

**MINUTES**  
**Legislative Finance Committee**  
**State Capitol, Room 322 - Santa Fe, NM 87501**  
**October 26 - 28, 2016**

**Wednesday, October 26<sup>th</sup>**

The following members and designees were present on Wednesday, October 26, 2016: Chairman John Arthur Smith; Vice Chairman Jimmie C. Hall; Senators Carroll H. Leavell, Mary Kay Papan, Stuart Ingle, James P. White, George K. Muñoz, and Pete Campos; and Representatives Larry A. Larrañaga, Luciano “Lucky” Varela, Nick L. Salazar, Jason C. Harper, George Dodge Jr., and Patricia A. Lundstrom. Guest legislator Representative Harry Garcia.

**Program Evaluation: Tax Gap, Audit and Compliance, and Fraud.** Jon Courtney, Ph.D., program evaluation manager for the Legislative Finance Committee (LFC), and Maria Griego, program evaluator, presented the report *Tax Gap, Audit and Compliance, and Fraud*. The tax gap is generally defined as money legitimately owed to the state but not paid. The Taxation and Revenue Department (TRD) is tasked with retrieving those tax dollars through the agency’s Audit and Compliance Division (ACD) and Tax Fraud Investigations Division (TFID). However, looking at the tax gap in the broadest view introduces tax policy areas where revenue leakages occur that are not directly under TRD’s control. These options cover what could be collected under statutory changes. For example, the state forgoes hundreds of millions of dollars annually to targeted exemptions, credits, and refunds. While these policies intend to promote economic development and other goals, unintended consequences can occur due to poor policy design. The Legislature recently closed loopholes for two of the more costly tax credits.

The evaluation assessed the effectiveness and efficiency of TRD efforts to reduce the tax gap and identified tax policy areas potentially contributing to lost revenues in a broader view of the tax gap. A TRD 2013 tax gap analysis estimated the gap just under \$600 million but the methodology, based on outside sources, boosts uncertainty in the absence of state-specific information. TRD’s projection of \$174 million that could be collected was overestimated and is likely nearer \$70 million. TRD’s methodology minimizes or excludes other contributors to the tax gap, such as the cash economy and policy issues dealing with gross receipts tax on internet and catalog sales.

The Legislature appropriated \$15 million from 2003 through 2009 in an aggressive effort to bolster ACD and TFID programs but more recent economic declines forced scaling funding back. Nevertheless, ACD collected \$1 billion over the last five years. Despite progress, a 36 percent increase in year-end delinquent accounts indicates a slowdown in collection effectiveness. ACD could benefit most from an overhaul of its call center, where over half of delinquent collections take place.

LFC staff recommended the Revenue Stabilization and Tax Policy interim committee consider assessing complex tax gap dynamics and make recommendations on pursuing tax gap dollars, as well as vet proposed tax policy legislation. LFC staff recommended the Legislature consider

formalizing a sunset review process for the state's tax expenditures (deductions, credits, exemptions, etc.), reversing budget cuts to high return-on-investment divisions, and implementing rigorous sunset reviews and periodic evaluations of tax policies. Lastly, LFC staff recommended TRD complete a state-based tax gap analysis, reassess staffing allocations, and adopt new compliance tools with legislative authorization.

Demesia Padilla, secretary of TRD, said despite significant budget and staff reductions, TRD set a record for assessments and had its second highest collections year in agency history in FY16. In addition to increasing assessments and collections, TRD has expanded its efforts on preventing personal income tax (PIT) refund fraud, so far stopping \$9.3 million in possible fraud. Secretary Padilla said TRD's return-on-investment metrics in summary has improved. Secretary Padilla agreed with the report about staffing issues in the call center and collections, pointing out that TRD requested a budget increase for FY16, and again for FY17, to address those issues.

Secretary Padilla said TRD appreciates LFC staff's hard work on the evaluation and enjoyed a good working relationship throughout the process. Secretary Padilla suggested LFC staff consider changing some evaluation processes to lessen what she feels is an intrusive, disruptive, and resource-intensive impact on agencies. Secretary Padilla suggested LFC staff more specifically define evaluation scopes and work with agency staff on process time frames. Secretary Padilla said LFC's report was incomplete because it did not make apparent the gains made in the number of assessments and collections in FY16, creating issues of fairness and confusion to readers. The secretary suggested other ways LFC's evaluation process and reports could be improved.

Secretary Padilla said the report did not provide empirical evidence that state-specific tax gap studies constitute basic requirements and best practices nor did it provide evidence the studies serve as useful tools in developing strategies for compliance initiatives or resource allocation.

Secretary Padilla said that while the evaluation reported on issues within the agency, it mostly revealed the larger issues outside TRD's control. Secretary Padilla said as the agency continues to make progress through its initiatives, a greater impact needs to come from policy changes that improve the overall system.

In response to Representative Larrañaga, Secretary Padilla said zipper software is difficult to detect. Secretary Padilla said certain policy changes would be more effective than legislation to make the software and other similar technology illegal to sell, purchase, install, transfer, or possess.

In response to Representative Larrañaga, Secretary Padilla said unlike most states, businesses in New Mexico are subject to gross receipts tax (GRT) collection. Mr. Courtney said new business owners are often unaware of GRT collection, leading to unintentional noncompliance. Representative Larrañaga said the states needs to work more with and educate its business community on New Mexico's tax policy.

Representative Harper said the Revenue Stabilization and Tax Policy Committee is currently working on proposing a tax package that would reform consumption tax and address the issues with internet sales.

Twenty recommendations were made in the report. Representative Lundstrom requested a summary of the three recommendations TRD disagreed with.

**New Mexico Finance Authority Budget Overview FY17 and FY18.** Robert Coalter, chief executive officer for the New Mexico Finance Authority (NMFA), provided an overview of the authority's board and mission. He said two of 11 positions on the board of directors are currently vacant. NMFA meets its mission of helping New Mexico's communities by providing access to capital through mission-based funding in three primary areas: infrastructure and capital equipment projects, water, and community facilities and economic development.

Mr. Coalter provided a brief overview of NMFA program funding. The public project revolving fund (PPRF) is NMFA's "flagship" program, providing low-cost financial assistance for capital equipment, building, and infrastructure projects. The local government planning fund provides upfront capital to allow for proper planning of vital water and wastewater projects. The colonias infrastructure project fund provides capital to infrastructure projects in designated colonia communities. The drinking water state revolving loan fund provides low-cost financial assistance for construction and improvements to drinking water facilities. The water project fund provides grant money and low-cost loans for five types of water projects: water storage, conveyance, and delivery projects; water conservation; watershed restoration; flood prevention; and endangered species protection. The acequia project fund provides grant money for planning projects recommended by the Water Trust Board as authorized by the Legislature. Approximately \$25 thousand is currently available for new acequia projects. The primary care capital fund is administered by NMFA and the Department of Health, providing funding to nonprofit primary care clinics in rural and medically underserved communities for purchasing land and equipment and building finances. Similarly, the behavioral health capital fund is administered by NMFA and the Human Services Department, providing funding to small nonprofit behavioral health clinics in rural and medically underserved communities. NMFA and the New Mexico Community Capital (NMCCAP) together established Finance New Mexico, LLC, a community development entity investing in federally designated low income communities through new markets tax credits. Lastly, composed of both state and federal dollars, the economic revolving fund finances NMFA's Smart Money initiative and the Collateral Support Participation program.

Oscar Rodriguez, chief financial officer for NMFA, said the authority closed 186 projects totaling \$326.7 million in FY16, of which \$236.9 million for 67 projects were funded from PPRF. NMFA's operating budget for FY17 is \$8.8 million, a 3.7 percent decrease from FY16's operating budget. Mr. Rodriguez said two new positions have increased operating expenses for personnel services by one percent.

In response to Representative Hall, Marquita Russel, chief of programs for NMFA, said the authority's credit quality is at its strongest. NMFA has increased staffing in its private lending programs thereby improving compliance. Ms. Russel said NMFA's internal credit review process and board review process has improved performance in its public project programs.

In response to Representative Lundstrom, Mr. Coalter said NMFA is maintaining high ratings because of its reserves.

**State Fair Commission (460).** Dan Mourning, general manager of the New Mexico State Fair, said since LFC's review in 2011, numerous improvements have been made by the agency. New Mexico's state fair attendance and revenue has increased. Advance purchase ticket sales have increased by partnering with Groupon and Walgreens. Advertising has also increased through various media partners. The State Fair contracted with Reihoffer Shows two years ago; carnival revenues have since increased by 33 percent. Mr. Mourning said the State Fair rodeo and concert series has evolved, attracting new fans and reviving attendance.

