Legislative Finance Committee
Meeting Minutes
Room 307 - State Capitol - Santa Fe, New Mexico
October 20, 21, 22, 2010

Wednesday, October 20

The following members were present on Wednesday, October 20: Chairman Luciano "Lucky" Varela, Vice Chairman John Arthur Smith, Representatives Donald E. Bratton, Rhonda S. King, Don Tripp, Edward C. Sandoval, Jeannette O. Wallace, Nick L. Salazar, and Henry "Kiki" Saavedra; and Senators Sue Wilson Beffort, Carroll Leavell, John M. Sapien, Mary Kay Papen, Pete Campos, Carlos Cisneros, and Steven Neville (for Stuart Ingle). Representatives Larry Larrañaga, Brian Egolf, Rick Miera, and Andy Nuñez attended as guests.

General Fund Revenue Outlook for FY11 and FY12; Bonding Capacity Update. Dannette Burch, secretary designate, Department of Finance and Administration (DFA), reported new consensus estimates revised the July FY11 general fund recurring revenue estimate downward by $40 million. However, because FY10 revenue was increased by $21 million, the October estimates for FY10 and FY11 do not reflect a substantially different view in aggregate of general fund revenues from the July estimates; less than a .4 percent change. The FY12 new money (FY12 recurring revenue versus FY11 recurring appropriations) is $145.3 million.

Estimates are likely to change in December when final FY10 audited revenues and expenditures are available. December projections will be based on several additional months of actual revenue collections that will reveal whether the economy has indeed turned the corner. Estimates for FY13 and beyond are likely to be substantially impacted by actions of the new governor and Legislature. Revisions resulting from the current estimate range from $21 million over the July estimates for FY10 to a negative $154.3 million in FY15, 2.5 percent less than the FY15, $6.19 billion total. The recurring revenue estimate for FY12 is down $81.4 million.

The FY10 estimate for gross receipts taxes dropped $10.8 million, or 0.6 percent from the July estimate, and total selective sales tax dropped $21.2 million, or 5.5 percent. Weakness in gross receipts and selective sales taxes late in FY10 were important factors in the downward revision of the FY11 general fund estimate. Net general fund revenue reductions reflect $28 million in reductions that were partially offset by $15.5 million in increases, primarily personal income taxes. Reversions increased by $22.6 million, an increase of 62.7 percent.

Although recurring revenues are predicted to rebound, the state has prepared for continued slow growth in revenue and will take additional measures as necessary to control spending in FY11. Through its FY11 operating budget instructions and guidance on the 50 percent rule, which generally restricts a state agency's expenditures to one-half of its appropriation or approved budget for the first six-months of each odd-numbered fiscal year, the governor and Department of Finance and Administration (DFA) have prepared agencies for the possibility of reduced revenue estimates for FY11. All agencies were asked to prepare for a potential 3 percent to 5 percent budget reduction mid-year. The Consensus Revenue Estimating Group (CREG) monitors economic conditions, actual receipts and regular reports provided by revenue-generating agencies, governmental authorities, commissions and reports as required by statute. The administration does not propose to adjust allotments downward based on this forecast. Over time, there will be a need to restore general fund reserves to an appropriate level. Nearly $80.3 million would be required to reestablish the 5 percent operating reserve margin; $210 million for a 7.5 percent margin, and approximately $341 million up to a 10 percent margin. Based on the October revenue estimate, FY11 is $18.5 million short and a Section 14 action to reduce appropriations will be required or a request for additional transfer authority will be made.

Estimates are based on the current economic conditions and rely on a broad range of employment, demographic, and business data drawn primarily from Bureau of Labor Statistics (BLS) and Census sources. Sources are in agreement that decelerating growth observed in the 2010 second quarter and third quarter will not likely result in a double dip recession. Although GDP grew by less than 1 percent in FY10 and employment is not expected to grow at all in FY11 in New Mexico, personal income is expected to grow into 2011 and average between 2 percent and 3 percent growth through FY12.

The New Mexico economy, once dominated by agriculture and minerals industries, is now more susceptible to changes in demands for services, technology, and exports than in the past. Since 2008, changes in New Mexico employment and personal income mirror changes in employment and personal income for the entire U.S. economy. Although New Mexico appears to have been dragged down by the U.S. economy in 2008 and 2009, it is also forecast to improve in concert in 2011 and 2012. As the U.S. economy stabilizes through FY12, New Mexico's economic performance is expected to exhibit greater independence from this pattern now being observed at the bottom of an extraordinary economic cycle. Overall, New Mexico non-agricultural employment fell 3.3 percent in FY10 and no employment growth is forecast for all of FY11, down from 1 percent growth forecast in July. New Mexico personal income is expected to grow in the same period because of an increase in transfer payments and higher paying skilled jobs should experience salary growth. Inflation is expected to remain low; 1.3 percent in FY11 and 1.8 percent in FY12. The unemployment rate will likely remain in excess of 9 percent through FY12.

A budget for Federal Fiscal Year 2011 (FFY11) is still not in place permanently. A continuing resolution signed by the president last month provides federal funding through the beginning of December. Once Congress returns, any budget actions will supersede actions taken on the continued resolution.

