Legislative Finance Committee
State Capitol - Room 322 - Santa Fe, New Mexico
Meeting Minutes
May 18-19, 2011

Wednesday, May 18

The following members were present on Wednesday, May 18: Chairman John Arthur Smith, Vice Chairman Luciano "Lucky" Varela, Representatives Don Tripp, William "Bill" J. Gray, Conrad D. James (for James P. White) Edward C. Sandoval, Nick L. Salazar, Larry A. Larrañaga, and Henry "Kiki" Saavedra; and Senators Sue Wilson Beffort, Carroll Leavell, John M. Sapien, Mary Kay Papen, Pete Campos, Carlos Cisneros, and Rod Adair (for Stuart Ingle). Representatives Rhonda S. King and Rick Miera, and Senators Tim Eichenberg and Sander Rue attended as guests.

Introduction of members. Chairman Smith welcomed new members to the committee. Committee members provided a brief introduction including the districts they represent and the length of term in office.

Status Report: Public Schools Funding – Formula, Budgets and Audits. Rachel Gudgel, fiscal analyst, Legislative Finance Committee (LFC), reported in April 2011, the Public Education Department (PED) released information that indicated preliminary program units for FY12 were projected to increase 7,900 units; approximately 1.2 percent higher than in FY11. The projected increase resulted in a 3.4 percent reduction to the initial unit set for FY12. Ms. Gudgel noted the department relied on 80-day data to determine projections. Historically, projections have not been updated during the legislative session; however, uniform reporting requirements enacted in the 2010 and 2011 legislative sessions will change this practice. With the announcement of these projected increases in preliminary units, PED initiated an audit of school district data to ensure accuracy.

Charles Sallee, deputy director, LFC, added that PED identified special education as a driver in new units, as well as base enrollment units and teacher training and experience index units. The department also identified outliers in the data for 38 districts and 28 charter schools. Final reports are currently not available; however, preliminary data indicates an estimated unit increase of 3,700 due to the decline of projected enrollment growth units. Mr. Sallee noted that planned growth for charter schools is approved by a local or state authorizer. The unit value is diluted as charter schools continue to grow.

Ms. Gudgel said loopholes in the formula allow "unit chasing" and "formula gaming." Statutes are found to be broad or vague and, in many instances, lock in inefficiencies and funding policies that are not aligned with education policy goals. Examples are as follows:

- Districts with a high teacher training and experience (T&E) index generate funding in excess of the expected cost of more expensive and educated teachers, creating a windfall of additional discretionary revenue.
- Special education ancillary staff generate 25 units per full-time equivalent (FTE) in the funding formula and statutes do not define how FTE are calculated. In addition, FTE are not tied to individual education plans.
- Size adjustments are included in the current funding formula. The department allows multiple schools operating with shared staff and in one building to be eligible for small school adjustments. It is unclear whether charter schools are eligible for school size funding

given current statutory language prohibiting special programs from qualifying for the adjustment.

- Charter schools receive funding during the first year of operation for actual students that attend while districts and schools already open receive funding based on the previous year's average of 80th and 120th days.
- Charter schools disproportionately benefit from enrollment growth funding because of their small size and ability to plan enrollment growth over time.
- Twelfth graders are the second largest cost differential factor. Some students have mastered subjects and met graduation requirements and might not be attending full instructional days. Dual credit double funding also continues to be of concern as the number of high school students enrolled in dual credit courses continues to increase.

LFC staff is proposing a joint evaluation with the Legislative Education Study Committee (LESC) to assess the state's funding formula. Mr. Sallee added the joint evaluation would assess the state's funding formula for school districts and charter schools, including the quality and availability of data used to justify how PED administers the funding formula and oversees school districts. Staff also proposes to identify selected school districts for further case study and review. Proposed objectives for the project include allocation, administration, and accountability. Mr. Sallee emphasized that PED ensure the accurate distribution of formula funding, including assessing the data quality.

Representative Rick Miera, chairman, Legislative Education Study Committee (LESC), provided support for a joint review and will propose it as a major task of the LESC during the interim. During the 2011 session, LESC endorsed legislation to amend current law addressing factors in the formula, primarily the generation of program units for ancillary FTE; however, the legislation failed. Representative Miera said he will also propose a review of PED rules and guidelines as they relate to current provisions of law to improve the distribution of the funding formula.

