication among agencies, there is inefficient use of resources, and there is a lack of effective practices. Changes in communication led to a 290 percent increase in fraud referrals from the HSD between FY09 and FY10, contributing to the MFEAD's increased percentages of open referrals. The MFEAD cites many examples of interference, filtering, and sterilization regarding referrals provided to the MFEAD from the HSD. Guidelines for referral-building to the HSD from the MFEAD could increase viability of these referrals. Additionally, existing collaboration between the MFEAD and the HSD OIG may be in violation of federal law. The agencies have not formalized a relationship to ensure it does not run counter to federal law or requirements for investigating Medicaid fraud.

Neither the QAB nor the MFEAD track program integrity issues in the personal care option (PCO) or developmental disability (DD) waiver programs. In FY10, PCO services accounted for $334 million, or 46 percent of total program spending, making it one of the fastest growing service categories in the Coordination of Long-Term Services (CoLTS) program. The QAB does not track PCO-related referrals, making it impossible to ascertain the volume of referrals specific to this service category. For the DD waiver, services related to day habilitation, respite and substitute care, and therapies can leave gray areas for improper payments, as in the case with PCO services to CoLTS. Potential conflicts of interest and inefficiencies in the OIG could be resolved through reporting and personnel changes in the HSD. The OIG reports to one of two deputy secretaries within the HSD, placing OIG investigators in a position where they could review their own division. The Center for Medicare and Medicaid Services (CMS) does not recommend any specific model for program integrity within the single state agency, but under the HSD's current organizational structure, the QAB is the designated single point of contact for fraud, waste, and abuse investigation. Additionally, the QAB does not conduct on-site audits, despite evidence of their effectiveness and GAO recommendations.

Information sharing between MCOs is limited by confidentiality and competition. The HSD coordinates a monthly meeting where all MCOs can broach topics, but meetings focus on operational issues, and fraud and abuse are not consistently discussed. There is no opportunity for the individual MCOs to meet one-on-one with the QAB, despite at least one MCO requesting such meetings. This level of detailed information sharing would bolster the HSD's ability to analyze recurring issues and devise more appropriate guidance for MCOs in addressing risk.

MFEAD processes are slowed by a lack of referral prioritization and an imbalance in the allocation of human resources. There is currently no designated timeline for completion of an initial investigation and no guidelines exist for prioritizing referrals. As of April 2011, the MFEAD had 448 open referrals; 40 percent had been open over a year, contributing to a high rate of outstanding referrals and a backlog of open cases. Home- and community-based services, including the PCO and inaccurate reporting of service hours, are the main workload drivers in fraud referrals. The MFEAD reported that, for FY10, 25 percent of investigations were completed within 120 days, well below the target of 80 percent.

Ms. Griego said problems in provider credentialing, limitations in payment review, and lack of meaningful measurement of MCO activities contribute to a need to streamline procedures and improve oversight of MCOs. Central to controlling Medicaid fraud, waste, and abuse are strategies to improve provider enrollment requirements, enhance pre- and post-payment review, improve contractor oversight, and develop processes to address identified vulnerabilities. Strategies are outlined by the GAO; however, New Mexico falls short in implementing them.

The HSD's role in managing fee-for-service and managed care creates fragmented and confusing requirements and practices for providers and MCOs. Provider application procedures differ between fee-for-service and MCOs. State law requires the HSD to ensure credentialing processes are coordinated among MCOs; however, each MCO has a separate credentialing function. Other application discrepancies include the requirement that providers disclose potential conflicts of interest in their applications, which is currently done by only one MCO. Discrepancies also exist in data methodology because the MCOs and the QAB use different techniques for overpayment recoveries with varying success rates.

Encounter data reporting requirements focus solely on data completeness and not data accuracy. The HSD requires that encounter data submitted have a maximum 1 percent error rate and encounters that error out are to be corrected and resubmitted; however, this requirement relates to formatting and not the overall correctness of encounter data. There is no requirement for MCOs to show they have reconciled encounter data to financial reporting or any other benchmark to justify that the data is correct and appropriate, and the HSD does not perform any type of reconciliation control. While the majority of MCOs advised they perform a financial reconciliation of encounter data prior to submission, the HSD stated that requiring MCOs to do this would be burdensome and result in extensive information technology costs.

The HSD does not use prepayment review to reduce improper payments. Medicaid follows the common methodology of "pay and chase" placing burden of all program integrity functions on recuperation of overpayments. Experts advise greater success in preventing improper payments through prepayment review. Neither providers who have been successfully prosecuted by MFEAD or have been identified by the QAB as having made improper claims are flagged for prepayment review. Ms. Griego noted recoupments are less than generally accepted ranges of suspected overpayments in healthcare systems. The MCOs reported $1.2 million in recoveries for FY10, representing a 13 percent decline from FY09 to FY10.

Data integrity issues and insufficient database design limit the HSD's ability to identify repeat offenders, track length of time from initial referral to referral closure, calculate dollars under investigation, and identify potential performance metrics. In its current state, the QAB referral database is unlikely to have the capability to support the Patient Protection and Affordable Care Act.

Ms. Griego concluded with key recommendations for how Medicaid fraud, waste, and abuse controls can be improved. Recommendations include

- Implement ROI measures internally and across all MCOs to track success of program integrity activities and program effectiveness;
- Amend MCO contracts to include performance measures related to fund, waste, and abuse prevention activities;
- Streamline and prioritize Medicaid program integrity functions.