Duffy Rodriguez, secretary designate, Taxation and Revenue Department (TRD), reported the gross receipts tax (GRT) and the compensating tax are the largest source of general fund revenues and consistently generate more than one-third of total recurring revenue. In FY09, these tax revenues fell by 1.1 percent year-over-year. The momentum in taxable gross receipts deteriorated rapidly in 2009. The rate of decline began to slow last winter and finally experienced positive economic growth in the last few months for the first time in over a year. Overall gross receipts and compensating tax collections for FY10 dropped by 10.7 percent from FY09; the largest drop in decades. Construction activity has continued a trend of double digit declines. The contraction of the construction sector is changing the composition of the GRT revenue base. Revenue from the construction sector made up almost one-sixth of total gross receipts in the past; however, in recent years it has been contributing as little as one-twelfth of general fund revenues.

Revenue growth is expected to return slowly during FY11. The tax base level is expected to grow by 1.3 percent and will be augmented by the recently enacted one-eighth percent tax rate increase. Overall revenue growth is expected to grow by 4.6 percent, with more robust growth expected to return in FY12 and FY13 at 4 percent and 5.9 percent, respectively, and moderate growth at 5.1 percent in FY14 and 4.2 percent in FY15. GRT revenue is not expected to surpass its FY08 levels until FY13.

Over the past few years, the composition of natural gas produced in New Mexico has changed along with associated prices. As a result of relatively low market prices for dry gas, producers have shifted their focus to the production of crude oil and liquids. Liquids receive a significant premium over processed and unprocessed natural gas. The decline in overall natural gas production coincides with a decline in unprocessed natural gas. Higher liquids content of natural gas produced in New Mexico resulted in a weighted average premium for New Mexico natural gas over reported Henry Hub prices for dry gas in FY10. In FY10, 64 percent of the natural gas produced in New Mexico was from the San Juan Basin, 34 percent from the Permian Basin, and 2 percent from the Raton Basin. The percentage of production in the Permian Basin trending upwards because of Avalon, Leonard and Bon Springs shale plays and high content of natural gas liquids and oil condensates. During FY10, monthly natural gas volumes averaged 107.1 billion cubic feet (bcf) compared with 115.9 bcf in FY09. FY10 collections for the oil and gas emergency school tax are expected to be $13.4 million less than predicted in the July 2010 forecast. General fund revenues from oil, natural gas, and hard minerals in FY10 are expected to be $14 million lower than the July 2010 forecast.

The recession has negatively affected personal income tax revenues in a variety of ways, including slowing personal income growth, reducing capital gains, and increasing unemployment levels. Since the July 2010 forecast, the economy has continued to weaken, reducing personal income growth nationally and in New Mexico. FY10 revenues are now expected to be only 0.6 percent higher than FY09; however in FY11, the personal income tax revenue is expected to grow 10.6 percent over the FY10 revenue to $1,067 million. Most of this increase is due to new legislation.

Corporate income tax revenue for FY10 is expected to be approximately $114.9 million, $5.1 million down from the July 2010 forecast. Based on federal data, corporate income tax revenues are generally expected to rise considerably from FY10 levels. Film credits are assumed to remain flat at $65 million in FY11 and are expected to grow 5 percent year-over-year thereafter.

Selective excise taxes are expected to decline by 7 percent year-over-year in FY10 primarily due to large declines in the fire protection fund, motor vehicle excise, and gaming revenues only partially offset by a large increase in insurance revenues. FY11 insurance revenues are expected to continue to grow. Motor vehicle excise and gaming revenues will also grow but from the lower FY10 base. Motor vehicle excise tax collections are expected to fall to $92.2 million in FY10, declining approximately $39 million, or 30 percent, in three years.

Ms. Burch continued with reversions and said over the past six years, reversions have averaged approximately $41 million per year to the general fund and about $5 million to the appropriation contingency fund. On average, 27 percent of reversions from any particular fiscal year are remitted and booked timely. Approximately 57 percent of reversions are remitted with a one-year lag as agencies remit reversions pursuant to completed audits. These additional amounts of revenue were scored as recurring because of the difficulty of determining whether a particular reversion is recurring or nonrecurring, timely or delinquent. Regular reversions for FY10 are estimated at $58.6 million, up by $22.6 million from the July estimate. Regular reversions in

FY11 through FY15 are expected to return to historical levels between $30 million and $40 million annually.

The subtotal for FY10 solvency actions is $460.3 million. As a result of Senate Bill 182, an additional $1.4 million was collected from capital outlay reversions. FY10 authorized transfers from reserves totaling $150 million, $15 million from the 2010 Second Special Session and $58 million from the tax stabilization reserve authorized in House Bill 2, 2010 First Special Session. This assumes that $173 million in reserve transfers is needed to close out the fiscal year. The remaining transfer authority from the tax stabilization reserve of $24.9 million and $49 million from the appropriation contingency fund will be used for FY11.

Negative risk factors to the forecast include

- The U.S. and New Mexico economies are believed to be at the bottom of an economic cycle.
- A "double-dip" recession is still a possibility.
- Oil and natural gas prices are always an uncertainty.

Positive factors include

- Economic models show moderate general fund growth if economic assumptions are realized.
- Oil and natural gas prices forecasting services are showing better price realizations than prices assumed in this forecast.
- The forecast does not assume any federal assistance to the states.

Tom Clifford, chief economist, LFC, reported there are no major differences in the LFC analysis. The October 2010 revision for the recurring revenue outlook is down about $5 million from the July forecast. FY11 is down $40 million and FY12 is down $80 million. Total recurring revenue growth for FY11 is estimated at 6.6 percent and 4.7 percent for FY12. Most FY11 revenue growth is due to revenue enhancement legislation passed in the 2010 sessions. A lower track in the economic forecast seriously affects the gross receipts tax and the personal income tax. Corporate income tax deposits were over $100 million in the first quarter of FY11 due to a combination of factors. Energy revenues are down in FY11 due to deterioration of natural gas prices. Selective sales tax experienced a large increase due to the cigarette tax rate increase. The transfer needed from reserves is $172 million in FY10; a $243 million shortfall is projected in FY11.

Mr. Clifford provided an FY12 budget outlook, including the revised recurring revenue forecast for FY12 compared with the FY11 general fund appropriations after the sanding, as well as an estimated $280 million drop in federal Medicaid funding, $89 million in additional federal funding for public schools, and the amount needed to replace Temporary Assistance for Needy Families (TANF) balances, for a total of $5.6 billion to maintain current levels of services. Between FY08 and FY10, revenues fell from $6 billion to $4.8 billion, a decline of 20 percent. Projections indicate an increase to $5.3 billion in FY12.

In response to Senator Beffort, Mr. Clifford said the forecast for employment growth was revised down from 1 percent growth during FY11 to a decrease of .3 percent. Senator Beffort requested input from the business community addressing increased unemployment taxes and required health benefits.

Senator Sapien, Vice Chairman Smith, and Representative Bratton expressed concern with the gas and oil forecast being too optimistic, particularly the forecast of $5.75 for natural gas in FY12. Mr. Clifford acknowledged their concern, but noted that the forecast is a consensus of professional forecasts. Also, broader economic recovery will improve demand for natural gas, thus increasing prices.

Department of Health (665) – Preview of FY12 Appropriation Request. Mike Mulligan, acting deputy secretary, Department of Health (DOH), presented the FY12 preview appropriation request for the department. The department's budget was reduced $56 million over the past two years; half of the reduction was due to the enhanced federal participation rate for the Developmentally Disabled (DD) waiver match. With the additional 3.2 percent reduction imposed through executive order, an additional $2.3 million of general fund from the Public Health Division, $2 million in facilities, and $1.1 million in other program areas was reduced.

The department's FY12 general fund request is a base increase of $46 million to cover costs in the DD waiver program, the new Fort Bayard Medical Center lease, and GSD rate increases. All other budgets within the program area remain flat compared with reduced FY11 amounts. Mr. Mulligan provided information on FY12 reductions if additional funding is not received.

Mr. Mulligan said the DD waiver is up for renewal on July 1. DOH is working with the Human Services Department (HSD) to incorporate changes into the program. HSD will submit the application for renewal to the Centers for Medicaid and Medicare Services by April 1 for an effective date of July 1.

The department is working on DD waiver cost-containment measures for FY11 to reduce costs by $5.2 million by enforcing annual resource allotment limitations in the Omnicaid payment system, reducing provider rates limiting substitute care, and basing family care payments on level-of-care determinations. Because the FY11 appropriation was based on the 80 percent FMAP, the department is short $4 million due to the step-down in the federal participation rate. It is likely a supplemental appropriation will be requested.

Staff moved into the new scientific laboratory in Albuquerque. Currently, lab services has an 18 percent vacancy rate, which severly and adversely affects the ability to deliver mandated DWI and Office of Medical Investigators samples within the required time frames. Staff is in the process of moving into the Fort Bayard Medical Center and the new Roswell Rehabilitation Center. Construction is also beginning for phases one and two of the New Meadows Long-Term Care facility in Las Vegas.

In response to Representative Tripp, Mikki Rogers, division director, clarified that over the last two years several major initiatives were implemented due to Jackson litigation, including evaluating an aspiration level of all consumers. As a result, many individuals received increased services by therapists to prevent the risk of aspiration. Other initiatives increased the service level of consumers.

Senator Papen expressed concern with ARRA funding and requested information on how funding was used.

Department of Tourism (418). Jennifer Hobson, deputy secretary, New Mexico Department of Tourism, reported New Mexico generated about $370 million of state tax revenue in 2008 from the tourism industry. Domestic and international travelers to New Mexico spent $6 billion in 2008 resulting in federal, state, and local tax revenues of $764.8 million. Ms. Hobson said that, hypothetically, tourism taxes contributed $160.5 million to public school support, $57.5 million to higher education, and $40.6 million to Medicaid.

Michael Cerletti, secretary, New Mexico Department of Tourism, reported a 5 percent decrease in tourism revenue results in an $18.5 million drop in state revenues. Tourism is the largest private sector employer, supporting 110,000 New Mexicans and a payroll of $1.1 billion. Without these jobs, New Mexico's unemployment rate of 4.2 percent in FY08 would have been 10.2 percent. Reductions in GRT and lodgers tax collections adversely impact state and local governments. The state's seasonally adjusted unemployment rate as of August 2010 was 8.3 percent, nearly double what it was two years ago. New Mexico spends less on tourism advertising than its neighboring states and ranks 31st overall among the 50 states. New Mexico will spend $2.1 million on its advertising contract in FY11 compared with $14.4 million in Colorado, $6.95 million in Utah, and $25 million in Texas.

Art Bouffard, president, New Mexico Lodging Association, testified tourism is one of the top revenue producers for the state. Mr. Bouffard warned that budget reductions will severely impact the tourism industry. Vice Chairman Smith commented on how the Government Restructuring Task Force requested that all other Legislative committees provide feedback on how to make government more efficient to provide long-term cost savings: however, no feedback has been received. Mr. Bouffard said the lodging industry provided feedback indicating concern over the proposed Commerce Department to include economic development, tourism, and workforce development.