Hanna Skandera, secretary designate, Public Education Department (PED), provided an audit overview of the school district data, including the process, findings, and future steps of the department. PED examined district data in nine specific categories and identified districts that exceeded the statewide average growth by more than 200 percent from last year's 80th day to current year's 80th day. Random samples of files were identified in the audited categories. PED conducted both on-site and desktop reviews of district records, including a random sampling of individualized education plans (IEPs). Secretary-Designate Skandera noted that student data cannot be transmitted electronically and had to be transmitted through a facsimile.

PED is currently in the process of completing district notification and compliance follow-up. The initial focus of the audit related to $17.8 million in additional funding claims from 34 school districts related only to special education and T&E. Review of the 34 districts resulted in 435 findings related to either state or federal law.

Initial findings cleared eight districts that exhibited exemplary data quality, accurate record keeping, strong accountability, and no compliance infractions. Thirteen districts had minor compliance issues, four districts had major compliance issues, and nine districts had in depth audit issues. PED has a renewed commitment to ensure

- Services reported on paper translate to essential educational opportunities for students,
- Accurate reporting,
- Transparency and accountability for taxpayer dollars, and
- Fair distribution of funds to school districts.

PED intends to provide the initial audit findings for charter schools, as well as conduct additional in depth audits of the nine identified districts, ensure the districts with minor and major findings are in compliance with state and federal law, make policy recommendations, identify additional areas for review in consultation with the LFC and LESC, and place a renewed emphasis on accurate data and reporting.

In response to Vice Chairman Varela, Secretary-Designate Skandera said the accuracy of data for the student-teacher accountability reporting system (STARS) is as good as information reported by the districts. However, there are other areas of data and reporting that need to be reviewed for accuracy. Vice Chairman Varela asked what kind of training is provided to the school districts to use the STARS program. Secretary-Designate Skandera said data workshops are provided periodically. Vice Chairman Varela asked if there is a standard procedure manual for the school districts to train employees. Secretary Designate Skandera said the department does have a STARS manual on the department's website. In addition, PED intends to provide additional training on a regular basis. Vice Chairman Varela asked if the department is being restructured to put more resources into the fiscal component. Secretary Designate Skandera said the department's goals are to provide transparency and accountability internally and externally recognizing the importance of budget review.

Representative Larrañaga asked if any of the findings were duplicated. Secretary-Designate Skandera said some students represent more than one finding in districts that have multiple findings in multiple areas. However, each instance of state or federal non-compliance must be documented individually.

Senator Beffort expressed concern with the large increase in reported numbers of special education students and asked if it is mandated that students who are designated and placed in a special education setting ride on a special bus. Denise Koscielniak, director, Special Education Bureau, said students are not mandated to ride on a special bus unless there is a specific reason why they need to ride on one. Secretary-Designate Skandera added that New Mexico has approximately 17 percent of special education students compared to the national average of 13.4 percent.

In response to Representative King, Secretary-Designate Skandera said the quality of instruction is fundamental. Through the budget review process, calendars are also submitted to provide the opportunity to review changes. To date, PED has reviewed over 40 budgets between districts and charter schools and with the exception of one all have been able to preserve dollars to the classroom.

Sentor Leavell expressed concern regarding the difference in costs for funding charter schools and recommended placing a moratorium on charter schools. Secretary-Designate Skandera responded that during the 2011 legislative session, legislation was passed to hold charter schools accountable for both educational and fiscal success. Performance management contracts will be developed with charter schools to ensure transparency and accountability both fiscally and from a student achievement stand point. Senator Leavell asked if there were any pending applications for new charter schools. Secretary-Designate Skandera confirmed there were pending applications and said expectations are established for applications and review of charter schools and school districts. Charters and districts will be held accountable for results. Senator Leavell expressed concern with capital outlay costs for charter schools and said the state is obligated to provide the same quality of facilities to charter schools as the rest of the school system. Representative Saavedra expressed concern with the salaries for principals and superintendents of charter schools. Director Abbey noted the small school adjustment is a key factor in causing charter schools to have a higher level of revenue per student than comparable public schools. Chairman Smith added that a main function of the Public Education Commission is to approve charter schools. Secretary-Designate Skandera clarified there are two options for approving charter schools; one is through the Public Education Commission and the other is through the local school board. If there is an appeal, it is referred to the secretary of education.

Chairman Smith expressed concern with the legislative process not having the function to approve or disapprove Title I funding given directly to schools. In the event funding was misspent, appropriations came from the Legislature. Ms. Gudgel provided information on the original expenditure dates for funding. Secretary-Designate Skandera added that PED hosted a conference for superintendents to discuss deadlines for expending funding, as well as the importance of remaining funds.

TJ Parks, superintendent, Hobbs Municipal Schools (HMS) testified that HMS is the least funded district in the state despite being one of the top five revenue-producing districts in the state. HMS has grown by over 500 students within the last three years.

David Atencio, superintendent, Jemez Valley Schools, testified that current statute holds charter schools to not more than 10 percent of the total student population of the district. The Jemez Valley Schools district is currently at 33 percent. At the district level, less than 10 percent of funding goes towards administration; however, administration funding for charter schools is over 33 percent. Mr. Atencio requested the same standard be applied evenly across the board.

Winston Brooks, superintendent, Albuquerque Public Schools (APS), expressed concern that the audit for APS did not include an entrance meeting or exit meeting. APS provided a management response to PED and believes that 56 out of 57 files reviewed can be explained as a disconnect between STARS and the actual date of the audit. Mr. Brooks requested a response from PED regarding the explanation of findings. Mr. Brooks also questioned the criteria used by PED for unit increases; APS showed a decrease in special education units.

Following the lunch break, Senator Smith called for testimony from Moises Venegas. Mr. Venegas was not present.

Program Evaluation: Coordination of Long-Term Services (CoLTS). Charles Sallee, deputy director, Legislative Finance Committee, reported the Coordination of Long Term Services (CoLTS) evaluation was done to assess its implementation, including cost, performance, and oversight. It was also intended to provide a baseline analysis and to review selected recommendations from the LFC 2009 report on the Medicaid Salud program. CoLTS provides important services to thousands of developmentally and physically disabled New Mexicans; however, the program costs too much, does not allow the right services to be delivered to the right people at the right time, and needs an overhaul to ensure better services at a price taxpayers can afford. Mr. Sallee noted that the Human Services Department (HSD) has made progress implementing past recommendations on managed care, saving tens of millions of dollars.

HSD and the Aging and Long-Term Services Department (ALTSD) implemented the CoLTS program to provide better care and save money. The program coordinates the financing of physical health care with long-term care services, including nursing home and community-based services and personal care option. The state contracted with two managed care companies, Amerigroup and

Evercare, to implement the program designed for the following:

- To address the fragmented mix of Medicaid services,
- To help clients delay or avoid the need for higher cost nursing home care, and
- To coordinate acute care benefits for people receiving Medicaid and Medicare.

In FY10, the CoLTS program cost almost $800 million to deliver services to about 37,500 elderly and disabled New Mexicans per month. HSD in January projected spending over $900 million on the program in FY12. Overall, CoLTS holds promise for delivering better care, but the costs have far outpaced original projections and continue to increase. The program structure and oversight needs streamlining to ensure future affordability. A redesign of CoLTS, including continuing the consolidation of state oversight between HSD and ALTSD is necessary to improve the program and save money. These changes are needed to allow managed care organizations (MCOs) to seamlessly manage the full continuum of care, provide community-based services to those most at risk of nursing home placement, and change the managed care company's capitation rate structures to ensure minor changes in enrollment and services do not result in large-scale cost increases to the state. CoLTS and many other services are optional under federal law. The Legislature needs to play a greater role in reviewing the potential fiscal impact of Medicaid waivers and state plan changes before their implementation. Legislation was passed during the 2011 legislative session to review changes; however, that legislation was vetoed through gubernatorial inaction.

The growth in CoLTS spending is unsustainable; assuming no changes, costs in FY12 will be 60 percent higher than in FY07. New Mexico was a national leader in providing Medicaid community-based services as an alternative to nursing homes prior to CoLTS. In FY08, New Mexico ranked first nationally in having the most balanced long-term care system, spending the highest proportion of long-term care funding on community-based services. The state has made clear its intention to further rebalance the system away from nursing home care. The state has yet to quantify or set goals for the "right size" of Medicaid financed nursing home beds or how many people are currently placed inappropriately in nursing homes.

HSD designed the managed-care contract and the rate structure specifically to encourage the MCOs to steer clients to lower cost community services instead of nursing facilities. Medicaid could experience explosive spending increases and long-term care services, given projected demographic shifts towards more aged people eligible for services. Theoretically, CoLTS will help ensure the growing Medicaid population is steered towards the least cost of services in the community and delay or possibly avoid the need for extended nursing home stays. However, research by HSD's own contractors indicates community-based services are only cost-effective if they truly help people avoid nursing facility placements, pointing to a need to ensure slots for community-based services are allocated based on the risk of nursing home placement and not on a first-come, first-serve basis.

Full implementation in FY10 cost $235 million, or about 40 percent more than FY07 spending on the same services. HSD originally reported spending $564 million on the group of clients that would eventually move into CoLTS. HSD used these figures, as well as the utilization patterns and the cost of clients, to build FY10 capitation rates for MCOs. An estimated $83 million projected program spending increase was for enrollment and programmatic change. Assumptions for building capitation rates included a net increase cost to Medicaid for CoLTS overhead of about 10.5 percent or an estimated $68 million to $71 million. HSD assumed the net savings from managed care were insufficient to offset new overhead costs to managed care, including premium taxes and assessments for the New Mexico medical insurance pool. As a result, extra funding was built into the capitation rate for MCO's overhead.

In calendar year 2009, Evercare reported paying $17 million and Amerigroup paid $18.8 million to their respective parent companies for administrative services. Expenses are not negotiated within a CoLTS contract; however, they represent between 34 percent and 47 percent of all administrative expenses for the MCOs. LFC recommends including negotiation of expenses as part of the total administration charge for the program. Mr. Sallee noted trends for this Medicaid population increased with or without managed care. Much of the increased cost were related to the implementation of personal care option (PCO) entitlement Medicaid state plan amendment, representing a significant expansion of community-based alternatives to institutional care.

Unsustainable cost increases for CoLTS are a major cost driver within the overall Medicaid program. Cost estimates for the FY09 showed an increase of almost $400 million to over $450 million. Enrollment exceeded projections by 26 percent, or 6,800 clients per month. Much of the increase occurred in client groups with higher per member per month capitation rate.

The FY10 projection experienced a $42 million increase during the fiscal year. Overall, enrollment stabilized in FY10; however, growth was larger than expected in expensive client groups and smaller than expected in inexpensive healthy client groups. An estimated $128 million of the FY12 projected cost would be available for MCO administration, profit, and taxes.

Cost increases exceeded the department's original federal waiver projection required to demonstrate cost-effectiveness. Services now provided through CoLTS were increasing in cost prior to the program, but questions remain whether managed care will in fact be able to effectively control these increases. Spending on services by MCOs has also continued to increase under CoLTS, primarily driven by the PCO. Equivalent waiver costs appear to have declined, even after adding PCO expenditures, compared with spending in FY08.

Historically, HSD has not provided detailed cost estimates of proposed state plan changes or Medicaid waivers to LFC or the Legislature to review potential fiscal impact. State plan amendments do not require statutory change and circumvent the normal process for the Legislature to weigh in on major policy changes and assess their fiscal impact. In addition, implementation of CoLTS was not considered a program expansion during budget development, despite the addition of new costs to the Medicaid program in the form of managed care. CoLTS includes multiple federal waivers and programs, complicating cost-effective managed care. In addition, state oversight was also fragmented. CoLTS operates under two separate waivers requiring separate reporting and oversight requirements in addition to various optional state plan services.

The CoLTS waiver (formerly the disabled and elderly, or D&E, waiver) maintains a silo structure within CoLTS that hampers efficient use of resources toward high-risk Medicaid clients. Growth in PCO enrollment and spending necessitates a total reevaluation of the service's role within the system, its delivery structure and unit cost, and implementation of more aggressive options to contain spending. Other states with PCO and support services have structured their programs differently, including using individual spending caps, operating the PCO under a waiver to allow better cost controls and offering a more limited benefit. In FY09, people accessed PCO services on average between 26-27 hours per week. Over 4,400 clients used the services in excess of 30 hours per week. Capping enrollment and weekly hours, which would require a new federal waiver, could save an estimated $50 million.

Mr. Sallee noted HSD has made progress in improving the Salud program and has implemented, or is in the process of implementing, almost 80 percent of significant recommendations. For example, recommended changes to the way the state pays for outpatient hospital services are estimated to save over $140 million, and HSD saved an estimated $42 million implementing changes to MCO rates.

LFC key recommendations include:

- Amending state law to require HSD to submit fiscal impact reports to LFC and DFA prior to submitting state plan changes in Medicaid waiver applications,
- Transferring CoLTS responsibilities from ALTSD to HSD.

The report also recommends the following:

- HSD should integrate staff within existing bureaus into the Medical Assistance Division,
- HSD should consider including enrollment increases for Medicaid waiver services in their budget request,
- HSD should continue a managed-care approach to redesign CoLTS allowing for a comprehensive system of long-term care.

Sidonie Squier, secretary, Human Services Department (HSD), said she agrees changes need to be made to personal care options and spending. HSD's goal is to keep people in the community. Regulations for the department will go into effect on July 1 and will have a dramatic effect on the services in the PCO to bring down costs. Secretary Squier noted the CoLTS program has been recognized on a national level.