The HSD should also consider modifying its rate development and amounts available for administration and profit for the MCOs, including increasing its pay-for-performance set-aside to 5 percent of total premium, administratively setting base capitation rates for all MCOs, sharing medical savings with MCOs that meet all their performance targets, and using a competitive bid process for awarding administrative and profit amounts.

The MFEAD should implement ROI measures to track success of program activities, as well as reallocate at least on registered nurse (RN) investigator FTE to a special agent, or alternately consider completing the required process for investigators to also serve as special agents. The division should also formalize referral guidelines, including data required for a fraud referral from the QAB. In addition, the Legislature should revise state statute to bring the state false claims act into compliance with the DHHS OIG requirements to increase the share of civil settlements recovered by New Mexico.

Brent Earnest, deputy director, Human Services Department (HSD), responded the administration is committed to reducing fraud, waste, and abuse and added that the evaluation mostly addressed necessity. The HSD recently signed a recovery audit contract required by the Federal Healthcare Reform law. The HSD agrees with most recommendations; however, there are a few discrepancies. The HSD is currently working closely with the MCOs and agrees a better partnership is needed. Mr. Earnest noted a recent audit conducted by CMS found New Mexico was ranked third best for fee-for-service payments. The HSD agrees an ROI measure is needed for the OIG and QAB; however, disagrees with the methodology used in the report. The HSD also disagrees with the recommendation for reorganization at this time.

Mr. Earnest said the goal of controlling Medicaid fraud, waste, and abuse it to improve referrals to the Attorney General and to be a supplement to investigations by formalizing a relationship and seeking clarification from the federal government.

Jody Curran, director designee, Medicaid Fraud and Elder Abuse Division (MFEAD), Attorney General's Office (NMAG), said the MFEAD contests the actual numbers as they have been computed in the report. The report did not accurately integrate funding from the federal government. Second, the return on investment approach is not accurate and does not take into account misdemeanor convictions versus felony convictions or variations and priorities from one attorney general to another. Mr. Curran also expressed concern with the accuracy of the characterization for the number of investigations reported in the evaluation. Mr. Curran concurred with the finding to provide better communication and better sharing of information with all agencies involved. Mr. Curran also expressed that it is critical for the NMAG to partner with the HSD on investigations to elevate the success in Medicaid fraud prosecutions and elder abuse.

Ms. Griego noted the methodology used in the evaluation included removing qui tam or whistle blower settlements from recoveries. Staff did not make a distinction between federal and state portions of recoveries. Rankings and ROI were based on statistics from the federal department of Health and Human Services. Chairman Smith recommended drafting a letter to the Criminal Justice Committee on the findings and possible change in statute to the 2009 False Claim Act. Mr. Earnest clarified that recoveries include federal money sent back to the federal government. In addition, Chairman Smith also recommended that the committee notify in writing the federal prosecutor involved in the Mega Oxygen case, as well as the executive branch, on the findings of the evaluation.

In response to Senator Morales, Julie Weinberg, acting Medicaid director, HSD, clarified the department is working on streamlining provider credentialing, as well as implementing disclosure requirements for fee-for-service. In addition, under the Health Care Reform law there are additional checks to ensure providers have not been criminally active or convicted of fraud in other states.

Representative Larrañaga asked how the HSD is working with the MCOs to assure that waste and abuse are not occurring. Mr. Earnest responded that financial incentives are aligned for MCOs to be active participants in eliminating waste. In addition, the department added additional requirements for efficiencies. Ms. Weinberg added that there are specific requirements for MCOs in terms of preventing waste and abusive billing. Contractors are required to produce data mining, upfront claims editing, editing required by the federal government, and provider profiling.

Chairman Smith added the Legislature extended an offer for emergency funding to the NMAG for litigation purposes; however, a request for funding has not been made.

Report of the Court Reengineering Commission. Chief Justice Daniels, Supreme Court, reported on the progress of the Reengineering Commission. The commission was created in November 2010 to create a more efficient court system and includes members from the district attorneys, New Mexico BAR Association, public defenders, court personnel, as well as representatives from the legislative and executive branches. The Reengineering Commission worked with the National Center for State Courts to send out questionnaires on a broad basis to people who have concerns regarding operations of the justice system and requested feedback for improvement. No actions were predetermined and no idea was excluded in advance.

Chief Justice Daniels referred the committee to proposed reengineering principles and said none have been adopted by the commission or the Supreme Court. Some proposals may require management practice changes while others will require formal rule changes, legislation, or constitutional changes. Working groups have explored ideas suggested by the survey. The objective of these groups was to identify realistic initiatives that can significantly advance court operations and recommend these initiatives to the commission. Among these proposals are initiatives to consolidate municipal and magistrate courts, expand the use of video conferencing and testimony, enhance alternative dispute resolution, sustain the use of problem-solving courts, change the appeals processes in domestic violence cases and DWI cases, and expand pro se legal services.

Chief Justice Daniels referred to a recent U.S. Supreme Court opinion that mandates a lab manager cannot testify in the place of the analyst in a DWI. The case overruled the New Mexico Supreme Court and may have an adverse impact on prosecution efforts in the state. In response to the decision, the New Mexico Supreme Court formed a task force comprising representatives from crime labs, public defenders, the NMAG, and other interested parties so that rules and procedures could be adopted to deal with the implications for DWI prosecutions as a result of the ruling. The New Mexico Supreme Court is also communicating with the state crime lab to possibly change its forms and procedures so that one person is not responsible for signing off. In addition, Chief Justice Daniels said video-conferencing testimony should be considered as an option for cross examination.

Chief Justice Daniels concluded by providing an update to the electronic case management and electronic filing system. The system will be in every court in the state by the end of 2012.

Artie Pepin, director, Administrative Office of the Courts (AOC), added that minutes of all commission meetings, principles, and complete survey results are available on the judiciary's website.

In response to Senator Cisneros, Chief Justice Daniels said changes of process as well as the initial cost of implementing the Odyssey system are ongoing problems. Mr. Pepin added the contract for the Odyssey project includes a maintenance and support agreement throughout the life of the contract. In addition, the Legislature approved an increase to the Supreme Court automation fund to assist with hardware costs. Senator Cisneros asked if there would be additional start-up costs anticipated with respect to the reengineering aspect. Mr. Pepin said he anticipates some recommendations will require funding. Senator Cisneros asked how citizens of the state can be assured that their civil rights, constitutional rights, and privacy are protected during the transition period as well as when the reengineering project is implemented. Chief Justice Daniels said the New Mexico Supreme Court is committed to justice and providing a peaceful system resolving disputes by the rule of law.

Frances Cases, municipal judge, Socorro, testified that she recently became aware of the Reengineering Commission's proposal and expressed great concern. Judge Cases encouraged the Committee to contact city mayors, judges, and constituents regarding the proposal.

Daniel Lopez, president, New Mexico Technical Institute (NM Tech), welcomed the committee to NM Tech.

<u>Unemployment Insurance – Where Are We Headed in 2012? Insolvency, Federal Loans, Employer Contributions Increases.</u> Celina Bussey, secretary, Workforce Solutions Department (WSD), reported New Mexico's May 2011 statewide unemployment rate stands at 6.9 percent and has steadily declined over the last three months. Out of a total possible labor force of 944 thousand, approximately 66 thousand are unemployed. Secretary Bussey noted on a weekly basis approximately 46 thousand people are certifying for unemployment insurance (UI) benefits.

Currently, an unemployment insurance claimant can be eligible for a maximum of 86 weeks of benefits. Secretary Bussey noted that because of the decline in the unemployment rate, New Mexico has recently triggered off two levels of extended benefits. Only weeks one through 26 impact the state's trust fund; from that point forward, the federal government picks up 100 percent of all additional weeks of benefits.

Approximately 18,581 of all unemployment insurance claimants fall within the regular 26 weeks of unemployment followed by 8,256 claimants in the extended benefit high unemployment period: 1,860 in tier one, 4,582 in tier two, 4,002 in tier three, and 916 claimants are in tier four. Ninety-three percent of those claiming New Mexico benefits reside in New Mexico. Approximately 57 percent of claimants have not reported dependents, 40 percent reported one to three dependents, and 3 percent reported three or more dependents. Approximately 55 percent of claimants are male, 58 percent of claimants are between the ages of 26-50, and 10 percent of claimants are 25 or younger. Secretary Bussey noted under the current UI claims system, all information is self -reported.

On July 1, 2010, the general trust fund balance was $124.9 million. In October 2010, $117 million was transferred from the state unemployment trust fund into the general trust fund, resulting in an ending fund balance of $201.5 million. As of July 5, 2011, the trust fund balance stands at $129 million. Approximately $745 thousand is paid out every day in unemployment insurance benefits. The trust fund is funded by quarterly contributions from employers and all contributions are used to pay the first 26 weeks of unemployment insurance benefits.

The reserve ratio is contained in NMSA 1978, § 51-1-11 and is an annual computation the WSD is charged with conducting at the close of each fiscal year. Since 2005, the contribution rate schedule has been frozen by the Legislature. As of January 1, 2011, the state is using contribution rate schedule one for employers. Using the June 30, 2011, trust fund balance and the 2010 annual payroll, the fund reserve ratio is 0.61 percent. This fund reserve ratio would result in schedule five for 2012. The U.S. Department of Labor suggests that the fund reserve ratio stand at 2 percent. New Mexico's trust fund would need to stand at approximately $436 million to meet the 2 percent threshold. Current unemployment rate projections have been modified to bring into account new rates. The University of New Mexico (UNM) rates and the WSD rates are forecasting at 8.3 percent for 2011, 7.8 percent for 2012, and 7.64 percent for 2013. Projections used during the 2011 legislative session forecasted insolvency by March 2012. Because of higher actual contributions, fewer benefits paid out than projected and a major drop in the unemployment rate, the current forecasted insolvency date is March 2013. Secretary Bussey noted there are still periods of potential insolvency contained within the schedules.

Secretary Bussey explained cash-flow loans are made available to states that project a period of a cash-flow shortage. The terms of the loans are that they must be repaid in full by October 1 of the calendar year in which the advance is made. Even when a loan is fully repaid, interest will be charged retroactively if another loan is taken out in the last quarter of the same calendar year. With interest-bearing loans, interest cannot be repaid to the federal government out of contributions made by employers to the regular unemployment insurance trust fund. Twenty-nine states are currently borrowing from the federal government for a total of $41 billion. Per the General Appropriation Act passed by the Legislature in 2011, up to $30 million may be transferred during FY12 from the tobacco settlement fund to account for any potential needed benefit pay-out for unemployment insurance. It is the agency's analysis that funding from the tobacco settlement fund transfer is not needed at this point in time. However, if a transfer of funds is needed, it is contingent on review by the LFC and the State Board of Finance (BOF).

Unemployment insurance overpayments can occur for various reasons, such as appeal reversals, claimant error, incorrect wage reporting, agency error, and fraud. Secretary Bussey noted fraud is a type of overpayment when false information is knowingly given or information is withheld resulting in benefits that should have never been received. Overpayments can be collected through lump sum payments, payment plans, liens, state tax intercepts, wage garnishments, as well as being offset from future UI benefits. The WSD overpayment rate including both fraud and non-fraud for 2009 was 6.61 percent or $22.5 million. The USDOL will release 2010 overpayment data in August.

Because of the issues the agency has seen in the last six months to nine months, it has become of the utmost concern that the integrity of the system is reinforced. To do that, the department is in the process of hiring three additional investigators and an additional clerk to keep up with administrative backlog. Staff positions will be filled within the next 45 days. Additional investigators will assist with the cross-matches on the National Directory of New Hire. The department is also working on an overpayment automation project that will be an integrated part of the UI Claims and Benefits System and will be implemented in March 2012. The overpayment project will allow for cross-matches with the National Directory of New Hires and earlier detection of wages and continued UI certification. The project will also allow for the ability to set-up collection plans, overpayment reporting and other various measures.

Secretary Bussey provided an overview of the Workforce Investment Act. The WSD is the state administrative entity responsible for oversight of the act. The State Workforce Development Board is appointed by the governor and is responsible for the development of a state plan, review of local workforce development boards' plans, designation of local workforce areas, and development and review of an annual plan. Secretary Bussey noted the Navajo Nation receives funding through three states – Arizona, Utah, and New Mexico. Workforce Connection centers are currently in 27 communities throughout the state. Secretary Bussey provided an overview of local workforce board functions, as well as information regarding the adult funding stream, dislocated worker funding stream, and youth funding streams.

General Services Department, Risk Management Division – Status Report on State Unemployment Fund. Jay Hone, director, Risk Management Division (RMD), General Services Department (GSD), said the unemployment compensation paid by the RMD over the years was steady at less than $1.5 million per quarter until FY09, at which time it doubled and peaked to over $5 million. The RMD paid out $17.2 million in unemployment compensation for FY11. The projected payout for FY11 was $16 million. Mr. Hone noted there is a serious delay and problem in the data and information received from the WSD to the third-party administrator. The GSD determined that the RMD was under-utilizing the third-party administrator to provide training for staff.

Senator Beffort expressed gratitude with higher contributions than projected, less benefits paid out than projected, and a major drop in unemployment. Secretary Bussey responded the nature of the fund and building of projections is incredibly complicated.

Senator Sapien asked if the fiscal impact report from January was correct and Secretary Bussey confirmed that, based on the current information, the FIR was correct. Senator Sapien asked what would be a reasonable fund balance for the unemployment insurance trust fund and Secretary Bussey mentioned that the current balance of $120 million would be concerning to the WSD if there was another dip in the recession. Senator Sapien affirmed that if a fund balance of $120 million is concerning, then an $18 million fund balance would be very scary.

Senator Morales asked what the pros and cons are for borrowing $30 million from the tobacco settlement fund to pay for unemployment benefits. Secretary Bussey said if projections hold true, the $30 million would be an in-and-out process that would not necessarily be needed for the payout of benefits. Senator Morales asked if using tobacco settlement funding for unemployment benefits would violate the Master Settlement agreement.

Representative White expressed concern with the eligibility for unemployment benefits and the need to change legislation. Secretary Bussey responded that the nature of unemployment insurance does not always follow personnel practices, hiring and firing practices, and a standard operating way of business.

Preliminary FY11 General Fund Revenue Reports and Revised Revenue Estimates for FY12 and FY13 and General Fund Financial Summary. Demesia Padilla, secretary, Taxation and Revenue Department (TRD), provided a summary of the July 2011 consensus general fund revenue forecast. Total revenue for FY11 totaled $111 million, or 9.9 percent, greater than anticipated. Fiscal year 12 and FY13 show growth of approximately 4.9 percent. News for outer years is not as positive, with growth at about 4 percent. The bulk of growth is from an increase in gross receipts and oil and gas revenues. Some growth is reduced by the lower than expected revenue from corporate income tax. The decrease from the corporate income tax is due to higher than expected payments of film credits. Tobacco income continues to be higher than expected although taxable sales volumes did drop the reduction in sales and shift to tribal sales was not as large as anticipated. Motor vehicle excise tax is also trailing upward with growth for the full year expected to be at 12 percent.

The U.S. economy was affected by supply-chain interruptions due to the earthquake in Japan. It is expected the U.S. economy will improve in the second half of the calendar year as temporary factors become less important and the gradual recovery from the recession takes hold. The Federal Reserve is expecting to maintain on hold with no quantitative easing. No rate hikes are expected before the third quarter of 2013.

Over the past few years, personal income tax in New Mexico has benefited with transfer payments from the federal government. New Mexico take-home pay will increase by approximately $600 million in calendar year 2011; however, it is suspected that the benefit of payroll tax holiday has been mostly canceled out by the burden of higher gas prices. Although unemployment continues to lag in New Mexico and has not exceeded expectations, both personal income and private wages have grown more than expected in FY11 compared to the assumptions used in the December 2010 forecast. The FOR-UNM economic forecasting service expects personal income and private wages growth rate between 4 percent and 5 percent per year.

The locomotive fuel deduction passed in the 2011 legislative session and signed by Governor Martinez paved the way for construction to begin in June 2011 on the new Union Pacific railyard. The project will initially create thousands of temporary construction jobs and will then be replaced with hundreds of permanent jobs as the facility becomes operational. Union Pacific plans on investing $400 million to construction facility.

The resumption of mining activities by Freport-McMoRan at the Chino Mine continues to be on schedule also adding jobs to the New Mexico economy. The investment by Freport-McMoRan is expected to be $150 million for equipment and mill refurbishment. Two other projects are expected to bring jobs to New Mexico; however, they are harder to quantify. The projects are the Roadrunner Solar Electric facility near Santa Teresa and the Xcel Energy/SunEdison in Eddy and Lea counties.

An overview of the major tax programs indicate that personal income tax collections are consistent with the December 2010 forecast, which include an estimated $500 million from disallowing the itemized deductions for state income tax. Excluding that increase, growth would have been 5 percent. Gross corporate income tax collections rebounded strongly in FY11 increasing by almost 65 percent from the depressed levels of FY10. The new $50 million cap for film credits should offset the negative impact moving forward for New Mexico corporate income tax. Another positive impact to the corporate income tax should be the expiration of bonus depreciation at the federal level. Based on the size of gross receipt revenues, the service sectors have contributed the most; however, the sector showing the greatest year-to-date growth has been the mining and oil and gas extraction sector with 42 percent growth over FY10. The retail trade sector has remained mixed in FY11.

The Navajo Nation began construction on a $66 million casino outside Farmington and is scheduled to be open in January 2012. The revenue share from the Navajo Nation casino will be at the rate of 8 percent under the conditions of the 2001 tribal/state class III gaming compact. The new casino is expected to have a negative impact on SunRay Racetrack-Casino, which shares its revenues at a 26 percent rate; however, the net revenue impact to the state is expected to be slightly higher.

The county gaming tax credit went into effect for Ruidoso Downs Racetrack and Casino in January 2011. It will effectively cut its tax rate in half up to a maximum benefit of $750 thousand annually. The general fund will be held harmless through the revenue generated from Lincoln County Business Retention gross receipts tax passed in September.

Richard May, secretary, Department of Finance and Administration (DFA), reported the executive played no political role in development of revenue numbers and the consensus revenue process was completed by staff. Secretary May said consensus numbers are encouraging; however, fiscal restraints and caution still remain for both FY12 and FY13. In addition, it is unclear what significant impacts will occur as a result of the federal deficit reduction currently being negotiated in Washington. Other concerns include the general growth of Medicaid spending, as well as future implementations of healthcare reform. Secretary May noted the state's major pension programs are facing serious unfunded liabilities. While there are many ideas on how to address the unfunded liabilities, there is an assumption that millions of dollars have to be added each year from the employer share.

Secretary May expressed concern with the continuing structural deficit and provided a long-term recurring revenue trend. New revenue estimates duplicate an unusual peak in revenues. In addition to providing a five-year revenue projection, Secretary May provided a five-year expenditure projection.

Elisa Walker-Moran, chief economist, LFC, reiterated the FY11 recurring revenue exceeds appropriation by $111 million, FY12 by $120 million, FY13 by $165 million, and FY14 by $190 million. In FY11, disaster allotments from the appropriation contingency fund were increased to $21.9 million from the projection of $11 million due to the recent wild fires. The remaining balance totals $54.8 million with $47.1 million dedicated to education spending. The general fund financial summary assumes the state will not receive the FY12 tobacco settlement payment in the amount of $18.9 million for health and education purposes. Recurring revenue growth is forecast at 9.9 percent in FY11 and 4.9 percent in FY12. One-third of the FY11 revenue increase is due to revenue enhancement legislation passed in the 2010 sessions.

Energy-related revenues were increased due to oil prices and volumes higher than projected in the December 2010 estimate. Gas prices have been adjusted up slightly from the December forecast and oil prices are expected to remain at 85 percent per barrel in the near term with moderate growth in the out years. Oil volumes increased by 1 percent in FY10 and preliminary actuals show a 4 percent increase in FY11. Growth in oil volumes is expected in the near term with decreasing production in later years. Spot prices for natural gas have been slightly higher than the December 2010 forecast averaging approximately $4 per thousand cubic feet for New Mexico producers in the latter half of FY11. Natural gas liquids are adding approximately $1.20 per thousand cubic feet to the average value of total gas production. Natural gas volumes failed by 7.5 percent in FY10 and are projected to fall by 4.7 percent in FY11. Although natural gas volumes are falling, higher prices and volumes for natural gas liquids helped to offset the decline in total production.

In FY11, the appropriation to the state equalization guarantee assumed $59.4 million credits in local 0.5 mill levy federal impact aid and federal forest reserve funds. Actual credits received by the state totaled $73.5 million credits, resulting in an estimated reversion of $14.1 million to the general fund.