A recent public survey on New Mexico's state fair indicates strong customer satisfaction. Mr. Mourning said New Mexico ranks ninth best in the nation for fairs and festivals based on the value of entertainment per dollar spent. Mr. Mourning said New Mexico's state fair is clean and safe.

Mr. Mourning talked about community outreach. In 2016, the State Fair provided free flu shots for 1,500 attendees and provided free admission for thousands of public servants on honored guest days. Over 12 thousand students, parents and teachers were admitted free for the "school days" experience. Twelve people became U.S. citizens on Hispanic Heritage Day at the fair. A Taxation and Revenue Department booth at the fair searched 582 names resulting in the identification of over \$34 thousand in unclaimed properties to taxpayers. Also during the 2016 fair, 50 sick kids interacted with professional cowboys and the fair queen during their visit to local hospitals.

Over 2 million people visit the state fair grounds for other events happening year-round. The Gathering of Nations Pow Wow will be hosted at the state fair grounds for the next eight years. Mr. Mourning said the State Fair is finding creative ways to generate revenue such as using its facilities for movie making and recently hosting a haunted house recognized by Guinness World Records.

Concluding, Mr. Mourning talked about future considerations. The number of state fair days has decreased to 11 days, which Mr. Mourning said maximizes revenue and decreases operating expenses. The State Fair is in the process of contracting a company to conduct a facility condition assessment on its facilities. Mr. Mourning said the assessment will help the agency determine future infrastructure needs. A feasibility study is being conducted for a state of the art events center.

In response to Representative Harper, Mr. Mourning said while Tingley Coliseum is still a viable venue, the feasibility study will likely reveal that a much larger event center is needed for the state.

In response to Representative Varela, Mr. Mourning said the State Fair is working with the Department of Finance and Administration and General Services Department on resolving its insurance premium debt.

**Strategies for Stabilizing General Fund Revenue and Reserves.** Dan White, senior economist for Moodys Analytics, said the U.S. economy is largely impacted by state and local governments. The U.S. job market is still missing 400 thousand state and local government jobs

lost after the Great Recession, putting a drag on overall job growth even though other job industries have rebounded. Historically, state and local government job loss rebounded more quickly following a recession; however, the current lag is a result of state budget difficulties. Tax revenue as a share of gross domestic product (GDP) is increasingly becoming volatile, putting pressure on state budgets. Mr. White said the amount of revenue volatility in a state depends on its tax structure. States with progressive personal income taxes had much greater volatility in their tax revenues during the Great Recession.

Mr. White said recessions affect revenues and spending. A graph in the presentation compared the percent of change in government social benefit payments with state tax revenues during the great recession; government social benefit payments spiked early on while state tax revenues remained somewhat steady before sharply declining almost 12 months later. The Great Recession began December 2007 but revenue declines were not realized until almost a year later. The spike in social benefit payments was the first indicator the nation was heading into a recession but was missed by most.

Mr. White said prior to the Great Recession, most states had 5 percent in reserves, which was not enough for states to cover the major increase in Medicaid and unemployment benefit spending during the great recession. Mr. White said many initial state budget cuts and tax increases following the start of the recession were implemented to cover the increase in social benefit spending, not the decline in tax revenues. Mr. White said state's reserves should be sufficient to cover both declining revenue and social benefit spending.

About 18 percent of a state's budget in 1968 was spent on Medicaid. States today are spending about 35 percent of their budget on Medicaid. Mr. White said Medicaid spending will increase to 45 percent of a state's budget in 10 years and will continue to increase 7 percent every year thereafter in perpetuity unless the federal government intervenes to make Medicaid a sustainable program.

State tax revenues are continuing to decline nationally. Mr. White said prices are significantly impacting sales tax returns. Mr. White said the housing market is also impacting revenues. Despite declining revenues, the U.S. economy is in its seventh year of a business cycle expansion, the fourth longest period of expansion in U.S. history. Mr. White said there is only a 20 percent chance of a recession occurring in the next six months; still, states need to be prepared for the next recession when it does happen. Mr. White said building a purposeful rainy day fund is the most important thing a state can do to protect itself during the next recession. Some models suggest the average state should have 8.5 percent in reserves to weather the impact of a moderate recession lasting one year. The amount of sufficient reserves varies based on the volatility of the state's revenue structure; some states may need more reserves, others not as much. Mr. White pointed out that recessions can last up to four years.

Representative Larrañaga expressed concern for building reserves sufficient to support New Mexico's high Medicaid spending during the next recession. Mr. White said New Mexico needs to stress-test state and local reserves to be able to determine what reserves should be and develop a plan to build the reserves without interrupting the economy. Mr. White said New Mexico needs

to find a way to work with the volatility in its revenues while at the same time decreasing that volatility.

In response to Representative Larrañaga, Mr. White said establishing rules on the use of reserves is a best practice among states nationwide and is looked at by rating agencies.

Chairman Smith asked LFC staff to provide the committee a copy of a Pew Research Center article that discussed state reserves.

In response to Senator Muñoz, Mr. White said the Federal Reserve requires banks to stress-test a downturn in a foreign market scenario. It would benefit states to stress-test the same scenario. The impact from a foreign market downturn would depend on a state's level of involvement in the market.

Chairman Smith said there is an urgency for the executive and legislative body to work together to rebuild reserves. Chairman Smith said changes are necessary to address the many challenges New Mexico faces. Chairman Smith said policy makers need to find ways to decrease the state's dependency on oil and gas revenues.

**Medicaid and TANF: Preview of FY18 Appropriation Request.** Brent Earnest, secretary of the Human Services Department (HSD), first provided a brief overview of total budget projections for FY18. Current projections indicate funding needs totaling \$7.35 billion for FY18, of which \$1.15 billion is state general fund need, an 11.4 percent increase from FY17's general fund appropriation. HSD will present its budget request during LFC's December hearing.

Secretary Earnest reported on the state's Medicaid program. Enrollment continues to grow but at a slower rate. Medicaid's adult population experienced the most growth since the start of Centennial Care. Medicaid enrollment totaled 888,540 individuals as of September 2016. Cost trends in Centennial Care are significantly lower than regional and national healthcare inflation. According to the latest HSD dashboard, Medicaid enrollment increased by 10 percent the last 12 months but per capita cost decreased to negative 1 percent. Secretary Earnest attributed the decrease in per capita cost to a decline in inpatient spending.

Total Medicaid program spending is projected to be \$6.14 billion in FY18. HSD estimates state general fund need to be \$1.03 billion, a \$120 million increase from FY17's general fund appropriation. However, general fund need may not be as high as currently projected due to recently updated federal medical assistance percentage (FMAP) rates; New Mexico's rate increased by almost 1 percent. HSD's cost-containment efforts for Medicaid may also lower general fund need. HSD's Medicaid budget request will be presented during LFC's hearing in December. Secretary Earnest said the request will consider various federal rule changes, rising medical insurance pool assessments, and healthcare inflation.

Secretary Earnest updated the committee on Medicaid cost-containment efforts. Three subcommittees, created in 2015 by HSD, have completed their work on evaluating cost-containment strategies and have made their recommendations on ways to reduce Medicaid spending. HSD has implemented provider rate reductions recommended by the Provider

Payment Subcommittee, reducing Medicaid spending by \$122 million. The Benefit and Cost Sharing Subcommittee recommended no changes. Recommendations made by the Long-term Leveraging Subcommittee include working with the New Mexico Medical Insurance Pool to establish a firm deadline to transition remaining members and working with the Association of Counties to leverage federal dollars. Regarding other cost-containment initiatives, HSD plans to submit a draft state plan amendment to the Centers for Medicare and Medicaid (CMS) and for public input to implement certain copayments.

Secretary Earnest said Centennial Care is achieving what it was set out to do: create a single comprehensive system of care, encourage members to be active participants in their health care, implement payment reforms to achieve better outcomes, and create a coordinated delivery system. Secretary Earnest detailed Centennial Care successes.

Behavioral health spending has increased. HSD projects a state general fund need for behavioral health of \$152.4 million for FY18, a 6.42 percent increase from FY17's general fund appropriation. Behavioral health performance measures indicate increased satisfaction with services provided. More youth on probation are being served. Follow-up services after discharge have improved. The number of persons served through Telehealth in rural and frontier counties has increased.