Retta Ward, secretary designate, Aging and Long-Term Services Department (ALTSD), added that the consolidation of the entire management of CoLTS into one department will facilitate changes.

Julie Wienberg, acting director, HSD, Medicaid Division, said the department does not agree with the recommendation to provide fiscal impact reports to the LFC and DFA; however, once waivers are submitted to the Center for Medical Services (CMS), the department is willing to share the information. The department agrees that enrollment services be considered an expansion and is committed to working within the budget allotted by the Legislature; however, the department does not agree with the recommendation regarding enrollment increases for waiver services. In regards to the redesign of CoLTS, the department implemented a regulation designed to better manage the assessment and allocation of hours over the PCO program. The department anticipates a savings of $30 million in the CoLTS program for FY12, which includes $10 million from the general fund. Other recommendations will be addressed in the department's redesign and modernization plan.

Senator Beffort expressed concern with the definition of eligibility for receiving nursing home care. Mr. Sallee responded that one of the recommendations for HSD to consider is to encourage clients to rely more heavily on natural support rather than PCO services. It is also recommended to have a thorough and accurate assessment of the process for awarding PCO services to people. Senator Papen requested information on the New Mexico behavioral health plan, including cost-containment information submitted to CMS.

Doris Husted, public policy director, ARC New Mexico, provided testimony regarding eligibility for waiver services.

Ellen Pine, Disability Coalition, provided testimony regarding the instrument used to assess the need for nursing home care. Ms. Pine urged the committee to commit to the program and make services available to people who need it.

Analyst and Program Evaluation Workplans. Cathy Fernandez, deputy director, presented the analysts' and economists' 2011 draft interim work plan summary. Goals and objectives include attending board and commission meetings, attending oversight meetings, and visiting agencies. Many responsibilities include joint issues and joint work plans with evaluation staff, other legislative interim committees, and agencies.

Charles Sallee, deputy director, presented the 2011 program evaluators' work plan summary. Mr. Sallee noted the unit has begun planning for the evaluation of the State Fair operations and performance as required in the General Appropriation Act. Representative Sandoval asked if tax credits or tax exemptions would be reviewed in the near future. Mr. Sallee said tax credits and tax exemptions are specifically reviewed in the healthcare arena. Ms. Fernandez noted tax expenditures and dedicated revenue analysis is included in the economists' work plan. Staff is recommending a hearing in August to discuss the broader topic of tax expenditures.

Miscellaneous Business

Action Items

Discussion and Approval of 2011 Calendar and Committee Travel. Director Abbey said the proposed calendar was presented in December 2010 and does not include a September meeting due to the expectation of special session on reapportionment. Director Abbey recommended travel in July at Truth or Consequences. The committee received invitations from the city of Rio Rancho and NM Tech in Socorro. The committee will also travel in August.

Information Items

Review of Monthly Financial Reports

April 2011 ARRA Status Report. Director Abbey reported 80.5 percent of funds have been spent; however, a significant amount of public school funding remains unspent and $14 million remains unspent in the Government Services Fund (GSF). In April, LFC chairs sent a letter to the governor suggesting deauthorization of funding and redirection to offset potential dilution of K-12 funding due to extra units. Although a response was not received, the governor deauthorized $2.5 million.

April 2011 Cash Balance Report. Director Abbey reported that agency allotments or spending accounts are leveling out or growing slightly. In response to Vice Chairman Varela, Director Abbey said the state unemployment fund is in deficit. GSD requested a BAR to transfer monies from the public liability fund to the unemployment compensation fund to cover higher payouts and higher legal costs.

January-April 2011 BAR Report. Director Abbey reported the budget adjustment request (BAR) report addresses four months. Activity reflects federal funds, budget increases from other state funds, and transfers from other categories.

FY11 & FY12 LFC Budget Status. Director Abbey reported a reversion of $200 thousand, or 5 percent, for FY11 due to staff turnover and budget savings. The FY12 budget projection includes an FTE for a capital outlay auditor that was authorized but not filled, as well as contractual services during the budget cycle.

May 2011 Full-Time Employees by Agency. Director Abbey reported a 13 percent reduction over the last two years without impairing effectiveness of services to the public. Director Abbey noted there have been no furloughs or layoffs with minor exceptions.

Thursday, May 19

The following members were present on Thursday, May 19: Chairman John Arthur Smith, Vice Chairman Luciano "Lucky" Varela, Representatives Don Tripp, William "Bill" J. Gray, Conrad D. James (for James P. White) Edward C. Sandoval, Nick L. Salazar, Larry A. Larrañaga, and Henry "Kiki" Saavedra; and Senators Sue Wilson Beffort, Stuart Ingle (for Carroll Leavell), John M. Sapien, Mary Kay Papen, Pete Campos, Carlos Cisneros, and Rod Adair (for Stuart Ingle). Representatives Rhonda S. King and Senator Tim Eichenberg attended as guests.

