MINUTES
Legislative Finance Committee
Hyatt Regency Tamaya, Santa Ana Pueblo
July 21 - 23, 2021

Wednesday, July 21
The following members and designees were present on Wednesday, July 21, 2021: Chairwoman Patricia A. Lundstrom; Vice Chairman George K. Muñoz; Representatives Javier Martinez, Nathan P. Small, Randal S. Crowder, Gail Armstrong, Candie Sweetser, Jack Chatfield, and Harry Garcia; and Senators Nancy Rodriguez, Steven P. Neville, Roberto "Bobby" J. Gonzales, Gay G. Kernan, Pat Woods, Sia Correa Hemphill, and Pete Campos. Guest legislators: Representatives Phelps Anderson, Ambrose Castellano, Meredith A. Dixon, Brian Egolf, Joshua Hernandez, Ryan Lane, Raymundo Lara, Tara L. Lujan, Antonio Maestas, Marian Matthews, Jane E. Powdrell-Culbert, Sheryl Williams Stapleton, and Luis M. Terrazas; and Senator Harold Pope, Jr.

LFC Program Evaluation: Department of Health Facilities: Oversight, Capacity, and Performance -- Brian Hoffmeister and Jacob Rowberry, both LFC program evaluators, presented the report *Department of Health Facilities: Oversight, Capacity, and Performance*. Department of Health (DOH) facilities provide an important array of behavioral health, substance abuse treatment, and long-term and supportive care services to some of New Mexico's most vulnerable populations; however, the agency's seven facilities face chronic issues with underutilization, staffing shortages, fiscal management, and facility conditions, resulting in substantial costs to the state and risks to the health and safety of individuals in their care.

DOH lacks strong, dedicated leadership over facilities, affecting its ability to respond to deficiencies and address critical patient needs. The agency is currently without a dedicated deputy secretary for facilities and went over three years without a director for facilities management. Further, the DOH Facilities Governing Board lacks independence and performs limited oversight for quality of care.

Inadequate oversight likely contributed to the higher rate of deficiencies in recent years, causing actual harm to residents in DOH long-term care. It was also likely a factor in the high Covid-19 infection and death rates among residents of the New Mexico Veterans' Home (NMVH), as well as the significant construction issues there. Multiple independent reviews found failure to follow proper infection control and personal protective equipment (PPE) procedures despite early guidance from DOH to do so. Since 2015, deficiencies have cost NMVH over $180 thousand in federal penalties. Significant construction and maintenance issues at both the old and new buildings on the NMVH campus have left two therapy pools and multiple residential wings nonoperational.

Along these lines, failure to plan for the long term has led to underutilization, growing costs, and inefficiencies across many DOH facilities. Underutilization of facilities worsened during the pandemic, costing facilities as much as $41 million to keep unoccupied beds open in FY20, along with causing a 10 percent rise in total cost per occupied bed. DOH lacks a comprehensive facilities master plan to address inefficiencies and lacks a comprehensive strategy to address workforce needs.

Without a comprehensive approach to manage facilities as a unified system, individual facilities drive their own budgets with limited oversight from the agency. As result, facilities tend to overestimate their revenue. Facilities largely conduct billing on their own, and are also individually responsible for seeking ways to increase revenue. Also, DOH facilities lack a standardized system to track and report operational performance in real time, instead relying on a variety of siloed tools at the facility level.

LFC staff recommend the Legislature consider

- Establishing a chief executive officer of facilities at the deputy secretary level, accountable to the DOH secretary and Facilities Governing Board;
- Formally establishing the DOH Facilities Governing Board in statute, with voting membership independent of facility administration and with clear authority to review quality metrics, clinical outcomes, finances, and management performance; and
- Funding the state share of replacing the original NMVH building.

The Facilities Governing Board should update its bylaws to establish standing committees on quality and safety, finance, and strategic planning.

DOH should

- Take immediate action following recommendations of infection control specialists to ensure staff follow best practices on using PPE;
- Develop a systemwide facilities master plan that includes a needs assessment for all facility services currently offered;
- Develop a comprehensive strategy to recruit for and retain the highest-need positions;
- Report at least quarterly to the Department of Finance and Administration and LFC projected revenues and expenditures for each facility;
- Reorganize responsibilities and workflow of the Administrative Services Division and facilities program to centralize certain financial and billing operations, oversight, and planning;
- Assess critical data needs for management of facilities as a unified enterprise and develop a plan for integrating key operational metrics with clinical data; and
- Facilitate work groups across all DOH facilities to share institutional knowledge and implement best practices.

Acting Secretary David Scrase, M.D., said DOH facilities mainly serve as a safety net, providing services not met by the private market, particularly in rural areas. DOH's current strategic planning efforts include development of the next five-year facility master plan.

Secretary Scrase pointed out many of the issues found in LFC staff's evaluation have existed for two decades and said establishing foundations could help facility management improvement efforts to progress from one administration to the next.

Kathy Kunkel, former secretary of DOH, highlighted key points in DOH's formal response to the report. Ms. Kunkel said low census is largely attributed to the pandemic and, in response, DOH will open two units of the original NMVH. Chairwoman Lundstrom expressed concern about opening the two units that have been deemed inadequate for patients.

Representative Martinez remarked on the need for more alcohol and drug detox and treatment facilities that provide longer-term services.

Chairwoman Lundstrom said LFC would support the use of American Rescue Plan Act funds for rebuilding NMVH.

Investment Performance Report. LFC Chief Economist Dawn Iglesias said record stimulus, vaccine rollout, and relaxing economic conditions resulted in soaring markets and large gains for state investments; however, first quarter 2021 performance remains lackluster compared with peer funds.