Ms. Walker-Moran highlighted risks to the forecast and said natural gas prices remain vulnerable to increase supplies from productivity improvements. In addition, there is risk in the Bureau of Labor Statistics (BLS) employment numbers due to variability and because they are subject to great adjustments. Education reversions over the past two years total little more than $25 million, and credits may be underestimated for FY12. Because the timing of receipt of credits is crucial and often hard to estimate, the Public Education Department (PED) has been hesitant to set more aggressive estimates of credits without a safety net. Increasing the estimated credits would result in decreased reversion amounts and increased funding distributed to school districts. To maximize allocations to school districts and decrease reversion amounts for FY12 and FY13, the Legislature might want to consider an appropriation for the appropriation contingency fund to cover any shortfall in actual credits may occur if they come in lower than assumed allowing estimates of credits to be increased.

Ms. Walker-Moran explained the LFC post-session report provided an FY13 expenditure projection that assumes a generally flat budget from FY12 with a 4 percent increase in Medicaid spending. Based on the July 2011 forecast new money available for appropriations is estimated at $367 million. In FY13, approximately $64.4 million will be needed to replace federal funds and other state funds including $49.7 million for the retirement swap.

In response to Vice Chairman Varela, Secretary May clarified that even though there will not be a formal forecast estimate in October, and staff will continue to work on a consensus. Vice Chairman Varela said in addition to using caution, collection patterns also have to be considered. Vice Chairman Varela said in addition to keeping reserves at a certain level he would like to see a reverse of burden put on teachers and state employees.

Committee members expressed concern with essential state employee hires and the amount of time it is taking to fill positions. Secretary May responded that state agencies have to prove they have the resources available to fill positions for FY12 and beyond. Preliminary instructions for FY13 are to request a flat budget.

Friday, July 15

The following members were present on Friday, July 15: Chairman John Arthur Smith, Vice Chairman Luciano "Lucky" Varela, Representatives Don Tripp, William "Bill" J. Gray, James P. White Edward C. Sandoval, Nick L. Salazar, Larry A. Larrañaga, and Henry "Kiki" Saavedra; and Senators Steven Neville (for Carroll Leavell), John M. Sapien, Mary Kay Papen, Bernadette Sanchez (for Pete Campos), and Carlos Cisneros.

New Mexico Legislative Lottery Scholarship: A Review 15 Years After Enactment

New Mexico's Financial Aid Profile in a National Context. Anne Sturtevant, the director of Enrollment Services and Access Initiatives, Enrollment and Advocacy Division, provided a national summary of demographic information and national trends on federal student financial aid policies and funding and noted where New Mexico's high school and adult-age college students fit in this national context.

Relying on data shared by David Longanecker, president of the Western Interstate Commission on Higher Education (WICHE), and Education Sector's *Measuring Up 2008: Report Card*, Ms. Sturtevant noted New Mexico's flat population projections of high school graduates, though more than half of these graduates will be Hispanic and other minorities. She further cited achievement gap data between Hispanic and non-Hispanic white students at key points in the educational pipeline: high school graduation or GED attainment, college entry, associate degrees, bachelor's degrees, and graduate degrees. The gap between students earning degrees is among the highest in the country.

Ms. Sturtevant then focused on college affordability, noting that, even with New Mexico's comparatively low college tuition and living costs, these costs would comprise 28 percent of a lower-income family's income – even after financial aid is considered. Given this high percentage of household income and many competing economic priorities – health care, housing, and families -- adult students face greater hurdles to attend college.

In addition to college costs, Ms. Sturtevant focused on available student aid, particularly for New Mexico's unusually high proportion of adult students in its college system compared to the rest of the country. For federal assistance, 21 percent of New Mexican students receive Pell Grants, while the national average is 21 percent. She also noted that New Mexicans are much less likely to file a federal financial aid application (FAFSA). The conclusion is that New Mexicans are not receiving federal grant aid that they likely would receive if they applied.

Because the legislative lottery scholarship does not require financial need and is awarded based on academic merit, Ms. Sturtevant noted that the lottery program subsidizes those students who could otherwise afford to pay a little more towards their education and generally disenfranchises the most vulnerable population and the population not yet participating in higher education. To stretch both lottery scholarship funds and expand need-based aid, the Legislative Lottery Scholarship Program could be changed to cap awards, index awards to levels of tuition, and ration awards by increasing eligibility and scholarship-maintenance criteria. Recognizing that New Mexico's program is based on Georgia's HOPE Scholarship Program, Ms. Sturtevant reported that Georgia has increased scholarship eligibility (grade point average to 3.7, SAT scores to 1200) for a student to get their maximum Hope Scholarship and that many scholarship recipients are unable to sustain the GPA requirements needed to maintain scholarship eligibility. Without a regular evaluation of such programs, it is easy for such programs to go off course and require more dramatic steps when a significant change is required.

Some members mentioned the state is not adequately preparing students to go to college and this should be a focus starting at the first grade. Representing a mostly Hispanic district, Representative Saavedra noted that legislators and policymakers need to help educate parents on the importance of college and obtaining a degree. Representative Larrañaga asked whether New Mexico could make college more affordable and increase the number of college graduates.

Ms. Sturtevant replied that Hispanics tend to enter community colleges instead of universities for many reasons – lack of knowledge about financial aid, seemingly high tuition costs, and household obligations. Importantly, research has shown students who start at the community college level, while financially beneficial because of lower costs, take much longer to earn a bachelor's degree than if the student started at a four-year institution.

In response to member questions, Ms. Sturtevant and Michelle Arnold, government relations director for the College Board Southwestern Region, discussed the College Board's work supporting the kindergarten-12th grade pipeline and access to college. Importantly, efforts in Texas school districts have demonstrated that early intervention can prepare students to attend college, some of the best in the country, and experience tremendous success. This experience is true, no matter family income levels.