In response to Chairman Varela, Martin Leger, advertising manager, Tourism Department, said each year the Legislature appropriates $100 thousand to the Cultural Affairs Department and $100 thousand to the State Parks Division for advertising. In addition, $50 thousand is appropriated to support golf tourism. Chairman Varela expressed some concern with the proposal to combine the Economic Development Department and the Tourism Department.

Indian Affairs Department (609). Alvin H. Warren, secretary, Indian Affairs Department (IAD), provided an overview of the department's statutory duty. The department facilitates communication between tribal governments and their counterparts in state government. In 2008, the department in conjunction with tribal leaders, the governor, and the Legislature created a strategic plan focused on Native American health, tribal infrastructure, economic development, and effective government-to-government relations. Secretary Warren provided an overview of the department's accomplishments for FY10.

Secretary Warren said two-thirds of IAD's budget is dedicated to grants for tribes, tribal organizations, universities, and consultants and contractors for special projects benefiting Native Americans. IAD funded 14 special projects in FY10. IAD also funded eight tribal tobacco cessation prevention projects in FY10.

The IAD budget was reduced 25 percent over the last two fiscal years, from $4.3 million to $3.2 million. The department has undertaken a number of efficiency measures, including an additional 3.2 percent budget reduction. The department is requesting a flat budget for FY12.

Representative Salazar asked for clarification about the Medicaid program and funding for medical services. Secretary Warren said Native Americans are disproportionately eligible for

Medicaid. If an individual receives services through the Indian Health Service (IHS) or contracted facility from IHS, the reimbursed funding is 100 percent federal. If an individual receives services elsewhere, reimbursement will be shared with the state. The department, along with the Human Services Department (HSD), is pursuing a federal Medicaid waiver to allow full federal cost reimbursement to the state for healthcare services delivered to Native Americans outside of HIS or tribal facilities.

Department of Veterans' Services (670). John Garcia, secretary, Department of Veterans' Services, reported the department has served 31,878 veterans in FY10 through 17 field offices, a 21.2 percent penetration ratio. The result is the state received $76 million in disability-related compensation pensions. Secretary Garcia noted compensation pensions for FY09 totaled $92 million. The Veterans' Administration (VA) medical services spent $824 million in federal fiscal year (FFY) 2009 and served more than 178,000 veterans. Veterans made 560,000 visits to receive health care at the VA hospital and community based outpatient clinics and service officers. Through the VA medical center and clinics, 35,000 veterans and survivors received disability compensation and pension payments from the VA. Nearly 4,800 veteran reservists and survivors are currently using the GI bill for education.

New Mexico veterans generate $1.3 billion for the economy through pensions, disability payments, retirements, dependent payments, educational benefits, and other state and federal veteran and dependent compensation benefits and services. New Mexico ranked 46 in terms of outreach and number of claims processed in 2008 and now is ranked among the top five states per capita for veterans receiving compensation and pensions.

Veterans' federal education benefits provide funding for education training, on-the-job-training (OJT), and apprenticeship programs in excess of $27 million a year. Veteran-owned business is growing generating economic funding for the state as a result of Public Law (PL) 108-183.

Secretary Garcia provided an overview of the FY10 accomplishments including

- OEF/OIF outreach
- Heroes Hiring Heroes Job Fair
- Native American Tax Refund
- Women Veteran License Plate
- Post Traumatic Stress Disorder (PTSD) Outreach Program
- Veteran Business Resource Center
- Honor Guard Training

New initiatives include

- Homeless Women Veteran Services
- PTSD Wellness Treatment Program
- Vietnam Veterans Call for Photos
- Veterans Green-Job Alliance Program

Secretary Garcia said the department's primary goal is to strive within limited resources to maintain a fully integrated system of services and benefits for New Mexico veterans and their families. Major goals for the department include improving overall management and operational systems, delivering and improving existing programs and services, identifying new initiatives, and developing annual budget and performance standards.

Daniel McCormack, director, Administrative Services Division, reported the department's FY12 budget request is flat compared with the FY11 operating budget after the 3.2 percent reduction. Mr. McCormack noted the department is no longer receiving federal revenue. Additional fund balance derived from the sale of license plates will be used, resulting in an increase of fund balance, for a total FY12 appropriation request of $2.9 million. The department experienced a reduction from 40 FTE to 38 FTE. Secretary Garcia noted the department has experienced an overall reduction of 24 percent since 2008.

Senator Cisneros asked about reduced services at the Embudo clinic that serves northern New Mexico veterans. Secretary Garcia said the department is moving aggressively with the VA and the congressional delegation to ensure continued service. The VA provides annual reviews of usage, as well as annual reviews of access. Additional options include increasing telemedicine and contracting with providers, as well as reopening a wellness program. Secretary Garcia added the Legislature established an interim Legislative Veterans Committee to help find solutions for ongoing issues.

In response to Senator Beffort, Secretary Garcia said the federal government offers a three-year graduated tax credit for the hiring of veterans. The department is proposing through the Legislative Veterans Committee to initiate a similar program in the state to encourage employers to hire veterans.

Chairman Varela expressed concern with the attitude of the public and protesting veterans' memorial services. Secretary Garcia said legislation prevents protesters to be within 500 feet from burial services.