New Mexico’s investment agencies are the Educational Retirement Board (ERB), Public Employees Retirement Association (PERA), and the State Investment Council (SIC), which manages the land grant and severance tax permanent funds. For the year ending March 31, 2021, the value of New Mexico's combined investment holdings for the pension and permanent funds grew by $10.3 billion, or 20.9 percent, to an ending balance of $59.8 billion. Over the last five years, the state's combined investment holdings grew $15.6 billion.

After a year of record growth, one-year returns ranged from 21.6 percent (PERA) to 26 percent (LGPF), and average investment returns over the last 10 years ranged from 7 percent (PERA) to 7.85 percent (ERB). ERB and the permanent funds outperformed their targets for every period, and PERA outperformed its targets for the one- and five-year periods.

Despite annual returns in excess of 20 percent, when compared with peer funds greater than $1 billion on a net-of-fee basis, all funds performed in the lowest quartile for the one-year period. All funds also performed below the median for all periods except the quarter.

ERB Chief Investment Officer Bob Jacksha said of ERB revenue, 56 percent is from investment earnings, 24 percent is from employers, and 20 percent is from employees. For the year ending March 31, 2021, ERB’s investment return exceeded its 7 percent actuarial target for all time periods, net of fees.

ERB performance data issued for the FY21 third quarter report is incomplete. Mr. Jacksha explained ERB invests a significant amount to private assets in the form of limited partnership funds. Typically, these funds report results with a one calendar quarter delay due to the nature of assets. Year-end auditing causes further delays in reporting results; therefore, third quarter reports do not include December results for many funds. Mr. Jacksha said December and March results are very robust, which fourth quarter reports fully reflect.

Mr. Jacksha said ERB assets totaled $15.7 billion on May 31, a $2 billion increase since March.

PERA Deputy Chief Investment Officer Kristin Varela reported $3.2 billion in investments, $2.8 billion in member contributions, and $6 billion in paid benefits over the last five years. Ms. Varela said PERA’s reliance on investment activity for the public employees’ retirement system requires diversification, liquidity, and comprehensive risk management. Like ERB, PERA has shifted from predominantly growth-oriented assets, cutting its equity allocation by 50 percent over the past 20 years.

PERA's investment return in the first quarter of 2021 met or exceeded its actuarial target for almost all time periods, net of fees.

Ms. Varela talked about implementation of the policy portfolio adopted by the PERA board. PERA is directed to consider risk tolerance, long-term strategic allocation, and assumed rate of return in managing its portfolio. PERA's investment strategy is expected to lag the index during strong market rallies. Ms. Varela said PERA's portfolio has strong absolute performance and ranks near the median in risk-adjusted return efficiency. The asset allocation is highly diversified and efficient, but does target a risk that is about 20 percent lower than industry peers; as a result, rates of return are in the lower rankings.

PERA assets totaled $17.4 billion on May 31, an all-time high.

SIC Chief Investment Officer Vince Smith said the agency is managing over $33.76 billion of net assets as of May, an $8.2 billion increase over the past 14 months. The growth is primarily in the land grant permanent fund (LGPF), followed by the severance tax permanent fund (STPF). Permanent fund distributions increased from $425 million in FY01 to $1.15 billion in FY22. Majority of the $1.15 distribution is from LGPF, which Mr. Vince said demonstrates that larger funds provide greater benefits.

SIC's investment return for both permanent funds exceed their actuarial targets for all time periods, net of fees. Mr. Smith talked about SIC's investment strategy.

In response to Senator Gonzales, Mr. Jacksha said ERB's 2020 actuarial report stated the funded ratio for the benefit plan is 60.4 percent, and total unfunded actuarial accrued liability (UAAL) is approximately $9 billion. Mr. Jacksha said the agency expects the 2121 actuarial report will indicate an improvement.

Vice Chairman Muñoz expressed concern for PERA's low retention rate of management staff and low investment performance.

House Speaker Egolf requested LFC staff compare New Mexico's investment performance with other states and provide recommendations on potential opportunities.

Children, Youth and Families Department: Child Protective Services. Brian Blalock, secretary of the Children, Youth and Families Department (CYFD), updated the committee on current initiatives and said overdue investigations decreased from 3,500 in January 2019 to about 200 in April of this year. During the same time, kinship care placements increased 50 percent and out-of-state youth placements decreased 50 percent. Although improved, the average number of placement moves is slightly higher than the targeted four placement moves or lower per 1,000 days. Significant strides were made in rebuilding community-based mental health. Secretary Blalock reported a 25 percent increase of infant mental health clinicians and 55 percent increase of high-fidelity wraparound service providers in the state. The current vacancy rate of Child Protective Services (CPS) is 15 percent.

CYFD Chief Data Scientist Alberto Edeza, Ph.D., talked about data collection and said CYFD is

- Linking records of children in protective custody with Human Services Department service records,
- Capturing more robust information on Native American and Indian Child Welfare Act-eligible children to identify additional interventions,
- Conducting comprehensive and tailored team meetings for every child, and
- Forming workgroups to identify statistical correlates of specified outcomes for children.

CYFD has several data-informed projects in progress, including building interactive dashboards to help staff access key performance indicator data easily. Mr. Edeza provided an overview of the changes made to improve CYFD performance measures.