Secretary Earnest lastly reported on HSD's Income Support Division. Federal funding for ISD services will increase by \$25.5 million in FY18, primarily due to increased Supplemental Nutrition Assistance Program (SNAP) cases. The Temporary Assistance for Needy Families (TANF) appropriation request for FY18 totals \$139.6 million. State general fund need is expected to remain flat for FY18. A chart in the presentation showed steady TANF participation for New Mexico while the national trend continues to drop. New Mexico's work participation rate has increased to 54 percent, above the national average. ISD is working to help TANF recipients prepare for and find employment. Approximately 10.7 million in TANF funds is expected to carry over into FY18, a significant reduction compared with carryover balances from previous years, which Secretary Earnest said may pose an issue for services provided in FY19.

In response to Representative Lundstrom, Secretary Earnest said providers are subject to pay gross receipts tax (GRT). Representative Lundstrom asked HSD to provide the committee evidence that GRT is being paid.

Representative Lundstrom asked HSD to provide the committee a final draft of its Behavioral Health Performance Report. Representative Lundstrom also asked HSD to provide the committee information on how the administrative services functions are now being administered after transitioning from OptumHealth.

**Tourniquet Kits for New Mexico's Law Enforcement.** Mark Shea, undersheriff for the Valencia County Sheriff's Office, made a short presentation on providing tourniquet and trauma kits to New Mexico's law enforcement officers. Tourniquets can stop bleeding before emergency medical services arrive, increasing the odds of saving a person's life. Undersheriff Shea said the kits are especially critical for New Mexico's rural areas. For example, Catron County is 7 thousand square miles and has only five deputies. Robin Hopkins, a retired deputy from

Bernalillo County Sheriff's Department, shared with the committee her experience about how a tourniquet helped save her life after being shot in 2015. Many law enforcement agencies do not have the resources to purchase the kits. Undersheriff Shea suggested reverting funds from the law enforcement protection fund be used to purchase a tourniquet and trauma kits for every law enforcement officer in the state. By using the reverting dollars, the program would continue to be funded, ensuring new officers will be provided the kits.

In response to Representative Lundstrom, Undersheriff Shea said the kits range in price. The committee was shown a tourniquet used by the United States military. Less quality tourniquets may snap when pressure is applied. Undersheriff Shea said the program would also include training on how to properly use the kits.

In response to Chairman Smith, Undersheriff Shea said it is currently being determined which law enforcement agencies are already providing the kits.

### **Miscellaneous Business.**

#### **Action Items.**

Representative Hall moved to adopt the September 2016 meeting minutes, seconded by Senator Leavell. The motion carried.

**Review of Monthly Financial Reports and Information Items.** David Abbey, director of LFC, briefed the committee on information items. Charles Sallee, deputy director of LFC, updated the committee on the status of program evaluation projects in progress. Mr. Sallee asked committee members for their feedback on potential projects for the future.

### **Thursday, October 27<sup>th</sup>**

The following members and designees were present on Thursday, October 27, 2016: Chairman John Arthur Smith; Vice Chairman Jimmie C. Hall; Senators Carlos R. Cisneros, Carroll H. Leavell, Stuart Ingle, James P. White, Howie C. Morales, George K. Muñoz, and Pete Campos; and Representatives Larry A. Larrañaga, Luciano "Lucky" Varela, Nick L. Salazar, Paul C. Bandy, Conrad James, Jim R. Trujillo, and Patricia A. Lundstrom. Guest legislator Senator Mary Kay Papen.

### **Program Evaluation: Procurement – Obtaining Value in State Procurement and Issues with Non-Competitive Procurement Methods.**

Jon Courtney, Ph.D., program evaluation manager for LFC, and Travis McIntyre, program evaluator, presented the report *Procurement – Obtaining Value in State Procurement and Issues with Non-Competitive Procurement Methods*. Up to \$13 billion of the \$18 billion state budget is spent on the procurement of goods and services. The purpose of the evaluation was to assess agency purchasing practices and results of state contracts for goods and services. The report finds procurement is done through a decentralized system encouraging noncompetitive methods. Room for improvement exists through additional procurement reform regarding contract management, the role of chief procurement officers (CPOs), and more standardization and centralization.

The state procurement process has redundancies and differing methods among agencies. For procurement subject to oversight, agencies submit their procurement vehicle to one of three



agencies [Department of Finance and Administration (DFA), General Services Department (GSD), or Department of Information Technology (DoIT)]. These agencies then route procurement vehicles among themselves, creating a circuitous process. Additionally, the three agencies overseeing procurement have different practices for contract requirements. For example, emergency procurements need only two signatures, including the agency chief procurement officer (CPO) whereas IT professional services contracts require nine signatures, excluding the CPO. The results of this structure and process are a lack of oversight for procurement and long timelines for state agencies, potentially encouraging additional noncompetitive procurement.

Noncompetitive procurement is overused, resulting in the potential for higher costs to state agencies. Sole source contracts, emergency procurements, contract amendments, Procurement Code exemptions, small purchase abuse, and receiving services without a valid contract in place are all examples of noncompetitive procurement. Best practices and guidelines from the governor's office encourage competitive procurement to obtain best value. LFC staff found examples of improper use of sole source and emergency contracting, cases where contracts were amended for more than five times the original value, and billions of dollars in spending determined to be exempt from the Procurement Code by state agencies, along with multiple procurement violations exceeding \$100 thousand.

Procurement reform in New Mexico has had partial success but there is still room for improvement, particularly in contract management and other best practices. Accomplishments of the task force on procurement reform include requirements that a chief procurement officer be designated for each state agency and local body and the development of a best value procurement guide. However, guidance and practice for CPOs need improvement. For example, the role of CPOs are not well defined in law, rule, or other guidance. Many contract management best practices are not followed in New Mexico leading to lost value. Potential cost savings in competitive procurements due to issues with contract management were found for professional services contracts and price agreements.

In response to Senator Cisneros, Mr. Courtney said reports from the Office of the State Auditor provided much information on agency procurements, including violations, during the analysis. While many procurement violations are reported by the state auditor, they are often not on GSD's radar and therefore not dealt with. LFC staff recommend agencies be mandated to self report procurement violations to GSD.

In response to Senator Morales, Mr. Courtney said there are 40 exemptions in the Procurement Code, some applying more to some agencies than others. For example, the Children, Youth and Families Department prekindergarten contracts are exempt from the Procurement Code. Mr. Courtney said the New Mexico's judicial branch and legislative branch are excluded from central oversight but still subject to the Procurement Code. Charter schools are also excluded. Mr. Courtney said LFC's 2015 review of charter schools found several procurement violations made by charter schools. The report listed other exclusions.

In response to Representative Trujillo, Mr. Courtney said not all potential procurement violations found in agency annual audits are reported to GSD. Some procurement violations are not found

by the auditors. There are some instances when GSD does not agree with an audit's finding of a potential procurement violation. Mr. Courtney said increased coordination amongst agencies would help close loops in the system.

The committee then divided into two subcommittees to be briefed on agency budget requests. Reports on the subcommittee hearings are located on LFC's website.

### **Friday, October 28<sup>th</sup>**

The following members and designees were present on Friday, October 28, 2016: Chairman John Arthur Smith; Vice Chairman Jimmie C. Hall; Senators Carlos R. Cisneros, Carroll H. Leavell, James P. White, Howie C. Morales, Mary Kay Papen, and Pete Campos; and Representatives Larry A. Larrañaga, Luciano "Lucky" Varela, Nick L. Salazar, Paul C. Bandy, Jason C. Harper, Jim R. Trujillo, and Patricia A. Lundstrom.

**Program Evaluation: Cost, Quality, and Financial Performance of Nursing Homes in New Mexico.** Brian Hoffmeister and Madelyn Serna Mármol, Ed.D., both program evaluators, presented the report *Cost, Quality, and Financial Performance of Nursing Homes in New Mexico*. By 2030 New Mexico will move from 16th in the nation to fourth in the percentage of people aged 65 or older, according to U.S. Census projections. As the population ages, more people are faced with the prospect of moving either themselves or a family member into a nursing home, underscoring the need to monitor the cost and quality of nursing homes in New Mexico. The number of individuals living in New Mexico nursing homes declined by 12 percent over the last five years as options for home and community-based care have expanded under Centennial Care. As such, nursing homes are caring for residents who are gradually becoming more dependent on others for activities of daily living, leading to higher costs of care. This has considerable implications in New Mexico, where 64 percent of nursing home residents rely on Medicaid to pay for their care.

