

MINUTES
Legislative Education Study Committee
Virtual Meeting
December 16-18, 2020

Wednesday, December 16, 2020

The following voting and advisory members were present: Voting: Chair Christine Trujillo, Vice Chair Mimi Stewart, Senators Candace Gould and William P. Soules, and Representatives Derrick J. Lente, G. Andres Romero, and Sheryl Williams Stapleton; Advisory: Senators Roberto "Bobby" J. Gonzales, Linda M. Lopez, Michael Padilla, and Shannon D. Pinto, and Representatives Kelly K. Fajardo, Joanne J. Ferrary, Natalie Figueroa, Joy Garratt, Susan K. Herrera, Raymundo Lara, Willie D. Madrid, Patricia Roybal Caballero, Tomas E. Salazar, Debra M. Sarinana, and Elizabeth "Liz" Thomson.

On a motion by Senator Stewart and a second by Representative Williams Stapleton, the committee approved the December LESC meeting agenda with no opposition.

On a motion by Senator Stewart and a second by Representative Williams Stapleton, the committee approved the November LESC minutes with no opposition.

FY21 and FY22 General Fund Revenue Estimates. Stephanie Schardin Clarke, secretary, Taxation and Revenue Department, described the U.S. economic outlook, noting real gross domestic product (GDP) nationwide decreased at an annual rate of 31.4 percent in the second quarter of 2020. Ms. Schardin Clarke noted federal monetary and fiscal policy bolstered the economy and mitigated some of the negative effects of the Covid-19 public health crisis, yet instability remains in U.S. and local economic forecasts. National projections from Moody's Analytics – a company that provides economic research on risk, performance, and financial modeling – anticipates employment recovery to be much slower than GDP recovery. The industries most affected by the pandemic nationally include retail, leisure, hospitality, and recreational activities. In April 2020, the United States lost 20.7 million jobs, marking the highest monthly job loss since 1945. The United States has recovered over 12 million jobs to date. Moody's Analytics projects that all jobs lost nationally will not be regained until 2024.

Ms. Schardin Clarke said New Mexico uses multiple national forecasts to create the state economic forecast and some of these forecasts assume additional federal fiscal stimulus and others do not. By considering both data sources, Ms. Schardin Clarke said current projections balance multiple scenarios. The current forecast is stronger than anticipated from previous projections in 2020, but no additional federal stimulus could result in lower revenue projections than what is anticipated. Prior to the pandemic, New Mexico's economy was growing steadily but contracted. New Mexico lost over 104 thousand jobs at the beginning of the pandemic and has only regained 40.1 percent of these jobs. Ms. Schardin Clarke said unemployment insurance claims continue to remain elevated. Unemployment rates peaked at 12.7 percent in July 2020 and have decreased to 8.1 percent as of October 2020. The most impacted employment sectors in New Mexico continue to be leisure and hospitality, which is down 20.2 thousand jobs, and mining, which is down 7,500 jobs. State government, federal government, and retail trade gained jobs between April 2020 and October 2020. Moody's Analytics projects that it will take until 2025 for New Mexico to recover to pre-pandemic employment levels.

Oil and natural gas production continues to be of concern for state revenues. Ms. Schardin Clarke noted national oil production is expected to decline through 2021. While the overall outlook has improved over previous forecasts, much uncertainty remains in regard to overall economic recovery. The brunt of the oil production decline in New Mexico is expected to occur in FY21.

Debbie Romero, acting cabinet secretary, Department of Finance and Administration, discussed the general fund overview for FY20, FY21, and FY22. Fiscal year 2020 recurring general fund revenue declined by 1.9 percent over FY19; FY21 recurring general fund revenue is estimated to decline by 10.9 percent versus FY20; and FY22 recurring general fund revenue is forecasted to grow by 5.4 percent versus FY21. Current projections show “new money” in FY22 is forecast at \$169 million. Ms. Romero said total recurring general fund revenue is estimated to decrease due to the impact of the Covid-19 pandemic.

Ms. Romero said the December 2020 consensus general fund forecast is higher than the forecast in June 2020, but lower than the forecast from December 2019. Fiscal year 2020 general fund reserves are estimated to be \$2.5 billion, or 35.4 percent of recurring appropriations, at the end of FY20; they are estimated to be \$2.4 billion, or 33.5 percent of recurring appropriations at the end of FY21. These estimates do not consider appropriations that will be made at the upcoming 2021 legislative session. Ms. Romero said the major risks to the forecast in New Mexico include continued pandemic uncertainty, uncertainty about new federal stimulus funds, and uncertainty in oil demand and supply. Ms. Romero added events in 2020 illustrated New Mexico’s revenue instability due to an oil market downturn; the state’s revenue sensitivity to an energy downturn and a national recession highlight the need for the state to maintain healthy reserve levels.

Dawn Iglesias, chief economist, Legislative Finance Committee (LFC), noted the consensus revenue estimate has increased considerably from the June consensus estimate; however, recurring general fund revenues for FY21 are still estimated to decline \$857.1 million. Most of the decline in FY21 is due to the pandemic’s effects on the oil market. Ms. Iglesias said New Mexico would have had to pull \$1.1 billion from reserves to cover the current budget level if federal funds had not been available and \$182 million in nonrecurring general fund revenue is still being used, even with federal aid. If the oil market crash had occurred without federal intervention, the state would have dipped further into reserves. If the Legislature had not acted in the June special legislative session, the state would have been overspent by \$243 million in FY21.

Senator Soules asked Ms. Romero about recommendations for cash reserves. Ms. Romero said the executive is approaching is aiming to have a reserve level of 25 percent of recurring expenditures coming out of the 2021 legislative session. Ms. Romero said this amount is supported by recommendations from Moody’s Analytics and the state still does not know the full impact of the pandemic on its economy; higher reserve levels are important to ensure stability in the state budget and revenues. Ms. Iglesias added LFC’s reserve target is below 25 percent because LFC advocates using some of the reserves to get through the economic downturn, while also keeping an eye on rebuilding reserves for future use.

Public Education Reform Fund Uses and Projected FY21 Year-End Balance. Joseph Simon, principal analyst, LESC, reviewed the creation and purpose of the public education reform fund. The fund was created for the Legislature to support evidence-based education reforms. The fund has been funded with unused appropriations for the K-5 Plus program and Extended Learning Time Programs. He said \$125.8 million reverted to the public education reform fund at the end of FY20 and around \$70 million could revert to the fund at the end of FY21. He noted the Legislature appropriated \$24.6 million from the public education reform fund for programs in FY20 and FY21. He said this would leave an estimated \$170.4 million available for appropriation for education reforms in FY22; the Public Education Department has requested appropriations totaling \$171.2 million from the reform fund. State statute allows the fund to be used for programs that support high quality teaching and school leadership, extended learning opportunities, interventions for at-risk students, effective administration or public school accountability.

Chair Trujillo asked about budget recommendations for FY22, noting the importance of LESC members participating in the budget process. Rachel Gudgel, director, LESC noted timing issues between the submission of the Public Education Department’s budget request at the end of

November and the adoption of budget recommendations by LESC and the Legislative Finance Committee (LFC). David Abbey, director, LFC, said the committee budget recommendations were only the beginning of the process and the appropriation and education committees would need to collaborate on public school budget issues during the legislative session. He said the education committees usually hold a joint budget hearing at the start of the session, and he pledged to make himself available for those hearings.

Representative Romero noted that PED has yet to spend a large percentage of the appropriations from the public education reform fund for FY21 and he asked what barriers existed to spending those dollars. Mr. Simon said PED staffing levels remain below levels from a decade ago, limiting the ability of PED to manage large grant programs outside of the public school funding formula. In addition, he said many PED grant programs function on a request for reimbursement basis, so although PED has made an award, the money is not actually expended until there is a request from the grantee.

Representative Romero asked if PED was required to report to the Legislature on the uses of the public education reform fund and Mr. Simon said although there was not a formal reporting requirement in statute the Legislature should use PED's budget request hearing to scrutinize the department's management of these appropriations. Representative Romero said it is disappointing there is not a formal reporting requirement given the amount of money involved and the Legislature needs to take a close look at how PED is spending those appropriations.

Civil Rights Commission Recommendations. Richard Bosson, retired chief justice of the New Mexico Supreme Court and chair of the Civil Rights Commission, provided background on the formation of the state's Civil Rights Commission, noting it was created pursuant to House Bill 5 during the June 2020 special legislative session. The commission had nine members and began meeting in August 2020; it produced a final report with recommendations in November 2020. The commission produced both a majority and minority report and Justice Bosson presented the majority's findings. Justice Bosson said New Mexico does not currently have a state statute that mirrors a federal provision allowing for lawsuits regarding violations of civil rights. The commission's vote was 6-3, with the majority recommending that the state adopt a Civil Rights Act. Justice Bosson noted the purpose of the proposed act would be to provide relief to citizens for their civil rights to be protected where there are not currently protections. Justice Bosson said it would be difficult to say if there will be additional costs resulting from enacting a new cause of action, but added that there is time for the Legislature to make adjustments and change the law as needed. Justice Bosson said other states, such as California, have similar provisions and there has not been significant litigation in California as a result of their legislation.

Steve Neville, State Senator, District 2, and a member of the Civil Rights Commission, added perspective from the minority report, echoing that civil rights are important and that it is important there are mechanism to address civil rights violations. Senator Neville said commission members in the minority felt sufficient existing avenues already exist, including the state's Tort Claims Act. Senator Neville also noted the commission's findings go beyond law enforcement and there are concerns that anyone who is a public employee could be impacted by this proposed act. Senator Neville said the minority opinion was also concerned that public involvement was not fully leveraged and many commission members were trial attorneys, whose positions may lean on the side of the legal community. If this proposed act were in place, insurance companies may not want to insure public entities.

Grace Philips, general counsel, New Mexico Association of Counties, also addressed concerns expressed in the minority report. Ms. Philips provided an overview of the law enforcement waiver in the Tort Claims Act, noting anyone may sue law enforcement for violation of any law, including the state and federal constitution. Ms. Philips said the proposed language in the act expands liability to any branch of government, including school districts and institutions of her

education, expressing concern about how insurance companies will be able to handle claims. Ms. Philips discussed concerns about insurance pools and historic difficulties with public entities receiving insurance, noting the New Mexico Association of Counties has been told by their insurance company that they would lose the ability to purchase re-insurance in the event that a law like this is enacted, creating concern about public entities being insurable. Ms. Philips also addressed how this may impact education, highlighting the *Martinez-Yazzie* consolidated lawsuit and expressing the view that this case is proof that there are avenues to bring to court violations of civil rights.

Richard Valerio, executive director, New Mexico Public School Insurance Authority (NMPSIA), said NMPSIA covers all school districts except Albuquerque Public Schools and also covers all 96 charter schools and 27 additional educational entities. Coverage offered by NMPSIA is afforded using a memorandum of coverage (MOC). Under the MOC, NMPSIA pays for any award for any violation of any rights, privileges, or immunities secured by the constitution and U.S. laws as well as the constitution and laws of New Mexico.

Martin Esquivel, general counsel, NMPSIA, agreed with Ms. Philips' concerns, stating the proposed law goes beyond concerns about law enforcement and imposes a new theory of liability without caps on damages and an added burden of paying the other side's attorney fees. This proposed law would apply to school teachers, administration, staff, and school volunteers. Mr. Esquivel expressed concern that certain Tort Claims Act violations may be turned into civil rights claims and could result in higher premiums to school districts. Mr. Esquivel added the proposed act could impact the value of a settlement without a cap on damages and with the potential award of attorney's fees, noting concern that cases may become fee driven even if the value of the claim is nominal. Mr. Esquivel said it would take time to conduct an actuarial analysis, but said civil rights claims addressed in state court versus federal court are likely to be more costly. Mr. Esquivel added the proposed law was initially intended to address law enforcement, but now has a much broader impact on all public entities, including schools, and that additional time is needed to study and consider such a law.

Representative Thomson asked how this proposed law might impact school districts being more careful in who they hire. Senator Neville noted PED should provide oversight of employees who may be problematic and for PED to play a role in keeping track of such employees. Mr. Esquivel also said findings from the House Memorial 57 task force may address this. The task force provided recommendations on defining duties to report and noted a need for PED to provide more training and investigators to look at these matters. Mr. Esquivel noted a need for more PED investigators.

Chair Trujillo expressed significant concern about the proposal, referencing issues such as the lack of caps on damages, that many issues could become more litigious than the Civil Rights Commission anticipated, and that the proposed bill could be financially costly for school districts and other public employees. The Chair said the commission's findings would need continued consideration and recommended that the Legislature move carefully in considering this proposed bill.

Education Partners and Other Stakeholders 2021 Legislative Session Budget and Policy Priorities. Joe Guillen, executive director of the New Mexico School Boards Association (NMSBA), said the joint education partners group comprises members from the American Federation of Teachers New Mexico (AFTNM), the National Education Association New Mexico (NEA-NM), the

New Mexico Coalition of Education Leaders (NMCEL), the New Mexico School Superintendents Association (NMSSA), the New Mexico Parent Teacher Association (NMPTA), and the New Mexico School Boards Association (NMSBA).

Dennis Roch, NMSSA president, said the joint partners' first priority was to ensure stable and sufficient formula funding that holds school districts harmless from enrollment shifts caused by the pandemic. Mr. Guillen noted the partners' second shared priority was to ensure local control to address district needs, particularly when it comes to extended learning time and community schools. The partners requested flexibility around the 25 additional instructional days in the current K-5 Plus program and request delayed implementation of the Attendance for Success Act. Ellen Bernstein, AFTNM president, said the third shared priority was social and emotional learning and explained the growing awareness of New Mexico's adverse childhood experiences statistics which require a mental health team at each school. The partners are advocating for the state to conduct an analysis of current staffing in relation to social and emotional learning. The fourth joint priority is to align state graduation requirements to what students need for the careers they are being prepared to pursue. The final priority was to improve educator recruitment, retention, and preparation using the following strategies: keeping all school personnel employed; partner with school districts in covering any increases to the cost of health care for school personnel; invest in regionally competitive salaries for educators; funding staffing efforts to recruit mental health and medical school based personnel; and increasing salaries of school support staff.

Olivia Calabaza, NMSBA president, explained the association's guiding principles for legislative proposals are opposing unfunded mandates, emphasizing local control, and providing adequate funding. Mr. Guillen noted NMSBA legislative priorities for the 2021 session include: school re-entry decisions remain with local school boards; temporary flexibility of graduation requirements; providing stable funding to meet all state mandates; holding school districts harmless for declining enrollment; protecting school district operational reserves; providing direct aid to schools for Covid-19-related needs; funding to ensure all school districts have access to online learning; flexibility around K-5 Plus requirements; funding culturally and linguistically responsive curriculum; and a hold harmless provision for any reductions to school district budgets as a result of the recent ruling on federal Impact Aid distributions.

Mr. Roch explained NMSSA and NMCEL's first priority is financial solvency. Mr. Roch highlighted four financial considerations: protecting transportation funding; creating a \$10 million emergency supplemental fund to protect school districts against Covid-19-related circumstances; investing in instructional materials; and ensuring Land Grant Permanent Fund distributions are directed to public schools. Mr. Roch said NMSSA and NMCEL's second priority centers on assuring flexibility in local decision-making, including local autonomy on instructional calendars, not mandating extended learning time programs, flexibility on graduation requirements, delayed implementation of the Attendance for Success Act, and further studying the restraint and seclusion statute before any revisions are implemented. Will Hawkins, president of NMCEL, said the third priority section focuses on recruiting and retaining quality educational personnel, noting New Mexico has the second highest teacher turnover rate nationally and declining teacher preparation program enrollment numbers. Mr. Hawkins encouraged alternative retirement options and removal of any penalties for retirees returning to work.

Dave Greenberg, NEA-NM executive director, noted NEA-NM supports state-wide investment in community schools and local control over the development and implementation of extended learning time programs. Ms. Sanchez addressed the importance of investing in early learning and higher education programs, stating higher education funding should be fully restored. Mr. Greenberg reaffirmed the joint partners' proposal to hold school district funding harmless, but also noted the need for an across the board salary increase for school staff. Ms. Sanchez also supported funding for social and emotional supports, personal protective equipment, and upgrading school ventilation systems. Finally, Ms. Sanchez called for the Legislature to prioritize

education by not implementing any cuts to the education budget and to increase funding through diversifying revenue streams.

Ms. Bernstein and John Dyrzcz, state affiliate political organizer for AFTNM, introduced AFTNM's legislative priorities. Ms. Bernstein school building closures provides a chance to consider low-cost school improvement ideas, including working on anti-racist structures in public schools statewide. Ms. Bernstein reaffirmed the joint partners call to revisit graduation requirements, noting support for incorporating personalized course pathways for students and expanding capstone projects. Ms. Bernstein also supported expanding educator preparation programs, including expanding the Educators Rising program. Mr. Dyrzcz stated the federations support for initiatives including: supporting lowest paid school workers, supporting Grow Your Own Teachers Act eligibility expansion, regulating student debt servicing, and pursuing additional funding to ensure all school buses are purchased with air conditioning.

Renata Witte, vice-president of NMPTA, stated the association supports expanded social and emotional systems and increased family engagement in schools. Ms. Witte noted the association believes the Legislature should prioritize work with family organizations, including NMPTA, to access family needs. Finally, Ms. Witte noted it is essential to provide students, families, and teachers the supports needed to navigate Covid-19. Mary Beth Weeks, NMPTA president, said Covid-19 provides the opportunity to prioritize student education.

Matt Pahl, executive director of Public Charter Schools of New Mexico (PCSNM), introduced the organization's policy platform. He opposed bills that attempt to restrict charter school development and enrollment, noting the number of charter schools in New Mexico is not growing. The organization supports expanding access to long-term facility funds with a revolving loan fund and simplifying short-term lease assistance funding using a per-student distribution of those funds. He said the loss of small school size funding will disproportionately affect rural and charter schools. Mr. Pahl noted support for PED's family index proposal. Mr. Pahl noted charter schools would like to continue allowing adult students to obtain high school diplomas. Additionally, the organization supports expanding PED's real-time data system and family focused Covid-19 recovery packages.

Representative Romero asked the joint partners for additional details on their hold harmless proposal. Mr. Roch suggested using an average membership over the last three years and holding that number steady for the next two fiscal years to provide funding stability. Senator Gonzales asked for clarification about what years would be included in the three-year average; Mr. Rounds stated the three years would consider the current and prior two years. Senator Gonzales noted that including the 2020-2021 school year will likely hurt the average.

Representative Garratt asked about the system for applying for broadband funds and if there is collaboration with non-educational entities in a community. Mr. Roch noted the application process is lengthy and superintendents have asked that the process be streamlined. Mr. Guillen stated the Public School Capital Outlay Council and the Public School Facilities Authority are examining ways to streamline the application process. Rachel S. Gudgel, director of LESC, said the council approved a contract to help school districts create broadband plans.

Albuquerque Public Schools Transformational Framework. Gabriella Duran Blakey, Ph.D., chief operations officer, Albuquerque Public Schools (APS), explained APS's school transformation model began as a "more rigorous intervention" plan at Los Padillas, Hawthorne, and Whitter elementary schools. The model is aligned with the Learning Policy Institute's recommendations to create community school frameworks and extend learning time with integrated student supports. The schools invest in the assets of their communities and emphasize student-centered learning, social and emotional learning, formative assessments, planning processes, and distributive leadership. The schools facilitate student growth by relying on three

critical transformational components: extended school day, extended school year, investments in human capital.

Gene Saavedra, associate superintendent for learning zone one, APS, explained the schools invested in human capital by shifting teachers to core subjects, grade levels, and areas of expertise. Additionally, the schools hired math and reading interventionists, community school coordinators, transformational coaches, and assistant principals. Mr. Saavedra said to sustain the transformational model in the three schools, APS spends approximately \$3 million annually, using a combination of operational funding and extended learning time program funding, to cover the extended school day, the extended school year, and the required staffing and programs.

Antonio Gonzales, Ph.D., associate superintendent for learning zone two, APS, noted the extended school day takes the form of a “genius hour” that builds enrichment, personalization, and acceleration into the normal school day. The extended school day also builds time for teachers to participate in job-embedded professional development. In addition to extending days, the extended school year increases instructional hours at the three elementary schools from the typical 996 hours to 1,316 hours. Mr. Gonzales concluded the presentation by requesting that the Legislature consider funding “equivalent hours” for extended learning time programs, rather than only funding additional days. Funding additional hours could provide funding to flexibly integrate student supports during an extended school day at more schools without adding additional school days.

Representative Romero asked how the schools will address learning loss resulting from the Covid-19 pandemic. Mr. Gonzales said genius hour will provide additional enrichment opportunities, but also explained the community school model has given rise to increased parent engagement, which will be important to ensure learning occurs at home when possible. Kimberly Finke, Ph.D., principal, Whittier Elementary School, APS, said the community school model helped parents understand student performance and learning and taught parents how to advocate for their children’s needs.

Representative Romero asked if APS has what the school district needs to continue funding the transformational model in the three schools. Ms. Duran Blakey explained the schools received school improvement grants from PED for the first year of the programs but lost funding in the second year. APS committed to using operational funds to continue the program, though it was an expensive undertaking. Representative Romero asked whether the school transformation model could constitute an “evidence-based intervention.” Ms. Duran Blakey noted the foundations of the model lie in research, including elements of K-5 Plus embedded in the program. However, the transformational model is not for every school, and Ms. Duran Blakey asked for funding flexibility to ensure schools can meet local communities’ needs.

Representative Sarinana asked for details about how teachers are assisted in reaching National Board certification. Cesar Hernandez, principal, Los Padillas Elementary School, APS, said Los Padillas provided support in filing applications and subsidized the application fee. In the first year, one teacher applied, and the next year, 12 other teachers followed suit.

Thursday, December 17, 2020

The following voting and advisory members were present: Voting: Chair Christine Trujillo, Vice Chair Mimi Stewart, Senator William P. Soules, and Representatives Rebecca Dow, Derrick J. Lente, G. Andres Romero, and Sheryl Williams Stapleton; Advisory: Senators Roberto “Bobby” J. Gonzales, Linda M. Lopez, Michael Padilla, Shannon D. Pinto, and Representatives Kelly K. Fajardo, Joanne J. Ferrary, Joy Garratt, Susan K. Herrera, Raymundo Lara, Willie D. Madrid, Patricia Roybal Caballero, Tomas E. Salazar, Debra M. Sarinana, and Elizabeth “Liz” Thomson. Also present were Representatives Harry Garcia, Patricia A. Lundstrom, and Candie G. Sweetser.

Public Education Department FY22 Public School Support Budget Request. Ryan Stewart Ed.L.D., secretary, Public Education Department (PED), highlighted elements from PED’s strategic plan and budget request for public schools for FY22. PED requested \$3.34 billion for public schools, with \$3.174 billion for the state equalization guarantee distribution (SEG), \$124.2 million for categorical programs, and \$27.9 million for special programs administered by PED, often called “below-the-line” programs. He said the request prioritized funds for the SEG and PED supports a hold harmless program for pandemic-related enrollment declines in some public schools. Mr. Stewart said school districts and charter schools had not yet reached full participating in K-5 Plus and Extended Learning Time Programs and PED was seeking authorization to restructure funding for the programs to promote participation.

The department requested authority to take unspent funds and use those funds for career technical education programs or community school programs at schools that participate in either K-5 Plus or Extended Learning Time Programs. He said this would give school districts and charter schools an extra incentive to participate in extended learning opportunities. Mr. Stewart said PED was supporting the elimination of the public school funding formula credit for federal Impact Aid funds. He said that any legislation to eliminate the Impact Aid credit should include strong language on tribal consultation on the expenditure of funds and must be used for the educational benefit and capital outlay needs of students for which Impact Aid is received.

Mr. Stewart said PED was requesting \$55.9 million from the public education reform fund to create a family income index to provide targeted funds to schools that support the largest number of low income students. He said PED would partner with the Taxation and Revenue Department to use tax records and census data to get a more accurate picture of students’ families’ income than is offered by currently available metrics. Mr. Stewart said PED was requesting \$95.3 million from the public education reform fund to provide grants to school districts and charter schools for a variety of programs designed to mitigate the effects of the pandemic. This includes funding for increased learning time, school transportation, counseling, a new work-based learning initiative, and professional development. He said PED requested \$63.6 million for FY22 and \$31.8 million for FY23. He said PED was requesting \$10 million to fund programs aligned to the tribal remedy framework proposed by a coalition of tribal representatives and \$8 million to fund implementation of a regional support network for budget and program reviews, with both requests from the public education reform fund.

Mr. Stewart also reviewed the PED operating budget request, which was based on a 5 percent general fund reduction, based on executive budget instructions. He noted the agency hoped changes to projected revenues may mean the Legislature would be able to avoid this cut.

Representative Thomson asked about reduced funding for the Division of Vocational Rehabilitation (DVR) that was allocated to regional education cooperatives for pre-employment transition services. Mr. Stewart said DVR was not eliminating these services but was going to provide the services with DVR staff. He said DVR needed to maintain the same quality of program and DVR has made progress in hiring counselors to implement the shift. He said if upon review the program was less effective there would need to be a change. Senator Lopez asked if PED was still contemplating moving DVR to the Department of Workforce Solutions and Mr. Stewart said those conversations were still ongoing.

Representative Lara asked if funding from the family income index could be used to support physical, social, and emotional health needs of students and Mr. Stewart said the proposal would be a flexible vehicle for the Legislature to decide what types of services could be funded with these dollars. Representative Lara said many stakeholders requested local control of funding, but the Legislature needed to have much more input on how these funds are spent to ensure this money is appropriately targeted for services to low-income students. Representative Dow asked

why PED was proposing a new program over making changes to the current at-risk index and Mr. Stewart said a new program would allow for more targeted funding by only focusing on schools with a high percentage of low income students.

Representative Romero asked about PED's proposed solutions regarding a hold harmless program for enrollment declines. Mr. Stewart said PED had received feedback from school districts about the need for budget stability. He said the department was concerned that without a hold harmless, school districts and charter schools would make budget plans assuming a worst case scenario. Mr. Stewart said the department is advocating for allowing a choice between using current year enrollment or prior year enrollment when calculating funding, but conversations were still ongoing and PED was continuing to analyze data.

Representative Lente noted he appreciated the efforts PED and other departments had made to address issues related to the *Martinez-Yazzie* lawsuit, however, he said PED is missing several pieces of critical information. He noted there was no formal tribal consultation on PED's strategic plan, which did not address the proposed tribal remedy platform. Mr. Stewart said feedback related to PED's strategic plan was still ongoing and PED would engage in tribal consultation to inform the strategic plan.

Representative Garratt asked if PED supported greater flexibility to increase participation in the K-5 Plus and Extended Learning Time Program and Mr. Stewart said the department was proposing to incentivize participation in the programs by prioritizing funding to schools that request grants for community schools and career technical education. Representative Dow said she was concerned with mandating one-size-fits-all programs. She said she was concerned that funds the Legislature appropriated to address the *Martinez-Yazzie* findings were being directed to other schools because high-need schools are not able to implement the standards required by state programs.

In response to Representative Garratt, Mr. Stewart said PED requested \$1.5 million for educator recruitment programs, which included support for the Educators Rising program in high schools, recruiting educational assistants into teaching positions, and marketing programs promoting teachers.

Representative Garratt asked what PED was doing to promote broadband and internet expansion. Mr. Stewart said school districts and charter schools received \$97 million from the federal CARES Act, a large portion of which was spent to address the broadband issue. He also said the state used CARES Act funds for technology. He noted the need for dedicated infrastructure, which will take time to build. He said additional federal funds could help address remaining needs. He said PED estimates \$55 million to \$60 million was needed for technology upgrades and so far schools had spent about \$46 million, closing a large percentage of that gap. Senator Pinto said the state needed to allocate additional funding to close the digital divide, though she noted federal funding was helpful. Representative Garcia asked which parts of the state did not currently have internet access and Secretary Stewart said he could provide that information. Representative Garcia noted some school districts were using cash reserves to provide internet access to students that are unable to afford it.

Representative Herrera said she thought PED needed to include more specific, measurable goals in its strategic plan and include cost estimates to reach those goals. Mr. Stewart said that was the goal for the strategic plan and the process of developing these goals were ongoing. Representative Roybal Caballero noted the strategic planning process should be constantly evolving to address changing circumstances. She encouraged the connection of an education strategic plan to economic development. Representative Herrera said she wanted to see side-by-side comparisons of different budget recommendations. Rachel Gudgel, director, LESC, said there would be additional budget recommendation hearing at the January LESC meeting.

LESC Public School Support and Other Public Education Budget Recommendations. On a motion from Senator Stewart and a second by Senator Soules, the committee voted to approve the LESC staff public school support and other public education budget recommendation. Representative Dow voted in opposition.

Potential Committee Endorsed Legislation. Staff presented bill drafts and analyses for several bills which the committee considered for endorsement. The committee voted to endorse the following bills:

- On a motion by Senator Stewart and a second by Senator Soules, a bill to mandate K-5 Plus and Extended Learning Time Programs in FY22 was endorsed on a vote of 4 to 3, with Representative Dow, Representative Lente, and Representative Romero voting in opposition. Senator Gould, Senator Brandt, and Representative Baldonado were absent.
- On a motion by Senator Stewart and a second by Representative Romero, a bill to eliminate credits for Impact Aid, forest reserve payments, and the local half-mill levy was endorsed on a vote of 6 to 0. Senator Gould, Senator Brandt, Representative Dow, and Representative Baldonado were absent.
- On a motion by Senator Stewart and a second by Chair Trujillo, a bill to revert 100 percent of unspent charter school transportation distributions to the transportation emergency fund was endorsed on a vote of 6 to 0. Senator Gould, Senator Brandt, Representative Baldonado, and Representative Dow were absent.
- On a motion by Representative Dow and a second by Senator Stewart, a bill to create an enrollment preference for the children of charter school employees was endorsed on a vote of 7 to 0. Senator Gould, Senator Brandt, and Representative Baldonado were absent.
- On a motion by Representative Romero and a second by Senator Stewart, a bill to allow LESC to study higher education was endorsed on a vote of 7 to 0. Senator Gould, Senator Brandt, and Representative Baldonado were absent.
- On a motion by Representative Lente and a second by Representative Williams Stapleton, a bill to expand eligibility for grow-your-own teacher scholarships was endorsed on a vote of 7 to 0. Senator Gould, Senator Brandt, and Representative Baldonado were absent.
- On a motion by Representative Dow and second by Senator Stewart, a bill to appropriate \$100 thousand to the Early Childhood Education and Care Department for New Mexico-grown fruits and vegetables was endorsed on a vote of 6 to 0. Senator Gould, Senator Brandt, and Representative Baldonado, and Representative Williams Stapleton were absent.
- On a motion by Representative Lente and a second by Chair Trujillo, a bill to elevate the Bilingual Multicultural Education Advisory Council to the statutory level was endorsed on a vote of 7 to 0. Senator Gould, Senator Brandt, and Representative Baldonado were absent.
- On a motion by Senator Stewart and a second by Representative Williams Stapleton, a bill to require a school nurse at every school district was endorsed on a vote of 6 to 1, with Representative Dow in opposition. Senator Gould, Senator Brandt, and Representative Baldonado were absent.

The committee did not endorse the following bill:

- On a motion by Senator Stewart and a second by Senator Soules, a bill to delay the implementation of the Attendance for Success Act until the 2021-2022 school year failed to receive an endorsement on a vote of 2 to 4, with Representative Dow, Representative Lente, Representative Romero, and Chair Trujillo voting in opposition. Senator Gould, Senator Brandt, and Representative Baldonado were absent.

The committee discussed but did not act on the following bill ideas:

- Mr. Simon presented options for a bill to hold school district and charter school state equalization guarantee distributions harmless for changes in enrollment due to the Covid-19 pandemic. Mr. Simon noted he will work with members to bring a bill draft to the committee during the January 2021 LESC meeting.
- Ms. Gudgel explained staff are working on a bill to address educator misconduct based on the findings of PED's task force on school ethical misconduct pursuant to House Memorial 57 from the 2019 legislative session.
- Ms. Gudgel also noted staff are working on a bill to create a commission on equity and excellence in education.

New Mexico Educational Retirement Board Benefit Analysis. Jan Goodwin, executive director, Educational Retirement Board (ERB), presented a recent study by economists at the University of New Mexico's (UNM) Bureau of Business and Economic Research (BBER) that compared ERB and Public Employee Retirement Association (PERA) contributions and benefits. Ms. Goodwin said ERB pursued the study because for years ERB members have noticed their pension benefits are lower than those of state employees covered under PERA and ERB wanted to quantify what the differences were. The study followed four cohorts of employees to incorporate the changes made by both PERA and ERB over time. From 1958 to 1983, PERA employee contribution rates were consistently higher than ERB's, but PERA reversed course by cutting employee contribution rates by roughly half in the 1980's while doubling the employer contribution rate. ERB steadily raised employee and employer contribution rates from 1958 to 2003, with employee rates exceeding PERA's from 1984 to 2003; however, the PERA employer contribution rate was higher than ERB's for most of those years. PERA's cost-of-living adjustment (COLA) was also higher than ERB's and the retirees began receiving their COLA sooner than ERB's retirees.

Rod Ventura, deputy director of ERB, said within each cohort the study compared different types of workers to account for different educational requirements and different salary levels. Mr. Ventura shared comparisons among each worker type for all of the cohorts, which yielded similar conclusions. Overall, the results of the study showed PERA members received more pension benefits relative to what they contributed for three of the four cohorts studied. Another finding was a typical PERA member receives significantly more in retirement relative to what they earn during their active years net of the employee contributions. One of the key differences in pension benefits is the higher multiplier for PERA retirees. Additionally, the COLA was significantly higher for PERA members than ERB members and compounded for a longer period of time. After adjusting for member contributions, BBER found PERA members also received more salary earnings on average than ERB members during their active years.

Ms. Goodwin additionally shared ERB's reasoning behind their legislative proposal for the 2021 legislative session and noted Senator Stewart is the sponsor of the bill. After ERB's 2019 valuation, ERB's actuaries prepared an experience study to ensure all of their assumptions in their valuation were accurate. Two key assumptions were changed by the actuaries including a decrease in the investment earning assumption from 7.25 percent to 7 percent and a decrease in the inflation assumption from 2.5 percent to 2.3 percent. These changes increased ERB's unfunded liability from \$7.9 billion to \$8.3 billion, increased how long it would take them to reach 100 percent funding from 47 years to 70 years, and decreased their funded ratio from 62.9 percent to 61.6 percent. ERB's unfunded liability is \$9 billion and Ms. Goodwin said ERB will never reach 100 percent funding with current contributions and benefits.

Ms. Goodwin says changes need to be made to ensure ERB does not run out of money and can get to 100 percent funded. During the 2020 legislative session, the Legislature shortened the COLA delay for PERA members from seven years to two years. In contrast, ERB members do not receive this benefit until they reach 65 or 67 years old, depending on when they started their ERB employment. The Legislature also increased the member contributions for PERA members from

8.92 to 10.92 percent over four years; however, ERB members have contributed 10.7 percent since 2015. There was also an increase to the employer contribution rate for PERA from 17.24 percent to 19.24 percent over four years. Currently, the ERB employer contribution rate is 14.15 percent. Ms. Goodwin said there have already been many reductions to the ERB benefit and ERB members have historically paid higher member contributions than PERA members. She stated the only reasonable and equitable path forward is an increase in the employer contribution rate. ERB's 2021 legislative proposal raises the employer contribution by 1 percentage point a year over four years, from the current rate of 14.15 percent to 18.15 percent. Each 1 percentage point increase will bring approximately \$30 million to the ERB fund and the ERB board unanimously endorsed this proposal at the December board meeting. The proposal was also endorsed at the Investments and Pensions Oversight Committee (IPOC) meeting last week. If the proposal is fully adopted, the funded ratio would be just under 74 percent by 2051 and the funding period will drop from infinite to 42 years. Ms. Goodwin concluded that the proposal is not a complete solution, however it does put ERB on the right path.

On a motion by Senator Stewart and a second by Representative Trujillo, a bill to increase the employer ERB contribution rate was endorsed on a vote of 4 to 0. Senator Brandt, Senator Gould, Representative Baldonado, Representative Dow, Representative Lente, and Representative Romero were absent.

Friday, December 18, 2020

The following voting and advisory members were present: Voting: Chair Christine Trujillo, Vice Chair Mimi Stewart, Senator William P. Soules, and Representatives Derrick J. Lente, G. Andres Romero, and Sheryl Williams Stapleton; Advisory: Senators Roberto "Bobby" J. Gonzales, Linda M. Lopez, Michael Padilla, and Shannon D. Pinto, and Representatives Kelly K. Fajardo, Joanne J. Ferrary, Natalie Figueroa, Joy Garratt, Susan K. Herrera, Raymundo Lara, Willie D. Madrid, Patricia Roybal Caballero, Tomas E. Salazar, Debra M. Sarinana, and Elizabeth "Liz" Thomson.

Update from New Mexico Alliance for College and Career Readiness. Lillian Torrez, XX superintendent, Taos Municipal Schools, provided an overview of the New Mexico Alliance for College and Career Readiness. The alliance is a consortium of school districts and superintendents that partners with Advancement Via Individual Determination (AVID) as a best practice. Ms. Torrez said 14 school districts in New Mexico actively use this system and are part of the alliance. Through this alliance, 8 thousand students public education students, including prekindergarten students, are served. Ms. Torrez noted that of AVID alumni, 42 percent of first-generation, low-income AVID college students graduate with a four-year degree within six years compared with 11 percent of their peers nationally. Ms. Torrez said students participating in AVID demonstrate higher performance on many college and career readiness indicators including higher rates of FAFSA completion to receive financial aid, completion of more honors and advanced placement courses during high school, increased on-time graduation, and increased enrollment in two-and four-year postsecondary institutions.

Chanell Segura, XX, superintendent, Truth or Consequences Municipal Schools, said AVID is an approach, not a program, and that it also provides tools to administrators via its coaching and certification instrument. Dr. Segura said the instrument is aligned with NM Dash and provides resources to administrators in regard to leadership, systems, instruction, and culture. Ms. Segura said the alliance looks at this partnership with AVID and their results as a remedy for key issues outlined in the *Martinez-Yazzie* consolidated lawsuit. The alliance will be submitting a bill during the legislative session asking for \$3 million to advance college and career readiness for New Mexico students.

In response to Representative Herrera's question about the current AVID budget, Edward Lee Vargas, XX, TITLE, ORG, said each participating school district funds this differently, including

using federal and state funds and grant funding. He noted he would follow up with specific funding from each school district. Representative Ferrary asked if special education teachers are also included so that students with disabilities may participate in AVID. Ms. Torrez said they are included. Ms. Segura added teachers of students with special needs can also learn AVID skills and entire school populations can participate in the AVID system.

Representative Roybal Caballero emphasized AVID is an approach rather than a program and asked how AVID integrates families and communities in its approach. Ms. Segura said AVID provides a sense of community where all students build upon a sense of belonging and that the system also uses a family component to educate and engage families on topics such as FAFSA completion, college success, college readiness, and teaching both students and families how to approach the postsecondary education system.

Ensuring All Students Are Engaged in School During the 2020-2021 School Year. Katarina Sandoval, deputy secretary of academic engagement and student success, PED, said PED partnered with Graduation Alliance to create a program named Engage NM to locate disengaged students and support them and their family. When a school district opts in to the program, which is free of charge, a school district or charter school provides a list of students who need to be referred to the program. So far, 132 school districts and charter schools have opted in and 32 thousand students have been referred. School districts and charter schools are instructed per guidelines from PED to refer students who are completely disengaged, irregularly participating, in danger of failing one or more class, qualify for tier three or four intervention levels from the Attendance for Success Act, are homeless or in foster care, and are referred by their families. Engage NM has connected with over 12 thousand families across the state and of those families 9,400 are participating in academic coaching. When a student opts in and makes contact with the program, the student and family work with Engage NM to identify needs and potential barriers to engagement. Depending on the results, appropriate tiers of support are offered, including academic supports, food and health services, and behavioral health supports through telehealth.

PED is also working to locate students who are unaccounted for. Ms. Sandoval said PED is working with the Children, Youth and Families Department (CYFD), the Human Services Department (HSD), and the Early Childhood Education and Care Department (ECECD) to undertake this work by combining data from each department. Data show about 12 thousand students were potentially unaccounted for. School leaders in 14 school districts were asked to check their records to see if students had reenrolled, were pursuing their high school equivalency test, or had started homeschool. Approximately 1,700 of the 12 thousand missing students are being homeschooled, and 3,100 missing students have been identified as reenrolled or having moved out of state. After this work, PED concluded the original list of over 12 thousand missing students is now approximately 7 thousand students. Missing students were sent a mailer that described the Engage NM program which gave them a link for more information.

Ms. Sandoval said PED is continuing to work with a number of partners, including HSD, CYFD, ECECD, and the Indian Affairs Department (IAD). PED's Indian education bureau, in collaboration with IAD, sent a letter to tribal leaders about these potentially unaccounted students who are tribal members. PED will be partnering with CYFD to provide home visits to students statewide to try and locate the remaining 7 thousand missing students in the next phase of Engage NM work. As CYFD locates these students and families, CYFD will continue to connect them to the services they need and refer students back to Engage NM and their school district for academic supports and services as appropriate.

Senator Padilla asked about the supports the program is providing to families. Ms. Sandoval said the program is addressing barriers to engagement, such as housing security, behavioral health supports, and food benefits. Additionally, Engage NM is connecting families with direct academic support, such as navigating their home school district. Senator Padilla asked if Engage NM is

working with the Department of Workforce Solutions (DWS) to connect families with available benefits. Ms. Sandoval thanked Senator Padilla for the idea and said they would reach out to DWS.

Representative Herrera asked about the cost of Engage NM in FY21 and projected cost in FY22 and how PED is funding the program. Ms. Perea Warniment, XX, Title, PED, said the department used \$1.6 million in federal CARES Act funds and will need to get back to LESC on the projected cost for next year.

Representative Stapleton said many APS students are working late hours and early mornings, preventing them from participating in their coursework due to the public health emergency. She asked about labor laws that apply to high school students. Jessica Hathaway, senior policy analyst, LESC, said state law limits how much students can work during the school year and requires children between 14 and 16 years old to have work permits. Restrictions are loosened for students older than 16. Representative Stapleton said students need to finish their coursework since they are close to graduation. Ms. Warniment said these reasons are exactly why funding needs to be available for work-based learning and internships for students in high school; students need the opportunity to connect to their post-secondary experience.

Senator Pinto asked about the regions of the state was most affected by disengaged or unaccounted students. Ms. Perea Warniment said it is happening all over the state, but 14 school districts had the majority of disengaged students and disengagement is occurring at higher rates in larger school districts; Central Consolidated, Farmington, and Gallup-McKinley school districts are experiencing high rates of disengagement of students. Ms. Perea Warniment said radio announcements were made across the state, including in Diné.

Food, Hunger, Water, Agriculture Working Group 2021 Legislative Priorities. Melanie Stansbury, State Representative, District 28, spoke about the impact of the Covid-19 pandemic on the state's food systems, noting New Mexico has the highest rates of childhood food insecurity with one in three children and one in five adults currently facing food insecurity; this is tied to multiple factors, including income inequality, food deserts, and the organization of food systems. Representative Stansbury, indicating the state exports more than 95 percent of its agricultural products annually, introduced the work of the food, hunger, water, agriculture working group to connect food producers, food banks, and other hunger organization and get food to where it is needed throughout the state. Hunger-related bills slated for the upcoming legislative session will involve emergency food assistance.

Mag Strittmatter, chief executive officer of the Roadrunner Food Bank and vice president of the New Mexico Food Bank Association, described the work of the state's five food banks, located in Gallup, Farmington, Clovis, Santa Fe, and Albuquerque in distributing food to all 33 counties and hundreds of local food distribution pantries, schools, early childhood centers, community kitchens, and chapter houses. Ms. Strittmatter said 35 percent more New Mexicans are experiencing food insecurity, including an additional 50 thousand children, with most spikes in McKinley, Luna, Cibola, Catron, and Sierra counties, where rates of food insecurity exceed 40 percent. Statewide, 23 counties have hunger rates exceeding 20 percent, 22 of which are rural counties. She also indicated additional effects of the pandemic on the state's food distribution network, including decreases in the amount of large-scale food donations and in the number of volunteers, closure of 20 percent of the state's hunger-relief organizations, implementation of mobile, contact-less food distribution, a 24 percent increase in food distribution to tribal areas, and increases in the cost of food.

Helga Garza, president of the New Mexico Food and Agriculture Policy Council, described needed supports for efforts to maintain New Mexico-grown fruits and vegetables in schools, which she said serves more than 171 thousand students in 57 school districts and more than \$1 million spent by schools to purchase New Mexico-grown food. Other legislative priorities for 2021 include

providing New Mexico-grown fruits and vegetables to seniors with the hope to expand this model into early childhood programs and creation of a New Mexico grown inter-agency program at the state level.

Lilly Irvin-Vitela, president and executive director of New Mexico First, emphasized New Mexico families are facing a series of challenges related to economic survival, food, and hunger that existed before the Covid-19 pandemic but have been exacerbated by the pandemic. She noted the times provide an opportunity to operationalize shared values through adoption of multiple strategies to address the root causes of hunger in New Mexico.

Housing Stability and Education Outcomes. Deanna Creighton Cook, special projects coordinator, ABC Community School Partnership, and Serge Martinez, associate dean of the University of New Mexico School of Law, presented on the intersection of housing and educational outcomes. Mr. Martinez said housing should be thought of as a human right and a need exists to remove obstacles that impeded efforts to enhance housing stability for individuals and families. He also indicated a sharp rise in eviction rates in Albuquerque noticeably concentrated in poorer neighborhoods and disproportionately affecting Hispanic residents. Ms. Creighton Cook discussed strategies used to gather and analyze housing-stability data and efforts to begin to mitigate the many housing challenges facing students and families in 10 Albuquerque schools, where rates of student mobility have been rising since 2015. Ms. Creighton Cook linked student mobility and housing instability to lower educational outcomes, with students experiencing higher rates of mobility performing worse on standardized testing, having lower grades and higher truancy rates and likelihood of dropping out of school. Ms. Creighton Cook made a series of recommendations to address housing instability, including wider implementation of the community schools model to bring agencies together collaboratively to provide a concerted focus to address problems; greater coordination at the state-level, such as the creation of a cabinet-level position dedicated to housing services; and urgent consideration of procedural remedies to slow down evictions and offer greater protection to tenants while recognizing housing as a human right.

Senator Gonzales asked if there was any existing outreach to increase Section 8 funding to help families. Mr. Martinez mentioned a proposal to prohibit discrimination based on tenants' Section 8 eligibility. Ms. Creighton Cook also noted there is a need to keep people housed and address the deeper issues underlying housing stability.