CPS Acting Director Annamarie Luna said CYFD aims to prevent institutionalization, unnecessary system involvement, trauma and adverse childhood experiences, suicide, and homelessness. CYFD works collaboratively with other state agencies, including the Public Education Department, Early Childhood Education and Care Department, and Indian Affairs Department. 2019 legislation established a multilevel response system to evaluate and provide services to children and their families or caretakers when a report of child abuse or neglect is made. The multilevel response system, also referred to as differential response, allows CYFD to include an alternative to investigating the report when the evaluation indicates there is no immediate concern for the child's safety. In the course of implementing the new system, CYFD launched the Family Outreach and Community Engagement (FORCE) pilot program. In collaboration with the Tribal Indian Consortium, CYFD chose four counties to host FORCE sites: Valencia, McKinley, Rio Arriba, and Sandoval counties.

Reporting on other prevention efforts, Ms. Luna said the federal Comprehensive Addiction and Recovery Act (CARA) requires states to keep track of infants born exposed to drugs or alcohol and assure a plan of care for every exposed infant and their affected family members or caregivers. In 2019, the Legislature added a new section to the Children's Code, requiring CYFD consult with the Department of Health, Human Services Department, and Medicaid managed care organizations (MCOs) and develop rules for providing guidance on the safe planning for newborns who exhibit symptoms of drug exposure, drug withdrawal or fetal alcohol syndrome. The Legislature also amended the Public Assistance Act, mandating CYFD require medical assistance plans for the safe care of drug-exposed newborns and their parents, relatives, guardians or caretakers. New Mexico has 1,700 plans of care currently in place. Ms. Luna talked about other prevention efforts and said CYFD is working to provide evidence based services.

Reporting on the *Kevin S. v. CYFD and HSD* settlement agreement, Secretary Blalock said the case was filed in 2018 on behalf of 14 foster youth and two advocacy organizations. The settlement plan includes

- Developing a trauma-responsive system of care for all children in state custody;
- Placing children in out-of-home care in stable, safe, appropriate, community-based placements in the least-restrictive environment;

- Building a relationship with each of the New Mexico nations, tribes and pueblos, and complying with the Indian Child Welfare Act (ICWA);
- Building a statewide, community-based behavioral health system that all children and families are able to access; and
- Implementing training, supervision, and support for agency staff, foster parents, and other adults who serve children impacted by trauma.

Senator Kernan asked CYFD to provide LFC the number of previously reported cases impacted by implementation of House Bill 230 of 2019. Senator Kernan also requested CYFD provide information on proposed spending of American Rescue Plan Act funds allocated to the agency.

Representative Dixon asked if CYFD would support the Legislature establishing a state ombudsman program as long as Title IV-E funds are not risk. Secretary Blalock said a state ombudsman program could duplicate existing efforts.

Representative Matthews requested CYFD provide LFC information on the lawsuits filed against the agency since 2015, including litigation costs to the state.

Federal Funds Update. LFC Program Evaluation Manager Micaela Fischer said the executive is spending down the $1.75 billion American Rescue Plan Act (ARPA) state fiscal recovery fund without legislative consent, primarily to fund the Vax2Max vaccine incentive program and replenish the unemployment trust fund. Though there was general agreement the money should be used to replenish the unemployment insurance trust fund, which the Legislature included as an appropriation but was vetoed in the 2021 regular session, spending on the vaccination lottery advertisement and prizes is occurring without appropriation by the Legislature. The executive has also issued press releases announcing they intend to use an additional $10 million of the federal stimulus funding to provide up to $1,000 incentives for people receiving unemployment benefits who return to work between July 2 and August 28. The executive has not publicly indicated priorities for spending the remaining dollars.

The state can use the ARPA state fiscal recovery funds to respond to the pandemic and its negative economic consequences and replace lost revenue. Once a state counts the ARPA funding as replacing lost revenue, then the U.S. Treasury allows states to use that funding for almost any purpose except paying down debt, replenishing rainy day funds, or paying into pension funds. Using revenue loss calculators developed by the Government Finance Officers Association, LFC staff estimate that much, if not all, of the remaining $1.1 billion left of state fiscal recovery funds could be counted as replacing lost revenue.

New Mexico-based tribes are estimated to receive $806.2 million in tribal fiscal recovery funds from ARPA. Like the state, tribes can use the funding to respond to the pandemic or replace lost revenue to their coffers.

DFA has until the last week of July to send smaller cities and municipalities their first half allocation of ARPA funding. Though counties and cities over 50 thousand residents received ARPA allocations directly from the U.S. Treasury, smaller cities and municipalities will receive their funding as a pass-through from the federal government through the state. The funding for these smaller governments will come in two, 50 percent tranches of $63 million each. The U.S. Treasury set an end of July deadline for DFA to send the first tranche of funding. DFA will receive and pass through the other half in July 2022.

In response to Vice Chairman Muñoz regarding ARPA funds for Covid-19 vaccine advertisements, Ms. Fischer said DFA established no bid contracts for the advertisements, declaring the funds are exempt from the procurement code.

In response to Vice Chairman Muñoz, Ms. Fischer said the U.S. Treasury wired the $1.75 billion to the State Treasury, and it was deposited into an account separate from the general fund. Vice Chairman Muñoz said transfers to the state are supposed to be deposited into the general fund, according to state statute. Vice Chairman Muñoz asked LFC staff to inquire with the State Treasurer why the funds were not deposited into the general fund.

Capital Outlay Quarterly Report. LFC Analyst Steve Olson said, as of July 2021, approximately $2.5 billion from all funding sources for 3,766 projects remains unexpended, including $203 million of earmarked fund balances for water, colonias, and tribal infrastructure projects. Additionally, $585 million remains unexpended from supplemental severance tax bonds for public schools.