The evaluation found that Medicaid and other patient revenues are not keeping up with the rising cost of care in nursing homes. Despite roughly \$49 million in additional funding for long-term services rate increases since FY13, Medicaid covers a decreasing percentage of daily nursing home costs, and nursing homes in New Mexico lost an average of 2 percent of patient revenues in 2015. Additionally, the state can improve payment and resident screening methodologies to more accurately reflect patient needs and predict costs.

Care and staffing issues affect the overall quality of nursing homes. Issues with quality of care are the most common source of deficiencies in New Mexico nursing facilities, and the state has seen declines in several key nursing home quality measures in recent years. New Mexico nursing homes were assessed \$461 thousand in civil monetary penalties due to health or safety violations in 2015. Additionally, nursing homes in New Mexico provide fewer overall staffing hours per resident than the nation and its neighboring states.

This report recommended the Human Services Department (HSD) consider pursuing a reimbursement system for nursing homes that considers additional categories of patient acuity, as well as provider quality and performance. The report also recommended the Department of Health (DOH) work with LFC and the Department of Finance and Administration (DFA) to

create Accountability in Government Act performance measures to track nursing home quality outcomes.

Charles Sallee, deputy director of LFC, said the Aging and Long-Term Services Department (ALTSD) provided LFC staff information on the ombudsman program. LFC staff also engaged DOH during the evaluation. Both agencies were not present for the hearing and declined to provide a response to the report's findings and recommendations, though, DOH did provide LFC staff few informal comments. Chairman Smith said he will send a letter on behalf of the committee to ALTSD and DOH expressing disappointment for their absence during the hearing. The report did contain a formal response from HSD.

In response to Senator White, Mr. Hoffmeister said 86 percent of New Mexico's nursing homes accept both Medicaid and Medicare. Brent Earnest, secretary of HSD, said there are two criteria in determining Medicaid eligibility for receiving long-term services and nursing home supports. Representative Larrañaga commented on the need to improve net profit for nursing homes so they stay in business, improve performance, and encourage competition that improves the overall system. The decreasing number of people entering nursing homes is posing a significant financial challenge for nursing homes, largely attributable to the array of new options made available to New Mexico's aging population; people are now able to "age-in-place" or age in a less restrictive environment, which Mr. Sallee pointed out costs less than a person in a nursing home. Mr. Sallee said New Mexico is a national leader in the options it offers to its aging community. Mr. Sallee said, for some, a nursing home provides the best option, which is why it is important the state works to address the issues for its nursing homes because they will continue to be a critical part of the system.

In response to Senator Leavell, Mr. Hoffmeister said Medicare typically pays more than Medicaid, which Mr. Sallee said is because Medicare covers higher acuity services than Medicaid.

In response to Representative Trujillo, Mr. Hoffmeister said DOH regulates assisted living facilities.

**Retirement Funds Actuarial Reports.** Jan Goodwin, director of the Educational Retirement Board (ERB), reported the latest actuarial valuation on ERB's pension fund. As of June 30, 2016, the actuarial funded ratio increased from 63.7 percent to 64.2 percent. The unfunded actuarial accrued liability (UAAL) increased from \$6.5 billion to \$6.6 billion. The normal cost rate increased from 12.9 percent of pay to 13 percent of pay. The funding period increased from 43.2 years to 45 years. ERB expects the normal cost rate will decrease due to the sustainability legislation passed in 2013 and the longer service requirement enacted in 2009.

Director Goodwin said FY16 was a challenging year for investments. The return on fair market value of assets was 2.6 percent after fees, an increase from FY15. The return on the actuarial value of assets was 6.6 percent, a decrease from 9.7 percent in FY15. Experience gains totaled \$193 million, which includes \$138 million gain due to the actual cost-of-living adjustment (COLA) less than the 2 percent assumed. Most retirees in 2016 received a COLA of 0.08 percent. COLAs are based on the consumer price index (CPI) for urban workers.

ERB's actuarial valuation included changes of assumptions adopted by the board in June 2016.

Reporting on membership, Director Goodwin said active membership decreased by 1.5 percent, though there was a slight increase in total payroll. Retiree membership increased by 4 percent. The average annual benefit is \$21,976. The active member to retiree ratio is 1 to 3. Ten years ago, the ratio was 2 to 2.

Though ERB's actuarial return was below the target for FY16, director Goodwin said ERB's long-term performance target was achieved; the 30-year return is 8.4 percent. ERB's net external cash flow was negative \$329 million, or negative 2.9 percent of market value of assets at end of year, which Director Goodwin said is reflective of a typical mature pension plan.

A chart in the presentation showed the volatility of fair market value versus smooth asset value. Despite the differences in volatility, both values most often coincide.

A portion of employer contribution is being used to decrease the UAAL. Employer contributions would need to be 17.32 percent to achieve 100 percent funded ratio in 26 years; the contribution rate is currently 13.9 percent.

Concluding, Director Goodwin said ERB places significant emphasis on actuarial matters. The board has taken action based on the reports, including proposing the long-term sustainability legislation passed in 2013.

Wayne Propst, executive director of the Public Employees Retirement Association (PERA), said 31 pension plans are administered by PERA. The public employee plan, PERA's largest plan, has almost 49 thousand active members. The deferred compensation plan, PERA's second largest plan, has over 19 thousand active members. Currently almost 39 thousand members are receiving benefits; over \$1 billion in retirement benefits were paid in FY16.

PERA's FY16 actuarial valuation was based on a new investment rate-of-return (7.25 percent) adopted by the board in July 2016. The actuarial valuation was also based on a 0.49 percent actual return (net of fees). The public employee plan's funded ratio increased from 74.9 percent in FY15 to 75.3 percent in FY16. The UAAL increased by \$156.6 primarily due to lower than expected salary increases. The UAAL is expected to amortize fully in 56 years. Director Propst noted improvements in payroll reporting affected FY16's valuations. A chart in the presentation reported the valuation results for PERA's other plans.

The average annual PERA pension in FY16 was almost \$30 thousand and the average age of a retiree was 59. Mr. Propst listed the average annual pension and average age of retiree for each plan. The average annual pension for retired state police officers and correctional officers was \$31 thousand. The average annual pension for retired municipal police officers was \$44 thousand.

As of June 30, 2016, the PERA fund balance was approximately \$14.1 billion. PERA's Smart Save balance was \$501 million.

In response to Representative Bandy, Director Propst said, prior to the 2016 special legislative session, approximately \$200 thousand a month from oil and gas distribution was contributed to

the legislative plan; new legislation has reduced the contribution to \$75 thousand a month. Legislative plan members contribute \$600 annually.

In response to Representative Hall, Director Propst said all PERA's plans are accounted for separately.

Chairman Smith asked about the progress of recommendations made for the state's pension plans in 2010 by an independent consulting firm. Director Goodwin said most of the recommendations were implemented, except moving hiring oversight from the State Personnel Office to each agency and removing legislative involvement from the state budget process. Mr. Propst said he would look into the 2010 review and follow-up on the status of recommendations made for PERA's plans. Chairman Smith asked that LFC staff follow-up as well.

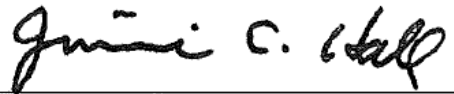
Chairman Smith then asked ERB and PERA to follow-up on a recent determination made by the Department of Finance and Administration about possibly shoring up shortfalls in the state's retirement plans with land grant permanent funds to satisfy governmental accounting standards.

With no further business, the meeting adjourned at 11:00 a.m.



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John Arthur Smith, Chairman



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Jimmie C. Hall, Vice Chairman

Senator John Arthur Smith  
Chairman

Senator Sue Wilson Beffort  
Senator Pete Campos  
Senator Carlos R. Cisneros  
Senator Carroll H. Leavell  
Senator Howie C. Morales  
Senator George K. Munoz  
Senator Steven P. Neville

*State of New Mexico*  
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Representative George Dodge, Jr.  
Representative Jason C. Harper  
Representative Larry A. Larrañaga  
Representative Patricia A. Lundstrom  
Representative Nick L. Salazar  
Representative Luciano "Lucky" Varela

October 27, 2016

**MEMORANDUM**

**TO:** House Appropriations and Finance Committee

**FROM:** Subcommittee A  
Senator Carlos R. Cisneros, Chair *CRC*  
Senator Carroll H. Leavell  
Senator George K. Munoz  
Senator Steven P. Neville  
Senator John Arthur Smith  
Representative Jimmie C. Hall  
Representative Paul C. Bandy, Vice-Chair  
Representative Patricia A. Lundstrom  
Representative Nick L. Salazar

**SUBJECT:** Subcommittee A

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Subcommittee A met on October 27, 2016 and recessed for a one hour lunch.