Game and Fish Department (516). Tod Stevenson, director, Game and Fish Department, reported the department complied with DFA and LFC guidance to maintain a flat budget request with two exceptions related to legislation. The department is requesting a modification from a flat budget with an expansion for a coordinator position and four seasonal quarter-time FTE positions to assist with the aquatic invasive species program. Additionally, the department is requesting two positions for the off highway vehicle program. The program was transferred from the Tourism Department to the Game and Fish Department with 2 FTE. The program is funded 100 percent out of the trail safety fund generated from registration fees. Mr. Stevenson said the U.S. Fish and Wildlife Service has notified the department of a potential $2 million increase in federal grant funding related to hunting.

Senator Leavell asked for clarification on the number of permits for elk. Pat Block, assistant director, said the *American Hunter* magazine under-reported the number of licenses in New Mexico by a factor of 10; however, a correction has been published. The percentage of population hunted is comparable to other states. Senator Leavell expressed concern with hunting becoming a rich man's sport.

Senator Neville said some individuals never draw a permit and asked if the department had considered going back to a point system. Mr. Stevenson said currently no action is proposed on a point system; however, it is a significant issue that the department and the state Game Commission continue to address.

In response to Chairman Varela, Mr. Stevenson said the department worked with an engineering firm and the Fish and Wildlife Service over the last four years to come to a resolution that the

New Mexico Dam Safety Bureau would accept as a fix to the inadequate spillway on both Lake Robertson and Bear Canyon; however, consensus could not be reached. The department is working with a new engineering firm on a new resolution.

Procurement Reform and Potential 2011 Legislation. Phillip Baca, staff attorney, Office of the Attorney General, reported proposed legislation is a direct result from a 2008 LFC program review of the General Services Department, Procurement Division, and is aimed at closing loopholes in current statute. The review called for clarifying language as well as better monitoring and tracking for emergency purchases, sole source contracts, and exemptions.

Proposed legislation requires written determination for sole source contracts by the purchasing officer or the purchasing agent. Written determination will remain in the procurement file for three years as a public record. Legislation also proposes sole source contracts be unique, showing other suppliers cannot meet the purposes of the contact. In addition, a good faith review will be changed to a "due diligence" standard. The proposed legislation also prohibits circumvention of the sole source specifications with only one vendor in mind.

In the LFC report, the state purchasing agent indicated, besides sole purchases, emergency purchases are one of highest procurement categories of abuse. Proposed legislation for emergency contracts changes the law so that only the purchasing agent or the central purchasing officer can make the determination of an emergency. Legislation also imposes a "due diligence" standard.

The legislation also supports greater transparency and oversight. Prior to the award of either a sole source or an emergency contract, the contract must be posted on the agency's web page, as well as sent to LFC. The right to protest is extended for either contract. Greater scrutiny of procurement exemptions was proposed, beginning with eliminating exemption of contracts for investment advisor services.

Additional legislation increases penalties for violation of the procurement code, which would extend the statute of limitations for prosecution.

Chairman Varela requested the Attorney General's office review the approval process for technical and professional service contracts over $1 million.

Senator Beffort asked that proposed legislation clarify that both parties, the purchasing party and the vendor, could be held accountable for violating the procurement code. Senator Beffort also asked that proposed legislation address "stacking" under small purchases, which is starting with an original contract that falls under the request for proposal (RFP) or competitive process but further amending the contract upward over the threshold amount, thereby avoiding the competitive procurement process. Chairman Varela asked that quasi-agencies, such as the New Mexico Finance Authority, be included in legislation.

Miscellaneous Committee Business

Action Items

Approval of Subcommittee Reports. **Representative Sandoval moved to approve the Sunset Subcommittee report seconded by Representative Salazar. Motion carried.**

Senator Cisneros moved to approve the report from Subcommittee A, seconded by Senator Neville. Motion carried.

Senator Beffort moved to approve the report from Subcommittee B, seconded by Representative Salazar. Motion carried.

Information Items
Review of Monthly Financial Reports

Director Abbey referred members to the FY11 LFC budget indicated a surplus of $18 thousand.

Director Abbey referred members to the Full Time Employees by Agency report indicating the report is a useful tool. Director Abbey noted a reduction in government employees.

Director Abbey referred members to the ARRA Status Report, September 2010 BAR Report, and the LFC Program Evaluation Status Report for review.

Thursday, October 21

The following members were present on Thursday, October 21: Chairman Luciano "Lucky" Varela, Vice Chairman John Arthur Smith, Representatives Donald E. Bratton, Rhonda S. King, Don Tripp, Edward C. Sandoval, Jeannette O. Wallace, Nick L. Salazar, and Henry "Kiki" Saavedra; and Senators Sue Wilson Beffort, Carroll Leavell, John M. Sapien, Mary Kay Papen, Pete Campos, Carlos Cisneros, and Steven Neville (for Stuart Ingle).

Public Defender Department (355). Hugh Dangler, chief public defender, Public Defender Department, reported the department has a high vacancy rate with some variation, resulting in fairly restricted operations. It is requesting a $600 thousand supplemental appropriation for FY11 to continue operations, as well as an increase in FY12 to restore the mandated 3.2 percent budget reduction.

Mr. Dangler said the department is considering doubling application fees collected from individuals needing representation, but it would require legislation. The fees collected are deposited into the automation fund and can be used for information technology, which offset general fund expenses. The department is also considering a cap on representation and legislative action is also required. Mr. Dangler noted the department received a federal grant to assist with federal immigration cases.

