

MINUTES
of the
SECOND MEETING
of the
NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE

July 1-2, 2009
Taos Convention Center
Rio Grande Hall, Section A
121 Civic Plaza Drive
Taos

The second meeting of the New Mexico Finance Authority (NMFA) