

**Legislative Finance Committee**  
**Room 307 - State Capitol - Santa Fe, New Mexico**  
**September 28, 29, 30, 2009**

The following members were present on Monday, September 28: Chairman Luciano “Lucky” Varela, Vice-Chairman John Arthur Smith, Representatives Donald E. Bratton, Rhonda S. King, Don Tripp, Jim R. Trujillo (for Edward C. Sandoval), Jeanette O. Wallace, Nick L. Salazar, and Henry “Kiki” Saavedra; and Senators Carlos R. Cisneros, Sue Wilson Beffort, Carroll Leavell, John M. Sapien, Rod Adair (for Stuart Ingle), Mary Kay Papen, and Pete Campos. Representatives Dennis L. Kintigh and Brian F. Egolf Jr. attended as guests.

**Proposals to Restore FY10 Solvency.** David Abbey, director, Legislative Finance Committee (LFC), reported the transfer to reserve appropriation shows an overdraft of approximately \$114 million. In FY10, assuming revenues will fall \$433 million below the estimate, general fund balances will deplete with no reserves. It is unconstitutional for the state to have a deficit greater than \$250 thousand; NMSA 6-4-6 allows inter-fund borrowing to cover a shortfall, but only if “at the end of the fiscal year balances in that fund or account will be restored.” The negative balance in the appropriation account minus \$542 million plus overdraft from the prior year will not be restored; it is urgent for the Legislature to address the general fund solvency.

The executive and legislative solvency task force, which includes nine LFC members, met three times. Governor Richardson made an initial proposal to target closing the FY10 shortfall with \$455 million. One of the first points of the tax force was agreement to take swift action, implying across-the-board methods. The task force agreed to defer any consideration of revenue measures until the 2010 regular session.

Director Abbey reviewed the LFC recommendations and said reductions are at 4 percent for most agencies with smaller amounts for some social service agencies and the judicial branch and a few at zero. Public school and higher education reductions are set at 3.5 percent. Provisions of the stimulus bill require reductions for public schools and higher education above the line at the same amount. Options for consideration include expanding the purpose for the use of SB9 and HB33 funding to include salaries for maintenance personnel and custodians, transportation maintenance, and insurance costs.

The governor proposed using \$91 million of the remaining stimulus funds and supplanting public school support; staff suggests using half that amount. An initial proposal from the executive was to issue sponge bonds, placing proceeds in the general fund. The executive also proposed swapping valid useful general fund appropriations for 2010 severance tax bonding capacity. There is approximately \$4 million in outstanding general fund capital outlay appropriations that could be swapped; however, it would take away from 2010 bonding capacity. LFC staff worked with the Local Government Division to send out a questionnaire to over 5,000 entities that have outstanding capital outlay projects worth \$1.4 billion. Criteria has been established to void outstanding projects, such as those deemed nonviable by grantee, those deemed to have inadequate funding to move forward, and completed projects with balances. The executive proposed delaying implementation of an increase contribution to education retirement and retiree health care. LFC staff has also recommended transferring surplus funds from the treasury to the general fund. LFC set a target of \$140 million, with the largest piece coming from the college affordability fund. In response to comments from the executive, the amount was reduced to \$100 million, with the college affordability targeted at \$42 million. The executive also

expressed concerns in domestic violence and DWI prevention as well as other areas that were reduced by half. The college affordability fund has \$80 million; only \$2 million a year is spent and it duplicates other financial aid activities.

Director Abbey reviewed the difference between FY11 projected revenues and FY10 current appropriations. Current year appropriations are adjusted for solvency and federal stimulus funds.

Katherine Miller, secretary, Department of Finance and Administration (DFA), reported FY09 revenues were down \$114 million from the established FY10 budget and the revenue estimates in February, resulting in an 8 percent reserve. The books for FY09 cannot be closed until transfers are made between accounts. HB920 allowed for an increase in the FY09 FMAP, federal matching rate for Medicaid; the State Board of Finance has taken action to approve the move of \$134 million into the appropriation account. Targets were established when the governor presented his plan for solvency and reduction to FY10. Agency budgets have been reviewed to determine where reductions could be made in current year budgets without having furloughs, layoffs, severe decreases to services, and cuts to education. Higher education or public education cannot be cut without supplanting it back with federal stimulus funds in the current fiscal year or next fiscal year. The governor's proposal amends the state's application on higher education saving the core funding. The executive believes it is appropriate to use sponge bonds, which are not long-term debt but rather one-day note not violating the Constitution.

Secretary Miller stated the governor feels strongly about not targeting education at this time and making sure public schools, as well as higher education, are funded. At the request of the task force, the governor is willing to talk to educators, superintendents, and representatives from the education community to get a sense of what is acceptable for them but is opposed to increasing class sizes, reductions in force (RIF), or major cuts. Differences between the executive and the LFC plans represent a 43 percent total. New Mexico is one of the most conservative states when issuing debt and has some of the shortest term debt in the country. Few bonds go beyond 10 years, including general obligation bonds that are 20 years. Outstanding general fund capital projects totaling \$410 million have been identified. The executive also identified \$57.1 million in fund transfers with \$20 million from the college affordability fund.

