

MINUTES
of the
SIXTH MEETING
of the
INDIAN AFFAIRS COMMITTEE

December 3-4, 2009
Room 322, State Capitol
Santa Fe

The sixth meeting of the Indian Affairs Committee (IAC) for the 2009 interim was called to order by Senator John Pinto, co-chair, on Thursday, December 3, 2009, at 9:30 a.m. in Room 322 of the State Capitol in Santa Fe, New Mexico.

Present

Rep. James Roger Madalena, Co-Chair
Sen. John Pinto, Co-Chair
Sen. Rod Adair (12/4)
Rep. Eliseo Lee Alcon
Rep. Ray Begaye
Sen. Eric G. Griego (12/3)
Rep. Sandra D. Jeff (12/3)
Sen. Lynda M. Lovejoy
Rep. Patricia A. Lundstrom
Sen. George K. Munoz
Rep. Jane E. Powdrell-Culbert (12/4)
Sen. Nancy Rodriguez
Rep. Gloria C. Vaughn

Absent

Sen. John C. Ryan

Advisory Members

Rep. Ernest H. Chavez
Rep. Ben Lujan
Sen. Richard C. Martinez
Rep. Debbie A. Rodella
Rep. Nick L. Salazar (12/3)

Sen. Stuart Ingle
Sen. Timothy Z. Jennings
Rep. Antonio "Moe" Maestas
Sen. William E. Sharer

(Attendance dates are noted for members not present for the entire meeting.)

Staff

Damian Lara
Jennie Lusk
Tamar Stieber

Guests

The guest list is in the meeting file.

Handouts

All handouts are in the meeting file.

Thursday, December 3

Subcommittee

The IAC met as a subcommittee until 10:00 a.m., when a quorum was present and noted. Senator Pinto asked committee, staff and audience members to introduce themselves. Following the introductions, Senator Pinto recited an invocation in Navajo and English.

Indian Education and Performance

Catherine Cross-Maple, deputy secretary, Public Education Department (PED), and Nancy Martine-Alonzo, assistant secretary of Indian education, responded to the committee's concerns that educators who contract with the PED through the Indian Education Division (IED) are not getting paid in a timely fashion. Committee members worry that those educators, including private individuals and small businesses, may not apply for contracts in the future because of the long delays. In a December 2 letter to Governor Bill Richardson and Secretary of Public Education Veronica Garcia, the committee requested that Ms. Martine-Alonzo be moved up in the PED's organizational chart so that she can be more directly involved in decision-making and expedite Indian education priorities.

Deputy Secretary Cross-Maple said the PED has worked hard to see that the Indian Education Act is fully implemented and the Indian Education Fund fully utilized. Ms. Martine-Alonzo presented a report (in the meeting file) summarizing the history of and justification for the fund and showing appropriations and distributions beginning in fiscal year (FY) 2004 and projected through FY 2011. For the current fiscal year, there will be a \$5.5 million carry-over, which will be included in the budget for FY 2011. She said the carry-over is due, in part, to the fact that the IED is a new department in the PED and because it changed its contracts from joint powers agreements to intergovernmental agreements. She said the division has taken a lot of care to spend down its carry-over funds and ensure that projects are sustainable.

Paul Aguilar, an analyst for the Legislative Finance Committee (LFC), said he sees several basic problems with the IED:

- Despite annual expenditure projections showing it will spend all its money, the IED's money does not get spent.
- The vast majority of IED funds pay for programs focused on native language and culture. While he described that as "vitaly important", Mr. Aguilar said the division ignores the other charge of the Indian Education Act: helping Native American students achieve learning goals statewide.
- The IED operates more like a contract management division than an educational assistance division.

In addition, said Mr. Aguilar, there does not appear to be a request for proposals (RFP) or other application process at the IED. He said the division seems to be sending tribes and pueblos checks for either \$40,000 or \$60,000 and letting the tribes and pueblos figure out what to do with the money after the fact. It would be a better use of the funds if the pueblos and tribes came up with programs before getting money earmarked for Indian education, he said. Mr. Aguilar noted that the LFC was meeting at that moment and was about to learn that state revenues have dropped another \$50 million. He said he feared that the LFC will not recommend earmarks for the Save the Children or Teach for America programs, both of which had contracts with the IED, unless it receives direction to do so from the IAC.

Tina Deschenie of Farmington, who sits on the Indian Education Advisory Council (IEAC), said the council has had the same concerns, and it made a written request for a breakdown by fiscal year of IED programs and grants, funds expended, funds reimbursed and carry-over amounts. The council also requested records of all correspondence between the IED and New Mexico tribes. She said the council is still waiting for the information.

Deputy Secretary Cross-Maple said the IED is working with a federal technical assistance center and the Southwest Comprehensive Center to help Native American students meet education goals. The division is also developing a web-based tool that monitors the needs and requirements of Indian school districts throughout the state, she said.

Senator Munoz asked why Teach for America is a sole-source contract and why the contract has not yet been signed. Ms. Martine-Alonzo said the process to engage Teach for America, a national organization whose aim is to end educational inequity in the United States, began as an RFP and then changed, mid-stream, to a sole-source contract, which required resubmitting the request. The Department of Finance and Administration (DFA) still has questions about the contract, and flagged it because the IED requested that it be retroactive to the beginning of the fiscal year. The contract is now back with the IED for responses to the DFA's concerns.

Representative Begaye asked why the DFA was not present to address the committee. Ms. Lusk said the DFA told her that the PED is in a better position to answer the committee's questions.

Deputy Secretary Cross-Maple said that backdating an application could present a procurement violation. She said the PED was ready to issue the contract in August, but the department had the "brakes put on" when the request was changed to a sole-source contract. The RFP process would have moved the process more quickly than an application for a sole-source contract, she said, adding, "We felt that would have been the cleanest route."

Deputy Secretary Cross-Maple referred the committee to attachments to Ms. Martine-Alonzo's handout that show the contract process, and particularly to the DFA review process, which she stressed could require the contract going back and forth between the two departments more than once. "We are trying to be as responsive as possible in a timely manner to the DFA's request for information", she said. Deputy Secretary Cross-Maple also noted that preparing for the October special session further delayed the contract approval process.

Senator Munoz said that 3,000 people applied for 67 jobs "in the middle of nowhere" in McKinley County. Because of the delays in approving the Teach for America contract, he said, the county will be 67 teachers short. "It's a big issue", he said. "We've got to get this contract done. They've basically been screwed by the school system and by the state. We're going to lose it. They'll go to another part of the state where they don't have these problems."

Other questions and comments included the following:

- *How many people staff the IED?* The IED has a staff of nine.
- *Who oversees contracts for services?* There is a part-time individual in the PED to provide assistance in handling funds.
- *Why is there a middleman and what are her services to the Indian Education Fund?* Her name is Pashella Reynolds-Forte. Her role is to bridge the gap. She works for the assessment division. She has 27 years of state finance administration under her belt. Her functions are to assist in getting funds appropriately budgeted, help applications go through the contract process and make sure vendors get paid. She is a liaison between the finance and program sides. If it were not for Ms. Reynolds-Forte, nothing would have moved. She takes ownership of a project and shepherds it through the entire process. She has been a huge asset to the IED, the Special Education Division, the assessment division and the department in general.
- *Would Ms. Martinez-Alonzo have better control of the funds if she handled them herself?* Initially, the role that Ms. Reynolds-Forte provided was necessary because of a backlog of funds. She has been helpful to the IED.
- *How is Ms. Reynolds-Forte paid?* Don Moya, deputy secretary of education, said the IED tracks her hours and makes sure she is paid from the appropriate source. He said it is a "slippery slope" to focus on the role of a single individual in the PED.

Mr. Aguilar said the IED's budget is good; it just needs to be executed. Noting that the fiscal year is half over and the division has not moved any money, he said, "If the division can execute a budget and get down to current funding in fiscal year 2010, it would be amazing.". He added that the IED often takes 60 days to pay contractors. Deputy Secretary Moya said the department currently averages 31 or 32 days to pay contractors.

Senator Lovejoy asked how the committee can help the IED to iron out glitches in its system. She pointed out that it took two years to get the IEAC started, and she would like to see the council do its job. Representative Vaughn said that she, too, would like to see the council do some of the work. Ms. Martine-Alonzo responded that the role of the IEAC is to advocate for tribes.

The chair recognized Regis Pecos, former governor of the Pueblo of Cochiti and currently chief of staff for Speaker of the House Ben Lujan. Mr. Pecos pointed out that the poor academic performance among Native American students is a result of unique circumstances and logistics that have not changed in 60 years, i.e., tribes not investing money to "grow our own" educational leaders. There are very few native teachers and school administrators, he said. Thus, despite some Indian school districts having more education money than neighboring non-native districts, the Indian students rank much lower in academic achievement than non-Indians, he said. He asked who will guide the research on these disparities and suggested investing in a technical assistance center to provide staff and curriculum development.

Deputy Secretary Cross-Maple said the PED's philosophy is to have a comprehensive, integrated team approach such that all divisions work together to close New Mexico's achievement gap. She said the department has seen tremendous improvement in math and language skills. Also, while improvements may not be fast enough, she said the state needs to "celebrate" any progress.

Representative Vaughn said she would like to see more stress on academics, such as reading and science, and less on culture so that young Native Americans can earn a living and not depend on welfare.

OptumHealth

Linda Roebuck Homer, chief executive officer, Interagency Behavioral Health Purchasing Collaborative, and Katie Falls, secretary-designate of human services, briefed the committee on sanctions the state imposed on OptumHealth, the state's "single entity" (SE) provider for behavioral health services, for not complying with its contract. Primarily, she said, OptumHealth does not have a fully functioning claims system, which has created very significant problems in paying providers and has left many providers in financial straits. She is concerned that if providers are not paid, consumers will not get needed services.

Since July 1, according to a handout, OptumHealth has only expended \$112.1 million of the \$122 million it received from the state. Of 117,286 claims to the company, 12,765 remain unpaid. The SE, by contract, is required to maintain a working electronic claims management system, promptly pay claims, make every effort to reduce administrative burdens on providers and provide consistent and user-friendly forms and procedures. The SE did not have or did not adequately use a computer system to pay pending claims, and many provider claims were lost even before they entered

OptumHealth's tracking, according to Ms. Roebuck Homer. The collaborative has imposed the following sanctions on OptumHealth:

- instituting a "direct corrective action plan" requiring OptumHealth to remediate its noncompliance in the areas of:
 - claims;
 - service registration;
 - authorizations;
 - funds mapping;
 - filing an audit; and
 - financial reporting;
- monetary penalties, including:
 - a lump-sum fee of one percent of the total contract amount (\$1.2 million); and
 - a daily prorated fee of \$10,000 per day beginning November 1 until OptumHealth can show it is paying providers on time;
- actual damages, including:
 - paying providers 1.5 percent interest on all unpaid claims from the date that providers submitted their claims; and
 - all costs incurred by the collaborative in remedying OptumHealth's noncompliance; and
- appointing a state monitor who:
 - is selected by the collaborative;
 - reports to the collaborative;
 - is paid for by OptumHealth; and
 - continues its supervision until OptumHealth:
 - has a fully functioning provider payment system; and
 - can prove it is making every effort to reduce administrative burdens on providers.

Ms. Roebuck Homer said that OptumHealth is disputing the sanctions and claims to have a fully functioning claims management system. She said the company is opposing the civil monetary and actual damage penalties. A hearing on the matter is scheduled for January 7.

Secretary-Designate Falls said the Human Services Department (HSD) is looking at options in the event that it needs to terminate its contract with OptumHealth.

Questions and comments from the committee included the following:

- *ValueOptions had the contract for four years. Was the system broken at that time?* Under state procurement laws, the HSD had to rebid the contract after four years.
- *Did ValueOptions challenge that?* There has been litigation about specific elements.
- *When OptumHealth submitted its proposal, the state knew it did not have the capabilities, but it contracted with OptumHealth anyway. Do you think that is*

the case? Ms. Roebuck Homer said she thinks OptumHealth believed it could provide what was necessary, but that when it "went live" and was hit with a big volume of claims, problems emerged.

State Budget Projections/Post-Special-Session Capital Outlay

Cathy T. Fernandez, deputy director, and Kyle Burns, capital outlay analyst, LFC, gave a status update of capital outlay following the October special session and the outlook for the upcoming 2010 legislative session as it relates to Indian affairs. Their presentation included the following:

- Senate Bill 29 (Chapter 7) voided 243 general fund projects totaling \$136.1 million and reauthorized 196 of the voided projects for a total of \$124.5 million in senior severance tax bonds (STBs). However, the governor vetoed 47 of the reauthorized projects, including six located on Native American land totaling \$700,000.
- House Bills 17 and 13 (Chapter 5) reduce general fund appropriations by directing that \$150 million in unexpended general fund appropriations be voided and submitted as a bill in the 2010 session. Projects with a third-party contract valid prior to October 31 will be allowed to continue.

Ms. Fernandez and Mr. Burns passed out a list of capital outlay projects and their fates. The committee had the following questions and comments:

- *Is the state coming into the next session \$500 million short?* Yes, and with recently determined additional deficits, the state will be short another \$62.3 million for a total shortfall of about \$560 million.
- *Reducing the Gallup Intertribal Ceremonial Office by 3.5 percent is "absolutely unacceptable".*
- *The legislature worked so hard for many years to get this money for these projects. How does it get this back?* That funding is gone.
- *Some items on the list that had a valid contract were vetoed.* If a contract is in place, the state has an obligation to pay.
- *Why were some items moved to STBs and others not?* For the general fund projects that are outstanding, the funding is intact, but it is on hold.
- *When will the money be unfrozen? What is the process? Where do we go?* The LFC staff is developing a time line with the Legislative Council Service and the DFA for presentation to the LFC on December 5. Projects will remain frozen until the legislative session.

Representative Alcon said he does not want to be informed at the last minute about which projects will be cut, which is what happened during the special session. Mr. Burns said it will probably be a short time frame this time around, too — "pretty much the eleventh hour, I believe", he said. Representative Alcon said that is being done on purpose so that legislators will not have time to work on keeping their projects. Mr. Burns said that it is not the intent of the LFC to be "sneaky".

Ms. Fernandez said LFC members were very concerned about the legality of the executive order to freeze capital outlay projects because appropriations are the purview of the legislature. She said it would take a legal challenge to stop the governor's order. The executive branch will say the order is legal because it is not really stopping appropriations, only freezing them.

Senator Lovejoy wanted to know why representatives from the DFA, which is part of the executive branch, were not present. LFC staff members were "just the angels who brought the message to us".

Uranium Subcommittee Report

Senator Lovejoy and Representative Lundstrom, co-chairs, Uranium Policy Subcommittee, and Mr. Lara, subcommittee staff member, reported on the activities of the subcommittee, which is composed of members of the IAC and the Radioactive and Hazardous Materials Committee (RHMC). Those activities included visiting the Grants Uranium Belt and meeting in Washington, D.C., with members of Congress and federal agencies involved with cleaning up abandoned uranium mining and milling sites. The subcommittee also met with stakeholders, including community leaders, uranium workers, residents in the uranium belt and members of the uranium industry.

Senator Lovejoy noted that the legacy of uranium mining and milling, of which the primary beneficiary was the federal government, has affected the health of Native Americans disproportionately and that the correlation has not been studied adequately. She added that several companies have applied to start mining uranium again, so it is important to get the legacy issues settled.

Representative Lundstrom agreed that New Mexico must become "proactive" in addressing issues of the uranium legacy, particularly because with increasing international energy demands, there is an increased demand for uranium. She noted that the Economic and Rural Development Committee was presented with pending uranium mining permits. When the public finds out, she said, "all hell will break loose". She said the subcommittee is working with all stakeholders to develop a five-year plan to clean up abandoned mines and enact tighter regulations.

Both Representative Lundstrom and Senator Lovejoy noted that the subcommittee is hampered because it does not have full-time staffers. They requested that the subcommittee continue into the next interim, that it be approved for another trip to Washington, D.C., and that a federal congressional hearing be scheduled in the uranium belt.

Mr. Lara said the subcommittee:

- has identified \$1.5 billion in uranium inventories that the federal Department of Energy can sell to fund abandoned uranium mine (AUM) reclamation;

- has arranged for the appropriate federal agencies to work together in drafting a comprehensive five-year plan to remediate AUMs and abandoned uranium mills, particularly on the Navajo Nation; and
- is forming a plan to seek assurances from the Nuclear Regulatory Commission that it is abiding with Environmental Protection Agency standards.

Representative Lundstrom recommended changing the name of the subcommittee to the Uranium Legacy Cleanup Subcommittee to avoid any confusion that the committee will take a position for or against uranium mining.

Senator Griego said he supports not putting the uranium legacy issue on the back burner. Representative Alcon asked for a definition of "uranium legacy". Representative Lundstrom explained that it refers to past mining and milling activities that left a legacy of contamination because of improper or no cleanup. Representative Alcon said he worked in an underground uranium mine for seven years and saw water running through unmined uranium on a daily basis and that there was no contamination. Representative Lundstrom and Mr. Lara explained that uranium in its natural, unmined form is not toxic because it has not been oxidized.

Representative Lundstrom pointed out that she and Representative Alcon live in the heart of the Grants Uranium Belt and that her mother lives one-eighth of a mile from the largest Superfund site in the state. She said that she is shocked to find how little testing has been done in that area, particularly in light of the high incidence of health problems there.

Capital Outlay for Native American Elders

Ray Espinoza, director, Office of Indian Elder Affairs, Aging and Long-Term Services Department (ALTSD), told the committee that his office has worked hard to secure funding for programs for Native American seniors, and he does not want to lose that funding. While some of those programs are moving very slowly, he said it is due to "reasons beyond our control", i.e., the bureaucracy of Indian governments, particularly on the Navajo Nation.

Fiona Calabasa and Bernadine Salazar of the capital outlay unit said that while there was a great number of reversions back to the general fund for projects in Indian country — primarily because funds had not yet been obligated through a contract — there were far fewer reversions recently than in prior years.

Senator Lovejoy said she received a list of 15 Navajo Nation projects for which the funding was not obligated, which she finds very disturbing. She suggested that capital outlay relating to projects earmarked for Native American elders should fall under the Indian Affairs Department (IAD) instead of the ALTSD. Mr. Espinoza explained that Indian aging programs come through the ALTSD because the department has a process for identifying statewide projects and prioritizing them.

Charlie Gorman, governmental affairs liaison for the Pueblo of Tesuque, described the capital outlay cuts and freeze as being "unilateral". He said the tribes never had a chance to comment. When one government takes money from another government, he said, it has an impact across the board. "We have to be very careful how we continue the process of cutting funding when it affects Indians", he said.

Highway Projects

Jackson Gibson, District 6 commissioner, and Roman Maes, District 5 commissioner, State Transportation Commission (STC), updated the committee on the status of highway projects on Indian land. They noted that the Department of Transportation (DOT) suffered a \$40 million cut in its operating budget.

Mr. Gibson said District 6 encompasses 3,350 miles of roadway in a 20,000-square-mile swath across Cibola, Catron, San Juan, Sandoval and Valencia counties. He passed out a booklet with details about road projects in his district.

Mr. Maes said District 5 has 2,166 miles of roadway in Los Alamos, Rio Arriba, San Juan, San Miguel, Santa Fe, Socorro, Taos and Torrance counties and takes in 10 tribal entities: the Jicarilla Apache Nation, the Navajo Nation and the Pueblos of Nambé, Ohkay Owingeh, Picuris, Pojoaque, San Ildefonso, Santa Clara, Tesuque and Taos. He said 92 percent of District 5 roads are above 6,000 feet, which means that major repair and maintenance requirements, especially during inclement weather, often require well over \$1 million each.

Noting that the state is \$300 million short to meet its needs, Representative Lundstrom asked if the DOT will weigh in and present ideas for next session. She said that the state pulls transportation-related dollars from health care, corrections and many other areas. Without commitments from the governor and the DOT, and without the backing of the STC, legislators are "wasting our time" endorsing transportation projects, she said, adding, "It's hard to ask legislators to stick our necks out during an election year and have the commission be namby-pamby about it.". There are a lot of projects that are only halfway done with insufficient funds to complete them, and there are millions of dollars worth of backlogged maintenance projects, she said. "This is a bad way to operate and I'm concerned about it", she said, adding that the state "can't get enough backbone out of the commission to say this is what we want to do".

Mr. Maes acknowledged the problems. He said that constituents make so many demands of the STC that it is difficult to satisfy them all. He agreed that the DOT needs a committed source of funding, and he promised to take Representative Lundstrom's message back to the commission and get answers. He also suggested that the committee draft a letter with recommended legislation to the governor, including a "lock-in dollar amount" to go into a fund for the DOT. Representative Lundstrom pointed out that it is too late to draft a bill because the interim is at an end. She moved that the committee draft a letter to the governor urging his staff to review the House Memorial 5 report from last year's legislative session, which she said lays out the needs of the DOT and what

could happen if they are not adequately funded. Representative Vaughn seconded the motion, which passed without objection or further discussion.

Other questions and comments from the committee included the following:

- *Will the DOT be able to handle the demands made upon it?* The department chose to take its cuts primarily in salary and benefits, so with a light winter, it should be able to provide necessary road maintenance.
- *Many contracts are going to out-of-state bidders, so the state is losing all the way around. It is only fair to keep people in New Mexico working.* The low bidder gets the job, but 88 percent of GRIP II contracts have gone to New Mexico contractors.
- *What is the status of the U.S. 491 project?* Of \$169 million the DOT received in federal stimulus money, almost one-fourth — \$40 million — went into U.S. 491. When compared to the other five districts in the state, "that's quite a chunk". The Navajo Nation contributed \$6 million to the project.
- *What is the tribal liaison's job?* The liaison makes presentations about federal American Recovery and Reinvestment Act funding to tribal governments, researches the shovel-readiness of projects and helps with documentation, among other things.

Recess

The committee recessed at 4:44 p.m.

Friday, December 4

Representative Jeff, acting as co-chair, reconvened the meeting at 9:16 a.m.

Census

U.S. Census Bureau (USCB) representatives Amadeo Sheji, tribal partnership coordinator, Vicki McIntire, deputy director of the Denver Regional Census Center, and Joe Maestas, partnership specialist, provided an overview of their work, including specific initiatives and accomplishments on tribal lands.

Ms. McIntire said the bureau has three functioning offices in the New Mexico area, including one that opened in Window Rock three days earlier. She said the bureau will start delivering questionnaires in March that, for the first time in the history of the census, will be both in Spanish and in English. Also for the first time, the bureau will send reminder postcards to areas with traditionally low response rates before census workers start knocking on doors. Other initiatives specific to Indian country include:

- hiring tribal members to do outreach, knock on doors, collect completed census forms, identify households and do enumeration;
- refraining from sending out any nontribal census workers without express permission from a tribal governor;
- speaking personally to each of the 91 tribal leaders in a 10-state area for a minimum of two hours each;

- attempting to get tribes to appoint a tribal liaison; and
- sharing address lists and maps with tribal nations.

Mr. Sheji listed some accomplishments of the Denver USCB office as they pertain to Native America, including:

- finishing the first phase of the census count, which includes identifying habitable homes and giving them addresses;
- recruiting local census workers; and
- strategizing with tribal leaders on how to get information out to tribal members and how to achieve an accurate count.

Mr. Sheji asked committee members to encourage tribes to participate and to explain that an accurate count means more money to the community.

Mr. Maestas, who is the mayor of Espanola, provided the following statistics:

- Between 1990 and 2000, New Mexico's population increased from 1.5 million to slightly over 1.8 million, which represents a 16 percent growth rate.
- The 2010 population projection for New Mexico is 1.98 million — an eight percent increase.
- There is out-migration from California to the Rocky Mountain states, so the region will pick up congressional seats.
- New Mexico and Colorado are not expected to pick up any additional congressional seats, but Arizona will get two and Texas will get four.
- The additional seats could make the western states a "power block".
- New Mexico's response rate for the 2000 census was 62 percent, which compares to a 76 percent response rate nationally.
- The highest response rate in 2000 was in Los Alamos County, the lowest in Lincoln County, with 81 percent and 39 percent, respectively. Also low were Catron County, with a 44 percent response rate, and Colfax, Mora and Rio Arriba counties, with a 45 percent response rate each.

Mr. Maestas said he wants to create a friendly competition between counties to help improve on the 2000 response rate and make sure that counties get their fair share of the \$400-plus billion in federal formula funding. He stressed that his office will not just focus on highly populated cities, but also on rural communities that traditionally are undercounted. This is especially true in the northern part of the state, which is sparsely populated and traditionally has low counts, he said.

Mr. Maestas gave examples of partnerships throughout the state that are working to get a more accurate census count, including the following:

- Bernalillo County is working the South Valley's hard-to-count international population by enlisting the clergy and faith-based organizations and targeting community events and committees.

- Santa Fe is working with the deacon of Our Lady of Guadalupe Church.
- There are efforts throughout the state to get youth-serving and pro-immigration organizations to assist people in filling out the questionnaires.
- Educators and schoolchildren are also being enlisted to spread the word about the census.
- Chambers of commerce can also help get the word out.

Representative Begaye said people are wary of the census in his district. He said that residents often throw the census form in the trash and walk away. Among the problems causing mistrust are census takers who go to the same house two or three times and, in one case, a census worker who entered a house through a window because no one came to the door. Census workers also often just walk off the job, he said.

Other questions and comments from the committee included the following:

- *How do you count people who get their mail at post office boxes?* The census only counts people at their physical addresses.
- *What is the follow-up in counties that have a low response rate?* If someone refuses to participate in the census, the bureau will get information from neighbors or other sources.
- *What is the pay level for census workers?* It ranges from \$7.65 an hour to \$16.00 an hour. Field positions pay much higher than the minimum wage, and field workers get reimbursed for mileage.
- *What are the minimum qualifications to become a census worker?* One must be at least 18 years old and a U.S. citizen. However, if there are no citizens available to fill a language need, the census bureau will hire a non-citizen. Field workers outside of urban areas must have a driver's license and a car.
- *How does someone apply for a census job?* Call 1-866-861-2010 to learn where to apply locally. Applicants take a three-minute test for basic skills, are fingerprinted, undergo a background check and receive a home visit.
- *How long do census jobs last?* Field workers will finish next June. Office workers will finish in September.
- *What is the importance of a region reaching a population of 50,000?* That is the minimum population necessary to become a municipal planning organization (MPO). MPOs receive dedicated planning funds to manage their own transportation and can make policy decisions. Roswell is striving to reach the 50,000 population level.

Indian Water Rights

State Engineer John R. D'Antonio and Estevan Lopez, director, Interstate Stream Commission (ISC), presented a statutorily required annual update on the Indian water rights settlements. They addressed the status of the proposed settlements, the distribution

of money from the Indian Water Rights Settlement Fund and their recommendations on appropriations to the fund as necessary to implement the settlements. Reading from a handout, they provided the committee with the following information:

Status of Proposed Indian Water Rights Settlements

- New Mexico has three settlements pending: 1) the Navajo Nation settlement in the San Juan River adjudication; 2) the settlement agreement with the Pueblos of Nambé, Pojoaque, San Ildefonso and Tesuque in the *Aamodt* case; and 3) the Pueblo of Taos settlement in the Rio Pueblo de Taos/Rio Hondo adjudication.
- The settlements were executed in 2005 and 2006, but the United States will not sign any of the agreements until Congress passes specific enabling legislation authorizing the secretary of the interior to sign.

Distribution of Money

There is no cash in the fund at this time. The ISC has not exercised its authority to sell bonds.

Funding Recommendations

The Office of the State Engineer and the ISC recommend that the 2010 legislature appropriate \$15.2 million to the Indian Water Rights Settlement Fund. This request is included in the ISC's budget request.

Questions and comments from the committee included the following:

- *Are there a lot of revisions to the Navajo settlement?* There are minor changes; nothing of substance.
- *Can the state use gross receipts taxes to fund the request of \$15.2 million?* Speaker Lujan said the New Mexico Finance Authority oversees those funds.
- *What is the state's total share of the Aamodt settlement?* Of a total cost of \$286.2 million, the state's share is \$50 million and the federal share is \$169.3 million. The rest will be paid by the City of Santa Fe and Santa Fe County. The state will receive an undetermined amount of credit for prior construction that satisfies portions of the settlement.
- *A poll that Santa Fe County requested about the water settlement was premature and was a setback for any movement in Congress on the Aamodt settlement.* The poll underrepresented the value of the San Juan-Chama drinking water diversion project and garnered an unfavorable response. There is a lot more support than that poll indicated.

DL Sanders, chief counsel, Office of the State Engineer, said there is nothing in the *Aamodt* settlement requiring people to cap their wells unless they choose to do so and, instead, hook up to the pipeline. It is entirely elective, he said, adding that there is a lot of "disinformation" about what the settlement does or does not do.

Charlie Dorame, chair of the Northern Pueblos Tributary Water Rights Association and a former governor of the Pueblo of Tesuque, said he supports the state engineer's recommendation to appropriate \$15.2 million to the water rights settlement.

Representative Jeff moved that the committee write a letter of support for the settlement. Upon a second by Representative Vaughn, the committee unanimously voted in favor of the motion. Mr. D'Antonio said his office will assist in drafting the letter.

Veterans Withholding Settlement

John M. Garcia, secretary, Veterans' Services Department (VSD), Rick Homans, secretary, Taxation and Revenue Department (TRD), and Alvin H. Warren, secretary, IAD, briefed the committee on the status of the Native American Withholding Settlement. They said that, to date, the legislature has appropriated \$1 million to make settlement payments to Native American veterans who had state taxes illegally withheld from their service pay starting in 1977. Payments will include the income tax withheld. The TRD will administer the fund and create procedures and rules. The VSD will assist in filling out the form and in getting the necessary paperwork, such as discharge papers or W-2 tax withholding forms. Secretary Homans said the first application for reimbursement arrived two days earlier.

All the panelists agreed that outreach will be vital in contacting eligible veterans. Secretary Warren asked for the committee's help in getting out the word.

Questions and comments from the committee were as follows:

- *What if a tribe drags its feet in signing the necessary paperwork for a veteran to get paid?* If someone is getting stonewalled, the proper authorities will personally get involved.
- *Can families of deceased veterans file on their behalf?* Yes.

Capital Projects

Arbin Mitchell, executive director, Division of Community Development, Navajo Nation, distributed a report on the status of 261 Navajo Nation capital outlay projects. The Navajo Nation feels that 105 of those projects are "safe", said Mr. Mitchell. He requested that the committee support 97 other projects that are making their way through the Navajo Nation bureaucracy and that could be in jeopardy because they are not yet under contract. They total approximately \$8,122,000, he said, adding that the Navajo Nation did submit exception letters on those projects, and it is waiting for a response from the DFA. Mr. Mitchell said the Navajo Nation did a good job on spending money allocated to it.

Anselm Roanhorse, executive director, Navajo Division of Health, said his division was having trouble expending state funds on projects for the elderly despite having put out money and other resources on planning, design, construction and

renovation of senior centers. He said that is due, in large part, to trying to navigate the administrative requirements of the Navajo Nation in addition to fulfilling state requirements. Many requests come directly from local communities, which, though well-intended, can lack the professional expertise necessary to get them through the process. The projects fall into three categories: 1) those that have completed the bidding process, including some projects already underway (\$1,299,655); 2) projects that have not yet been advertised (\$779,843); and 3) non-exceptional projects that have not yet met all the requirements (\$621,500).

Secretary Warren said he and his staff are working diligently to identify projects and determine which ones have third-party contractors already in place, the amount for which the state is obligated and when the contracts were entered into. He said the IAD is doing its best to work with the tribes, particularly the Navajo Nation. Many have extenuating circumstances and could be good candidates for exception letters explaining why the balance of funds should be extended.

Rebecca Martinez, capital outlay manager, IAD, said she met with the DFA the previous day until 6:00 p.m. and was "grilled" on each project for which the department is seeking an exception. She said that vendors are waiting in line to get paid and that she and her staff are doing their best to assure the DFA that the projects satisfy the rules and regulations. She hopes to have agreements out in the next week.

Representative Alcon said capital outlay money often sits unused for three, four or five years. He asked why anyone is shocked if that money reverts back to the general fund. Mr. Roanhorse said one of the reasons money remains idle is because many projects are underfunded from the start. Under Navajo law, he explained, projects cannot be completed in phases. They must be fully funded at the outset. He said he supports Representative Jeff's initiative allowing communities to pool their funding to complete projects. Ms. Martinez said she wants to vouch for Mr. Mitchell's projects being underfunded. That is the core of why projects are not moving, she said, adding that "bureaucracy cripples the system". Now, she said, it is almost like a panic because people are looking at considerable amounts of money that may be reverting.

Representative Powdrell-Culbert suggested that, rather than waste time on projects that clearly will not be salvaged, the capital outlay staff address only those contracts that are in place.

Representative Lundstrom moved to table Representative Jeff's bill, which would allow tribes to pool capital outlay money from inactive tribal projects and use it for viable tribal projects. Speaker Lujan said that if money is designated for certain projects, chapters cannot decide on their own to designate it for something else. That has to be done legislatively and signed by the governor, he said. It has to be reauthorized, Senator Rodriguez said. Representative Jeff withdrew the bill.

Representative Begaye moved to write a letter to Secretary of Finance and Administration Katherine B. Miller supporting streamlining capital outlay swaps on the Navajo Nation. Senator Pinto seconded the motion. Representative Madalena suggested that Ms. Martinez make recommendations on swapping project funding. Ms. Martinez said that, typically, when a grant agreement is already in place, her office would amend it rather than initiate another full-blown grant agreement. She said there is a swap process for the pueblos, too.

The motion passed with no additional discussion.

The committee also voted to write a letter in support of the projects Mr. Mitchell presented. The motion passed without objection.

Anthony Begay, president of the Mariano Lake Chapter of the Navajo Nation, said the chapter was shocked to learn that Governor Richardson vetoed a \$175,000 appropriation for a parking lot because the chapter had an intergovernmental agreement with McKinley County since 2008 to do the work. Despite it being a valid contract, the governor determined that the contract was "inactive" and "unsalvageable", said Mr. Begay. Speaker Lujan said he does not believe the project was vetoed but that the money was transferred from severance tax bonds to the general fund. Representative Jeff said the governor assured her during a meeting that the money is still there and can be salvaged as long as there is a contract.

Ms. Martinez said she would look into the issue. She said her office also needs to clarify the purpose and intent of Senate Bill 29, which canceled general fund appropriations and then re-established those funds as STBs.

Representative Jeff moved that the committee write a letter to the Navajo Nation on the subject. Representative Madalena brought an end to the discussion before the committee voted on the motion.

Mt. Taylor

Jan V. Biella, acting state archaeologist and interim state historic preservation officer, briefed the committee on Mt. Taylor's status as a traditional cultural property (TCP). She distributed a letter the attorney general wrote to Representative Alcon and Senator Ulibarri concluding that the Cultural Properties Review Committee did not violate the Open Meetings Act in connection with its decision at a June 5 meeting to designate Mt. Taylor permanently as a TCP. She also distributed the final order approving the nomination of Mt. Taylor for listing on the state Register of Cultural Properties.

Representative Rodella reiterated concerns she expressed during a Land Grant Committee meeting in which land grant heirs testified that 5,000 acres of their property were included in the TCP designation. The problem, she explained, is that with a new law allowing land grants to become political subdivisions and, thus, eligible for capital outlay

money, their land can be considered state property and be subject to the TCP designation. The issue is now in litigation. "I think the legislature's intent was clearly not to make land grant property become state-owned property", Representative Rodella said. She said that until the issue is resolved, the state could wind up defending another case, which will be a huge financial burden, especially given the current budget crisis.

Data on Uranium Exposure

Mr. Lara presented to the committee a letter requested by Representatives Lundstrom and Madalena asking the state to collect data on the correlation between exposure to uranium and the incidence of certain diseases in the Grants Uranium Belt. Senator Martinez asked if the letter was proposed to the Uranium Policy Subcommittee. Mr. Lara said it was not. Senator Martinez, who chairs the RHMC, said that it is inappropriate for the letter to go out from the IAC. It should at least be presented to the subcommittee before the IAC approves it, he said, adding, "That was the purpose behind the subcommittee.". Representative Madalena said he raised that question the previous day, but subcommittee Co-Chairs Lovejoy and Lundstrom pointed out that the subcommittee would not be meeting again. Senator Martinez added that he was disappointed not to have had a say as to the members of the Uranium Policy Subcommittee.

On a motion by Representative Alcon and a second by Representative Rodella, the committee voted unanimously to table the letter.

Minutes

The committee approved the minutes, as amended, from the November 18-20 meeting in Shiprock.

Endorsements

The committee endorsed the following bills for introduction in the 2010 legislative session:

Subject of Bill	Sponsors
Allow out-of-state placement for tribal members in residential alcohol treatment centers	Representative Begaye
Dual credit enrollment	Representative Madelena
Lottery tuition scholarships at tribal schools	Representative Madalena
Increase penalties under the Indian Arts and Crafts Sales Act	Representative Madalena

Tribal eligibility for state fire protection funds	Representative Begaye
Tribal emergency protection	Representative Begaye

Adjournment

The committee adjourned for the interim at 3:15 p.m.