

MINUTES
LEGISLATIVE FINANCE COMMITTEE
November 18, 19, 20, 21, 2008

Chairman John Arthur Smith called the Legislative Finance Committee (LFC) to order on Tuesday, November 18, 2008 at approximately 8:00 a.m.

The following LFC members were present on November 18th:

Senator John Arthur Smith, Chairman; Representative Luciano "Lucky" Varela, Vice Chairman; Representatives Brian K. Moore, Donald Bratton, Edward C. Sandoval, Jeanette O. Wallace, Nick L. Salazar, Henry "Kiki" Saavedra, Rhonda S. King; and Senators Carlos Cisneros, Phil A. Griego, Pete Campos, Leonard Lee Rawson, Shannon Robinson (for Mary Kay Papen) and Stuart Ingle. Representative Don Tripp attended as a guest.

The Legislative Finance Committee met in Executive Session to discuss Staff Briefings.

Administrative Office of the Courts. Mr. Patricio M. Serna, Senior Justice of the Supreme Court reported that the Judiciary can meet FY09 reduction objectives without reducing services. There are several vacancies within the system; however there is not a lot of flexibility. The total appropriation for FY09 is \$155 million which flows through AOC and out to the courts. Services cover special advocates, mediation programs, etc. The FY10 proposal for reducing spending includes a spending reduction of three-fourths percent. The AOC requested that the Supreme Court be given the authority to determine reductions for the Judicial Branch and allow for category transfers to be done between personnel and employee benefits, contractual services, and other costs. The total budget consists of 90-95 percent in personnel. Judge Serna requests that courts not be penalized due to extended vacancies held open to meet spending reductions.

Mr. Artie Pepin, Director, Administrative Office of the Courts said a \$950,000 special appropriation was received in FY08 and FY09 for funding of Magistrate Court Base Budgets and the Courts Facilities Fund. The AOC requests the remainder of the funds be allocated as part of the base budget for the magistrate program in FY10; this is not an expansion item. Funding would increase the magistrate court lease budget. The AOC requests \$1.6 million for furniture, equipment, and security upgrades. The AOC is also requesting a \$1,843 million appropriation for a one time funding management case system to complete the state-wide rollout. It is important to provide vendor supplied data conversion as new courts are added and support for staff to travel to all parts of New Mexico.

The AOC requested an appropriation in FY08 to pay prior year expenses in the Jury & Witness Fund and received less than requested. Funds were borrowed from the Board of Finance in the amount of \$453,000. The AOC is responsible for repayment of the loan. The AOC will ask for a special appropriation in the 2009 legislative session to compensate jurors, witnesses, and interpreters. Currently, jurors are paid \$6.55 per hour; the minimum wage will increase to \$7.50 per hour beginning January 2009.

The AOC will seek legislation in 2009 to eliminate the right to a jury trial for cases that do not include incarceration. A Jury and Interpreter Coordinator has been hired by the National Center for State Courts (NCSC) to look at efficient ways to operate the jury system.

Vice-Chairman Varela said it may be possible to balance the budget with a 2.5 percent reduction; he mentioned that the LFC recommendation for FY10 may include a 2.2 percent reduction and recommended looking at revenue enhancements.

Senator Griego said construction for the Mora facility is ready to proceed; mixed signals have been given about it. Mr. Pepin said the AOC would like to build a new court house and combine magistrate and district courts. The Magistrate facility consists of a trailer. Plans for construction are contingent upon funding. Senator Griego said he would oppose building a new facility; there is no reason to have two court houses. Mr. Pepin said the AOC will continue to work with the County Commission; there have not been any commitments made for a new facility.

Representative Saavedra asked about the new court of Appeals building. Mr. Pepin said the Legislature created a commission for the court; an appropriation has been given to construct a building. Funding is needed for furniture.

District Courts.

5th District Court. Ms. Rita Johnson, Court Administrator said the district requested full BAR authority. Drug and teen court will be reduced.

6th District Court. Honorable Henry Quintero said there are currently three vacancies and requests to hold them open. Ms. Cook, Chief Executive Officer also provided testimony.

3rd District Court. Honorable Robert Robles said the district will be able to meet a three quarters percent reduction. An expansion is requested for FY10. The district currently has a shortage in clerical staff.

1st District Court. Honorable Stephen Pfeffer said the district is not seeking an expansion request. Capitol outlay has been requested for furniture and equipment. Ground breaking is being held today. The court is requesting a new judgeship in FY10.

9th District Court. Honorable Stephen Quinn asked for districts to be allowed to allocate cuts. The district is asking for capitol outlay in the amount of \$30 thousand.

8th District Court. Ms. Jeannette Rael and Mr. Andres Trujillo said the FY10 General Fund request is at the same level as FY09. The district has identified areas to cover shortages and requests a waiver of policy for vacancies. Priorities include one judgeship, furniture for offices in Taos and Colfax counties, replacement funds, court monitoring program, and a vehicle for the district.

10th District Court. Ms. Diane Ulibarri said requested leaving positions open for six months. It was also requested to have an exception for FY10 in contract services to complete the FY08 audit. Furloughs will be considered, if needed.

Representative Moore suggested with an employee retiring in Ft. Sumner, the position be created as part-time.

4th District Court. Mr. Fred Sena said a \$25,000 shortfall is anticipated in FY09 in personnel services; the new judge is hiring retired state employees. It is also anticipated that there will be a shortfall of \$85,000 in FY10. An exception to a flat budget is being requested to maintain current staffing levels.

2nd District Court. – Honorable William Lang and Ms. Juanita Duran said \$136 thousand is needed for the Electronic Document Management System software and hardware maintenance agreements. There are currently 21.5 vacancies. Truancy Court was funded by the Public Education Department and was vetoed in last year's budget.

Vice-Chairman Varela said 12 vacancies are in the clerk area and suggested reallocating positions.

12th District Court. Honorable James Counts and Ms. Jan Perry mentioned they did not request any exceptions for their FY10 budget. If needed, the first area of cutting would be done in Drug Courts.

13th District Court. Honorable Judge McDonald and Mr. Gregory Ireland said it is critical to maintain the base budget in FY10 with an exception of a seven tenths increase. The district continues to see a reduction in performance. There is not a lot of turn over in FY09; one clerk position remains open. It is requested to obtain unlimited BAR authority in FY09. Drug Courts were asked to put a cap on caseloads; the waiting list is getting longer. Representative Saavedra asked if there is a need to add a 14th district. Judge McDonald said there are over 5,000 cases pending.

Metropolitan Court. Honorable Judy Nakamura reported that the court is asking for a 6.7 percent increase in FY10. Maintenance is being deferred and six vacancies are not being filled. The court is facing an increase in utilities and security. If funds are not available, a 10-15 percent reduction in Special Courts funding would occur, as well as reducing court and staff hours, and delaying cases for Interpreting, DWI, and Drug Court.

Senator Robinson asked how many outstanding warrants there are currently. Honorable Nakamura said 110,000. If warrants are not paid, penalties go up and there is opportunity for more warrants. In 1993 there were 30,000 warrants; approximately 25 people within the court system had warrants paid for by the warrant program.

Miscellaneous Committee Business.

Action Items

Approval of LFC Minutes – October 2008

Representative Moore moved to approve the minutes of October 2008, seconded by Representative Sandoval. Motion passed.

Approval of Subcommittee Reports

Sunset Subcommittee – October 20 - Mr. Abbey said the Sunset committee reviewed legislation to extend all boards and recommended legislation to allow out of state dentists with qualifications to come into New Mexico. The Committee chose not to advance a request to create a separate board for dental hygienists. Final approval will be brought to the full Committee at the January meeting. Senator Cisneros moved to adopt the Sunset Subcommittee report, seconded by Representative Saavedra. Motion passed.

Subcommittee A & B – Mr. Abbey said reports are from October Subcommittee budget hearings including the Public School Insurance Authority and the State Personnel Office. From the September and October preliminary staff recommendations, proposed adjustments could be higher and will be brought back to the Committee for final action in December. Motion to adopt passed.

Information Items

Review of Monthly Financial Reports

Mr. Abbey said the Legislative Finance Committee is fully staffed and will be taking actions for savings by reducing appropriations by two and a half percent.

Chairman Smith presented an appreciation gift to Senator Rawson and thanked him for his dedication to the state of New Mexico and the Legislative Finance Committee. Senator Rawson said he would like to continue receiving information from the LFC and will continue to support the committee.

State Engineer/Interstate Stream Commission. Mr. John D'Antonio Jr., State Engineer reported the agency is requesting seven base expansions. The first is a general fund replacement of the Water Project Fund. During the last two legislative sessions, the general fund for salaries and benefits was reduced and replaced by Severance Tax Bond funds. The second request is for the Elephant Butte Pilot Channel which will maintain a fully functional channel that reduces depletion of water. The third request is for an FTE to provide project management for Dam Rehabilitation projects funded in the capital outlay process and to provide engineering regulatory review for capitol outlay projects and review of emergency action plans for dams. The fourth request is for Water Planning for both a regional and statewide scale; all 16 regional plans have

been completed. It is anticipated to update four regional water plans per year and review the entire cycle in four years. The fifth is for the Active Water Resource Management Systems Support to continue the key operating strategy for the agency with a request of two additional FTE to maintain the agencies hardware/software program. Number six is the Middle Rio Grande Start Up to set up a an adjudication bureau and issue licenses in lieu of any future adjudication. Number seven addresses the Water Rights Backlog and hiring of three Engineer FTEs to assist the Water Rights Division with pending applications. Number eight is for one FTE in the Water Use & Conservation Bureau. An increase in the climate change, drought, and infrastructure has impacted water use and conservation. Number nine is a request for one FTE in the Hydrology Bureau to assist with increased case loads of protested water rights applications assigned for evaluation of impairment.

The agency is asking for a Special Appropriation to continue the Gila-San Francisco Planning Process. This is associated with an Arizona water rights settlement of 2004 that provides New Mexico an opportunity to obtain up to 14,000 cubic feet of additional water and anywhere from \$66 to \$128 million of federal money for water utilization projects; last year, \$800 thousand was received in funding. The implementation group has met and decided on work scope studies that need to be complete and have agreed on proposals to put out. Responses have been received from contractors to get them underway.

State Engineer D'Antonio discussed the impact of the Executive proposed 5 percent spending reduction for FY09. Water Resource Allocation Program positions would be held vacant. Positions have a major impact and reduce ability to provide customer service for District offices. In the Waters Program, two water rights contractors will be lost. One high level position also remains vacant and will impact the abstracting of the water rights files into the database specifically in the Middle Rio Grande basin. Two vacancies will not be filled in the Dam Safety and will impact the Bureau's ability to monitor capital outlay projects for dams statewide. Vacancies have already created a backlog of technical reviews of dam investigation and design proposals and prevent money from getting back into system building. Over 130 dams have been identified as being unsafe in New Mexico and this is a critical public safety concern. The reduction in personnel also reduces the frequency of dam inspections.

It is possible to reduce the current budget by five percent by charging personnel and benefits to other allowable sources, specifically the Lower Rio Grande appropriation to the Attorney General, as well as, federal grants. In FY10 those revenue sources will not be available and the vacancy rate will be impacted.

In the Litigation and Adjudication Program, the Hydrographic Survey Mapping Bureau Chief position will be held open. This will have a direct negative impact on the program's activity in the Animas adjudication and leadership and guidance of the Hydrographic Survey Mapping Bureau.

In Program Support, the five percent cut results in \$190 thousand. Proposed reductions include \$100 thousand from personnel services and employee benefit group, \$700 in contractual services, and \$89 thousand from other costs. Currently, three vacant positions need to be frozen

to generate \$100 thousand in savings. Funds are being taken from other sources to perform the audit for the agency.

The State Water Plan Act calls for the State Water Plan to be reviewed and updated periodically at a minimum of every five years and also calls for the integration of regional water plans. A challenge that is being faced is continued growth. In FY07 the state exceeded a population of two million. There is also increased attention being paid to climate change and variability of supplies.

In 2005, an Indian Water Rights Settlement Fund Act required the State Engineer and the Interstate Stream Commission to report by November of every year to the Indian Affairs Committee and the Legislative Finance Committee on the status of proposed Indian Water Rights requiring state financing, the distribution of funds from the Indian Water Rights settlement to implement approved settlements, and recommendations on appropriations to the fund necessary to timely implement Indian Water Rights settlements. In FY07, the legislature appropriated \$10 million to the Indian Water Rights settlement fund. That legislation required a certification of the ISC to the Secretary of Finance and Administration regarding water rights in the Navajo Nation, Abeyta and Aamodt cases. In September 2007, the director of the Interstate Stream Commission certified the cases had been settled and allowed for that money to go into the Indian Water Rights Settlement Fund.

The state has received credit for appropriations it has made. In order to stay current with the settlements, it is recommended to appropriate \$12 million per year to pay for the state's share. The water rights settlement has an appropriation tied to it that creates \$500 million through the Bureau of Reclamations that will pay and go towards the Indian Water Rights settlement projects.

Senator Cisneros asked what the ramification would be if the state did not or cannot come up with match funding. State Engineer D'Antonio said the threat would be that requirements would not be fulfilled and the settlements could be in jeopardy. Senator Cisneros asked about unexpended balances for dam maintenance and repair and said there was a \$60 million expended balance early in the year and additional monies were appropriated in Legislative Session 2008. State Engineer D'Antonio said most of those were capital funds and a listing is being developed to look for funds to utilize on the authorization. There is a current balance of \$19.6 million for dams. Mr. Abbey added that the Game & Fish Department has an additional \$5-6 million. The agency is working on a list of cost reductions from capital outlay to come up with recommendations. The unencumbered balance is approximately \$58 million. The agency is scheduled to come up with between \$8-9 million additional recommendations. Senator Cisneros asked that the list be made available to staff.

Representative Salazar asked if additional funds are being requesting to upgrade overall water plants. State Engineer D'Antonio said there are two parallel planning processes. The state was divided into 16 regions and, as funding became available, development of the plans was completed. Representative Salazar asked if the state water plan includes all the regional water plans. State Engineer D'Antonio stated that the state water plan does not bring together all individual regional plans. Representative Salazar asked what good is a regional water plan.

State Engineer D'Antonio said the regional water plans get more into the detail of what projects are going to be built in that region and how they are going to meet supply and demand.

Mr. Abbey said requests made by agencies were proposed in July and August when it was thought that budgets would grow 6-7 percent. Representative Salazar asked if State Personnel could be asked when people were hired. Mr. Abbey agreed, State Personnel would be asked what employees have been hired since the freeze was announced.

Senator Griego asked where the Acequias are in regards to the request from the administration to look at all unexpended funds. State Engineer D'Antonio said in the last few years the number of appropriations to Acequias has grown dramatically and everything has been done to manage appropriations and distribute them to the Acequias as quickly as possible. Senator Griego said his concern is that they should not lose funding once they have entered into a contract. State Engineer D'Antonio said a list is being put together to look at funds and there is a current balance of \$14 million that is classified as local government with \$6 million encumbered and an uncommitted balance of \$8 million.

Vice-Chairman Varela asked what the projections are for the Irrigation Works Construction Fund and the Improvement of Rio Grande Income Fund given the conditions of the markets and the revenues driven by the permanent fund. State Engineer D'Antonio said projected expenditures from FY09 through FY12 are in the range of \$6 million to \$8 million. The actual corpus of the Irrigation Works Construction Fund is on the order of \$12 million. The projected revenues for the Improvement of the Rio Grande Income Fund are \$1.8 million a year, projected expenses are \$930 thousand, and the corpus is \$30 million. Vice-Chairman Varela said in looking at the audit, there are a number of findings that are of concern in terms of the operation of the State Engineer's Office including the issue of providing vehicles to staff that do not qualify according to the rule. State Engineer D'Antonio said there are no employees that take vehicles home. In the past the only employees taking vehicles home were himself and Mr. Lopez, and that is no longer taking place. Vice-Chairman Varela said there is a Commuting Rule addressing non-emergency use and having a vehicle permanently assigned and requested a report by the beginning of the session on what has been done to address audit findings for FY07.

Secretary of State. Secretary of State Mary Herrera said she and her staff have been working with the 33 county clerks, candidates, and the public to promote efficient, nonpartisan, fair, and accurate elections. The office is still in canvassing the November 2008 general election. The Canvassing Board will meet on Tuesday, November 25, 2008 to certify the official election results. The cost of the general election will be approximately \$5.46 million. The cost for the June 2006 primary election was approximately \$4 million which was the first statewide primary election in which the all paper ballot system was utilized in New Mexico. The budget request for FY10 includes \$2.8 million in personnel services, \$824 thousand in contractual services, and \$1.3 million in other for a total of \$5,109,700 million. This includes 42 permanent positions and one temporary position. It also includes \$450 thousand for payments from the public election fund. The Secretary of State's office coordinates a primary and general election every fiscal year; two expansion sections have been included in the operating budget to account for election related expenses. By creating this new program in the regular budget process special appropriation requests are avoided for the base funding of elections. The estimated cost of the

June 2010 primary election is \$4.4 million. Expansion requests for 2 FTE were initiated. The confidential address program is progressing with 72 participants in the program. During the last year some advertising and education was conducted. As the public becomes more aware of this program, it is believed the program will continue to expand for victims of domestic violence.

Vice-Chairman Varela commended the Secretary of State's office and the County Clerks for the work done during the election. Representative Sandoval said one of the high costs of elections is early voting because of ballot combinations within counties. There are many ballots that have to be destroyed and Representative Sandoval asked if there is a possibility to consolidate three or four legislative districts to vote in one area. Secretary of State Herrera said in other states they are called election centers and is open to the idea. The majority of voters voted close to their homes or work. Assistant Secretary of State Francisco Trujillo said the methodology used for the general election included a tremendous amount of input from the Board of Finance, the LFC, and DFA. A three mile radius was used for each early voting site excluding Bernalillo County. Thirty percent of ballots were ordered for the precincts that fell within the three mile radius; ten percent of ballots were ordered for all other precincts. A procedure was developed in which a nightly inventory was taken at each of the early voting sites and if the county clerk's staff in Bernalillo County felt that any site was getting too low on ballots, a member from the Republican and Democratic party took inventory from another site where there was excess and moved it with a sheriff's deputy escorting them. Representative Sandoval asked if this problem happened anywhere else in the state. Assistant Secretary of State Trujillo said there is not as much of a demand in certain counties where they are able to use ballot on demand.

Representative Bratton said it would be a huge savings statewide to print ballots on demand particularly in smaller counties and would improve the integrity of the vote. It would also be a tremendous cost savings over a five to ten year period. Assistant Secretary of State Francisco agreed and said it is more cost effective and convenient for the voter in smaller counties. The issue with Bernalillo County is a certain amount of card stock has to be preprinted. Bernalillo County by nature has a larger ballot than the rest of the state.

Representative Bratton asked how many other counties have the ability to print ballots on demand. Assistant Secretary of State Francisco said at least half. Representative Bratton said there are other states that have complex ballot issues that require larger ballots so equipment would be available. Another issue is that people are on the rolls that are not supposed to be there. A methodology needs to be determined to clean up rolls for people who do not reside in New Mexico or who are deceased. It would cut down on campaign costs and gives the general public a true idea of voter turnout. A requirement from a national perspective should be worked on so that if someone moves and registers in another state, that state be notified so they can be purged and the Social Security office notify the Secretary of State if someone is deceased.

Chairman Smith asked if a plan has been determined to reduce the budget. Secretary of State Herrera said yes, the agency will hold off on hiring an IT director and is reviewing a capital project. Assistant Secretary of State Trujillo said he met with Vice-Chairman Varela who asked if the current budget could be reduced, as well as, the FY10 budget by November 15th. The agency was asked to look at a reduction of two percent in the current budget and a two and a half

percent in FY10. Chairman Smith said it might be prudent to look at another two percent for FY09.

Chairman Smith asked what the correct procedure is for entering data on the financial reporting system. Assistant Secretary of State Trujillo said the Campaign Reporting System crashed on July 23rd and was brought back up. Some data was lost or found in other areas. The Campaign Reporting System was not created for New Mexico. The office currently has a developer on staff that has developed a new Campaign Reporting System utilizing current resources. Staff from DOIT will test the system the first week of December so that the office can move from its current system to the new system which has search capabilities to satisfy the media as well. The new system should be up and running by Jan. 1st. Representative King asked what the cost is of the new system. Secretary of State Herrera said funding was given to the agency to enhance the system. Assistant Secretary of State Trujillo added that the cost is the cost of an employee. Some overtime costs have had to be absorbed to keep the project moving. Members of the legislature have been invited to test the system. Members from the LFC are also invited to test the system and provide input or suggestions. Funds were appropriated last legislative session; however, language is specific in that it enhances the current system. In the next legislative session a request to change the purpose will be presented. Once the system is developed all IT staff as well as staff from DOIT will have knowledge of how the system works. Representative King asked if there would be any other costs besides employee costs. Assistant Secretary of State Trujillo said there would be additional costs that would be taken out of the existing appropriation. Representative King requested that the LFC be updated on the process. Vice-Chairperson Varela suggested utilizing resources from DOIT since the agency is contemplating on leaving the IT position vacant and asked staff to contact that department and have personnel assigned to work on the project. Assistant Secretary of State Trujillo said they have spoken with staff from DOIT and they will be giving their advice and suggestions. Vice-Chairman Varela said not only advice is needed, but collaboration as well. There should be a conceptual plan on how the new system will work so the systematic process is defined to follow.

State Auditor. Mr. Hector Balderas, State Auditor introduced staff and said the agency has been in a transformation; many citizens across New Mexico were demanding more accountability and a great shift in duties to respond to fraud, waste, and abuse. The agency currently consists of 33 employees with two vacancies. Financial auditors have been shifted to the Fraud Division to meet increased demand, as well as, conduct financial reviews. The financial request is an expansion of 14 positions primarily in the Financial Audit Division with a total of \$842 thousand for additional financial auditors and an additional \$233 thousand for a new office in Albuquerque.

There has been an increase for requests in training for implementation of corrective action plans. There are two tales of accountability in the state; one is an agency that can afford the audit process and the other is an epidemic in rural communities that are challenged to comply with the Audit Act and are struggling. Accounting requirements have increased greatly in the last couple of years. The review process has increased from four pages to 40 pages to make sure all audits are submitted of a quality basis.

Performance results are mixed at best, \$400 thousand has been generated as requested, 16 training sessions were performed during the last year, and the agency is required to review working papers of every financial accounting firm. Reasons for not meeting certain performance measures is the increased workload in the Fraud and Special Audit Division, as well as, participating in special projects. The completion of records for regional housing authorities is being done. The agency has also been asked to engage in gender equity studies. The agency is interested in serving in the legislative oversight in providing more accountability in capital outlay. The fraud hot line has recently been self financed and was implemented in July 2008. An awareness campaign was started and there have been 124 reports with an average of 30 calls per month. Seventy-nine of the reports have been investigated, resolved, and closed; 45 reports remain active.

Vice-Chairman Varela said as of November, audits have not been received from several agencies and approximately 22 agencies audits have not been released. It raises concern of what kind of response is received if findings are turned over to an investigative or authority board. Vice-Chairman Varela asked if follow up could be given when recommendations are given to prosecutors. Mr. Balderas said follow up varies case by case. There is not a lot of follow up in terms of communication back to the agency once it is referred unless it is called to conduct special auditing. Vice-Chairman Varela said it is required to turn over criminal matters to a prosecuting agency and asked if a transmittal letter could be done requiring them to respond. In terms of audit findings, once the audit is delivered there should be a request that the oversight agency follow up.

Representative Bratton said part of the problems with timeliness especially with the smaller municipalities is getting someone to conduct an audit and asked about the possibility of putting together a unit to conduct audits for small municipalities/counties so they could be done in a timely basis. Mr. Balderas said there have been changes to address the late audit issue and to make it easily accessible for rural communities to compete against state agencies. State government was not notified that they could go out to bid to get their auditor in place much sooner. All deadlines have been moved up 30-90 calendar days that held up audits in which contracting and field work could begin. It is hoped that the Legislature will have a bill to amend the Audit Act allowing more flexibility to create two audit tracks. Accountability will not be reduced, but the need for financial audits for smaller communities will be reduced. Vice-Chairman Varela said part of the reason so much time has to be devoted is because records are not readily available for audits and suggested smaller entities report every quarter so data could be validated cumulatively.

Mr. Balderas said current language states every entity has to comply with the most complicated financial audit that is available according to accounting standards. Tiering would allow for financial threshold amounts that would be set in statute and would be more an affordable analysis. Vice-Chairman Varela said a penalty clause could be added for audits that are behind to continue to operate on a continuing resolution rather than approving a budget.

Wednesday, November 19, 2008

The following LFC members were present on November 19th:

Senator John Arthur Smith, Chairman; Representative Luciano “Lucky” Varela, Vice Chairman; Representatives Brian K. Moore, Donald Bratton, Edward C. Sandoval, Jeanette O. Wallace, Nick L. Salazar, Henry “Kiki” Saavedra, Rhonda S. King; and Senators Carlos Cisneros, Phil A. Griego, Pete Campos, Sue Wilson Beffort, Mary Kay Papen and Stuart Ingle. Representative Don Tripp and Senator Shannon Robinson attended as guests.

The Legislative Finance Committee met in Executive Session to discuss Staff Briefings.

Department of Public Safety. Secretary John Denko Jr., Department of Public Safety reported on the mission, agency structure, core policy agenda, initiatives, and major accomplishments of the department. The department prepared its FY10 budget in compliance with DFA budget instructions. The only increase over the FY09 operating budget is a 1.4 percent increase due to an increase in the DOIT radio communication assessment. The department’s first three priorities are \$996 thousand for the Computer Aided Dispatch System, \$36 thousand for the Hobbs Forensic Laboratory opening costs, and \$789 thousand to replace the Justice Assistance Grant Funding. There are two Information Technology requests; one for \$800 thousand for the New Mexico FastID Positive Identification Project and \$1.2 million for the Digital Video Recording System. The FY09 Supplemental requests are \$704 thousand for fuel for agency patrol vehicles, \$1.2 million for group health costs, and \$1.3 million for DOIT radio communication charges. A Special Request for FY10 for \$1.4 million is requested for fuel for agency patrol vehicles. The top three Capital Project Requests are for \$5.9 million for an annual replacement of 285 vehicles, \$33 million to construct a new forensic laboratory in Santa Fe, and \$4.5 million to construct a Port of Entry at Santa Teresa. The department submitted a budget reduction proposal to DFA in order to meet the Governor’s directions of reducing its FY09 budget by five percent.

Vice-Chairman Varela asked what kind of an opinion the department received on its FY07 audit. Dr. Mier said the audit report did contain findings and the opinion was unqualified. Information for the FY08 audit will be provided to the auditors the first part of December and it is believed it will be on time.

Representative Bratton said he is concerned with the capital outlay because there is not a request for the amount of funding Hobbs put into a facility. The original agreement was the city was going to furnish the building, the county was going to furnish a half a million dollars and because of delays it was decided the city would be the best agent to proceed. Secretary Denko said with instructions that have been received, the department did not request reimbursement because it was felt that it would not be approved. The department will do everything to live up to its commitment; however, it is in a financial bind. Dr. Mier said the department is working closely with the city of Hobbs, specifically with the city manager. It was agreed that the city would assist in providing additional funding to maintain staffing and enhance salaries for relocating to the municipality. The department is picking up additional costs for the salary enhancements for staff. In addition, there are equipment needs that were not anticipated. Representative Bratton said it is disconcerting that the city entered into an agreement and the costs have ballooned because of additional requirements from the department.

Vice-Chairman Varela said significant decreases in different sources of revenue are requested in federal dollars and asked why budget was not being requested. Mr. Harold Lopez said part of the decrease is due to not budgeting federal funds until May when it is determined what has been received during the fiscal year. The federal government does not allow the department to estimate what revenues will be. Vice-Chairman Varela said if federal dollars can be anticipated it can circumvent the appropriation process and recommended that staff realistically look at numbers and include as part of the budget.

Chairman Smith asked if there are requests from the Executive Branch in capital outlay. Secretary Denko said instructions have been received to submit further cuts in capital outlay. A five percent cut was initially done and has been increased to 15 percent. The department has been advised that anything that has begun will continue. Chairman Smith encouraged discussion with the Executive Branch to be careful with projects.

Chairman Smith said there are internal problems with the Narcotics Division and the restructuring. Chief Segotta said a major reorganization of the Investigations Bureau was done. The department is ahead of its timeline established in April 2008 to resume into full narcotics operations. The department continues to participate in task forces throughout the state. Undercover purchases are a big area of concern; policies and protocols have been rewritten and the department is in the process of training and updating officers who will be working in that capacity.

Senator Papen asked about problems with the crime lab backlog and four vacant positions. Dr. Mier said the department has been able to attract and retain qualified lab personnel. One of the difficulties in hiring is that a tremendous amount of training is required to certify them within the lab. There are several vacancies; one is for the Hobbs lab and it is anticipated that hiring will occur prior to opening the lab. Additional hires are being delayed throughout the department. Senator Papen asked what happens if cases are not completed within a time frame and at what point they sit on a shelf. Dr. Mier said within the lab there is a performance measure to have every case processed within a specific period of time; it is a goal to meet that standard. There are occasions that that standard cannot be met because of the shortage of personnel or the volume of cases. Every single case is analyzed at some point in time and really never shelved.

Senator Griego asked about recruitments. Chief Segotta said they are seeing an increase in the number of people interested in a career with the New Mexico State Police. Senator Griego asked about the retention factor. Chief Segotta said three officers a month are lost; staff is being retained a lot better. Other law enforcement agencies in the state have increased their benefits and people are being lost. Senator Griego said the department has to be looked at very carefully when making cuts because of the health, welfare, and safety of the state, primarily the people who live in rural communities.

Department of Finance and Administration and Special DFA-Appropriations. Secretary Katherine Miller, Department of Finance and Administration reviewed the agency, presented its accomplishments over the past year and introduced staff. The Secretary then presented the FY10 budget request, which included expansion requests: 1 FTE Attorney in the Office of the

Secretary; 1 FTE in the Board of Finance to accommodate the bond program workload; funding for evaluating the PreK and K+3 Programs; 2 FTE in Fiscal Management for document imaging; 3 FTE in Fiscal Management for a new SHARE Development Bureau; and 5 FTE in Fiscal Management for SHARE support. The FY10 operating budget request, including expansions, was \$72.5 million. This \$1.5 million increase from the FY09 operating budget was due primarily to a \$1.4 million increase in personal services and employee benefits. The non-operating budget request for FY10 was reduced by \$756.2 from FY09 to \$20.8 million for FY09 and \$1.3 million for FY10.

FY10 special appropriation requests included \$400 thousand for auditing fees for the Comprehensive Annual Financial Report (CAFR). The 2006 and 2007 CAFRs were completed this fiscal year and 2008 will be completed in early calendar year 2009. The Secretary proposed that the state shift from individual audits in all state agencies to auditing one comprehensive report and conduct compliance auditing in each state agency. The agency also requested \$2.5 million for SHARE improvements.

The Secretary ended her presentation commenting on the upcoming legislative session and its challenges of reducing operating budget without compromising agencies' ability to achieve core missions. The agency is focused on meeting challenges and making the best possible use of every tax dollar.

Representative Moore questioned how using non-recurring capital outlay monies could be used as a long-term budget fix. Secretary Miller responded that the drop in revenues over the last five months has been dramatic and to make it up on a recurring basis is not realistic. The Secretary asserted that it is prudent to make sure non-recurring funds are freed up as much as possible to cover the significant dip in FY09 and protect reserves for any future declines. Cabinet agencies were also asked for five percent decrease proposals for FY10 operating budgets.

The recording system was turned off at 11:27a.m. because of feedback, as directed by Mr. Abbey.

Senator Sharer said there are projects that are finished, but have not been paid for and asked why those projects cannot be reviewed first. Secretary Miller said it is not the Governor's plan to deauthorize any projects that are on a path to completion; accurate information is needed on what projects and appropriations are out there that do not stand the likelihood of moving forward that could be deauthorized.

The remainder of the testimony centered on two issues: deauthorizing capital outlay and the hiring freeze. Representative Bratton voiced his concern that the Governor has issued a hiring freeze and an excess of 400 people were hired after the freeze was implemented. Representative Bratton commented that the Legislature determines what is going to be funded and the Governor has every opportunity to decide if he concurs with it, but it is the Legislative responsibility to review what needs to be deauthorized or reauthorized.

Secretary Miller responded by suggesting that the executive is required to provide a plan on how to balance the budget and acknowledged that the executive cannot unilaterally stop allotments or

cut budgets. Agencies can be directed to stop spending, but it does require action by the Legislature to do that. Every appropriation has to be spent in accordance with the language in the appropriation. Information is being collected to make sure it is the most up to date and accurate to put forward to the Legislature. Representative Saavedra expressed concern that Legislators' capital outlay is being targeted and most of the big money is in the Governor's capital outlay. Secretary Miller said projects are being looked at across the board.

Senator Beffort said the Governor meets with his cabinet secretaries on a regular basis and it seems there would be a message when the monies starting dropping to stop hiring. Secretary Miller explained that agencies were required to put forward a five percent cut plan; they knew that they could not hire for an extended period of time. Many agencies already had hirings in process and they also needed to look at aligning positions to handle a long-term hiring freeze and an inability to fill positions. Senator Beffort said between salaries and benefits it would be an increase of about \$24 million. Secretary Miller responded that it is not a major increase in budgets because many agencies have high vacancy rates. Senator Beffort requested a list of new hires to include agencies, salaries, and a compilation of what that aggregate is. Mr. Abbey said LFC staff has asked the State Personnel Office for a list detailed by agency of who was hired after the freeze took place.

Representative King said DFA sent a letter per the direction of the Governor for all executive agencies to prioritize and identify a minimum of 15 percent of respective capital outlay balances for the deauthorization. Representative King commented that she hoped the intent of the list was for consideration only to ensure that the Legislative bodies are involved in these decisions because it impacts many local governments as well as state agencies. Representative King requested a list be provided to LFC staff including the balances submitted by agencies and the status reports submitted by local governments showing outstanding projects.

Vice-Chairman Varela noted the number of agency audit findings regarding procurement and questioned DFA regarding what has happened to the pre-audit function. Mr. Anthony Armijo said from this point forward agencies are being told if there are procurement code violations, vendors will not be paid unless an independent audit is done of that transaction showing there was no fraud involved. Vice-Chairman Varela expressed his concern that the vendor providing the service or product should not be punished because of an internal problem. Mr. Armijo said the vendor will be paid; however, it needs to be ensured there is no fraud involved. The issue is that Financial Control is not reviewing the actual procurement documents. A lot of procurement violations have to do with agencies having a valid contract and allowing that contract expire and continue paying for services. Vice-Chairman Varela asked about the encumbrance process before an agency enters into a contract or purchases for goods or services. Mr. Armijo said the total number of small purchases being made a year is approximately 500 thousand and another 500 thousand for larger purchases and asserted that most agencies comply very well with the procurement code. Vice-Chairman Varela said the only time a vendor should not be paid is if the agency did not have the authority, but that is the responsibility of the agency.

Vice-Chairman Varela questioned Secretary Miller on the executive's plans for budget reductions and if the plans were based on a \$500 million deficit. Secretary Miller said the last consensus revenue estimate (October) was \$200 million below revenue estimates for FY09.

Vice-Chairman Varela said it was his understanding that the Governor does not want to consider dipping into the reserves and is looking at avoiding cuts in education and would not consider any tax increases. Secretary Miller said that the position of the Governor was based on the October revenue estimate and that various recommendations would be proposed based upon the December revenue estimate. Vice-Chairman Varela asked if the LFC would prepare their own plan to address the shortfalls for current year and next year. Mr. Abbey said the LFC is meeting with Secretary Miller and agencies and sharing information. LFC staff will have a recommendation to the Committee in December.

Big Brothers/Big Sisters. Big Brothers/Big Sisters of Northern New Mexico provided lunch for the Committee and gave a brief thank you presentation on behalf of their program. New Mexico is a tough place for children to grow up. Twenty-six percent of children are growing up in poverty statewide; 38 percent live in single parent families, and 40 percent drop out of high. Through research based results, Big Brothers/Big Sisters mentoring means that children are 46 percent less likely to start using drugs, 27 percent less likely to start drinking, 52 percent are less likely to skip school, and a third less likely to engage in acts of violence. Significant progress has been made in both Hispanic and Native American mentoring initiatives.

Vice-Chairman Varela introduced Christine Trujillo and acknowledged the education community. Ms. Trujillo provided brief testimony on behalf of education.

Aging and Long Term Services Department. Ms. Cindy Padilla, Secretary for the Aging and Long Term Services Department provided an overview of the department and introduced staff. The department has been organized into two distinct modes of operation that includes communication and outreach and operations.

Ms. Padilla said when focusing services on people living with disabilities, the vision of the department is that people living in New Mexico and their families are empowered and allowed to live independently, productively, and with dignity.

The department has a relationship with the Aging Network and area agencies on aging. The Federal Administration on Aging identifies state units on aging to provide services. They also provide services established area agencies on aging and identified planning and service areas. New Mexico has six planning and service areas. Services provided through the network are critical at a local and community level.

Coordination of Long Term Services (CoLTS) is a managed long term service and acute care program that serves certain Medicare participants. The estimated number of individuals statewide is 38,000 and includes dual eligibles, individuals with both Medicare and Medicaid coverage, persons who meets nursing home level of care, and certain individuals with brain injury who meets medical and financial eligibility. The program will be rolled out this current fiscal year through a geographic phase in. Phase one has been completed with 12,063 enrollees, and two managed care contracts. Phase two is currently underway and phase three beings in January 2009.

The size of the 65 and older population in New Mexico in 2030 will be 554,000, 26.4 percent of the total population. Caregivers are key to independence for people needing services and support to live at home. By 2050, the number of caregivers will decrease for different reasons and is of concern for long-term planning. The correlation of age and disability rates is increasing for the population age of 65.

The department has been working on its strategic plan to align strategies with goals and objectives. The Policy Advisory Committee is Governor appointed by the Governor and represents all geographic areas of New Mexico. The Committee developed Issue Papers in 2007 and suggested the department create issue panels to bring people together throughout the state that provide services to people living with disabilities. New Mexico ranks third in the nation for people living with food insecurities. The department has been working with a collaboration of over 40 partners on creating a plan for hunger. The Conference on Aging and Network Training are two very successful programs of the department and provides information and education from people that provide services so that relationships are built to share and leverage resources.

The department is requesting an expansion for maintenance of effort in the Aging Network, especially for the Area Agencies on Aging known as the triple A's, including support for coordination of Long Term Services, Civic Engagement, Native American health care, and Adult Protective Services field staff. Representative Saavedra motioned to assign Representative Salazar to work with LFC staff to examine the Aging budget and bring a consensus recommendation back to the Committee, seconded by Representative Moore. Motion passed.

Secretary Padilla said a plan was submitted to DFA to look at reducing all non direct service expenditures. A meeting with the triple A's is scheduled for early December to discuss services to cut if needed.

Economic Development Department. Mr. Fred Mandragon, Secretary for the Economic Development Department, reported that New Mexico's unemployment rate in September was 4 percent versus 6.1 percent nationally. Last year was the most successful year for job creation; six thousand jobs were created. Over a dozen companies are being worked with and 3,000 new jobs are projected. Priorities are in Rural Economic Development, Film & Media Expansion, Technology Based Economic Development, International Trade & Foreign Direct Investments, Community Development & Capacity Building, Sustainable Economic Development, Public/Private Partnerships, Spaceport America, Small Business Support Programs, and Tribal Economic Development.

Secretary Mandragon reported on the department's accomplishments and said the department was asked to submit a 5 percent reduction plan for FY09. The plan addresses vacancy savings, contract reductions, and reductions in other costs. A plan was also submitted for FY10. Projected expansions are in three general categories: one FTE in International Trade, a contract for the European area, and a Program Manager for the Science and Technology Program assuming the Science and Technology Authority is funded. The department has also requested special appropriations of \$1 million for the Business Incubator Program, \$100,000 for a feasibility study for World Trade Center, \$75,000 for the tribal economic development assessment, and \$110,000 for IT equipment including security of systems.

The department currently has a balance of \$556,000 for JTIP; these funds will not cover the costs for the remaining needs of the year. Current applications and additional projections for requested funds from companies will also be received. This amounts to a shortfall of \$2.9 million. Obligations through JTIP will not be met if an appropriation is not received. Future demand includes growing industry needs in the film area, renewable energy, and spaceport America. Copper mining is down and approximately 150 jobs have been lost in Grant County. Eclipse is of great concern; and there is a decline in oil and gas prices. There is also a potential loss of production.

Chairman Smith asked about capital outlay for the Film Credit. The department had a total of \$26 million and currently has \$16.3 million remaining and it appears that some monies have been used for operational purposes. Secretary Mondragon said he is not aware of it being used for operations. Ms. Lisa Strout said most funds have gone towards universities for developing digital media programs; however, it is her understanding that the Governor's Media Fund has shifted some into operations.

Senator Griego asked if a study is being done to look at agricultural communities to recreate markets. Secretary Mondragon said the department is working closely with the Department of Agriculture. Both departments have contributed funding to develop a marketing plan for beef products. The department is also working with mobile Matanzas and slaughter houses throughout the state. Senator Griego said he would like to meet with Secretary Mondragon to discuss rural areas that could become thriving areas.

Office of Military Base Planning. Mr. David Lucero, LFC Analyst said the office is administratively attached to the Economic Development Department and it is the recommendation of the Sunset Committee to extend the agency for two years. The request from the department is flat from FY09. The department provides assistance to four major military bases and has succeeded in expanding their missions of White Sands and Kirtland Airforce Base. The office has assisted in securing capital outlay appropriations for projects to support the New Mexico installations including \$600,000 to secure the overpass and entrances to Cannon Airforce Base, resurfacing Highway 60/84 from Cannon, and \$30 million to improve base area schools.

Secretary Mondragon added that the office was very involved with assisting in saving Cannon Airforce Base, as well as brining in an array of additional activities for the base. They were also very active in the Airforce Cyberspace Command.

Retiree Health Care Authority. Mr. Wayne Propst, Executive Director, introduced staff. Mr. Gary Peterson, Authority Actuary, reported that there has been a dramatic improvement since last year because the Authority has taken several actions to restructure their program. The solvency projection is a relatively shorter mid-term program and is driven by current retirees and people who will retire in the near future. The projection of the solvency has been extended to FY2019. The unfunded accrued actuarial liability has been reduced from \$4.1 billion to \$2.9 billion. The annual required contribution which is part of the GASB disclosure and is a measurement of the liability attributable to one year of service for an active employee, plus a 30 year amortization of liability for all retirees and past service attributable to current actives, has

been reduced \$100 million to \$286.5 million. Extended negative earnings of the Investment Fund could shorten the solvency period from FY19 if other revenue sources are not increased. Over the next ten years, a \$21 million increase is projected in covered payroll and health care inflation could create a short stop.

The Employee/Employer contributions have been modified twice during the term of the Authority. In FY05, contributions equaled 46 percent of total expenditures for the year. That percentage decreases to 38 percent this fiscal year and to 36 percent projected in FY10. The Board will request the Legislature deal with the decreasing share of total costs by the Employer/Employee contribution sources by phasing in an increase to that source raising the combined total from 1.95 percent to a total of three percent over three years starting with July 2010. This would add an additional seven years to solvency. Further, an extension of the \$3 million personal income tax revenue brought which expires in FY10, would add an addition one half year to the Solvency. Together with the Board actions taken over the last year, this extends the total Solvency period from FY19 to FY27. In addition, the Board has looked at the potential for increasing contributions to normalize the expected amount to be paid into the system by people currently participating in retirement programs allowing for full retirement after 20 years or those programs that allow for enhanced service. In both events, it is expected that in 2027 investment funds will be depleted.

Executive Director Propst reported on Administrative Improvements in the agency. There has been significant improvement on the phone system. In July, there was an excess of 1,400 abandoned calls which decreased to 80 in October. Customer service staff has been reorganized and are solely dedicated to answering telephones and changes have been made to the system. A second switch enrollment was recently completed for the year. The refund process is also being changed and will enhance accountability including limits for refunds, who can approve them, and improving the documentation process.

Executive Director Propst said the FY10 base budget request is less than a two percent increase over FY09 in Program Support and 6.4 percent in Health Benefits. Expansion positions are for two customer service representatives and one contract attorney position. The agency was told by DFA that a five percent reduction plan did not have to be submitted.

Mr. Alfredo Santistevan, Board Chairman for the Retiree Health Care Authority said major modifications on premiums have been made over the last year. It is the intent to improve the Solvency of the agency and keep it affordable to the members. Testimony was also provided by Board Members Tom Sullivan and Jeff Varela.

Vice-Chairman Varela asked what the impact is for enhanced or early retirements. Executive Director Propst said part of the agency's proposal takes into account looking at those particular populations and modifying the rates paid.

Thursday, November 20, 2008

Chairman John Arthur Smith called the Legislative Finance Committee (LFC) to order on Thursday, November 20, 2008 at approximately 8:00 a.m.

The following LFC members were present on November 20th:

Senator John Arthur Smith, Chairman; Representative Luciano “Lucky” Varela, Vice Chairman; Representatives Brian K. Moore, Donald Bratton, Edward C. Sandoval, Jeanette O. Wallace, Nick L. Salazar, Henry “Kiki” Saavedra, Rhonda S. King; and Senators Carlos Cisneros, Phil A. Griego, Pete Campos, Leonard Lee Rawson, Mary Kay Papen, Sue Wilson Beffort and Stuart Ingle. Representative Don Tripp and Senator Cisco McSorley attended as guests.

The Legislative Finance Committee met in Executive Session to discuss Staff Briefings.

Medicaid Managed Care Program Evaluation. Charles Sallee, LFC Program Evaluation Manager introduced staff and said he met with Secretary Hyde and staff to discuss preliminary findings and recommendations. Overall, the conclusion is that there are significant opportunities to lower the cost to the state of managed care in the near term. State spending on physical health portions of Medicaid managed care has increased 30 percent since FY06 while enrollment has increased 10 percent. Enrollment seems to have rebounded significantly since the sharp declines in 2005. Those enrollment declines had a dampening effect on medical spending. Overall the medical spending within the program has increased 27 percent. Sub capitation payments made by managed care organizations to providers have increased. HSD needs to obtain more information to better understand these. Other major cost increases are in outpatient hospital services and there is an opportunity to move to a different payment methodology to gain better control on costs. Prescription drug costs are growing and are similar to other payment systems. Between FY06 and FY08, MCO earnings and the amount they spent on direct services was examined. The estimated difference between the amounts actually spent and the amount anticipated under the contracts is between \$100 and \$200 million. There is an opportunity to bring payments to MCOs in line with costs.

The financial information reported to the Insurance Division shows that managed care companies during this time have improved their financial situation significantly. Overall, there is opportunity to realign incentives and improve efficiency to save money and create value for tax payers. Before 2003, the Federal Government had regulations that required managed care to cost less than old fee-for-service programs. The requirement was removed in 2002 because of a national concern over managed care companies leaving the market. A new regulation was established requiring states to pay an actuarial sound capitation rate to managed care organizations. The actuarial sound rate is intended to project the medical spending costs and the administrative costs.

There are opportunities to insert more incentives for MCOs to lower costs. Using three to four MCOs increases administrative inefficiency. The most common rates that Medicaid is paying have been analyzed and there needs to be more upfront work with the department to adjust rates, if necessary, in the least burdensome manner. The department uses a pay for performance program that requires the managed care organizations to earn a portion of their premium based on meeting certain performance measures. It is recommended to tie greater financial ramifications to performance.

The system needs to transition to using more healthcare outcomes to better enable the Legislature and the public to gauge monitor the health of the Medicaid population under managed care. Outcomes of pregnancy and birth could be reported, such as the percentage of low birth weight babies. Newborns needing intensive care are a significant cost to the system. Other areas of focus should include at the policy maker level surround chronic diseases. Other output measures that should be received on a quarterly basis include average enrollment, utilization information, efficiency, and other administrative measures. HSD employs all the necessary oversight tools to monitor MCOs and rely heavily on contractors because it is required by the Federal government. Preliminary recommendations include having HSD require the MCOs to submit more information on the sub capitation payments and consider modifying outpatient hospital service payment methodology. The department can reduce managed care organization rates for FY09 and FY10 to account for the past difference between the amounts earned under the contract and amounts spent on direct services to bring service costs and administrative costs more in line. The department should reevaluate rates for FY11 and make an administrative decision; there is no reason to enter into negotiations after the bidding process is completed. Staff continues to work with the department to explore other options for injecting incentives for low bids and lower costs within the system. Other options for provider rate changes should be explored. The department should work with LFC and DFA to come up with a more comprehensive family of performance measures on an annual and quarterly basis. The Legislature should appropriate money to Medicaid in a block grant and separate major cost centers from that grant so that policy decisions on how much to appropriate could be made. A final report will be submitted at the January meeting and will include additional information.

Secretary Hyde said there is only one set of information that the department refuses to provide because it protects the ability to obtain the best possible price. The potential for legislative language is being considered to allow for LFC information for evaluation purposes. The biggest reason why costs have increased outside the normal costs is because there were two major provider rate increases initiated by the Legislature. The issue raised for sub capitation payments has been taken under advisement. The rate payment methodology for the ambulatory hospital outpatient is agreed and is in the process of being reassessed. The department is working with MCOs to bring down current costs and current rates. It is time to readdress the medical loss ratio rate as the enrollment grows and as the Long Term Care Program is being introduced it has an impact on the physical health costs.

With regard to the opportunity to realign incentives, it is agreed to steer clients to lower cost MCOs. HSD does not agree that the number of MCOs has a direct cost relation. The number of MCOs and the rates they are paid are constantly managed. Provider rates are not out of line and increases across the board are not being considered. The agency is proud of its pay for performance program and is willing to look at the financial impacts and how they might be increased to get better outcomes. The agency is also willing to work with the LFC and DFA on Performance Measures and determine what the best outcomes are.

It is disagreed that the appropriations to the department for managing Medicaid programs should be further bifurcated; experience show it is difficult to manage. The agency will continue to have discussions on it.

Comments on Environmental and Rate Regulatory Issues. Mr. Patrick Ortiz, General Counsel, Public Service Company of New Mexico, provided a background of operation and said PNM is currently in a massive construction program to meet growing demands for power in New Mexico. It is estimated that from 2008 to 2012, \$1.2 to \$1.4 billion will have to be spent to provide infrastructure to meet power needs. The cost for building generation, transmission, and distribution plants has escalated considerably over the last ten years. If costs for providing services to customers cannot be recovered, the financial viability of the utility is threatened and service to customers could be threatened. The company had trouble borrowing money to pay bills. Through great efforts, the company was able to secure \$350 million in debt financing. PNM's rates are among the lowest in the country and in the region and will remain so even if the commission were to grant the full amount of rate increase that has been recently requested. Recognizing that New Mexico is a low income state, average electric bills have been compared to the median family income. Even when adjusting to New Mexico's low income status, PNM's rates remain among the lowest in the country and region.

A utility cannot charge any rate that it wants; it must ask for authorization from the Public Regulation Commission. The Commission engages in an extensive review of the company's operation in order to determine what rate is acceptable. The rate making process is prospective in nature, meaning that if a company lost money in the past, it cannot recover it with new rates. The new rates are designed to recover the costs that are expected to be experienced in the future when new rates are set. The commission uses a test period to determine what costs will be each year. A test period is a 12 month period showing revenues, expenses, and investment. The last rate order received was April 24, 2008, and was based on cost experience for the 12 month period ending September 2006. The lack of timely recovery of costs impacts a company's ability to cover debt. Without the adequate cash from revenues that are the result of reasonable rates, the company will have difficulty in raising the capital in the market place, resulting in higher debt costs. It also impacts the ability of a company to raise equity capital. The situation will become more severe as new costs are faced on the horizon. Climate change initiatives will impose very significant material costs on the utility industry in order to protect the environment. In the past year, sudden and dramatic downgrades were experienced in credit ratings. New solutions are needed for other additional significant costs that the company is facing.

Mr. David Hudson, Director of Strategic Planning for Southwestern Public Service Company said Southwestern Public Service Company (SPS) is an electric utility and has served Eastern New Mexico for a number of decades and is part of a larger holding company, Excel Energy. The company is very involved in renewable energy development. The company is the fifth largest combination electric and gas utility; SPS has 100,000 customers in New Mexico. Excel Energy is the number one wind energy provider in the United States and is currently the fifth largest solar provider in the nation. SPS has a long history of conserving water using city effluent to generate electricity instead of using original water out of the ground. Seventy percent of electricity costs for SPS is for fuel; 30 percent is the cost of generation plants, transmission and distribution lines. Sixty-six percent of fuel comes from natural gas; other natural resources are being looked at to reduce natural gas and fuel consumption. This will have various impacts on rates; base rates will be raised for customers, with a reduction in fuel prices. Under the rate making process, a historical period is reviewed to develop rates. During that period of time, costs are not recovered. This effectively reduces the utility's earnings during that period and

does not allow for a return of investment. There is a unique opportunity in New Mexico to develop additional resources; however, there needs to be more symmetrical treatment in the regulatory environment. Rates need to become more concurrent with the increased cost on the system and it is being proposed that the Legislature consider adopting interim rates.

In response to Representative Bratton, Mr. Ortiz said significant and substantial costs are incurred in order to comply with climate change rate regulations. The company is very concerned that without timely recovery, their financial liability will be jeopardized.

Senator Papen asked what could be done to make the regulatory process more conducive. Mr. Ortiz said there are possibilities for solutions in four areas: interim rates, shortening the suspension period, making the environment more conducive to accepting projections and using a future test period, and wider use of adjustment clauses so cost recovery could be done.

Ms. Loretta Armenta, President, Qwest New Mexico, said the company currently has 800 employees. Last year, Qwest lost 40,000 land lines and by the end of the year, 60,000 additional land lines will be lost. Land lines are being lost at the rate of 5,000 per month. Major investments are being made in the state due to the Second Amended Settlement Agreement (SASA).

Qwest is facing a dilemma in that statutes have not changed for more than 20 years and it continues to have an impact on the company.

Mr. Leo Baca, Government Affairs Director, Qwest New Mexico, referred to a market share analysis from December 2007 and said wireless providers were the dominant providers and are growing at ten percent per year. The competitive companies are not regulated by the Public Regulation Commission. Regulation of Rates and Charges, Section 639A8 was established in 1985; the Commission uses this law to determine if there is effective competition in New Mexico. These laws are severely outdated. Qwest does have price cap regulation and is regulated differently than the electric companies. Qwest needs ability to move prices and lower them to compete easily with competitors in the market.

District Attorneys/Administrative Office of the District Attorneys. Mr. Clint Welborn, 7th Judicial District Attorney & President of the District Attorney's Association, introduced retiring and new attorneys.

5th District. Mr. Terry Haake, outgoing District Attorney, and Ms. Jeannetta Hicks, incoming District Attorney, testified that the district is requesting eight expansion items and are APRI based. Vice-Chairman Varela reminded all DA's and the AODA, of the revenue constraints faced by the state. He said the Legislature may allow more transfer authority between categories to provide budget flexibility. Mr. Welborn said each district has developed a spending reduction plan and it has been submitted to Mr. Abbey.

6th District. Ms. Mary Lynne Newell said a 4 percent increase is requested with two expansions. Recurring funding was awarded last year for an Information Systems Assistant; however the FTE was not given. The other position is for a District Officer Manager. Currently there are 13

staff attorneys and a total of 40 employees. The district is composed of three county law offices and each office is fully staffed. The three most recently hired attorneys are very experienced career trial prosecutors. The victim advocate program is paying off; however, there continues to be homicides and very violent crimes directly related to problems in Mexico.

3rd District. Ms. Susana Martinez, District Attorney, said 93.5 percent of the district's budget is salaries. Grants have been solicited for the past 12 years and have been helpful in funding extra programs. The district is in constant touch with El Paso crime units and works closely with law enforcement from Mexico. The district has become very innovative with funds to bring in new programs without additional resources.

12th District. Mr. Scott Key, District Attorney, and Ms. Kimberly Sanchez, Chief Financial Officer, said the district's budget was created and written prior to the economic position and includes expansion items. The budget was created on the basis of need to conduct public safety and prosecutorial functions.

9th District. Mr. Matthew Chandler, District Attorney, said 95 percent of the district's budget is for employee benefit services. The office is fully staffed with 39 positions. Homicide rates and violent crimes are down significantly. The district has assisted the U. S. Attorney General's Office in preventing the organization and chartering of the New Mexico Arian Brotherhood.

10th District. Mr. Ronald Reves, District Attorney, said the district requested a flat budget. There are currently no vacancies. A salary increase is being requested for attorneys.

11th District, Division One. Mr. Lindy Bennett, District Attorney, and Ms. Amy Hahn, Chief Financial Officer, said the district is requesting one expansion position for an Accounts Payable Clerk. Two attorney positions have been left open and two attorney positions have recently been filled.

11th District, Division Two. Mr. Karl Gillson, District Attorney, provided statistics from FY05 through FY08 and said the business industry relies heavily upon district attorneys to recover restitution amounts.

8th District. Mr. Donald Gallegos, District Attorney, and Ms. Cindy Gallegos, Fiscal Officer, offered to work with the Committee in any way necessary. Vice-Chairman Varela asked if the request for five automobiles were for additional vehicles. Mr. Gallegos said they would replace existing vehicles.

4th District. Mr. Richard Flores, District Attorney requested a flat budget with one expansion item for a Victim Assistant; the district includes large rural areas and only two employees are currently employed in the Victim's Unit. Vice-Chairman Varela asked how many total vacancies there are currently. Mr. Flores said there are three total. Vice-Chairman Varela said it is critical to interact with the courts and Public Defender to exchange information and asked Mr. Saavedra if it was possible to help the districts that need IT support. Mr. Saavedra said support is provided to them.

2nd District. Ms. Kari Brandenburg, District Attorney, said the district is requesting 13 expansions; however, she would be satisfied with a flat budget. Caseloads are increasing and the office handles 40 percent of the crime that occurs statewide. Representative Saavedra asked how many vacancies the district has and Ms. Brandenburg said there are six; there is not funding for two of them.

13th District. Mr. Lemuel Martinez, District Attorney, said the district experienced a shortfall of \$103 thousand at end of FY08 and is projecting a shortfall of \$263 thousand in FY09. The district is requesting an expansion of one FTE for a secretary position. There are two vacancies that will be kept open.

1st District. Mr. Henry Valdez, District Attorney, Ms. Angela Pacheco, District Attorney Elect, and Ms. Geri Mulligan, Fiscal Officer, presented the district's budget and said its request shows a decrease because of federal funding running out. Mr. Valdez said grants were partially funded positions and the district was able to fill those positions.

7th District. Mr. Clint Welbon, District Attorney, and Mr. J. B. Mauldin, Chief Financial Officer, said a flat budget was submitted and at that level will continue to provide services.

Administrative Office of the District Attorneys. Mr. Randy Saavedra, Director, Administrative Office of the District Attorneys, said the office requested a flat budget. AODA also requested that the DWI attorney be funded. The position is currently funded by the Traffic Safety Bureau.

Public Regulation Commission. Jason Marks, Chairman, Public Regulation Commission introduced staff and presented highlights in Telecommunications, Major Rate Cases, Rulemaking, the Insurance Division, Public Safety, and Consumer Outreach. On the administrative side, the agency has lowered its vacancy rate to under three percent, implemented a new consumer-friendly toll-free number, made case dockets available on the Internet, and has held Commission meetings in each district. On the financial side, there are four program budgets with 283 permanent FTEs and one term. It is expected to go into FY10 with a three percent vacancy rate.

The total budget request is for \$26.1 million of which \$12.3 million are General Fund and 13.8 million is Special Revenue Fund; the agency has brought in over \$200 million in revenues to state funds.

The Patients' Compensation Fund is a \$10 million fund, administered for the state, which provides compensation to patients who have medical expenses and other damages awarded from medical malpractice. The Commission's budget was submitted with an expansion for nine FTEs which would benefit the public in administering programs; however, special consideration for two FTEs. It is the Commission's understanding that PERA will be moving in May 2009. GSD has given assurances that the Commission can back fill space with minimal remodeling by August 2009; the lease with Marian Hall expires in July 2009. Several divisions are housed there and rent and moving costs are being requested for FY10. Vice-Chairman Varela

recommended obtaining a letter of commitment from GSD as to when the PRC will be able to be housed in one building.

Public Employees Retirement Association. Michelle Aubel, LFC Analyst reported that the PERA total FY10 budget request is \$41.9 million; a 6 percent increase over the FY09 operating budget. This includes two expansion requests totaling \$135,000. Each category saw increases; six percent for personnel salary and employee benefits, five percent in contractual services, and almost 14 percent in other category. The largest increase is in contractual services and most of the increase is due to investment related fees.

State Treasurer. James Lewis, State Treasurer introduced staff and presented the FY10 budget. The office has been asked to develop and present a revenue forecasting model to be used by a State Revenue Consensus group and is working with several agencies to develop a revenue model. Staff has been working diligently with the support of DFA to catch up on the back log of unreconciled book to bank reconciliations; all prior year reconciliations have been cleared up over the past month and STO is up to August 2008 for the current year. The FY10 general fund request operating budget is \$4,692,500, a 2.5 percent increase over FY09. The Supplemental Special Appropriation request for IT includes \$50,000 to complete a Disaster Recovery Plan; \$108,000 for the IT System Security Requirement; and \$200,000 for an LGIP Online Banking System.

The office contracted with Research & Polling of Albuquerque to conduct independent studies on customer service and employee satisfaction. The overall satisfaction rating of the Treasurer's Office was 90 percent based on a target of 80 percent or better. Employees also rated their employment experience satisfaction with 66 percent, based on a target of 80 percent. A high priority has been placed on education, training, and establishing a professional staff development program.

The State Treasurer manages three portfolios to include the General Fund, Local Government Investment Pool-New MexiGROW, and the Bond Proceeds Investment Pool. The State Treasurer also serves on various boards and commissions.

State Land Office. Commissioner Patrick Lyons introduced staff and said revenues for last year were approximately 13 percent over FY07. Despite the increase in FY08, the office continues to seek out innovative opportunities to maximize revenues from trust. A minor reorganization was recently done to promote renewable energy that will benefit the agency for years to come. The Right of Way Bureau has been expanded to include the Water Resources Unit. The mission of the two organizations is to protect the trust of natural resources while creating income for trust beneficiaries. Oil and Gas has experienced a decline in prices and will impact the State Land Office beneficiaries.

The agency is requesting a flat budget of \$13.996 million for FY10. The Office has reverted \$5.8 million over the last six years and continues to increase money being brought in. A Special Appropriation Request includes \$500 thousand to continue Asset and Inventory on State Trust Lands. Language is also being requested to continue the authorization to hold and suspend

amounts received pursuant to the sales of state royalties and interest under Section 29 of the Internal Revenue Code.

Friday, November 21, 2008

Chairman John Arthur Smith called the Legislative Finance Committee (LFC) to order on Thursday, November 20, 2008 at approximately 8:00 a.m.

The following LFC members were present on November 21st:

Senator John Arthur Smith, Chairman; Representative Luciano “Lucky” Varela, Vice Chairman; Representatives Brian K. Moore, Donald Bratton, Edward C. Sandoval, Jeanette O. Wallace, Nick L. Salazar, Henry “Kiki” Saavedra, Rhonda S. King; and Senators Carlos Cisneros, Phil A. Griego, Pete Campos, Mary Kay Papan, Sue Wilson Beffort and Stuart Ingle. Representative Don Tripp and Senator Cisco McSorley attended as guests.

Department of Cultural Affairs. Stuart Ashman, Secretary, Department of Cultural Affairs introduced staff and said a five percent reduction for the agency was submitted as directed and the same is planned for FY10. A study of the economic impact of museums both locally and statewide has begun and will be published later in the year. The department reached 1.4 million people with educational outreach and the museums had 850,000 visitors.

Each division was allowed to identify areas to cut in order to have the least impact for the FY09 and FY10 budget. The department does not have any Capital Outlay Projects that have been stalled, ineffective, or underfunded. The budget submission was flat and does not include a vacancy factor in personnel services. An increase of 41 percent is estimated for utilities; the department received a major grant from the Energy and Minerals Department to assist in being the model of sustainability. The department has taken on Ft. Stanton and requests two FTE that will be transferred from the General Services Department. A budget expansion is requested for \$7.1 million to cover the Veterans Museum, the purchase of Los Luceros (a three way partnership with Spencer Theatre and Eastern New Mexico University-Ruidoso), the History Museum (opening this summer), one additional legal assistant, and IT equipment needing an upgrade. Also, 2012 is the Centennial of the state and appropriations are behind. The top priority in Capital Outlay is for statewide museum repairs in the amount of \$8 million for completion of projects that are underway.

Secretary Ashman said museums are visited by out-of-state people 75 percent of the time. Admittance is free on Sunday’s for New Mexico residents and a plan is underway with the Rail Runner to offer a free pass to the museums when a ticket is purchased to the Rail Runner. Fees have been raised by \$1 for all other days.

Educational Retirement Board. Jeff Riggs, Deputy Director, Educational Retirement Board introduced Board members and staff. Jan Goodwin, Executive Director, Educational Retirement Board said the Board is working on improving communication to constituents, improving member education so that teachers at the beginning of their career can understand how important it is to start saving securing their financial future, and improving member service. The Board is

getting ready to prepare an initial Comprehensive Audited Financial Report (CAFR) and receiving certification by the Government Finance Officers Association.

The Board's overall base budget request increase is for ten percent, the bulk of which is increased fees for investment related contracts for investment management fees. A nine percent increase is also being requested to fully fund salaries and benefits for all employees. The current year assumes a four percent vacancy factor and does not budget for overtime or leave.

Expansion Requests include two new FTEs for an Attorney and an IT position, as well as, increased travel for outreach.

Key accomplishments include the IRIS project being accepted after an eight year period of being implemented, hiring of an internal auditor, providing the FY08 actuarial valuation report, fully staffing the executive management team, and providing annual statements to retirees. Annual statements were mailed out to active members in September and improved communications were implemented. The newsletter is being sent via e-mail and better use of the website is being done. The Board has been working hard to make sure active members are kept apprised of information.

Financial statement drafts were delivered to Actuaries on November 7th, and a draft report will be received on November 18th. The June 30, 2008 Evaluation Report will be presented at the December 2008 Board meeting. Member data was provided to the Actuary in August.

For the 12 months ending September 30, 2008, the Fund experienced a gross investment loss of \$1.5 billion; total assets were \$8 billion. Over the past five years, the Fund returned seven percent on average. For the one year period ending September 30, 2008, the Fund returned negative 15.4 percent. For the quarter, the fund posted a negative eight percent return. All asset classes were within policy ranges with the exception of private equity, which continues to be underweight.

Legislative initiatives include a change to a 30 year minimum service requirement for retirement, as well as changing the rule of 75 that includes a combination of years, service and age to a rule of 80. Legislation will be requested to provide audit authority to work with employers ensuring they are paying the full amount of contributions on time. A confidentiality statute will be requested to exchange information with groups. A modification to the educational return to work program will be requested to extend it to 2020; members will have to have a 12-month layout before returning and employers will be asked to pay the employee contribution. The final legislative initiative is to update the current Alternative Retirement Plan.

Vice-Chairman Varela asked what the reaction from the education community has been regarding the 30 year retirement plan. Executive Director Goodwin said the educational community is not thrilled; however, the retirement would affect employees hired after July 1, 2010. Vice-Chairman Varela asked how the employer budget would be affected by paying both employer and employee contributions. Executive Director Goodwin said it was a recommendation by the 2005 ERB Task Force recommendations, but was not enacted at that time. The cost would be approximately \$2.6 million and would not have a dramatic effect on the budget, but it is important that money be added as soon as possible to improve stability. Vice-

Chairman Varela asked if the individuals returning to work continue to pay into the Retiree Health Care plan. Executive Director Goodwin said the employer pays the employer share. Chairman Smith asked if this has been presented to the Legislative Education Study Committee. Executive Director Goodwin said no; however they would be happy to be placed on their agenda. Chairman Smith asked that staff notify the director of the LESC to proceed with discussion prior to the Legislative Session.

State Investment Council. Gary Bland, State Investment Officer, State Investment Council introduced staff and reported that they have moved into their new facility in southern Santa Fe. Distributions from both the Land Grant and the Severance Tax Permanent Funds will be down slightly in FY10. Going forward assistance will be needed from various Capital Markets in order to maintain distribution levels. Effects on fund distributions will be greater as time goes on due to the fact that they are made based on a five year moving average. Bonds will be the new equities and equities will do well as a result of the bonds. As the economic damage is repaired, the strength of fixed income markets will provide the best returns to the funds. SIC has renewed its equity hedging strategy which should offset future losses in U.S. equity markets. In addition, SIC is currently holding approximately \$1.2 billion in cash and cash equivalents.

An FTE increase is requested in the base for clerical, legal, and administrative support. Smaller than usual investment management fees have been assumed in the budget and it is assumed that if markets recover those fees will go back to a normal level. Because of the performance of internal staff, compensation increases are being requested.

State Investment Officer Bland introduced board members and said there is good oversight and cooperation from members.

Attorney General. Gary King, Attorney General introduced Mr. Al Lama, Chief Deputy and Ms. Evangeline Tinajero, Administrative Services Division Director. The protection efforts for the state include protection of consumers, rate payers, young people from underage drinking and methamphetamine, and predators on the Internet. The agency has a very aggressive outreach effort to the population as a whole to inform them about scams. Efforts have been amplified because the local media have been interested in working with the agency.

The agency generates more revenue than what is appropriated in a variety of ways. Outside attorneys are hired to pursue fraud against the state with regard to securities; security litigation has been successful. The agency has been involved aggressively with attorneys throughout the country on tobacco litigation. The state of New Mexico's settlement amount last year was \$44 million. Currently, tobacco companies that are members of the settlement have been pushing a theory that might damage the state; therefore a lot of resources have been assigned to address that theory making sure the state continues to receive shares of tobacco settlement money. The agency is also looking for non-conforming sellers of tobacco products.

A Memorandum of Understanding was entered into with the Attorney General from Chihuahua, Mexico to address human trafficking issues on the border. A joint training session with law officials from Chihuahua has been conducted to work on coordinating with them. It is currently working with the state of Chihuahua to keep guns from flowing from the U.S.A. A special

request from the State Department was received to attend a meeting of the Commission on the Rights of Children. New Mexico and Chihuahua are the only two states in the world working together to combat human trafficking.

The agency is pursuing other cases as well. The Environmental Unit is focusing on making sure the EPA has done everything that is required to protect the air quality in northwest New Mexico. Work is being done across the country to get Face Book and MySpace pages to add protection for children. The alcohol industry is being worked with to stop marketing alcoholic energy drinks. Cases are being pursued with regard to the Indian Arts and Crafts Act to make sure that vendors in New Mexico are not marketing products as authentic Native American made if they are not.

The FY10 budget request is for \$19.6 million which is an increase of eight percent. The request includes expansion requests, special appropriations and budget increase authority.

Vice-Chairman Varela asked what the role is of the Attorney General in approving contracts. Attorney General King said historically the Attorney General's Office reviewed large contracts through a DFA rule, but it has been changed. Vice-Chairman asked if that function should be in the Attorney General's Office as an essential function of government to require performance in contracts for those with a certain dollar amount. Attorney General King said it would be a good check and balance, but there are currently not any resources for it. The contract reviews done previously looked at the parties to see if they were appropriate and that the procurement code was followed.

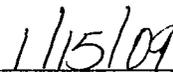
Chairman Smith asked if the Legislature restricted the ability to pursue Medicaid Fraud with a change in some of the penalties to a misdemeanor. Ms. Elizabeth Staley said yes, there are three criminal trials pending indictments and two more anticipated in the next couple of months. Chairman Smith asked Ms. Staley to research if a restriction has been imposed and to submit information to LFC staff.

Representative Sandoval asked if there is anything that could be done legislatively to address telemarketing issues. Ms. Karen Myers, Director, Consumer Protection Division said they are participating with other Attorney General offices from other states to try and stop the particular companies offering extended warranty solicitations. All the companies are not from New Mexico. Other telemarketers are not from the U.S. The Attorney General's posts all scams on its website and provides an e-mail to those wanting to sign up to receive notification of new scams.

With no further business, the Committee adjourned at approximately 11:30 a.m.



Chairman



Date