Anthony Armijo, state controller, DFA, testified the estimate is too optimistic and double the amount is needed to close out FY09. Final numbers are needed from the Taxation and Revenue Department (TRD) to be able to complete the audit. Chairman Varela asked that LFC auditors work with DFA to provide information to the committee within a couple of weeks.

In response to questions from Chairman Varela, Olivia Padilla-Jackson, director, State Board of Finance, testified lawyers from the executive, the attorney general, and the bond council reviewed the issuance of sponge bonds and concluded the Constitution, Article 8, Section 10, does not specify what the notes can be used for, and there are no legal issues with the proposal. In addition to current revenues collected by the state, the notes are taxable and federal Internal Revenue Service prohibitions do not apply. The interest paid on behalf of the state would be paid and deposited into the general fund.

Chairman Varela said he is concerned with having to furlough or layoff employees and not having a high enough solvency during the special session so budgets will not have to be cut again during the regular session in 2010.

Senator Beffort said road projects are in jeopardy and maintenance is a concern. Expansion of

rail service needs to be taken off the table so that money in the road fund is dedicated to maintenance. Senator Beffort also said salaries for unauthorized hires should be considered for reduction. Secretary Miller said the executive has worked on bringing down costs, has not given increases to exempt employees, and has reduced the number of employees across state agencies.

Senator Sapien inquired about the transaction for use of sponge bonds and the long-term effect. Secretary Miller responded that severance tax is dedicated to the severance tax bonding fund. A portion is used for senior severance tax notes and a portion is used for supplemental bonds. In both areas, there are long-term notes and short-term (sponge bond) notes. The sponge notes are an effective way for the state to use bonding funds on a one-day note. In paying them off, proceeds become cash and traditionally finance capital outlay considered to be taxable. Bonding capacity is determined by the previous year's revenue and bonding; extra cash gets swept to the permanent fund. The long-term effects would be that the money would not be used for infrastructure in the current year, but there are no detrimental effects.

Representative Bratton said he is concerned that two-thirds of the one-time money is being used to solve a recurring problem, and all areas where recurring funds are spent can't be excluded. Statutory changes need to be looked at to change the cost of public education with regard to testing and reducing the impact in the classroom and at the same time creating opportunities to save money. Director Abbey said recurring revenues are \$443 million less than recurring appropriations and may grow. Everything in FY10 will be a one-time occurrence with the exception of cutting recurring appropriations.

Representative Egolf asked about revenue enhancement measures and why tax increases are not being considered. Secretary Miller said revenue enhancements for FY10 are a one-time fix that need to be done swiftly to get money back into reserves for this year. Representative Egolf said he understands that tax increases is not a fix for solvency, however, there is no conversation that looks at the revenue side for long-term fixes. Representative Egolf asked what the data is on the impact of a change in the tax structure on economic activity and jobs. Director Abbey said revenues for FY11 are on the table in a recurring sense and it is important to put mandates across the board on the spending and revenue sides of the required structural changes.

Chairman Varela asked what effect recommendations have on retiree healthcare fund (RHCA) and Public Employee Retirement Association (PERA) contributions. Secretary Miller said from previous studies and actuarial data it will not affect the solvency of the fund in any significant way; it is a percentage of annual revenues. Wayne Propst, executive director, RHCA, testified that RHCA currently projects RHCA will be solvent until 2028. The board of directors approved premium increases effective January 1, 2010, as well as raising benefit deductions.

Chairman Varela asked about contracts, including those in higher education and public education, and how much is given to the private sector. Secretary Miller responded that the majority of the budget is salaries and benefits, healthcare costs, and education; approximately \$800 million is for contracts.

Chairman Varela asked what response was received from superintendents and board members on not cutting education. Secretary Miller said the governor has not met with superintendents but is hesitant to raise maximum class-size restrictions and increase student limits requiring educational assistance in the classroom. Director Abbey said staff met with Santa Fe public schools and a proposal from staff would allow the use of property tax revenue targeted for capital maintenance, allowing school districts to afford a reduction in the range of 3.5 percent. Paul Aguilar, principal analyst, LFC, added that superintendents from Albuquerque, Las Cruces,

Farmington, Artesia, Truth or Consequences, Gadsden and other districts statewide, business managers from other districts, and regional educational cooperative directors all indicated that, if given flexibility, they should be able to absorb the funding cuts recommended by the LFC. Senator Cisneros asked if small school districts were included. Mr. Aguilar said he spoke with the superintendents from Hatch Valley, T or C, West Las Vegas, Bernalillo, and Cuba. Director Abbey said staff proposes to use \$5 million of the remaining \$47 million to supplement emergency funding restricted to small districts. Bobbi Gutierrez, superintendent, Santa Fe Public Schools, testified that 86 districts generate SB9 funds and 12 generate HB33 funds. Expanding language to include property and liability insurance coverage, utilities, maintenance and custodial salaries would be approximately \$9.7 million use of funds for Santa Fe Public Schools currently being paid for operations. Additionally, if transportation maintenance salaries were included, it would add an additional \$322 thousand. The resolution is broad enough and would not require going back to the voters; SB9 funds are intended for maintenance and care of facilities. Chairman Varela suggested the governor meet with districts to discuss flexibility and a consensus regarding education be reached before the special session begins.