Members discussed the value of requiring students to complete the Free Application for Federal Student Aid (FAFSA) for admission to college, as part of the Legislative Lottery Scholarship Program, or to receive state financial aid. Ms. Sturtevant noted that in some states all students are required to fill out a FAFSA as part of a K-12, public education department mandate, whether or not students attend college. Ms. Sturtevant stated it is now much easier to apply for financial aid than it ever has been and the U.S. Department of Education has made great strides in automating the process. She noted students in community colleges don't apply for financial aid for the following reasons: They think they can afford it on their own because fees are so low, they think it's a hassle and don't want to go through the process, and they think they would only be eligible for a loan and don't want to bother with the process.

<u>New Mexico's Legislative Lottery Scholarship Program and Pressing Issues.</u> Tom Romero, chief executive officer for the New Mexico Lottery Authority, reported the authority will deliver approximately \$41 million to the legislative lottery scholarship fund for FY11; this is less than FY10's net revenue return of 43.6 million. While FY11's \$135 million is the lottery's second highest net revenue year in its history, it is \$11 million less than the FY11 net sales projection of \$146 million.

The revenue projection failed to anticipate flat ticket sales due to the recession, loss of retailers, increasing gas and food prices, competition from other companies for entertainment, and fewer jackpot run-ups that motivate people to play. For example, Powerball sales were down 29 percent or \$12 million and scratcher sales were down about \$2.4 million in FY11 as compared with the previous year.

Despite the setbacks, net revenue for the scholarship program has increased both in dollars and in percentage. This is the result of strict fiscal disciple and severe cost cutting. The authority has spent less money on advertising than they did four years ago. The authority does not pay retailers incentives to keep ticket dispensers filled with games, or sales kiosks stocked with information on the latest games and promotions. The authority has frozen salaries for more than three years and have only hired and replaced for critical positions.

In the past two fiscal years the authority has taken a number of steps to stabilize sales in nearly every game, except Powerball. The steps include reformatting Road Runner Cash to offer higher jackpots and improve odds of winning, offering the Mega Millions game alongside Powerball and Hot Lotto. Authority staff has negotiated with two entertainment acts to introduce world premier scratcher games. They have developed the "*what you gonna do*" branding campaign to help connect with nonlottery players. They have offered promotions to let players turn in their non-winning scratcher tickets for a second chance to win prizes such as electronics and trips to popular music concerts. They have acquired 60 new retail locations and have introduced a VIP club registering 6 thousand members who so far have received more than 125 thousand text messages reminding them to check their tickets for winning numbers, as well as alerting them to the next jackpot. Another promotion they have worked on is a social media strategy to help reach younger players.

To further capitalize on these initiatives in FY12, the authority staff will make over Powerball in January to offer a higher starting jackpot, improve the overall odds of winning, and create a $1 million second place prize with an increased ticket price of $2. They will also launch a new instant play game that will be printed from in store sales terminals and upgrade their internal communication network system to create a subscription program that will allow players to buy drawing game tickets anywhere from six months to a year in advance.

Even with these game changes, the authority anticipates flat growth revenues and flat net returns for FY12 through FY16. The annual sales forecast remains $136.4 million and the annual revenue is $41 million, equal to 30 percent of revenues.

Mr. Romero noted the lottery's 55-person staff is committed to doing all that it can to sell games responsibly and return at least 30 percent of monthly revenues to the Legislative Lottery Scholarship Program, as required by law.

Chairman Smith asked what will happen to sales when Powerball tickets increase to $2. Mr. Romero responded that, based on research, the authority estimates 35 percent to 40 percent of players who currently play Powerball will stop, but revenues will sufficiently offset reduced playership. Based on the increased price starting January 15, 2012, the lottery anticipates making $2.7 million more in revenues, despite a predicted 40 percent reduction in play. There remain many $1 options than the increased Powerball ticket.

Karen Kennedy, director, Financial Aid Division, New Mexico Higher Education Department (HED), reported 61 thousand students have attended college on lottery scholarships and that these students are likely to be more successful than those without the scholarship. Lottery scholarship recipients have a higher graduation rate than non-recipients.

The HED formed an ad hoc Lottery Study Committee, with members from the research universities, comprehensive universities, HED, DFA, and has met many times within the last year to discuss lottery scholarship issues. To improve fund solvency, the study committee considered incremental program changes, including raising the GPA for eligibility and maintaining the scholarship and increasing credit load from 12 semester hours to 15 to maintain the scholarship. More students would lose lottery scholarship eligibility because of these changes, and the changes would adversely affect minority students.

Ms. Kennedy mentioned the HED is looking at ways that financial aid can incentivize completion and mentioned staff is doing a great deal of college outreach they have not done in the past by going out to the rural areas around the state.

Ms. Kennedy reports that, in the Administrative Code, under objectives, it says scholarships are not awarded on basis of financial need. Therefore, the HED does not require students to complete the FAFSA. At one time, the HED did require filling FAFSAs, but this was changed in 2004 or 2005.

The July 1 balance in the scholarship was $47.272 million. The lottery income this year, without the June 2011 revenues, is approximately $41.554 million. The expenditures as of June 30 are $53,252,000. At the current expenditure rate, the fund will not be able to provide full-tuition awards to recipients after FY13.