Chairman Smith requested a moment of silence in remembrance of Representative Wallace.

Program Evaluation: School Bus Transportation Program. Charles Sallee, Deputy Director, Legislative Finance Committee (LFC), reported that the Public Education Department (PED) is responsible for distributing state funding and overseeing the operations of public school transportation programs by local school districts and charter schools. State appropriation levels fluctuated between $100 million and $110 million annually from FY07 through FY11 for local operating expenses, including purchase and leasing of school buses used to transport 180,000 students.

In 1993, LFC issued a program evaluation report on this program to review its oversight administration. That report found an inequitable funding formula, lack of incentives for local efficiency, and weak PED oversight and monitoring of the program. In 1994, the Legislature appointed a taskforce to further study many of these issues, resulting in the repeal or amendment of several laws, the adoption of a new funding formula and the implementation of several operational recommendations. Similar problems continue to plague the school transportation program, including a problematic funding formula, poor oversight of districts, and administrative inefficiencies within PED. Although the state implemented the new funding formula, much discretion was left to PED to develop and implement formula factors, which are not documented and appear to have been arbitrarily changed in some years. PED lacks an effective audit process to validate the accuracy on district reported data, some of which appears erroneous. As a result, some districts may receive more funding at the expense of other districts.

The purchase of the global positioning system (GPS) for school buses has also proved problematic. PED paid $1 million out of a $2 million appropriation to buy and install more than 2,300 GPS units, some of which are unaccounted for. The department also does not have any operating appropriations to use the GPS units and instead has been diverting $500 thousand from the formula allocation to districts to pay for GPS units without a contract or use of a local school district. PED has not adequately used the GPS system for its oversight. PED has also received another capital appropriation to install key card pass swipes on all buses around the state, which also required an operating cost. The potential planned uses for both systems do not appear to justify the ongoing costs without a full cost-benefit analysis.

Christine Chavez, contractor, Legislative Finance Committee (LFC), reported the purpose and scope of work for the audit was to focus on the financial aspects of the program. LFC staff followed up on 25 key findings, of which 18 were resolved by PED. However, under the current system, there were several similar findings or other issues related to the monitoring of the program. LFC staff also followed up on 15 recommendations, nine of which were implemented. PED staff identified that there are no internal controls to ensure efficiency and effectiveness of operations. The department did not develop written policies and procedures to guide staff on the financial aspect of the program. LFC staff also reviewed data used to develop the funding formula, concentrating on FY10 and FY11. LFC staff found unexplained changes to district data for a net reduction of 426,000 miles, as well as unexplained changes to differences in student ridership. Districts use STARS to report ridership, but the ridership did not agree with the allocation. LFC staff also found unexplained changes to two variables in the formula. Student variables were changed for districts greater than 1,000 and the mileage variable was changed for districts with less than 1,000 students. The formula is highly dependent on the reliability of data districts provide.

The validity of bus rental fees could not be determined because the calculation is not documented. Contracted bus operations are provided a five-year rental fee. The department has the authority to calculate the base cost of the bus and apply a prime rate plus one. LFC staff could not determine how fuel supplement was allocated to districts for FY08 and FY09. LFC staff also found noncompliance with statutory requirements. The division concentrating on safety and inspection audits; however they did not concentrate on the financial aspect of the program. Certification to the department's secretary regarding allocation based on the transportation distribution formula could not be found. LFC staff did not find approval of site characteristics used in the formula; however, statute is not clear as to who is required to give approval. Statute requires districts report mileage by route; however, the format requires districts report by bus. LFC staff recommends the department work with the Legislature to determine if route information is necessary.

The division was not calculating year-end balances for reversion to the emergency fund. There is no evidence the department is verifying that districts are using their share of the balance as required by law. The November 15 and contractor expenditure report were reviewed to determine if data was reliable and how it compared with data at the department. Some districts are not filling forms out correctly and are not using the state-required contract form. Reports and contracts are not being submitted timely. The data as recorded by the department did not always agree with the data supplied by the districts. There was no evidence of review of the data and some of the data collected was not used.

The purchase and implementation of the GPS had serious concerns. As previously stated, the department purchased 2,350 GPS units plus installation from Zonar System for a cost of $966,400. There is no evidence the project was reviewed by the Department of Information Technology (DoIT); however, DoIT approved the evaluation committee report. In addition, Zonar hired a PED employee that was part of the evaluation committee, violating the contemporaneous employment law. Zonar shipped GPS units in two separate shipments; 100 GPS units were shipped to a subcontractor in New Mexico and 2,250 were shipped to PED. LFC staff could not obtain verifiable evidence of the first shipment. The subcontractor was contacted by PED; however, the contractor had no documentation proving they received the units. The GPS units were shipped to an address different from that of the subcontractor's place of business. PED could not provide definitive and verifiable evidence of the inventory of the 2,350 units. According to the department, units are installed on all "to and from" buses and on school-owned activity buses. In addition, there is no evidence of what was installed and whether the installation was coordinated with the school district as required by the deliverables of the contract. Some of the units may be in the hands of the subcontractor when they are the property of the state. There is no contract for the annual fee of $498 thousand plus tax charged by Zonar. Funding is funneled through Deming Public Schools because they have an established account. The department is not using the system as designed and is only monitoring bus mileage of over 200 miles a day per bus.

LFC key recommendations:

- The Legislature should consider further study to amend and simplify the formula,
- PED should fully document the formula,
- PED should reassess staffing levels,
- PED should document policies and procedures,
- PED should perform a full cost-benefit analysis of Zonar system and account for all units purchased.

Ms. Chavez noted at the time of the LFC evaluation, the department's internal audit unit was non-functional. Mr. Sallee added that the cost-benefit analysis is important, particularly with the new Z-pass system potentially coming online statewide.

Paul J. Aguilar, deputy secretary, Public Education Department (PED), noted that some of the findings have been addressed, but not fully resolved. There is a lack of documentation and a lack of process identification that have taken place in years past; however, the department is committed to dealing with situations as they are identified. The department is working actively to develop a transportation standard operating procedures manual, including documentation on how the funding formula was determined and implemented in place by the third quarter of FY12.

Mr. Aguilar said the FY12 appropriation for the department was reduced significantly. The department is committed to a reorganization plan to submit to the LFC in June addressing financial issues, as well as compliance issues, including auditing of school districts. PED disagrees that the division is not properly reviewing and analyzing the data submitted annually for the route surveys. Some of the data was changed after the November reporting period; however, it was done in consultation with the school districts. Mr. Aguilar noted that several components should be used to develop the allocation of school districts; however, up until April, primarily mileage was used to determine allocations. PED worked with statisticians at NM Tech to redevelop the formula in a manner that aligns itself with existing statute and in a manner that accounts for regression analysis.

In response to the undocumented fuel supplement request allocation, Mr. Aguilar said in FY09 the Legislature appropriated $4 million in emergency supplemental funding for schools districts; however, only $200 thousand was used and $3.2 million was reverted. The general appropriations act for FY12 authorizes expenditure of $1.2 million from the transportation emergency fund for extraordinary fuel costs. The department has received requests from contractors wanting to be reimbursed for the difference in what they perceive to be the cost of fuel and the final payment.

Mr. Aguilar said PED did not request funding for the GPS; however, the department agrees it could provide good data. Through the capital process, funding was received to purchase and install the product, but there is not a provision to operate the system over time. PED agrees that a number of units were sent to a subcontractor and are not accounted for. PED notified the subcontractor and the vendor requesting an accounting of all units purchased by the state. Any units not installed should be returned to the department. Mr. Aguilar said there is not a mechanism to move funds out of the transportation distribution to pay for a maintenance contract. The previous assistant secretary determined that because the Deming Public Schools had an independent contract with Zonar, $500thousand would be transferred from the transportation distribution to the district to pay for the annual maintenance of GPS units. Funding for the annual maintenance was paid in advance for

FY11. PED is committed to following statutes and rules of the state to implement the transportation program in the method and manner that it should be and report more efficiently and effectively to the Legislature and the governor. Senator Cisneros suggested also addressing the 40-day count within the funding formula.

Linda Kehoe, principal analyst, LFC, clarified that in 2007 the requested $2 million in capital outlay to purchase and install the GPS for school buses statewide was an executive request. In addition, the executive request included $2 million to install 4,000 security cameras in public schools statewide and $1.5 million to purchase laptops for seventh graders.

Chairman Smith requested LFC staff draft a letter to the attorney general regarding the missing GPS units, the procurement process of PED, and the possible violations of state law.

Public Comment:

Mr. Adair, school bus contractor and president, New Mexico Student Transportation Association, Clovis, testified that the funding formula has always been an issue and welcomed further review by the state.

Daniel Romero, contractor, Taos School Association, Taos, testified that the funding formula as well as the 40th day count are issues. Emergency funds are needed to continue operating.

Theresa Saiz, Rio Rancho Public Schools, testified that districts are concerned with sufficiency. Information given by districts is important as well as site characteristics. Districts want written clarification of regulations and would like to actively participate in a fuel study.

Post Session Report. Cathy Fernandez, deputy director, Legislative Finance Committee (LFC), highlighted the 2011 post session report. Director Abbey added that in FY08 revenues fell $800 million short and fell another several hundred million by FY10. The state lost 20 percent of revenue in a two-year period. The state and Legislature kept reserves over 10 percent and as revenues fell, very effectively used non-recurring revenues to ease down spending. FY13 shows a prospect of revenue growth. Ms. Fernandez summarized information regarding the 2011 General Appropriations Act (GAA), as well as information for select agencies.

Review of Vetoed Appropriations. Raúl Burciaga, director, Legislative Council Service (LCS), stated for the record that, as director of the LCS, he is bound by statutory requirement to confidentiality and nonpartisanship. His comments are his and not those of the Legislative Council or any of its staff.

Some of the governor's vetoes seem to impinge on the Legislature's appropriation powers and plow new ground on the governor's exercise of his veto authority. The Legislature passed 284 bills during the past 60-day session. The governor vetoed 35 bills with messages and vetoed 63 bills through inaction.

Additionally, the governor partially vetoed House Consumer and Public Affairs committee substitute for House Bill 59, referred to as the unemployment bill and HB2, the General Appropriations Act of 2011. The 35 vetoed bills and the 63 pocket-vetoed bills were legitimate and are not in question. However, there is question as to whether or not some of the partial vetoes were constitutional. Constitutionally, partial vetoes are only permitted in legislation appropriating money based on two cases and one attorney general opinion. Article IV, Section 22, of the state constitution allows the governor to veto or sign bills and similarly approve or disapprove any part or parts, item or items, of any bill appropriating money. HB59 is not a bill appropriating money and the governor's partial veto is invalid. An appropriation is a legislative authorization to expend state money for a specific purpose. Article IV, Section 30, indicates that money is to be paid out of the state treasury only upon appropriations made by the Legislature. A bill appropriating money shall distinctly specify the sum appropriated and the object to which it is to be applied. HB59 did not authorize the expense of state money because authorization was already in statute and was not amended in this bill. Additionally, the funding mechanism for employment was already in place and not in question. Aside from the benefit changes, the only other change was the rate at which employers were to make payments into the employment compensation fund. The distinction between a revenue bill and an appropriation bill is further evidence by the constitutional provision outlining what can be introduced during a 30-day session. Money paid by employers into the unemployment compensation fund is immediately transferred to the treasury of the U.S. government. The governor's veto, if left to stand, creates a gap in employer contributions for 2012.

Mr. Burciaga said the partial line item vetoes in HB2 regarding the New Mexico State Fair and the Commission on the Status of Women do not rise to the level of being invalid or unconstitutional. In both cases, the governor partially vetoed distinct parts or items of the appropriation.

The governor attempted to reduce an appropriation by vetoing part of an item by striking a digit in a number of appropriated funds for Department of Finance and Administration (DFA) for disbursement to New Mexico Finance Authority (NMFA). The Legislature appropriated $150 thousand and the governor struck the "1". The New Mexico Constitution does not expressly give the governor the power to reduce an item of appropriation. The New Mexico Supreme Court emphasized that the partial veto was not without limits and is a negative power and not a power to alter the effect of the remaining parts or items. In 1953, the attorney general concluded that the attempted reduction by the governor of any appropriation was ineffective and a nullity.

Senator Cisneros asked who is in the best position to pursue court action and challenge the partial vetoes. Mr. Burciaga said the responsibility lies with any of the 112 individual legislators. The Legislature as a whole could also pursue a lawsuit; however, there is no mechanism in place for the Legislative Council to specifically fund a lawsuit against the governor. Overriding a veto issued by the governor during the regular 2011 session would have to be done in the 2012 regular session or through an extraordinary session. Vice Chairman Varela questioned if the executive could have limited the expenditure or the allotment for NMFA rather than vetoing a number and testing the will of the Legislature through the courts. Mr. Burciaga said the executive does have the ability to direct her cabinet and other agencies to control funds. Staff from the Attorney General's Office testified that they do not have the authority as part of the quasi-executive branch to proceed directly to court without a request from the Legislature.

With no further business, the committee adjourned at approximately 12:01 p.m.

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Chairman Date