**Processing Federal Funds for School Districts and the Public Education Department -- Regional Education Cooperatives.**

Lawrence Davis, program evaluator, LFC, reported 30 percent of school districts and charter schools responded to LFC's statewide survey. There are two key findings within the report. Delayed reimbursements continue to impact cash management operations for school entities despite the implementation of Public Education Department's (PED) online request-for-reimbursement system. The reimbursement process has taken PED an average of 29 working days in FY09. The second key finding focuses on the unjustified retention of \$1.8 million in special appropriation funding by regional education cooperatives (REC). The Legislature approved funding in 2006 and 2007 in an effort to mitigate cash flow issues with REC's delayed reimbursements. Reimbursement timeliness is critical for FY10 because of New Mexico's anticipated allocation of \$369.9 million in incoming American Reinvestment and Recovery Act (ARRA) funding, of which an estimated \$164.7 will supplement state equalization guarantee funding and will not be distributed on the traditional allotment basis, but on a reimbursement basis. All ARRA funding will be distributed by PED through the reimbursement process; therefore, it is imperative that PED improve the timeliness of their reimbursement process as soon as possible. PED will experience an increase in the number or reimbursement submissions and workload as a result of incoming ARRA funding. Schools must first pay for goods and services and subsequently request reimbursement to replenish cash. It is vital for school districts to actively submit reimbursement requests and manage cash in order to fulfill operational obligations.

In July 2008, PED implemented an online request for reimbursement system at a cost of \$95 thousand. The system automated the majority of internal processes and offers greater accountability, transparency and efficiency. PED managed to improve its processing time experiencing an increase in the number of reimbursement request submissions and improved from 62 working days to 17 working days; however PED does not monitor reimbursement timeliness and lacks performance measures within the general appropriation act allowing the Legislature to monitor such performance. The review also identified several department and system inefficiencies contributing to reimbursement delays. Inefficiencies include

- Duplication of effort between program and fiscal analysts,
- The inability of the current reimbursement system to direct re-submitted requests to the proper bureau,
- The lack of front-end and logic checks in the request-for-reimbursement system that could reduce PED processing times.

It is recommended PED work with DFA and LFC to establish a reimbursement timeliness performance measure within the General Appropriation Act to capture the average number of working days to process reimbursement requests and report performance on a quarterly and annual basis. PED should also generate managerial performance reports from the reimbursement system, allowing the department to identify reimbursement process delays and use information to improve timeliness of existing processes. The department should improve the timeliness of final award and carryover funding processes to mitigate reimbursement complications toward the latter part of the fiscal year. The department should also streamline the approval process for intergovernmental agreements and consider the implementation of multi-year and multi-fund intergovernmental agreements.

Jacob Candelaria, program evaluator, LFC, continued with steps other states have taken to improve timeliness of their reimbursement processes. Other states, including those that do not maintain a fully automated reimbursement approval system, take less time to process reimbursement requests. The state's nine RECs have failed to justify a sufficient need to retain \$1.8 million in nonrecurring appropriations.

States with largely manual processes take less time to process requests. States have reduced processing times by working to eliminate duplication of effort between program and fiscal analysts and by designing approval processes minimizing processing times, performing all functions required by state and federal law. While federal law requires states to assure localities spend grant money in accordance with grant regulation, states retain considerable latitude when designing their oversight processes. PED does not have a standard audit rule for all program analysts. Standards of review vary across program bureaus, increasing the risk in funds relative to others, and results in inefficient labor within program bureaus. The department has maintained that more resources are needed in the form of staff to reduce processing times; however, other states have shown that processing times can be reduced by working to eliminate duplication of effort and developing audit rules, allowing analysts to use time more efficiently by paying more attention to high-risk requests.

Between 2006 and 2007, the Legislature allocated \$1.8 million in nonrecurring funds to the state's nine RECs to alleviate cash-flow issues stemming from the untimely reimbursement of federal and state grant funds; PED distributed \$200 thousand to each REC for this purpose. RECs were to revert funds at the end of FY09, unless they could demonstrate a need to retain them. The Legislature directed PED to ensure sufficient justifications were submitted on time by the close of the fiscal year. As of July 2009, PED had yet to obtain justification from any of the RECs. Following an LFC request, PED obtained the justifications; however, justifications did not demonstrate a need to retain special allocation funding, did not contain any cash-flow analysis and, in many cases, were identical word for word. REC 9 continues to have negative fund balances. REC 3 had \$2.3 million cash on hand at the close of FY08. REC 2 has not submitted its annual audit report to the state auditor for the past three fiscal years. PED should require all RECs to justify a need to retain the funds to include cash-flow analysis and average monthly cash balances. If analyses do not demonstrate a need to retain funds, then PED should be directed to recover advances and revert funds collected to the state's general fund. PED should require its inspector general to conduct a special audit of REC 2 to identify why it has been delayed in submitting audit reports and REC 9 to identify ways to resolve cash overdraft and fund deficit issues.

Veronica Garcia, secretary, PED, said PED takes seriously its responsibility to administer federal education programs appropriately. The reimbursement system is one of many mechanisms PED

uses to provide comprehensive oversight of federal funds spent by sub-grantees and is a key control facilitating New Mexico's compliance with federal responsibilities. Federal requirements regarding the use of federal dollars changed requiring funds to be provided on a reimbursement basis creating a delay and an issue with cash management. PED is increasingly focusing on cash management issues due to the release of several high profile audits by the inspector general highlighting noncompliance by state and local educational agencies.

A small percentage of districts appear to have issues with the reimbursement process. The request for reimbursement system is strong and has the capability to address some issues; however, while the capability is there, the funding to develop the capability is lacking. Improving the request for reimbursement process is a shared responsibility with the districts. Don Moya, deputy secretary, PED, added that a third of requests from districts came in during the last three months of the year. Representative Bratton requested a comparison from other states on the number of FTE and requests handled in the dollar amount to provide a better idea of the workload.

Senator Cisneros asked how a school district falls back three years without raising a red flag. Mr. Moya responded that the Legislature passed legislation imposing sanctions against school districts behind on their annual audits. Districts will be given one year to comply with audits, and beginning in 2011 PED may impose sanctions against school districts that are behind. It is the local board's responsibility to direct superintendents and administration to comply with annual audit reporting requirements. Chairman Varela said interim fiscal reports should be timely so auditors do not have to reconstruct records. Director Abbey suggested every government entity put their check register online. Chairman Varela suggested strong oversight assuring that reports received on a monthly or quarterly basis are reviewed for reliability. Mr. Moya said he is confident with what is received from general ledgers with respect to revenues and expenditures; more needs to be done with the cash report. Several entities are working together to define the cash report to supply accurate information.

**Follow-Up on Program Evaluation of Department of Health Facilities Management.** Pam Galbraith, program evaluator, LFC, reported on assessing the oversight by the Office of Facilities Management (OFM) of fiscal and staffing management and budgetary controls of the state facilities, assessing practices to maximize revenues and control costs by OFM at selected state facilities, and follow-up on the implementation status of findings and recommendations of the May 2007 review of OFM.

Most of the recommendation for the May 2007 evaluation have been addresses or are currently being addressed and OFM is making efforts to improve the oversight. The division was created in the Department of Health (DOH) through a reorganization of existing programs in FY06. Prior to that, the department treated each state-operated facility as stand alone. The division operates seven programs and is the largest in budget with the most employees of all DOH divisions and programs. In addition to the seven facilities, OFM is responsible for the Department of Justice settlement agreement at the Fort Bayard Medical Center and the Jackson Lawsuit with the Developmental Disabilities Division. Historically, the appropriation process has tried reducing legislative oversight of agency management and financial administration. In 2000, DOH had 23 appropriations entities and 11 categories; there are now seven appropriation programs. In the 2005 General Appropriation Act, the Legislature authorized DOH to create the facilities management program, allowing flexibility to oversee and direct the facilities and be accountable for results. Financial support is provided through the Administrative Services Division; however, OFM lacks financial expertise. There is need for financial, healthcare, and hospital expertise within the office. In addition, the administrator job descriptions in each

facility are not standard and reporting structures are not clearly outlined. In FY09, OFM received \$750 thousand supplemental for FY08 and \$11.8 million supplemental for FY09. The division has had difficulty in over projecting revenues and underestimating expenses, raising concern that there could be another revenue shortfall in FY10.

Ms. Galbraith recommended that the Sequoyah Adolescent Treatment Center remain at a high census with a waiting list and should be the only center considered for expansion. State-operated nursing home facilities with appropriate cost control should be budget-neutral with an expectation that revenue exceeds expenses. The Behavioral Health Services Division (BHSD) receives state capital funding for an additional substance abuse program. The Board of Finance approved the General Services Department (GSD) to enter into a contract for design and construction of another substance abuse facility in Las Lunas. There is no coordination among programs and each state facility identifies itself as a safety net provider. Recommendations include the following:

- DOH and DFA should immediately reduce facility expenditures for supplemental or deficiency appropriations.
- OFM and BHSD should collaborate to determine appropriate placement of substance abuse treatment facilities within state government and whether services are better operated by the state or community providers.
- OFM should work with BHSD to consider decreasing facility capacities and staffing to realistic censuses or consolidate facilities by closing units with a low census.
- DOH should work with the State Personnel Office (SPO) on exit interviewing, an in-house personnel pool, a compensation and classification study of critical positions, and union negotiations.
- DOH should immediately document and monitor revenue management policies.
- DOH should collaborate with other state departments to investigate and enhance other sources of revenue

Alfredo Vigil, secretary, DOH, responded to the issue of coordinating behavioral health activities with the collaborative and OptumHealth. The program is in its fifth year of a 10-year transition of the state behavioral health system into a unified activity. Discussions continue and have increased with the collaborative and the new entity to accomplish transitions and activity.

Katrina Hotrum, deputy secretary, DOH, said the department agrees with the majority of findings. Two out of three nursing homes have five-star ratings from the Centers for Medicare and Medicaid Services. The department has also been acknowledged nationally and the veteran's home is ranked number one in the nation. Huge strides have been made with the U.S. Department of Justice and the settlement agreement with Fort Bayard Medical Center.

**Department of Health (665) -- Review of FY10 Operating Budget and Preview of FY11 Appropriation Request.**

Duffy Rodriguez, deputy secretary, DOH, reviewed department accomplishments. The original FY09 general fund operating budget of \$301.7 million was reduced so that the current FY10 general operating budget is now \$285.4 million, resulting in a reduction of \$16.3 million. The current budget reflects reductions due to freezing hiring, travel and other operating costs, as well as professional services contracts. The general fund appropriation to the trauma fund was reduced by \$1.5 million; general fund appropriations for public health contracts, including rural primary healthcare clinics and school-based healthcare centers, were reduced by \$3.8 million. The department requested and for the past two years has ensured that the developmental disabilities (DD) Medicaid waiver and facilities be held harmless from any reductions. The DD recurring general fund amount was ultimately reduced by \$13.6

million as a result of a temporary increase in the Federal Medical Assistance Percentage (FMAP) due to ARRA funding.

The FY11 budget request includes increased costs for utilities and maintenance for the new tri-services laboratory, \$711.4 thousand to fund 10 vacant existing FTE positions that conduct federal CMS and statutorily required inspections of healthcare facilities, and \$9.6 million to maintain the integrity of existing services to DD waiver clients.

Ellen Pinnes, representing the Disability Coalition, provided testimony on behalf of DD waiver clients and the department's refusal to spend money appropriated by the Legislature for services to clients on the DD waiver waiting list. After months of assurance that individuals would be served on the waiting list, a letter was received indicating no one on the waiting list would be served. Mr. Vigil responded that the DD program is of highest priority; however, the department will need to maintain its current level using nonrecurring funds. In the last seven years, 1,000 clients have been taken off the waiting list and added to the program and expenses have risen from \$55 thousand to \$75 thousand per person. The department has an ethical and legal obligation to maintain the sustainability and integrity of the current program.

Emergency Medical Services. Current funding totals \$8 million out of the general fund; the program is seeking to replace it with sustainable funding. Sustainable and flexible funding will address the critical needs of the state's emergency medical services (EMS) system with its rural challenges.

Senator Beffort said in regards to the DD waiver waiting list, legislative intent was ignored and requested that there be consideration of slight expansion allowing the Legislature to make decisions in the upcoming session regarding the DD waiver. Senator Sapien also agreed to the need to continue appropriating funds by the Legislature.

**Children, Youth and Families Department (690) -- Review of FY10 Operating Budget and Preview of FY11 Appropriation Request.** Dorian Dodson, secretary, Children, Youth and Families Department (CYFD), reported the general fund request for FY 11 is a 0.58 percent increase over the FY10 operating budget; with a total request of 0.72 percent increase over the FY10 adjusted budget request.

For FY11, the department is requesting

- An overall vacancy rate of 8.8 percent,
- \$500 thousand to restore Protective Services to the pre-ARRA level,
- Funding for increases in Department of Information Technology and and SHARE rates to sustain basic operations,
- A vacancy rate of 8.91 percent for Juvenile Justice Services,
- Transfer of 7 FTE from other programs into Protective Services and a vacancy rate of 8.25 percent,
- \$7.2 million in TANF transfer funds for Early Childhood Services,
- A 7.97 percent vacancy factor for Youth and Family Services,
- Several expansion requests with no general fund impact.

Chairman Varela asked if area legislators and the Springer community were consulted before making the decision to close the Area One facility. Secretary Dodson said there was no discussion in advance; however, staff plans on meeting with the community at a later date. Chairman Varela asked that the committee, the community, legislators, and other officials

representing that area are notified of when staff will be visiting the area.

## **Miscellaneous Business**

### **Action Items**

*Approval of Minutes -- August 2009.* **Senator Cisneros moved to approve the August 2009 LFC minutes, seconded by Senator Sapien. Motion carried.**

### **Information Items**

*August 2009 Cash Balance Report.* Director Abbey reported that staff is targeting \$60 million from sweeping funds in the treasury. Anthony Armijo, deputy secretary, DFA, sent a letter to agencies giving them authority to cancel accounts in the red, reapply and obtain approval by October 15. Approval will be based on detailed cash projections.

*August 2009 BAR Report.* Director Abbey reported 57 BARS were approved; most related to stimulus funds. Workforce Solutions submitted three BARS for over \$1 million.

*LFC FY10 Budget Status.* Director Abbey reported the targeted surplus for the year is 4.25 percent. There are two vacancies in the audit area.

*4<sup>th</sup> Quarter 2009 Investment Report.* Director Abbey reported that the investment report was presented to the Revenue Stabilization Committee. As of June 30, 2009, every fund underperformed its benchmarks. Staff remains concerned about agency use of stimulus funds. Chairman Varela asked for information regarding recurring stimulus funds for the next report.

*LFC Program Evaluation Work Status Report.* Director Abbey reported that two projects have been completed and information on five school districts will be completed in November. Work will continue on the developmental disabilities waiver, charter schools, and professional service contracts.

## **Tuesday, September 29**

The following members were present on Tuesday, September 29: Chairman Luciano “Lucky” Varela, Vice-Chairman John Arthur Smith, Representatives Donald E. Bratton, Rhonda S. King, Don Tripp, Edward C. Sandoval, Jeanette O. Wallace, Nick L. Salazar, and Henry “Kiki” Saavedra; and Senators Carlos R. Cisneros, Sue Wilson Beffort, Carroll Leavell, John M. Sapien, Stuart Ingle, Mary Kay Papen, and Pete Campos. Representative Ray Begaye attended as a guest.

**New Mexico Mortgage Finance Authority Overview: FY10 and FY11.** Joseph Montoya, deputy director of programs, New Mexico Mortgage Finance Authority (NMMFA), reported on the state of housing in New Mexico. A key factor of housing and economic development is select home ownership rates; New Mexico has one of the highest in the nation.

Erin Quinn, senior policy and program advisor, reported on funding received by the state for housing and residential energy efficiency measures through the ARRA. The appropriation request for the weatherization assistance program (New Mexico Energy Smart) totals \$27 million to be spent over a three-year period. Funds will be awarded to four weatherization service providers. The state received \$14 million for the tax credit assistance program, which will be awarded to projects that have already been awarded tax credits: \$6.8 million was received for the

homelessness prevention and rapid re-housing program, the neighborhood stabilization program will receive \$7 million and \$1.8 million will go directly to the city of Albuquerque.

Ms. Quinn provided information regarding funding other housing entities administering ARRA funding which include \$9 million to local public housing authorities, \$7 million to Native American housing block programs, and \$5.6 million to the community development block grant program.

The formula grant funding under ARRA for other housing entities totals \$71 million. NMMFA also submitted an application in July for the neighborhood stabilization program II (NSPII), totaling \$23.7 million to allow for acquiring closed and abandoned homes for redevelopment rehabilitation; notification should be provided in December.

Senator Papen expressed concern that NMMFA does not have oversight on some programs. Mr. Montoya responded that NMMFA received funds for oversight for the current fiscal year for regional housing authorities.

Mr. Montoya highlighted the home ownership program and rental housing programs. Last year, \$221 million of bond funds were provided for first time home buyers, \$4.6 million for down payment assistance, and over 1,400 new rentals for multi-family use. Targeted initiatives include work in the colonias, homeless shelters, and green initiatives.

Gina Hickman, deputy director of finance, NMMFA, provided an overview of funding revenue. Total resources available in FY09 were \$490 million. Single-family housing bond program activity has fluctuated and loan reservations are down 30 percent. In 2009, the general fund (housing opportunity fund) represented over \$15 million of available resources. The housing opportunity funding is generated by excess revenues over expenditures; however, it will be limited over the next few years. Chairman Varela requested information regarding programmatic funding and projections for FY11 to include in the LFC Volume I report.

**FY09 Performance Report on Key Agencies and DFA Approval of FY11 Performance Measures.** Esther Varela-Lopez, deputy director, State Budget Division, reported that the Accountability in Government Act (AGA) requires agencies submit proposed changes to their current program structure and performance measures by July 15 of each year. The act requires the State Budget Division to consult with the LFC on proposed changes and issue a determination on the requested changes within 30 days. Three agencies submitted program changes, including the Department of Information Technology (DoIT), the Department of Military Affairs, and the Corrections Department. DoIT requested to consolidate all enterprise functions under one program and a second program for project oversight and compliance. The Department of Military Affairs requested to consolidate its two programs into one single program to better manage its finances, identify savings opportunities, and more easily absorb budget reductions. The Corrections Department requested to consolidate the inmate management and control program with the inmate programming program to consolidate functions at the prisons and improve operations. The division approved all three program changes but will maintain the ability to separately account for the activity under the SHARE accounting system.

Forty-nine agencies and institutions requested performance measure changes including

- 168 new measures
- 150 discontinued measures

- 104 adjustments

DFA worked in collaboration with LFC and each agency to review the 422 proposed changes. The ARRA accountability and reporting requirements prompted two new measures that were implemented across various agencies aimed at reducing the time to request reimbursement from the federal government and the timely expenditure of federal funds. After consultation with LFC, the division approved 370 out of the 422 proposed changes for FY11.

David Lucero, principal analyst, LFC, provided information and criteria used to develop agency report cards. Mr. Lucero and Gene Moser, principal analyst, LFC, highlighted FY09 report card ratings for several agencies.

Brett Woods, principal analyst, LFC, provided information on FY11 performance measures requested by agencies and approved by DFA. A total of 19 issues remain unresolved and will be addressed during the legislative session.

**Agency Performance Review.** Mr. Vigil addressed the Department of Health performance review and report card ratings. The most important fact impacting the health of citizens is that so many are uninsured.

Arturo Jaramillo, secretary, General Services Department (GSD), reviewed performance measures and report card ratings for the department. The department's goal and target is to satisfy state government with all measures.

Artie Pepin, director, Administrative Office of the Courts (AOC), reviewed performance measures and report card ratings. Out of nine measures, AOC has one rating in the red for percentage of jury summons successfully executed.

**Status Reports on Outstanding Audits.** Manu Patel, deputy director, LFC, reported that based on the state auditor's rule, a deadline has been set for all entities to submit audit reports. The state auditor expressed concerns that several reports have not been submitted are behind several fiscal years. Last legislative session, the Legislature passed HB321 amending the audit act to give PED authority to withhold a portion of state equalization guarantee funding for districts consistently behind in submitted their reports and to suspend local boards from their financial responsibilities. The Public School Finance Authority adopted a policy to not consider any capital outlay funding from school districts unless audit reports are submitted on time.

Hector Balderas, state auditor, reported that there are currently five counties and 91 governments with outstanding audits or at risk for not submitting audit reports. It is estimated annual operating budgets for these government entities total over \$1 billion and they have gone unaudited for the last one to three fiscal years. These government entities have been designated at risk and have been notified in writing. Monthly reports detailing the reason why they are not compliant with the audit act will also be requested. Mr. Balderas suggested developing state law, requiring oversight requirements, or adding additional resources to the Office of the State Auditor to get entities into compliance. He also suggested the Legislature consider withholding funding for entities and the budgetary process be used as an important incentive and requiring greater coordinated effort with other oversight agencies.

Chairman Varela said responsibly for oversight has been centralized or contained with state agencies. Rick Martinez, deputy secretary, Department of Finance and Administration (DFA), said in working with the Office of the State Auditor the department passed a promulgated rule

for the budget certification process for local governments. The department also works with the Acequias Commission and land grants to establish rules and laws in their governance.

Chairman Varela asked if there are any prerequisites for higher education. Debra Garcia, Higher Education Department (HED), said quarterly and monthly reports (in some cases) are required. Institutions having issues with budgets are put on a fiscal watch program; however, funding is not withheld. Chairman Varela said in regards to public education, legislation requires withholding allotments for those districts exceeding time periods specified in law. Don Moya, deputy secretary, PED, responded that all budgets need to be approved and signed by June 30 of each fiscal year. There is nothing currently in place that would prevent PED from approving a budget if an audit is not on time.

Chairman Varela asked about local governments that are non-state agencies receiving stimulus funds and the audit process. Mr. Balderas responded that the test work under normal financial audit compliance should test federal funds. An internal auditor has been designated to oversee the review process for discrepancies. Mr. Balderas suggested there be an effort to separate government agencies between large and small to consolidate oversight and training. Chairman Varela asked staff to work with the state auditor, higher education, and PED to change oversight if needed and to recommend action to the Legislature during the next session.

### **Wednesday, September 30**

The following members were present on Tuesday, September 29: Chairman Luciano “Lucky” Varela, Vice-Chairman John Arthur Smith, Representatives Donald E. Bratton, Rhonda S. King, Don Tripp, Edward C. Sandoval, Jeanette O. Wallace, Nick L. Salazar, and Henry “Kiki” Saavedra; and Senators Carlos R. Cisneros, Sue Wilson Beffort, Carroll Leavell, John M. Sapien, Stuart Ingle, Mary Kay Papen, and Pete Campos.

**Corrections Department (770) -- Review of FY10 Operating Budget and Review of FY11 Appropriation Request.** -- Joe R. Williams, secretary, Corrections Department, provided an overview of the Correction’s Department FY10 operating budget. The department is holding monthly budget hearings with every entity in the department and tracking revenues and expenditures. Strict budget measures have been incorporated and negotiating with private vendors for no inflation increases in contracts has been successful. The department is requesting full budget transfer and budget authority from all sources for FY10 and FY11.

The FY11 budget request is conservative with minimal increases in various categories with a total of \$311 million from all sources, including \$288 million from the general fund, a 1.3 percent increase over the FY10 operating budget. The department did not request funding for Sierra Blanca women’s correctional facility. Industry programs continue to struggle. Funding for additional positions for re-entry and reform were also not requested.

Senator Beffort said she has concerns with fixed costs for prescriptions and a higher expense policy for inmates than state employees. Mr. Williams said in trying to reform the system the cost of incarceration is not going down. Senator Beffort suggested having plateaus in contracts lowering expenses and not rewarding a medical contract. Mr. Williams said the department is in the process of negotiations with CMS to lower the cost by \$2.5 million. Jolene Gonzales, deputy director for administrative services, added that an RFP was issued for the medical contract; CMS was the lowest bid. Senator Beffort said the state is in a good position to bargain the contract differently. Mr. Williams said the department is also considering contracting with an efficiency expert to look at the medical contract.

Senator Leavell said he is concerned with the early release program and releasing prisoners up to one year in advance. Mr. Williams said the community corrections statute allows certain offenders to be let out of prison 12 months early. At this time, prisoners have not been released early; however, there is a recommendation to pilot program with a small group of women out of Grants.