David Isenberg, deputy chief public defender, reported on the department's continued commitment to open an office in Gallup and said the department is working with McKinley County to occupy the existing sheriff's office building or expand its judicial complex to include the Public Defender Department.

Chairman Varela expressed concern about the independence of the public defender and the consideration to include the department under the executive branch. Mr. Dangler said an independent commission does not address funding issues. The department is in a unique position to help with any reform the state chooses to entertain. Chairman Varela asked about the change of attorneys during court cases and the lack of consistency for defending an individual. Mr. Dangler said the American Bar Association (ABA) identified that one lawyer remain through the trial process as a key component of proper representation. However, the Metropolitan Court violates the principal due to the high volume of court cases.

Senator Leavell asked about the cost to defend a death penalty case. Mr. Isenberg said the least expensive part of defending a death penalty case is the attorney fees set by the death penalty contract. An overwhelming part of the cost is hiring expert witnesses.

In response to Vice Chairman Smith, Mr. Dangler said DFA has shifted its position on requesting stimulus funding from the governor. Vice Chairman Smith the Public Defender's Department has a constitutional requirement, and it is imperative the appropriation committees recognize the requirement.

Regulation and Licensing Department (420). Kelly O'Donnell, superintendent, Regulation and Licensing Department (RLD), presented a flat budget request for FY12 with increases in the base that include

- $45 thousand for the Alcohol and Gaming Division to fully fund existing staff,
- $70 thousand for Information Technology (IT) program support to support and maintain the KIVA system,
- $104 thousand for program support to provide increased assessment based on updated cost allocation,
- $121 thousand for the Pharmacy Board to fully fund existing state drug inspector positions.

In addition, four expansion requests are included for the Financial Institutions Division (FID) to support the mortgage licensing and examination program mandated by the federal government.

Ms. O'Donnell presented FY10 and FY11 accomplishments for the department that included

- Expanding mortgage licensing, examination, and enforcement;
- Successfully revoking three liquor licenses;
- Entering into agreements to shut down three liquor establishments;
- Reducing processing time for dispenser licenses;
- Continuing building inspection requests within 24 hours;
- Adopting 2009 building codes;
- Resolving 100 percent consumer complaints in the Manufactured Housing Division (MHD);
- Continuing success with prosecution of securities fraud;
- Adopting consumer protection rules for boards and commissions.

Chairman Varela asked for recommendations for the restructuring task force. Ms. O'Donnell said most RLD programs are self funding and created to provide administrative proficiency through shared administrative services. Chairman Varela said the purpose of reorganization is not necessarily to save money, but to streamline government and make it accessible to the public. She responded that RLD would not oppose certain types of consolidation.

New Mexico Finance Authority Budget Overview FY11 and FY12. Bill Sisneros, chief executive officer, reported the New Mexico Finance Authority (NMFA) is not a general fund agency; however, NMFA works closely with its legislative oversight committee.

NMFA continues to have strong, clean audits. NMFA's platform ties directly to legislative mandates to carry out the purpose of the public project revolving fund (PPRF) program. NMFA was successful in obtaining $100 million of new market tax credits, creating 1365 new jobs in the state. Smart Money programs created an additional 210 jobs.

The operating budget for NMFA totals $8.6 million. NMFA manages $140 million within its budget for debt payments, resulting in a 2.4 percent decrease from FY10. NMFA anticipates an increase of 1.6 percent for development and budget growth over the next five years. Based on historical numbers, 750 new projects or financing for $1.6 billion of infrastructure improvement is expected over the next five years. Mr. Sisneros noted statute requires NMFA to maintain a reserve account to support the program. The oversight committee discussed the possibility of NMFA providing support to the general fund in the amount of $15 million or more to address solvency issues.

Representative Bratton requested a comparison of benefits and salary structure to not only make sure employees have adequate coverage but also to make sure it is comparable to other governmental entities.

Racing Commission (469). Marty Cope, chair, Racing Commission, reporting racing has an annual impact of $400 million to the state. Gaming revenues total approximately $63 million. There are 10,000 related jobs to the racing industry. Racing is the largest spectator sport, attracting more than 2 million out-of-state visitors each year.

The Racing Commission is working on creating a national standard for drug testing and has established a rule for out-of-state competition testing. Environmental contaminant levels are now at a national standard level. The commission is responsible for the safety and well-being of the horse and the rider; however, the commission only has two investigators for all New Mexico tracks.

Ms. Cope said the Racing Commission's budget for FY11 totals $2.154 million. The commission is requesting $2.2 million for FY12.

Senator Leavell asked how other states control drug testing. Ms. Cope said several states enacted the out-of-competition rule. Senator Leavell requested the total income derived from licensing fees.

Senator Papen asked what is needed to ensure New Mexico is on the national standard for all drug testing. Ms. Cope recommended the national standard be set in statute.

Senator Neville asked if there was any control or process being considered for over-using horses. India Hatch, director, responded the commission is concerned with not having oversight for match races; however, the commission instituted daily grooming reports and regular meetings for track safety.

Representative Bratton asked if the commission considered using a small percentage of funding directed at purses to pay for a testing program. Ms. Cope said the commission considered a percentage from the $63 million generated from racino tax revenue.

Gaming Control Board (465). John Monforte, executive director, Gaming Control Board, reported the board met with the Board of Finance (BOF) to request $177 thousand in emergency funds for the FY11 budget. Emergency funds will be used to offset employee furloughs.

The Gaming Control Board regulates an industry comprising 14 gaming tribes, 24 tribal casinos, five race tracks, 57 nonprofit casinos, and 96 bingo and raffle establishments with a total net win of $863 million. FY10 tribal revenue sharing totaled $63.9 million; racing, $62.9 million; nonprofit, $1.1 million; and bingo and raffle, $135 thousand.

Mr. Monforte said the state is adding two additional casinos in Hogback and Fruitland. Jemez Pueblo is proposing to open a casino in the Anthony area. Mr. Monforte noted the agency is currently without a tribal auditor and is facing arbitration issues derived from a set of articles in the Indian Gaming magazine.

Vice Chairman Smith expressed concern with class two gaming machines. Damesia Padilla, board member, said the board has had discussions with the tribes that are considering switching out their gaming floor to class two machines. Mr. Monforte noted there is not a distinction between class two and class three machines outside of tribal gaming.

Friday, October 22

The following members were present on Friday, October 22: Chairman Luciano "Lucky" Varela, Vice Chairman John Arthur Smith, Representatives Donald E. Bratton, Rhonda S. King, Don Tripp, Edward C. Sandoval, Jeannette O. Wallace, Nick L. Salazar, and Henry "Kiki" Saavedra; and Senators Sue Wilson Beffort, Carroll Leavell, John M. Sapien, Mary Kay Papen, Pete Campos, Carlos Cisneros, and Steven Neville (for Stuart Ingle). Senator Linda Lopez attended as a guest.

Report of the Higher Education Funding Task Force. Curtis Porter, associate vice president, University of New Mexico (UNM), reported the higher education taskforce began work in April. Subcommittee groups were tasked to look at tuition credit, Higher Education Department's (HED) master plan, performance funding, and formula mechanics. The primary work of the taskforce is focused on two significant changes in the funding formula.

The taskforce is recommending a change in the tuition credit mechanism to eliminate the formula "add-back" for governing board tuition increases beyond the legislatively enacted tuition credit. The taskforce is also recommending the elimination of the "enrollment band" calculation of plus 3 percent or minus 5 percent because of wide variation in the affect on individual institutions. The taskforce has not been able to reach consensus on a rolling average for credit hours; however, HED will have a recommendation by November 1. The taskforce also recommends changing the mill levy calculation for two-year institutions to actual prior-year revenue rather than projections and amending the HED financial reporting manual to permit flexibility in the use of building renewal and replacement funds. Performance funding was also discussed; however, the taskforce does not have a recommendation for FY12. Mr. Porter said the taskforce will continue reviewing the HED master plan and discussing a formula revenue policy, as well as a performance formula and alternative funding models.

Viola Florez, secretary, Higher Education Department (HED), added that HED has several recommendations in the master plan related to funding. HED would like to revisit components to determine outcomes related to enrollments and workload. HED is also recommending a cost-analysis study to review the funding system and improve the cost-effectiveness for two- and four-year institutions.

Hipolito Aguilar, principal analyst, LFC, reported the funding formula in its present condition is not aligned with many of the state's policy goals for higher education. Many issues were raised by institutions regarding inequities in the funding formula becoming exacerbated due to the decrease in funding revenues. LFC staff recommends establishing a three-year rolling average for calculating enrollment funding. Mr. Aguilar noted many LFC concerns were not addressed in the taskforce agenda; however, the taskforce has agreed to include them in their work plan.

The funding formula funds enrollment growth at full funding for every student credit hour. Comments made during funding taskforce meetings and the government restructuring taskforce noted it does not cost the same amount of money to educate an incremental student. Full funding and workload under the current formula is expected to cost $61 million for FY12 and does not account for the marginal cost of educating students. The $61 million in enrollment growth for FY12 accounts for almost 96 percent of the total workload growth.

Mr. Aguilar said the tuition revenue credit is generally applied at the same percentage to all institutions, causing a disproportionate hit to institutions with a higher tuition and causing a shift in general fund revenues from the four-year institutions to the two-year institutions. Mr. Aguilar addressed duplication and double-funding methods institutions use to expand enrollment.

Mr. Aguilar addressed tuition waivers and said they offer institutions an opportunity to attract high-quality students from out-of-state. Currently, the 14 tuition waivers cost more than $60 million annually and directly offsets general fund appropriations. It is expected the waiver amount will increase to $70 million due to a waiver expansion. LFC staff recommends the Legislature consider formally establishing a taskforce outside HED to develop a new funding formula.

Senator Sapien inquired about the bridge scholarship and the possibility of moving it to the end of a student's education. Mr. Porter said the taskforce has not addressed the issue. Ms. Florez added that discussions on the bridge scholarship were held at town hall meetings in relation to the HED master plan. Many students are unaware of other available financial opportunities. It was also suggested that HED work more collaboratively with high schools to assist students with scholarship applications.

Chairman Varela asked if there was consideration to change the mill levy rate from a 2 mills to 3 mills. Mr. Proter said the taskforce has not had discussions to change the mill levy rate.

In response to Vice Chairman Smith, Ms. Florez said the geographic rule regarding facility expansion has never been implemented; however, HED is recommending abiding by statutes and rules. Vice Chairman Smith recommended setting up a funding formula taskforce within the Legislature to develop a new funding formula if a consensus is not reached within the HED taskforce.