Vice Chairman Varela asked Ms. Kennedy about her division and staffing levels. Ms. Kennedy said she has three full-time employees working in the division and the division is fully staffed. Vice Chairman Varela asked if this was sufficient to complete the HED's responsibilities, and Ms. Kennedy responded by noting the division has been fully staffed for only two weeks so it was too soon to comment.

Vice Chairman Varela wanted to know about staffing in the rest of the HED, addressing this question to LFC analyst Tracy Hartzler-Toon. The HED has 58 FTE and 18 vacancies as of the meeting date. Ms. Harzler-Toon stated one of the legislative mandates for HED is to complete a funding formula revision by October 15, 2011. The LFC is concerned about staffing levels, particularly at the Institutional Finance and Capital Projects Division, which is supposed to have at least five employees and currently has two, including the director. The vacancy rate in that division has impacted core functions, including approving institutional operating budgets by July 1, 2011, as well as decisions on staffing and completing the research for the funding formula. A number of institutions have committed to providing staffing support to meet the legislative mandate to have the funding formula completed by October 15.

Vice Chairman Varela noted the HED lacks adequate resources and the wants the HED's secretary to provide the committee with a plan by December as to what its allocation of resources are.

<u>Impacts of the Legislative Lottery Scholarship Program to Institutions and on Institutional Outcomes.</u> Brian Malone, director, Student Financial Aid, University of New Mexico, spoke to the committee on the school perspective of the Legislative Lottery Scholarship. Referring to his materials, Mr. Malone said there are 23 thousand students at UNM's main campus and approximately 8.6 thousand lottery scholarship recipients. Nearly two-thirds of lottery recipients completed a FAFSA, with students having a median income of $55 thousand and about 3 thousand students qualifying for Pell Grants.

Mr. Malone reported that 11 percent of all student financial aid ($30 million of $272 million) supports the first-semester bridge scholarships for lottery scholarship recipients. He stated about 70 percent to 75 percent of students who receive first-semester, bridge scholarships go on and are eligible for the lottery scholarship their second semester. In other terms, 25 percent to those who receive bridge scholarships do not satisfy requirements to receive lottery scholarships.

Graduation rates for lottery recipients at the University of New Mexico are 58 percent within six years, whereas the overall UNM rate is almost 44 percent. The graduation rates for high-need or Pell-eligible students is 48 percent with the lottery scholarship and 18 percent without.

Mr. Malone shared his experiences on the lottery study committee. He reported the study committee looked at data from different schools in New Mexico and found that, when isolating GPA by raising it in increments of 2.5, 2.75 and 3.0 while lowering semester hours, the number of students who lost the lottery scholarship rose, as expected. The attrition rate for raising semester hours to 15 credits and GPA raised the attrition rate to almost 60 percent.

Members asked about the term of the lottery scholarship and relationship to graduation rates. Mr. Malone clarified lottery funding is for four years, or eight semesters, beginning the second semester. At UNM, students need 128 hours to graduate and the scholarship covers 96 hours, so students could have 108 semester hours covered when the bridge scholarship is included. Should a student change majors during the course of studies, Mr. Malone noted the student might have more of a gap on the end of the scholarship time and might delay graduation. The federal government allows up to 150 percent of length of the program to receive financial aid to allow for such things, but a student's lottery scholarship could run out before graduation.

Senator Smith noted he never looked at college tuition as a policy situation and he anticipates one regarding tuition increases and lottery awards. The lottery has been good for students and tuition increases should be analyzed before scholarship awards are raised automatically.

Ms. Hartzler-Toon highlighted a 1997 LFC brief reviewing federal financial aid options, like the federal HOPE tax credit. At that time – and still today – families or students who receive full lottery scholarship awards are unable to claim this federal tax deduction or a tuition credit. The state may wish to consider changing the scholarship program to allow these scholarship students to receive full federal benefits.

Further, the hearing is designed to present options to align state financial aid requirements with New Mexico's lottery scholarship requirements. Importantly, 7 states have higher education lottery scholarships—Arkansas, Florida, Georgia, New Mexico, North Carolina, South Carolina, and Tennessee. These programs have changed over time to address solvency and target financial need. Some states have raised academic eligibility, capped award amounts for total awards or based on enrollment status, or capped tuition for lottery recipients. Many states, including Florida, have required lottery recipients to complete the FAFSA more for data collection. Arkansas has prioritized lottery scholarships for students who have made academic progress or are studying to meet state workforce needs.

Chairman Smith stated when the Legislature established the law, there was no empirical data for this program or any nationally. The Legislature could not accurately anticipate lottery revenues and expenses. The Chairman asked the HED secretary with revisiting the rule making it a requirement to fill out FAFSA application and to report back with the LFC staff after that conversation.

Further, Chairman Smith stated the HED secretary must inform the governor about any proposed changes to the Legislative Lottery Scholarship Program and have it put on the call in January because legislation may not be germane otherwise. When talking in terms of the lottery, PED is putting out students whose chance of success is extremely limited but who are receiving initial semesters of lottery funding. Chairman Smith requested information from PED on what schools have the lowest performing numbers.

<u>Action Items</u>

Approval of LFC Minutes – Jun 2011. **Senator Cisneros moved to approve the June 2011 LFC meeting minutes, seconded by Senator Sandoval. Motion carried.**

With no further business, the committee adjourned at approximately 11:05 a.m.

______________________ Chairman

8/18/11 Date