**New Mexico Lottery Authority Overview: FY10 and FY11.** Tom Romero, chief executive officer, New Mexico Lottery Authority, reported that the lottery has transitioned to a new gaming system. The project involved building a new communications network, installing more than 6,000 pieces of new equipment among 1,100 retailers throughout the state, training more than 3,500 retail clerks, and transferring the lottery's entire database of player wagers and prizes from the old gaming system. The November cutover came in on time and players purchased 30 percent more drawing game tickets in the first week. Over seven years, the lottery will pay the vendor a base price of 1.5 percent of total net sales or \$18.2 million based on projected net sales of \$1.15 billion, representing a savings of more than \$35.4 million over the lottery's contract pricing with the previous gaming system vendor. The new contract rates will continue to be a key factor in helping to return at least 30 percent of gross revenues to the legislative lottery scholarship program. Deployment of 225 self-service lottery sales terminals offers two significant improvements: sale of tickets for drawing games and dispensing of twice as many scratcher games. New gaming system capabilities help support state public safety campaigns and will help distribute amber alerts and announcements of missing persons and public safety throughout the state. The loss of 75 retailers was offset by recruiting 50 new retailers, including Sky City Casino travel center and K-Mart.

Lottery sales in FY09 were down for a third straight year. Gross revenues for FY09 were off \$5.2 million from the previous year's gross revenues. The biggest losses occurred in scratcher games, which typically total some \$80 million. Over two years, almost \$11 million has been lost in scratcher games. Scratcher sales are down approximately \$1 million compared with the same time last year. Despite sales being down, revenues for the year remain flat with a return of \$42.8 million to the scholarship program. Sales and revenue projections for the next three years have been revised from approximately \$151 million a year to approximately \$139 million. Projected scholarship revenues have been revised from more than \$45 million a year to approximately \$41.7 million. Total lottery profits since 1996 have hit the high mark of \$410.3 million. With those revenues, more than 54,000 students have attended college on legislative lottery scholarships.

**New Mexico Finance Authority Overview: Review of FY10 Operating Budget, FY11 Projections, and Review of Program Activities.** William C. Sisneros, chief executive officer, New Mexico Finance Authority (NMFA), reported the NMFA Legislative Oversight Committee is charged with approving and reviewing all rules, policies, and practices for the authority. The budgeting process requires extensive internal team work to identify programs by function and program.

Jerry Trojan, chief operating officer, reported NMFA is on a sustainable course for the future. Growth over the past five years includes a 400 percent increase in grossed managed assets, 500 percent growth in managed invested cash, 300 percent increase in bonds payable, and 400 percent increase in loans outstanding. Over the past five years, NMFA has grown in the number of actively managed programs.

Greg Campbell, controller, reported the authority operates on a consolidated budget; however, it

is allocated to the different programs serviced. Revenue sources pay for both operating and nonoperating expenses. The operating budget totals \$8.9 million; the overall budget totals \$187 million.

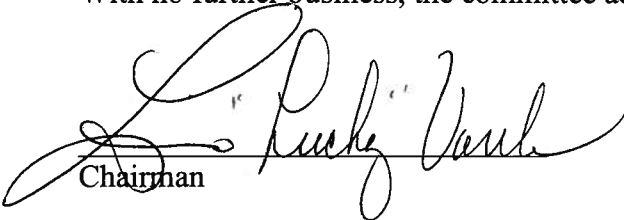
Marquita Russell, chief of programs, presented an overview and update of the programs administered by the authority. Particular emphasis was placed on the core of the authority's loan resource -- the public project revolving fund (PPRF), capitalized by 75 percent of the governmental gross receipts tax.

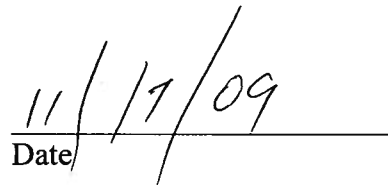
Senator Beffort asked if an audit is required of local entity borrowers. Mr. Trojan said audits are required for all individual loans. If an audit is not complete, the reason is noted and a review of unaudited numbers is done as well and brought before the Finance and Loan Subcommittee before a loan is closed. Senator Beffort said NMFA should have a policy to withhold loans unless the entity has a recent audit. Mr. Cisneros responded that the coordination on the financial underwriting requires a three-year audit, for the authority to work with the Department of Finance and Administration (DFA) to determine the status of revenue sources, and verification by the Taxation and Revenue Department (TRD). The authority also makes sure that over-leveraging of existing funds does not occur.

Senator Smith questioned if there were ongoing investigations at the authority. Mr. Cisneros responded that the investigations were now behind NMFA, and there were no more Department of Justice probes or inquiries.

Following a question from Speaker Ben Lujan regarding NMFA's analysis of job development from loans from PPRF, Ms. Russell responded that the New Market Tax Credit Loan program partnered with private bankers for \$16.5 million contributed to jobs doubling from 55 to 110 in the Deming area. Following the Speaker's question, Senator Smith emphasized for a second time that he had no financial interest whatsoever in the Deming project.

With no further business, the committee adjourned at approximately 11:22 a.m.

  
Chairman

  
Date