Higher Education Department (950). Viola Florez, secretary, Higher Education Department (HED), provided information on the department's achievements, including

- Creation of a master plan for higher education,
- Developing and implementing a strategic plan,
- Securing reauthorization from the Higher Education Advisory Board,

- Reorganizing the department,
- Managing $26 million in ARRA funding,
- Securing transfer of the federal "state-approving agency."

HED continues to develop a state master plan to meet the responsibilities of the statutory requirements. Other priorities include

- Serving as a resource and support system to institutions,
- Aligning the Education Trust Board budget with statutory requirements,
- Facilitating transition to the new administration.

Secretary Florez said the department is requesting a flat budget for FY12. Secretary Florez provided an overview of cost-saving measures within the department. Chairman Varela asked if the department was requesting an increase from the general fund. Tino Pestalozzi, deputy secretary, clarified a discrepancy in the agency request regarding an increase in the general fund amount. He noted that House Bill 2 substituted $2.3 million from the college affordability fund for general fund and the department is requesting $2.3 million in general fund to eliminate the substitution.

Senator Cisneros asked if the department has considered the duplication of effort for purchasing licensing for the online class program called IDEAL because the state is licensed on a statewide basis. Secretary Florez said the department is aware of the duplication and is working with institutions not currently part of the system to encourage them to join IDEAL.

Chairman Varela asked how the department interacts with the Public Education Department (PED) through its master plan. Secretary Florez said HED continues to work with PED on implementations of the P-20 (preschool through college) program, as well as other programs, such as high school redesign, transfers to two-year and four-year institutions, and the dual credit program. Chairman Varela expressed concern with the quality of teachers and the capacity to teach in any component of public education, remediation for high school students entering into college, and expanding education to include vocational education.

Outlook for Higher Education in New Mexico. Van Romero, vice president for research, New Mexico Tech, provided an overview of research and its important role in the future of higher education. The impact to a university is the reputation and ability to recruit faculty and students. Research plays an important economic impact in the state and the community, creating jobs and contributing to the local economy. The impact of research provides students with work opportunity, scholarships, and work experience. Research focuses on homeland security, security, energy, and water.

New Mexico Tech is part of the national domestic preparedness consortium training first responders to deal with weapons of mass destruction. New Mexico Tech has trained more people than any other institution for the federal Department of Homeland Security and federal Emergency Management Association, bringing 50 people a week into the program.

Mr. Romero provided an overview of projects supported by research and public service funding (RPSF). Twenty-five percent of the student body is employed by research. National studies show work-study has the most positive impact for student aid. Research has contributed over $20 million in scholarships since 2000. The average starting salary of graduates is the third highest of any western university. New Mexico Tech is ranked 15th in the nation for students earning undergraduate degrees and is the number one public institution for Ph.D. production per capita.

David Lepre, Council of University Presidents, reported the council will provide a report to the committee in December to address issues that have not been discussed in recent years, as well as describing institutional profiles, student profiles, and student success rates. Chairman Varela suggested including recommendations to reform higher education in the report.

Capital Outlay Quarterly Report. Linda Kehoe, principal analyst, presented the quarterly status report of outstanding capital outlay projects appropriated between 2007 and 2010. Since the July 2010 report, $766 million for 1,684 projects remain unexpended compared with $1 billion for 2,084 projects reported in July. Ms. Kehoe noted this is the first time since 2003 outstanding balances dropped below $1.3 billion. Balances do not include the $175.5 million general obligation bonds (GOB) pending ratification by the electorate in November. Outstanding funding includes 7 percent general fund, 70 percent severance tax bond, 21 percent GOB, and 2 percent other state funds. Within the last quarter, 400 projects totaling $264.3 million were either expended or reverted between June 2010 and September 2010. LFC staff is tracking $469.5 million of the unexpended $766 million for 223 projects. Of the million or greater projects, $81.5 million was expended or reverted in the last quarter.

Jeannae Leger, fiscal analyst, LFC, highlighted major projects for completion and full expenditure, as well as projects with significant activity and delays since the July 2010 quarterly report. Ms. Kehoe highlighted red flag projects with no activity.

Ms. Kehoe said October revenue projections indicate very limited funding for general fund capital outlay. According to the Board of Finance (BOF) preliminary estimates, approximately $267 million severance tax bond capacity, and approximately $146.3 million supplemental severance tax capacity strictly for public school construction is available for capital outlay.

Ms. Kehoe referred members to the outline of new initiatives and process for capital outlay projects implemented by DFA for state grants to local entities. Initiatives include changes in accounting practices, grant agreement language, and reporting requirements. According to the Local Government Division, initiatives will improve the management and accountability for both current and future appropriations for local projects. The local project tracking system will take effect on December 30, 2010, and will require all local entities receiving state funds to provide a monthly update to the current capital project monitoring system. State agencies will update projects on behalf of those entities that do not have access to the required technology. Ms. Kehoe noted LFC staff agrees with the process and benefits of the initiatives.

Chairman Varela asked if there were any capital outlay projects that could be considered for replacing or canceling severance tax bond and moving it to severance tax capacity. Ms. Kehoe said a list of those projects will be provided at the December LFC meeting.

Vice Chairman Smith suggested using available capital outlay funds for highways. Ms. Kehoe noted state agencies, public education, and higher education requested $1.5 billion in capital outlay projects.

With no further business, the committee adjourned at approximately 12:00 p.m.

L. "Lucky" Varela

Chairman

11/17/010

Date