Staff is currently tracking 528 “$1 million or greater” projects, totaling $2 billion; $1.4 billion is unexpended.

Mr. Olson said the proliferation of projects with large unspent balances creates a growing bottleneck, impacting the successful completion of turning available funds into public infrastructure. Mr. Olson said lack of planning, insufficient administrative capacity, and increased construction costs are among the common challenges and obstacles facing local capital projects.

Reporting on public school capital outlay, Mr. Olson said, since 2010, $1.6 billion has been allocated from the public school capital outlay fund for standards and systems awards. The school facility condition index remained relatively stable during this period. School facilities in some districts are almost completely new, reducing demand for funding. A 2019 formula change will reduce the state match for many districts.

Members were provided detailed information on all projects; the status of select projects were highlighted.

Thursday, July 22

The following members and designees were present on Thursday, July 22, 2021: Chairwoman Patricia A. Lundstrom; Vice Chairman George K. Muñoz; Representatives Javier Martinez, Nathan P. Small, Randal S. Crowder, Gail Armstrong, Candie Sweetser, Jack Chatfield, and Harry Garcia; and Senators Nancy Rodriguez, Steven P. Neville, Roberto “Bobby” J. Gonzales, Gay G. Kernan, Pat Woods, Sia Correa Hemphill, and Pete Campos. Guest legislators: Representatives Phelps Anderson, Ambrose Castellano, Meredith A. Dixon, Brian Egolf, Dayan Hochman-Vigil, Ryan Lane, Raymundo Lara, Tara L. Lujan, Antonio Maestas, and Sheryl Williams Stapleton.

<u>Tax Policy Matters for Economic Prosperity.</u> Richard Anklam, president and executive director of the New Mexico Tax Research Institute, remarked on the interest of tax matters to governments, businesses, and families.

Jared Walczak, vice president of State Projects with the Center for State Tax Policy at the Tax Foundation, said Location Matters is a landmark comparison of corporate tax costs in all 50 states. The study calculates and analyzes the tax burdens of eight model firms: a corporate headquarters, a research and development facility, a technology center, a data center, a shared services center, a distribution center, a capital-intensive manufacturer, and a labor-intensive manufacturer. Each firm is modeled twice, first as a new operation eligible for tax incentives and then as a mature operation not eligible for incentives.

Currently in its third edition, Location Matters provides an understanding of each state's business tax system, demonstrating how tax codes impact businesses and offering policymakers a road map to improvement.

A chart in the presentation demonstrated the radical difference in tax rate effectiveness among the various firms, which is because of structural provisions that Mr. Walczak said are not neutral but rather more favorable to certain businesses and industries.

New Mexico's reliance on gross receipts tax (GRT) is 44.5 percent, 10.6 percent higher than the national average. New Mexico's sales tax breadth is 69.6 percent, 39 percent higher than the state average. Mr. Walczak said a well-structured sales tax base is broad and includes all final transactions of goods and services. Also, sales taxes should be destination-based, meaning that tax is owed in the state and jurisdiction where the good or service is consumed. New Mexico's sales tax base is limited because of the large number of exemptions. The high degree of tax pyramiding in the state is also causing inefficient economic outcomes. Mr. Walczak said the state should consider destination-based sourcing for all goods and services, rather than the state's current system of partial destination-sourcing.

Mr. Walczak said New Mexico relies much less on personal and corporate income taxes. Because the state does not have its own indexing provisions, taxpayers are permitted to claim the federal standard deduction, which is inflation-adjusted. New Mexico is one of only three states to see higher rates this year, due to 2019 federal legislation.

Mr. Walczak said remote work is triggering complex tax issues that will likely drive tax policy considerations in the near future.

In June 2018, the U.S. Supreme Court ruled in favor of the state in *South Dakota v. Wayfair, Inc.*, permitting states to tax remote sales via their economic nexus laws, laws guiding taxation of goods shipped to a state. Richard Cram, National Nexus Program director of the Multistate Tax Commission (MTC), provided an overview of economic nexus legislation enacted in states since the ruling. In New Mexico, remote sellers and marketplace providers are now required to collect and remit GRT if their total gross receipts from sales sourced to the state are $100 thousand or more in the previous calendar year. California, Texas, and New York have the highest sales threshold of $500 thousand, followed by Mississippi and Alabama at $250 thousand.

Mr. Cram said last year many out-of-state workers who normally commuted to work across state borders to their employer's location instead worked from home. The continued presence of remote workers may cause income, sales, and use tax nexus for the out-of-state employer in the remote worker's state of residence.

Mr. Cram said MTC will be studying digital products in response to the growing number of states that have imposed sales and use taxes on digital products. The study will include identifying potential best practices and areas for increased uniformity of digital product taxation. A study on state taxation of partnerships is also in the works.

PFM Group Consulting conducted a study on New Mexico's tax structure and presented its findings to the Revenue Stabilization and Tax Policy Committee in December 2020. Randall Bauer, director of the consulting firm, said PFM analyzed state budget and tax data, conducted in-depth interviews with state tax policymakers and subject matter experts in the public and private sectors, and benchmarked New Mexico with peer states. PFM examined the state tax structure through the lens of five tax policy principles articulated by LFC in 2009: adequacy, efficiency, equity, simplicity, and accountability and transparency. PFM also reviewed prior studies of the state tax system and identified key issues that have led to prior recommendations and changes in the existing state tax structure.

Providing an update on PFM's findings since the December 2020 report, Mr. Bauer said

- The oil and gas industry continues to be the largest component of the New Mexico economy. As a share of GDP, the industry is larger than the largest industry in most states.
- There was significant disruption within the industry in 2020, including an unprecedented period when prices on the West Texas Intermediate (WTI) crude oil futures market went negative.
- While there has been a recovery, the "boom and bust" nature of the industry is a concern for the state's revenue structure.
- Reliance on the energy industry in general carries significant risk for states. One analysis identified New Mexico as among the most volatile state tax structures.
- The current structure has not kept pace with overall economic growth. An analysis by the Pew Charitable Trusts found, prior to the pandemic, New Mexico was one of six states that had not recovered its tax revenue since prior to the Great Recession.
- Federal assistance in 2020 and 2021 has helped New Mexico transition into recovery, but there are still structural issues that should be addressed.

Mr. Bauer highlighted key recommendations for state. New Mexico should

- Reinstitute a personal income tax rate structure with a higher marginal tax rate at higher income levels,
- Eliminate the capital gains PIT deduction,
- Reinstitute an estate tax,
- Restructure the GRT food exemption to be a refundable PIT credit,
- Increase the motor vehicle fuel rate,
- Undertake a regular and rigorous process for evaluating business tax incentives,
- Broaden efforts to diversify the economy and target key industries, and

- Pursue a constitutional change to broaden the use of local property taxes as a mechanism to reduce local gross receipts taxes.

PFM's recommendation to establish tax parameters for recreational marijuana was accomplished in House Bill 2 of the 2021 special legislative session.

Mr. Bauer said aspects of New Mexico's tax structure make a lot of sense based on the state's features. GRT, for example, allows taxing some important economic activity in the state that is not taxable in a typical state sales tax structure. There are immediate opportunities, however, particularly around the PIT structure and removing the GRT exemption for food coupled with an increase in PIT refundable credits. The issues related to changes in the property tax, which would require a constitutional amendment, are not short-term in nature. Mr. Bauer said PFM recognizes the historic resistance to this form of tax, but it is, by far, the most-used local tax in the United States. It provides an opportunity to reduce some of the regressive nature of existing reliance on GRT. The longer-range considerations primarily relate to non-tax changes to the state economy, which Mr. Bauer said should not be overlooked, as they perhaps have the greatest potential to change the shape of the New Mexico's tax structure.

House Speaker Egolf said New Mexico should consider tax incentives that benefit entrepreneurs and startups.

In response to Senator Kernan, Mr. Cram said New Mexico's GRT allows for taxation of services more than most other states.

Senator Kernan asked how long it would take New Mexico to replace revenues from the oil and gas industry with revenues from other industries. Mr. Walczak said shifting reliance in two or three years is unrealistic. Mr. Walczak said some states, like Alaska and Wyoming, are considering long-term strategies to shift their reliance on oil and gas revenues over a 10- to 15-year period.

Representative Crowder expressed concerned the trucking industry in the state could be negatively impacted if New Mexico increases the motor vehicle fuel tax rate while keeping the weight-distance tax in place.

LFC Progress Report: Tax Gap, Audit and Compliance, and Fraud. LFC Program Evaluation Manager Micaela Fischer presented a progress report on the state tax gap, audit and compliance, and fraud. In the last five years, the tax gap between what taxpayers owe and what they actually pay has grown 17 percent, partly because agency efforts have resulted in greater identification of owed taxes but lesser growth in collections.

The Taxation and Revenue Department (TRD) is the entry point for almost all state tax revenues and the agency's ability to accurately assess and collect taxes is key to funding new government initiatives without raising taxes on law-abiding taxpayers. Combatting the tax gap has also become a key strategy at the federal level to pay for post-pandemic infrastructure packages without increasing taxes on law-abiding taxpayers.

In the five years since the original 2016 LFC tax gap evaluation, TRD tax administration program expenditures have expanded 11 percent, along with new investments in IT tools, which have helped the agency increase auditing efficiencies. These investments resulted in TRD improving identification of taxes owed, but not collections. Some of the remaining challenges identified in the original 2016 program evaluation and 2017 progress report persist, including high vacancy rates.

Key recommendations from the 2016 evaluation still stand with the intent of helping TRD tackle the tax gap: better managing tax protests, focusing staff work and audits on collections, and working with LFC and Economic Development Department staff to monitor the impact of state tax expenditures.

TRD Audit and Compliance Division (ACD) Director Aysha Mora talked about current efforts for improved compliance and said TRD offers online workshops for new businesses and employees. Over 550 individuals attended the online workshops in FY21. The agency has a YouTube channel and a notification service. Other efforts include simplified forms with aligned instructions, enhanced taxpayer access point system, and implemented e-file and e-pay mandates. TRD also redesigned the combined reporting system, including decoupling business tax programs.

Providing an overview of current audit initiatives, Ms. Mora said TRD expanded its managed audit program to allow a greater number of taxpayers 180 days without penalty and interest to voluntarily comply and deescalate tax disputes. A paperless audit process was implemented to limit travel and customer touchpoints.

Ms. Mora said the Legislature should consider legislation that expands collection options for out-of-state taxpayers to align with destination-based sourcing changes. The Legislature should also consider authorizing TRD to enter reciprocal tax collection agreements with other states.

Ms. Mora said TRD is working to reduce the protest backlog by assigning more ACD resources to assist with reviews. The agency is also implementing technology to track protest cases and improve efficiency.

In response to Vice Chairman Muñoz regarding the elimination of other state funds received by TRD, Secretary Stephanie Schardin Clarke said the funds were replaced with general fund dollars in FY20, but not in FY21. The funds were partially replaced in FY22. Vice Chairman Muñoz suggested the agency submit a budget adjustment request (BAR) for the $1.5 million shortfall.

New Mexico Corrections Department. Ed Smith, acting director of the Corrections Department (NMCD) Administrative Service Division, said NMCD is budgeted $363.1 million for FY22; however, current estimates indicate less Inmate Management and Control Program revenue than initially projected. Mr. Smith explained there are no inmate work crews at this time because of low staffing levels and the pandemic. The agency is facing other budget challenges, including lower collection of community corrections fees and a deficit in the Probation and Parole Division for salaries and benefits. NMCD will request program transfer and budget adjustment authority to provide flexibility in addressing budget issues internally, reducing the need for supplemental appropriations.

Secretary Alisha Tafoya Lucero said NMCD's inmate population is currently 5,643; the agency has the capacity to serve 7,655 inmates.

Reporting on inmate classification, Secretary Tafoya Lucero said NMCD uses objective criteria to determine each inmate's custody and program needs. The agency is working with the University of New Mexico Institute of Social Research to improve the classification system. Secretary Tafoya Lucero said the goal is to ensure inmates are appropriately placed at the lowest possible restrictive level while maintaining safety. A new scoring method was recently deployed, which the agency expects will move many inmates to less restrictive custody levels and save costs.

Secretary Tafoya Lucero talked about the potential closure of Springer Correctional Center and said NMCD engaged other agencies to discuss possible opportunities for the campus should NMCD leave. An economic impact study is underway.

Secretary Tafoya Lucero reported the Guadalupe County Correctional Facility (GCCF) had a correctional officer vacancy rate of 72 percent earlier this year. In response, NMCD reduced the inmate population at the private prison by 50 percent and is now leasing the facility while the operator covers maintenance costs. NMCD pays correctional officers a higher wage than the private operators. At GCCF, the starting hourly wage of a correctional officer will increase from $15.75 to $20.09.

NMCD will soon lease the Northwest New Mexico Correctional Center as well. NMCD plans to merge the Northwest facility with the Western facility, which Secretary Tafoya Lucero said will allow NMCD to consolidate overhead and save costs. The starting hourly wage of a correctional officer at Northwest will increase from $16.50 to $20.09.

Highlighting key information in the LFC staff brief, Analyst Ellen Rabin said, despite significant reductions in inmate population, NMCD has seen significant growth in its budget. While falling populations and classification reforms provide opportunities for NMCD to realize substantial cost savings, the agency's plan to continue to convert private prison facilities to public operation, rather than reducing unused bed space, will likely lead to further cost escalation. While the state pays to maintain empty beds at its prisons, inmate programming continues to lag behind the levels necessary to improve New Mexico's high recidivism rate.

Senator Neville said converting the private prisons to public prisons under a short-term lease could impact the communities of Santa Rosa and Gallup economically, explaining that other industries and residents may leave because they are uncertain about the future of the prisons. Secretary Tafoya Lucero said NMCD's intention is to keep the prisons in operation long-term.

Chairwoman Lundstrom asked NMCD to provide the committee information on the change of costs from operating privately to publicly.

Secretary Tafoya Lucero agreed with Representative Lane on the benefits of providing prisoners vocational training; however, it is difficult to recruit instructors.

Remarking on the declined inmate population in New Mexico, Speaker Egolf suggested LFC staff analyze the potential advantages and drawbacks of closing the penitentiary in Santa Fe.

Carbon Sequestration at Power Plants in New Mexico. Duane Highley, chief executive officer of Tri-State Generation and Transmission, said Tri-State is a cooperative of 45 members in four states that together provide power to more than a million electricity consumers across nearly 200,000 square miles of the west. Tri-State is on course for reaching 70 percent clean energy supplied to its members by 2030. Mr. Highley said, to reach 70 percent clean energy, the cooperative is retiring coal facilities and building a massive wind and solar footprint. When reached, Tri-State's achievement will far exceed requirements of the New Mexico Energy Transition Act (ETA).

Mr. Highley said Tri-State is helping to secure funding for the community of Escalante Generating Station to assist in the transition from coal-dependent jobs. The cooperative is also considering sourcing a large solar facility in the same community.

Mr. Highley said standard utility tools for transition debt and costs do not work for cooperatives. Cooperatives are not-for-profit and have few consumers to share costs. Their members are primarily in rural, high-poverty counties with low populations. Facility retirements often happen in rural areas, resulting in loss of jobs, tax revenue, and other economic drivers. Without tools to manage costs, electricity rates increase in those rural areas.

Wiley Rhodes, chief executive officer of Newpoint Gas and cofounder of Escalante H_2 Power, said Newpoint Gas specializes in the management of gaseous molecules. The company focuses on the removal of contaminants from natural gas. Mr. Rhodes said Escalante H_2 Power is an entity that was organized to convert retired coal-fired power plants into zero-emission hydrogen fired power generation plants, beginning with the Escalante Generating Station (EGS).

Mr. Rhodes said EGS is an ideal first opportunity because the facility is in perfect condition and has the surrounding infrastructure in place for retrofitting to blue hydrogen. Also, the facility has capacity for carbon sequestration within the area, needed for decarbonizing natural gas. Once in operation, EGS will be able to produce enough hydrogen to power the plant and an additional 50 million standard cubic feet per day (MSCFD), which can be marketed to attract other industries to the area, such as semiconductor, green steel, and low carbon manufacturing.

Mr. Rhodes said the demand for dispatchable power will continue to increase as states work to stabilize their power grids.

Peter Mandelstam, chief operating officer of Enchant Energy, said it would be premature to close the San Juan Generating Station (SJGS). Mr. Mandelstam remarked on the existing qualities, opportunities, and benefits of the facility. In partnership with Farmington, Enchant is investing in state-of-the-art environmental technology at the facility for the purpose of sequestering carbon. The technology is expected to capture 6 million metric tons of carbon dioxide annually, equivalent to removing 1.3 million cars off the road. The capture will be enough to meet carbon dioxide emissions standards of ETA. The public-private partnership is expected to continue until at least 2037.

Mr. Mandelstam remarked on existing storage issues in the country.

Mike Eisenfeld, energy and climate program manager of the San Juan Citizens Alliance (SJCA), said porosity, liability, and pollution controls are potential risks of SJGS. The alliance is concerned current efforts will not be enough to meet ETA emission requirements.

SJCA is concerned the Escalante project could impact the solar project that was meant to replace EGS. Mr. Eisenfeld said carbon sequestration projects distracts from renewable energy efforts. The alliance supports renewable energy projects to address climate change.

In response to Representative Small, Mr. Rhodes said the Escalante Generating Station will produce hundreds of jobs compared with only a handful of jobs at the solar plant when operating.

In response to Representative Small regarding the recent collapse of a cooling tower at SJGS, Mr. Mandelstam said Farmington intents to rebuild both cooling towers. Over $139 million in deferred maintenance will be invested when the facility is fully transferred to Farmington.

In response to Senator Woods, Mr. Highley said Tri-State's intent is to sell the facility to Escalante H_2 Power. Tri-State might then purchase electricity from Escalante for its members. Mr. Rhodes said the electricity prices will depend on several factors.

Providing brief remarks, Joseph Hernandez, organizer of the Dine Energy Native American Voters Alliance Education Project, said communities of the Navajo Nation and their leaders understand the need to transition from coal-fired energy but do not believe the EGS and SJGS projects are in the right direction.

Friday, July 23

The following members and designees were present on Friday, July 23, 2021: Chairwoman Patricia A. Lundstrom; Vice Chairman George K. Muñoz; Representatives Javier Martinez, Nathan P. Small, Randal S. Crowder, Candie Sweetser, Jack Chatfield, and Harry Garcia; and Senators Nancy Rodriguez, Steven P. Neville, Roberto "Bobby" J. Gonzales, Gay G. Kernan, Pat Woods, Sia Correa Hemphill, and Pete Campos. Guest legislators: Representatives Brian Egolf, Pamelya Herndon, Raymundo Lara, Derrick J. Lente, Tara L. Lujan, Antonio Maestas, and Sheryl Williams Stapleton.

Addressing *Martinez-Yazzie* Findings Related to Native American Student Outcomes. Ryan Stewart, secretary of the Public Education Department (PED), said investments in extended learning time, early childhood education, at-risk student services, and career and technical education (CTE) programs are among measures taken to address the *Martinez-Yazzie* education quality lawsuit. The state also dedicated additional resources for community schools and Native language programs and established a family income index and special education ombudsman program. PED developed a financial system to increase transparency and oversight of school spending. Equity councils were formed to guide programming and budget development. School districts are now required to align their annual budgets with an annual education plan submitted to PED for approval.

Since 2019, the Legislature has allocated $12 million to the Indian education fund and $5.5 million to indigenous, multilingual, multicultural, and special education initiatives. The Legislature has also allocated $9 million for culturally and linguistically diverse instructional materials and curriculum development. PED awarded grants to 21 tribes, pueblos, and nations and 28 school districts and charter schools serving large numbers of Native American students. PED also provided 6,252 Chromebooks to 22 tribes and schools with significant Native American student populations, 101 CradlePoint fixed and mobile hotspots to tribal schools and 22 tribes, and 700 residential hotspots to the Navajo Nation to assist in closing the digital divide. The agency is continuing to work with stakeholders to develop culturally and linguistically diverse instructional materials.

Secretary Stewart said, over the past year, PED engaged stakeholders in a strategic planning process to evaluate current initiatives and determine ways to strengthen and improve strategies for

- Administering a vibrant educator ecosystem,
- Closing the opportunity gap,
- Creating pathways and profiles, and
- Providing whole child education.

Daniel Benavidez, superintendent of Central Consolidated School District (CCSD), said despite best efforts of very capable and talented educators, educational and social emotional gaps remain. Mr. Benavidez said CCSD serves a rural and remote area, resulting in long travel times to the bus stop and school. Seventy percent of residents are unemployed, and the poverty rate is almost four times the national average. Thirty to 40 percent of households do not have electricity, potable water, or indoor plumbing. Internet is spotty throughout the area. Unless provided by the school district, there are little to no municipal amenities (e.g., public libraries, municipal swimming pools, rec centers, and parks). Less than 2 percent of the land is taxable. Revenue primarily comes from the San Juan Generating Station and mine and the Four Corners Power Plant.

Legal Counsel Germaine Chappelle said CCSD is working to mitigate the impact of the generating station closure and improve gaps in the school district. An Intercultural Community Outreach Department was established to address student learning gaps. Providing an overview of the initiative, Ms. Chappelle said the department is identifying problem areas, implementing strategies, and using data to track progress.

Regis Pecos, co-director of the Santa Fe Indian School Leadership Institute, said the tribal remedy framework is a comprehensive plan for meeting the educational needs of Native students and their tribal communities. It was created by tribal community members and indigenous education experts, following a series of tribal community education institutes and pueblo convocations. The framework proposes a set of strategic solutions that place tribal communities at the center of education planning, programming, and infrastructure:

- Shared responsibility and increased tribal education sovereignty;
- Community-based education, created by and centered within tribal communities, and
- A balanced, culturally and linguistically relevant education that sustains the strengths of children and their communities.

The framework is endorsed by leaders of the nations, tribes, and pueblos.

Mr. Pecos shared his concerns with the long-standing issues in the public education system, which he said continues to fail Native American children in New Mexico.

In response to Senator Correa Hemphill, Secretary Stewart said the Developmental Disabilities Planning Commission is in the process of hiring a special education ombud.

Senator Gonzales requested LFC staff provide the committee information on effective public education systems in the other states, identifying best practices.

Vice Chairwoman Lundstrom asked LFC staff provide the committee information on the status of legislative memorials that have educational directives.

Miscellaneous Business.

Action Items. Senator Gonzales moved to adopt the LFC June 2021 meeting minutes, seconded by Representative Small. The motion carried.

Representative Small moved to adopt the LFC Higher Education Subcommittee June Report, seconded by Senator Rodriguez. The motion carried.

Review of Monthly Financial Reports and Information Items. David Abbey, director of LFC, briefed the committee on information items. The proposed LFC budget guidelines for FY23 were discussed. The guidelines serve as general direction of committee priorities. Members were invited to provide feedback on the proposed guidelines before the committee votes on them in August.

With no further business, the meeting adjourned at 11:31 a.m.

Patricia A. Lundstrom, Chairwoman

George K. Muñoz, Vice Chairman

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July 26, 2021

MEMORANDUM

TO: Representative Nathan P. Small, Co-Chair
Senator Nancy Rodriguez, Co-Chair
Members, Higher Education Subcommittee

FROM: Mark Valenzuela, Principal Analyst
Micaela Fischer, Program Evaluation Manager,

SUBJECT: **Higher Education Subcommittee Report**

The LFC's Higher Education Subcommittee met on July 22, 2021, at 7:00 am.

The Subcommittee first heard from a panel consisting of Jim Wysong, Dean, School of Liberal Arts and School of Arts, Design, and Media Arts, Santa Fe Community College (SFCC); James Holloway, Provost, University of New Mexico; and Laura Valdez, Student Advising Director, University of New Mexico.

Dr. Wysong first presented on the need to set reasonable goals to increase the number of students transferring out of two-year colleges and decrease the number of students stopping out, in addition to reducing the time to a degree. SFCC has surveyed its students and found that many first-generation and older students do not tend to thrive in a traditional four-year campus environment. For these students, Dr. Wysong suggested "intrusive advising" aided by guided pathways and automated platforms to keep track of student activities is effective in keeping students engaged. Dr. Wysong also talked about transfer school when a student moves from a two-year school to a four-year school with a completely different culture. Dr. Wysong shared his experience from other states where peer advisors for transfers students at four-year schools can help ease transfer shock.

From UNM, Provost Holloway and Ms. Valdez shared a number of metrics about students that transfer into UNM, in addition to challenges in supporting transfer students and suggestions for legislative action to support transfer students moving ahead. In particular, UNM noted that 57 percent of UNM transfers come from CNM but only about 12 percent from UNM's own branches. Further, UNM noted that data from the Higher Education Department (HED) doesn't necessarily paint full picture of transfer because students tend to take multiple classes at multiple institutions at a time. UNM transfer students tend to have an extra ten credit hours at graduation, and a lower GPA if they take their general ed classes outside of UNM. They also have 10 percent decreased graduation rates compared to their non-transfer peers.

UNM efforts to improve transfer student success include articulation agreements with CNM and SFCC, transfer-student specific scholarships, and providing transfer students access to a UNM advisor prior to admission and enrollment.

Provost Holloway and Ms. Valdez suggested that the Legislature could modify the statutory requirements of the lottery scholarship, which currently limit it to students taking 15 hours a semester, to a 12-hour a semester cap to benefit transfer students. Provost Holloway also suggested the state sponsor one conference on "high-engagement teaching and learning practices" and another for support services and student affairs professionals to support transfer student success.

Senators Rodriguez and Kernan both asked for clarification about "general education" courses transferring versus transferred courses counting toward a degree requirement or not. Provost Holloway clarified that all general education classes transfer as "general education" cleanly. The transfer classes may or may not count toward a student's eventual degree, however, as degree requirements can differ from institution to institution. Dr. Wysong added that strong advising and clear degree pathways would help students avoid taking courses that are not aligned to their end major. Representative Lundstrom expressed that she would like HED to take a leadership role in improving transfer student success. Senator Hemphill and Representative Crowder both asked about required skill sets, training, and education for advisers. Ms. Valdez noted that UNM prioritizes soft and interpersonal skills in hiring advisors and that their advisors have to complete 90 hours of training before they see students and then professional development after that.

After the first panel, Mark Valenzuela, LFC Principal Analyst, presented a proposed work plan for the Subcommittee through November 2021. HED Secretary Stephanie Rodriguez expressed appreciation for LFC's willingness to be constructive on higher education issues. The Secretary announced that they had reached an agreement among all institutions on general education courses and that the department would be focusing on common course numbering systems and meta majors next. HED also noted that they would work with institutions on coding to characterize transfer better. Finally, Secretary Rodriguez thanked the LFC for the $100 thousand appropriations for national student clearinghouse data. She also noted that there was prior RPSP meta major funding a few years back that may need to be reconsidered in the future.

Senator Kernan made a motion to accept the subcommittee work plan as submitted by Mr. Valenzuela. The Subcommittee voted unanimously in support.