**(205) Supreme Court Law Library.** Lynn Rhys, head librarian, presented the budget request, which was flat with FY17 before the 2016 special legislative session solvency adjustments. The library is fully staffed, but the recent reclassification of a library technician to a financial specialist has not only driven up costs but driven up work load for the single library technician, so Ms. Rhys told the committee that future funding for a new FTE will be needed. The subcommittee moved to receive the staff recommendation, and it was unanimously approved.

**(208) NM Compilation Commission.** Brenda Castello, director of the commission, presented the budget request, a 0.2 percent increase, to fully fund an administrative position. Ms. Castello stated the agency made it through the recession without the need for general fund, but reminded the committee that civil filing fees, a large portion of the revenue, are going down and with across the board cuts in agencies, subscription revenues will also likely decrease. The agency is expecting at least \$35 thousand in lost subscription revenue in the current fiscal year. The subcommittee moved to receive the staff recommendation, and it was unanimously approved.

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(210) **Judicial Standards Commission.** Randal Roybal, director, presented the budget request, a 2.2 percent increase over the FY17 operating budget before the state's solvency adjustment. The increase was for commissioner training, because the commission consists of mostly lay people appointed by the governor, who have little knowledge of legal proceedings. The subcommittee moved to receive the staff recommendation, and it was unanimously approved.

(215) **Court of Appeals.** Judge Linda Vanzi presented the court's budget request as future chief judge of the Court of Appeals. The request was an increase of 2.6 percent over the unadjusted operating budget to fill vacancies the court has sustained for years, which are causing poor performance results. Judge Vanzi reported the court is likely to furlough employees in the current fiscal year to reach the reduced operating budget. The subcommittee moved to receive the staff recommendation, and it was unanimously approved.

(216) **Supreme Court.** Chief Justice Daniels presented the request for the Supreme Court, beginning with an overview of the judicial unified budget to give context. The three unified budget priorities were adequate base budgets, a job re-measurement initiative for court clerks, and IT funding. Representative Bandy asked about the court's view of fiscal consequences when ruling on issues and Justice Daniels answered that decisions do not focus on cost or politics, but on constitutional meaning and sometimes court rulings will be costly. Senator Leavell asked if the judiciary would face layoffs or furloughs and Justice Daniels indicated concerns in this regard. Senator White asked if any savings had been realized from automating case filings and the Justice Daniels said there have been savings but flat budgets have absorbed them. Senator Munoz asked why magistrate courts close early and cannot get started on time. Justice Daniels reported the court has authorized magistrates to shut down early for staff catch up time. Chairman Cisneros asked about Court Appointed Attorney (CAA) funding; Justice Daniels stated the judiciary could reach a point where CAAs are unable to take cases as experienced by the Public Defender Department and District Attorney's Office in the fifth judicial district. The subcommittee moved to receive the staff recommendation, and it was unanimously approved.

(219) **Supreme Court Building Commission.** Joey Moya, Supreme Court building manager, presented the request which was 5.4 percent above the unadjusted operating budget to fully fund all filled positions. Chairman Cisneros asked about the stucco and asbestos removal project and Mr. Moya reported the project is complete except for two interior courtyards for which funding was insufficient due to realizing too late that the project would include asbestos removal. The subcommittee moved to receive the staff recommendation, and it was unanimously approved.

(308) **State Auditor.** Tim Keller, State Auditor, presented a request for \$3.5 million, a \$79 thousand increase from the FY17 adjusted operating budget. The increase is due to the reduced general fund allocation adjusted during the special session. Auditor Keller expressed his concern with depleting fund balances and the ability of the office to operate at current levels in the near future. The auditor explained that the reduced support smaller agencies, such as the acequia and ditch programs, will get to perform audits in the coming years will impact the office's ability to generate additional revenue. The committee asked for more explanation on services provided by the office for small government entities. In response, the auditor explained the three tiers of the

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audit rule separating entities that have revenues and expenditures or neither. The subcommittee moved to receive the staff recommendation, and it was unanimously approved.

**(352) Educational Retirement Board.** Jan Goodwin, director, presented the FY18 request. The agency requested \$31.9 million which was an increase of 4 percent from the FY17 operating budget to reach full staffing levels, pay investment-related fees for projected growth in assets under management, and cover increases for office leases and information technology-related expenses including security and disaster recovery which have been delayed due to the lengthy time it takes contracts to move through various channels of government. Ms. Goodwin commented that 30 percent of the total portfolio is now managed in-house and as of September the fund is up 3.7 percent which translates to returns of 10.3 percent the past year. The subcommittee moved to receive the staff recommendation, and it was unanimously approved.

**(354) New Mexico Sentencing Commission.** Linda Freeman, director, presented a request of 5.5 percent over the FY17 adjusted budget and described the creation of a data warehouse and repository at the commission. Senator White commended the agency for its work. The subcommittee moved to receive the staff recommendation, and it was unanimously approved.

**(366) Public Employees Retirement Association.** Wayne Propst, director, presented the FY18 request. Anne Hanika-Ortiz, LFC analyst, began the discussion by highlighting two key issues. First, according to the Government Finance Officers Association, defined benefit plan sponsors should make efforts to ensure that boards represent all interests. Ms. Hanika-Ortiz continued by saying all PERA board members derive a benefit from participation in PERA and adding two governor-appointed public members with financial expertise that do not derive a benefit from being a PERA member may add value. Secondly, the board continues to accompany investment staff on out-of-state manager site visits and the board should be less involved with manager selection. Mr. Propst said the agency requested \$37.7 million which was a 12 percent decrease from the FY17 operating budget to cover payroll, manager fees under lower projections for growth in assets under management, and expenses related to creating schedules of participating employer allocations and pension amounts under new accounting standards. Mr. Propst also requested \$71.3 thousand from the general fund for social security administration because PERA believes the trust fund cannot be used for this purpose. The board lowered the actuarial return assumption to 7.25 percent for ten years then it increases to 7.75 percent. Jon Gabel, chief investment officer, said a new asset allocation is being implemented to reduce risk and volatility and be better positioned and returns as of the first quarter of FY17 are 3.7 percent. The subcommittee moved to receive the staff recommendation, and it was unanimously approved.

**(369) State Commission of Public Records.** Melissa Salazar, deputy state records administrator, presented the budget request for the Commission of Public Records in the State Records and Archives. The commission requested a general fund budget of \$2.6 million which is a flat budget when compared with the original FY17 operating budget which has since been reduced 5.5 percent due to special session solvency measures. The total request was \$2.8 million and included \$218 thousand in other state funds from the sale of goods and services and fund balance to offset less general fund revenue. The agency is eliminating 5 FTE and funding for the New Mexico History Scholars Program. Ms. Salazar detailed the request in the other cost



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category which included property insurance, DoIT rates, and lease costs. Ms. Salazar concluded by saying that the agency may BAR for \$80 thousand if it is successful with a grant proposal to the National Historical Publications and Records Commission for a two year period. The subcommittee moved to receive the staff recommendation, and it was unanimously approved.

**(378) State Personnel Office.** Justin Najaka, executive director, presented the agency's budget request for the State Personnel Office (SPO). Director Najaka stressed most of SPO's budget is in personal services and employee benefits; SPO has reduced its FTE by 17.5 percent. Director Najaka reported the non-general fund revenues in the budget are generated from shared service agreements between state agencies and SPO, and requested SPO be given additional budget increase authority to add revenue generated from these agreements. Director Najaka indicated SPO's enterprise content management record digitization IT project has begun implementation with its contractor, Lexmark. Director Najaka reported in FY17 SPO conducted 104 trainings, posted 4,934 job notices, received 187,605 job applications, and had 38 personnel action appeals pending. Senator Cisneros asked about the agency's declining performance going from 64 days to 70 days to fill a position. Director Najaka replied the agency was also concerned with this decline and is happy to report the number of days to fill a position was back down to 64 in the first quarter of FY17, but SPO continues to work with agencies to improve the time from when hiring lists go to supervisors to when an offer is made to a candidate, as this period is when the biggest hiring delays occur. Director Najaka noted the Rapid Hire Program can be used at job fairs to hire on the spot hard-to-fill positions such as social workers and nurses. The subcommittee moved to receive the staff recommendation, and it was unanimously approved.

**(377) State Investment Council.** Steve Moise, chief investment officer, presented a budget request for \$56.3 million, a \$289 thousand decrease from the FY17 operating budget. The decrease was largely related to lower projected asset values through the end of FY18, reducing the need for associated asset management fees. Chief financial officer Brent Shipp stated that funding for SIC comes from the land grant and severance tax permanent funds, and any unused appropriations revert to the permanent funds rather than the general fund. In FY16, about 20 percent of SIC's budget reverted to the permanent funds, and SIC expects about 15 percent to revert in FY17. Senator Munoz asked for clarification on the funding source for SIC's contractual services, to which Brent Shipp responded that all SIC funding is non-general fund and added that contractual services make up about 77 percent of the SIC's budget. Senator White asked about current vacancies in the agency, noting that as a non-general fund agency they should not experience the same hiring pressures general fund agencies have experienced. Mr. Shipp responded that out of seven current vacancies SIC is actively recruiting; he expects five positions to be filled in the next few months. Mr. Moise added that going through the State Personnel Office for hires makes the process more difficult. The subcommittee moved to receive the staff recommendation, and it was unanimously approved.

**(385) Mortgage Finance Authority.** Director Jay Czar provided an overview of the Mortgage Finance Authority (MFA) to the committee stating MFA is not a state agency, and it does not receive an annual recurring appropriation for operations. Instead, the state mandates MFA generate its own funding to carry out its duties. Deputy Director Isidoro Hernandez reported MFA will request a recurring general fund appropriation to support the oversight of the regional

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housing authorities (\$300 thousand) and the Affordable Housing Act (\$250 thousand). The subcommittee moved to receive the staff recommendation, and it was unanimously approved.

(394) **State Treasurer.** Jon Clark, LFC economist, began by saying that general fund balances held by the Treasurer had declined by 29 percent year-over-year by the end of September, down to less than \$1.4 billion. The agency projects a budget shortfall of \$152 thousand for FY17 after applying the 5.5 percent special session solvency reduction and is working to determine how to address the shortfall. Treasurer Eichenberg requested a budget increase of \$778 thousand, or 22 percent, and said the agency has 31 filled FTE and 9 vacant FTE. Upon a question from the committee, the treasurer said that there is a high level of risk to the funds held by the office with the current vacancies and he only has 2 FTE managing the \$4 billion in funds. The committee asked about constitutional and legal issues of issuing and signing warrants in light of the projected statewide general fund deficit. The treasurer responded that it is illegal for him to sign warrants if insufficient funding; however, the agency decided in April to sign any warrants issued by the Department of Finance and Administration (DFA). Following up on another question, he said the agency made significant progress working with DFA on cash reconciliation, and reconciliation issues have dropped from \$500 million to single digit millions. The subcommittee moved to receive the staff recommendation, and it was unanimously approved.

(417) **Border Authority.** David Espinosa, budget analyst, presented a FY18 budget request that was flat with the FY17 operating budget, with a slight increase of \$11 thousand for increases in personal services and employee benefits. The agency requested an increase to cover higher health insurance costs and increased maintenance costs for the Border Authority building. The subcommittee moved to receive the staff recommendation, and it was unanimously approved.

(465) **Gaming Control Board.** Donovan Lieurance, acting director, presented the budget for the board. The request was flat compared to the original FY17 appropriation. Senator White asked about the cost per square foot and its relation to what the rest of state government is paying, as stated in the LFC staff documents. In response, the agency said it had renegotiated the lease contract a few years ago and that the lessor is currently going through bankruptcy issues. Mr. David Lucero, LFC Deputy Director, expressed to the committee an option of the agency finding smaller space concurrent with the LFC reducing unfilled vacancies in the agency. The subcommittee moved to receive the staff recommendation, and it was unanimously approved.

(469) **Racing Commission.** Mr. Ismael “Izzy” Trejo, executive director, presented a request for \$2.9 million, a \$255 thousand increase over the FY17 adjusted operating budget. The increase comes from a request to use \$140 thousand more funding from the racehorse testing fund. The subcommittee moved to receive the staff recommendation, and it was unanimously approved.

(490) **Cumbres and Toltec Scenic Railroad Commission.** Dick Cowles, Commissioner, presented railroad initiatives. John Bush, president, presented a general fund request that is flat with the FY17 operating budget, which included a reduction of \$58.3 thousand in other revenue. The subcommittee moved to accept the staff recommendation, and it was unanimously approved.

(491) **Office of Military Base Planning.** Eric Kivi, director, presented a request

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that included a slight increase in general fund of \$2.2 thousand to cover increases in health insurance. Director Kivi stated the agency could resubmit to request a flat budget as he was unaware of the 5.5 percent reduction and informed the committee he will work with the Economic Development Department to ensure accountability of what the agency requested. The subcommittee moved to receive the staff recommendation, and it was unanimously approved.

(508) **Livestock Board.** William Bunce, executive director, presented the FY18 request of \$6.2 million, including \$903.4 thousand in general fund revenue. Mr. Bunce noted the request is flat with unadjusted FY17 operating levels and yield control has reduced projected mill levy revenues even though agency response ability remains the same. Representative Bandy asked about the recommendation to reduce general fund revenue. Staff explained the recommendation funds the request, but with an increase in fund balance to offset the general fund reduction. The subcommittee moved to receive the staff recommendation, and it was unanimously approved.

(522) **Youth Conservation Corps.** Wendy Kent, executive director, noted that the program has employed thousands of youth since 1992. YCC requested \$3.9 million, a decrease of \$815 thousand from FY17 operating levels, which aligns with actual expenditures in prior years. The subcommittee moved to receive the staff recommendation, and it was unanimously approved.

(603) **Office of African American Affairs.** The office requested a 5 percent decrease from the FY17 unadjusted operating budget. Director Kaufman-Bell highlighted the office's work in 14 counties statewide. Representative James asked if the office would consider partnering with Fort Bayard for community outreach to support the fort's preservation efforts. The subcommittee moved to receive the staff recommendation, and it was unanimously approved.

(605) **Martin Luther King, Jr. Commission.** The commission requested a flat budget to the unadjusted FY17 operating budget. Director Waites highlighted new activities the commission is supporting such as a national track and field meet being hosted in Albuquerque. The subcommittee moved to receive the staff recommendation, and it was unanimously approved.

(668) **Office of Natural Resources Trustee.** Butch Tongate, the state's natural resources trustee, presented a request for \$2.3 million which was flat when compared to the unadjusted FY17 operating budget. Mr. Tongate emphasized the agency's near self-sufficiency through natural resource damage settlements, noting tens of millions of dollars in settlements. He also stated that using the agency's fund balance to cover administrative overhead costs reduces the return in restoration efforts. Legislators had questions regarding the Gold King mine contamination of the Animas and San Juan rivers. Mr. Tongate stated the Attorney General's Office held a public meeting to seek testimony and assist in compiling damage claims to submit to the federal Environmental Protection Agency. The New Mexico Environment Department and Department of Health are providing tests and tracking for water contamination. The subcommittee moved to receive the staff recommendation, and it was unanimously approved.

(760) **Parole Board.** Sherry Stephens, director, presented the budget request, a 1.4 percent increase over the FY17 adjusted budget. Director Stephens responded to a question from Representative James that parole dockets are public information once they are submitted to the

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parole board and that victims have the right to attend parole hearings. Director Stephens explained the agency notifies victims through district attorney victim advocates of scheduled parole hearings and meets with them at their request. Representative James asked about the powers of the parole board. Director Stephens explained the board has statutory authority to grant, deny or revoke parole through the interpretation of law, not by the vote of the board. The subcommittee moved to receive the staff recommendation, and it was unanimously approved.

**(765) Juvenile Public Safety Advisory Board.** The board requested 5 percent less than the FY17 operating budget. Annette Romero, deputy director of administrative services, Children, Youth and Families Department, reported on the board's current duties and composition. The subcommittee moved to receive the staff recommendation, and it was unanimously approved.

**(780) Crime Victims Reparation Commission.** Frank Zubia, director, presented a request for a 5.5 percent increase over the FY17 adjusted budget. Director Zubia provided an overview of the commission's work over the past year, including updates to the agency's software system for applying for reparation. The agency stated that it could accommodate additional budget reductions by relying on income from crime victim reparation fees paid by offenders. Senator White asked about the reparation eligibility determination process and Director Zubia answered that victims must be determined to be cooperating with law enforcement to be eligible. The subcommittee moved to receive the staff recommendation, and it was unanimously approved.

**Renewable Energy Transmission Authority.** Robert Busch, chairman, began by stating RETA's intent to request a \$100 thousand special appropriation to support operations in FY18. Mr. Busch said the state's investment in RETA could result in billions of dollars of private development of transmission lines and electricity generating facilities; the Western Spirit project overcame significant difficulties in recent years and pieces are in place for large scale transmission development. Representative Bandy asked what RETA's role is in development of projects privately funded, and Mr. Busch explained RETA offers other benefits to project partners, including tax and regulatory exemptions and power of eminent domain. Senator White asked how some companies are developing renewable energy generating facilities without RETA's involvement. Mr. Busch replied RETA has been involved with almost all other developers but stopped most activity when FY16 funding was vetoed by the governor. The subcommittee moved to receive the staff recommendation, and it was unanimously approved.

Senator John Arthur Smith  
Chairman

Senator Sue Wilson Beffort  
Senator Pete Campos  
Senator Carlos R. Cisneros  
Senator Carroll H. Leavell  
Senator Howie C. Morales  
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Representative Nick L. Salazar  
Representative Luciano "Lucky" Varela

October 27, 2016

**MEMORANDUM**

**TO:** House Appropriations and Finance Committee

**FROM:** Subcommittee B  
Senator Howie C. Morales, Vice-Chair  
Senator Sue Wilson Beffort  
Senator Pete Campos  
Senator John Arthur Smith  
Representative Jimmie C. Hall  
Representative Larry A. Larrañaga, Chair *RAE*  
Representative George Dodge Jr.  
Representative Jason C. Harper  
Representative Luciano "Lucky" Varela

**SUBJECT: Subcommittee B Report Afternoon**

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Subcommittee B met on October 27, 2016.

**(340) Administrative Hearings Office.** Mr. Brian VanDenzen, chief hearing officer, presented the agency request of \$1.6 million. He also explained the possibility of hearings increases with the implementation of REAL ID and its effect on currently stretched hearing officer caseloads. Additionally, Mr. VanDenzen said they are collaborating with other agencies on the possibility of making other administrative hearing functions of agencies centralized within the hearings office. The subcommittee moved to receive the staff recommendation.

**(356) Governor.** Julia Reutten, chief financial officer for the Office of the Governor, presented the FY18 general fund request of approximately \$3.3 million which was 0.5 percent higher than the adjusted FY17 operating budget which was reduced 5.5 percent due to statewide solvency measures. The office will resubmit the request for FY18 to keep a flat budget. LFC analyst Anne Hanika-Ortiz said the FY15 audit received a finding for unspent general fund appropriations for the governor's contingency fund. Past practice allowed these appropriations to roll over from

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year-to-year and revert at the end of a governor's final term, and the State Auditor recommended full disclosure of spending from the contingency fund. Ms. Hanika-Ortiz also said LFC requested from the agency a list of vacancies and expired terms for boards and commissions. The subcommittee moved to receive the staff recommendation.

**(360) Lieutenant Governor.** Julia Reutten, chief financial officer for the Office of the Governor, presented the FY18 general fund request of approximately \$535 thousand which was 0.5 percent higher than the adjusted FY17 operating budget which was reduced 5.5 percent due to solvency measures. However, the lieutenant governor will resubmit to keep a flat budget. The subcommittee moved to receive the staff recommendation.

**(379) Public Employees Labor Relations Board.** Thomas Griego, executive director, presented the FY18 general fund request of approximately \$231 thousand which was 8 percent higher than the adjusted FY17 operating budget which was reduced 5.5 percent due to solvency measures. The FY15 audit included 2 findings: over expending the budget in the general fund and failure to have a certified chief procurement officer. In response, staff received training and for FY16 spent only 95 percent of its budget. In response to member questions about consolidating with another agency, Mr. Griego said he is in discussions with the Administrative Hearings Office to share office space, resources and personnel. The subcommittee moved to receive the staff recommendation.

**(404) Board of Examiners for Architects.** Melarie Gonzales, interim director, presented an FY18 request with a 4 percent increase from the FY17 operating budget, attributed to salary increases for two reclassified positions. Interim Director Gonzales indicated the board was switching to annual licensing instead of biennial licensing for architects. The subcommittee moved to receive the staff recommendation.

**(418) Tourism.** Latham, secretary, presented an FY18 request flat with the adjusted FY17 operating budget. Secretary Latham focused on the New Mexico True campaign's accomplishments during FY16 and plans to expand into new markets in FY17, such as Austin. The secretary also focused on leveraging private funding to offset reduced funds in the operating budget in order to ensure the marketing and promotions divisions continue to increase advertising efforts. The subcommittee moved to receive the staff recommendation.

**(446) Medical Board.** Sondra Frank, executive director, presented the flat FY18 request. The increase in FTE is a change from part-time to full-time attorney for the board's appeals and legal counsel. Director Frank indicated the board receives over 300 complaints per year and claimed the Attorney General's Office could not supply legal services sufficiently specialized for cases regarding physicians and medical practice. The subcommittee moved to receive the staff recommendation.

**(449) Board of Nursing.** LFC analyst Sunny Liu presented the FY18 agency request for a 5 percent decrease from the FY17 operating budget, attributed to the elimination of \$98.6 thousand in attorney fees and \$95 thousand to the Nurse Excellence Fund. The agency request also reflects an increase of 1.25 FTE for a license clerk and investigator.

**(464) State Board of Registration for Professional Engineers & Land Surveyors.** Executive Director Perry Valdez presented the flat FY18 request. Director Perry indicated the board is serving 8,653 licensees and adjusted fees to match the budget. He noted concern over the legislative sweep of the board's fund balances and the decreasing number of licensed surveyors entering the profession. New Mexico State University is considering the removal of its professional surveyor program, while New Mexico Institute of Mining and Technology is looking to start a two-year or four-year program. The subcommittee moved to receive the staff recommendation.

**(479) Board of Veterinary Medicine.** Executive Director Francis Sowers presented the FY18 request which was flat with the FY17 operating budget. Representative Hall asked about including a Livestock Board member and the state veterinarian on the Board of Veterinary Medicine as ex-officio members to develop a state emergency response plan. Director Sowers indicated she would follow up on the request, which will be available during the Sunset Subcommittee report in November. The subcommittee moved to receive the staff recommendation.

**(495) Spaceport Authority.** Zachary DeGregorio, chief financial officer, presented the FY18 flat request. Spaceport America anticipates being 100 percent self funded by FY19, due to increased customer activity. Mr. DeGregorio also stated Virgin Galactic rent increases from \$1 million annually to \$3 million beginning in FY18. The subcommittee moved to receive the staff recommendation.

**(516) Game & Fish Department.** Alexandra Sandoval, executive director, presented the Department of Game and Fish (DGF) FY18 budget request of \$41 million. Director Sandoval discussed the department's declining vacancy rate in recent years and the need to fund all positions currently filled and to reduce vacancies. Sandoval also mentioned changes to the Gaining Access Into Nature program and efforts with schools and 4-H programs to encourage increased outdoor recreation and not limited to hunting and fishing. DGF highlighted its partnerships with other agencies, including \$5 million for forest and habitat management with the State Forestry Division and \$2.5 million to soil and water conservation districts. Representative Varela asked about progress on transferring Pecos Canyon properties to the State Parks Division (SPD), and Director Sandoval stated that surveys of 11 sites are completed and the State Game Commission will have a subcommittee consider the mechanics of the transfer, including a first right of refusal to area land grants. DGF and SPD will establish a memorandum of understanding to manage the properties. Representative Trujillo asked about the status of animal populations. Director Sandoval replied that DGF is working to keep the elk population stable, identify the cause of a decline in mule deer, and expand bighorn sheep population areas. For predators, DGF is studying whether mountain lion and bear populations have increased, and Director Sandoval noted the number of wolves had been steady but declined slightly in the most recent study. The subcommittee moved to receive the staff recommendation.

(538) **Intertribal Ceremonial Office.** Dudley Breyley, president, presented the FY18 budget request which was flat with the adjusted FY17 operating budget. Mr. Breyley state that the office has a new board and is aggressively making efforts to increase ticket sales. The subcommittee moved to receive the staff recommendation.

(604) **Commission for the Deaf and Hard-of-Hearing Persons.** Nathan Gomme, director, discussed the agency’s FY18 budget request to nearly double general fund revenue to \$799.4 thousand due to a projected decrease in telecommunications relay service (TRS) revenue. The director also discussed technology that will allow people to communicate wirelessly and legislation the commission is proposing to increase TRS revenue. The subcommittee moved to receive the staff recommendation.

(606) **Commission for the Blind.** Greg Trapp, director, introduced staff and members of the commission spoke about the commission’s budget request. Senator Papen asked about flights between the School for the Blind in Alamogordo to Albuquerque that allowed students to fly home and be with their families on the weekends. Director Trapp stated that flights have not run for several years. It was later mentioned that New Mexico State University has an airplane and received an appropriation to start the flights again. It was unknown whether any of the flights have taken place. The subcommittee moved to receive the staff recommendation.

(632) **Workers’ Compensation Administration.** The Worker’s Compensation Administration (WCA) requested a 3 percent reduction below the FY17 unadjusted operating budget. The request included a \$371.3 thousand increase in the personal services and employee benefits category (PS&EB) and 122 FTE. The request did not include a transfer of \$1.5 million to the Workforce Solutions Department. Thomas Dow, deputy director of WCA reported the agency did not include the transfer because the agency would prefer a direct transfer to the general fund. At the request of Representative Larranaga, Mr. Dow updated the subcommittee on the recent Supreme Court decision which required farm and ranch businesses with more than three employees to obtain workers’ compensation insurance. The subcommittee moved to receive the staff recommendation.

(644) **Division of Vocational Rehabilitation.** Director Joe Cordova highlighted DVR’s work statewide and updated the subcommittee on the issues the agency is working through due to new guidelines in the federal Workforce Innovation and Opportunity Act. The Division of Vocational Rehabilitation (DVR) requested a general fund decrease of 5 percent below the FY17 unadjusted operating budget but increased federal revenues. Representative Varela asked what the Public Education Department’s (PED) involvement with DVR is. The Director responded DVR is administratively attached to PED in addition to PED assisting DVR in connecting disabled students to work opportunities. The subcommittee moved to receive the staff recommendation.

(645) **Governor’s Commission on Disability.** Karen Courtney-Peterson, director, provided an introduction and spoke about the relatively flat budget request. Representative Varela asked about the brain injury fund and Ms. Peterson stated the fund is at the Human Services Department (HSD) and that the commission has membership from HSD. The subcommittee moved to receive the staff recommendation.



(647) **Developmental Disabilities Planning Council.** John Block, director, introduced members of the commission and spoke about the flat budget request. Mr. Block spoke about recent guardianship rate increases, a pending embezzlement case against a former employee, and a capital outlay request for a new ramp van. Representative Trujillo asked if there is a guardianship waiting list and Mr. Block stated that there is not. The subcommittee moved to receive the staff recommendation.

(662) **Miners' Hospital.** Shawn Lerch, director, presented the FY18 budget request including the use of nearly \$1 million in patient revenues more than the FY17 operating budget. Director Lerch explained the FY15 audit is in the process of being submitted and that it was delayed due to issues with the FY14 disclaimed audit opinion and the FY15 Medicaid cost report. Representative Varela asked about permissible uses for the miners' trust fund under a previous federal court decision. The subcommittee moved to receive the staff recommendation.

(705) **Department of Military Affairs.** Brigadier General Andrew Salas presented the agency's budget request, a 14 percent increase over the FY17 adjusted budget. General Salas informed the committee the 126<sup>th</sup> Military Police company returned home and invited members to a welcoming ceremony on November 4<sup>th</sup>. General Salas stated the department actively works with the Homeland Security and Emergency Management Department to respond to disasters and is working with the Veterans Services Department to assist homeless veterans. Representative Varela asked if any signing bonuses have been determined to be awarded unnecessarily or fraudulently after audit findings in California were determined; General Salas answered it would ensure that signing bonuses given to New Mexico guardsmen were given in compliance with laws. The subcommittee moved to receive the staff recommendation.

(795) **Department of Homeland Security and Emergency Management.** Jay Mitchell, secretary of the department, presented the agency's FY18 budget request, a 5.5 percent increase over the current year's adjusted FY17 budget and explained how state general funds and federal funds are spent. Representative Varela asked about the status of the department's FY15 audit and Secretary Mitchell answered the department struggled with provider and high financial staff vacancy rates. Representative Varela asked about vacancy rates and vacancy savings. LFC staff responded that vacancy savings were taken last fiscal year. The subcommittee moved to receive the staff recommendation.

(930) **Regional Educational Cooperatives.** Paul Aguilar, deputy director of the Public Education Department (PED), and Vicki Chavez, president of the Regional Educational Cooperatives Association, stated the request for the Regional Educational Cooperatives (REC) would be included in the PED special appropriations request in December. Deputy Director Aguilar noted the request would be a 5.5 percent decrease from FY17 appropriation levels. Representative Hall asked about the \$10 million in cash balances from all RECs, and Deputy Director Aguilar indicated cash balances are typically used to alleviate cash flow issues as RECs wait for reimbursements and may be restricted to state-directed activities under Part B of the federal Individuals with Disabilities Education Act or the Medicaid in the schools program. Due to cash flow issues, RECs engage in entrepreneurial ventures to supplement current funds. The subcommittee moved to receive the staff recommendation.

**(940) Public School Facilities Authority.** Executive Director Robert “Bob” Gorrell presented an FY18 request flat with the FY17 operating budget, including additional costs for the agency’s eBuilder software. Director Gorrell indicated \$2.5 billion had been spent to date in project awards and the statewide facilities condition index had improved to 32 percent. Consequently, the Public School Capital Outlay Council is transitioning to a systems initiative awards approach to extend the useful life of buildings rather than constructing new projects. Director Gorrell noted concern over the projected decrease in funds allocated to broadband deficiencies corrections and current statewide maintenance effectiveness for schools. The subcommittee moved to receive the staff recommendation.

**(949) Education Trust Board.** Theodore Miller, executive director, and Dr. Barbara Damron, secretary, Higher Education Department and Education Trust Board (ETB) chair, reminded the subcommittee ETB does not receive general fund appropriations and is not listed in the General Appropriation Act. For FY18, ETB will submit a budget adjustment request through HED to expend \$2.6 million, a decrease of \$50 thousand from FY17. Representative Jim Trujillo expressed concern there are more investors in New Mexico’s 529 college savings plan from out of state than there are in-state investors. Dr. Damron and Mr. Miller noted ETB is working to gain more New Mexico investors through new marketing campaigns and efforts to allow employees at various organizations to contribute to their college savings plans through payroll deduction. The subcommittee moved to receive the staff recommendation.

**(954) New Mexico Department of Agriculture.** Anthony Parra, deputy secretary, presented the department’s FY18 general fund request of \$11.6 million, a flat request when compared with the department’s original FY17 appropriation, but a 5.3 percent increase when compared with adjusted appropriations from the 2016 special legislative session. The request was submitted prior to the special session. Mr. Parra noted the department is ramping up efforts to gain other sources of revenue, such as on-site inspections. Mr. Parra also explained although budgeted fund balances for the department are \$2.7 million in FY17, about \$1 million of the fund balance is held for the soil and water conservation districts and the acequia and community ditch fund. The subcommittee moved to receive the staff recommendation.

**(954) Cooperative Extension Service/Agriculture Experiment Station.** Dr. Jon Boren, associate dean and director of the Cooperative Extension Service (CES), presented the agency’s FY18 general fund request of \$13.3 million, a 5.3 percent increase over adjusted FY17 appropriations. Dr. Boren explained 80 percent of CES’ budget is for personnel, and CES has budgeted 8 percent of its fund balance due to economic uncertainty. For the Agricultural Experiment Station (AES), Dr. Dave Thompson, associate dean and director, presented AES’ request of \$14.4 million, a 5.3 percent increase over adjusted FY17 appropriations, although the request was intended to be a flat request when originally submitted. Dr. Thompson noted AES would be leaving vacant positions unfilled for the remainder of FY17 due to economic uncertainty; however, Dr. Thompson emphasized AES will continue to provide the same level of operations it currently delivers. Representative Hall asked why AES does not provide a weekly report on cattle, pork, or other commodity prices. Dr. Rolando Flores, dean and chief administrative officer of the New Mexico State University College of Agricultural, Consumer, and Environmental Sciences, stated the agencies publish reports for other products, such as

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cotton, and the agencies are interested in publishing a weekly report for cattle, pork, and other commodities as suggested by Representative Hall. The subcommittee moved to receive the staff recommendation.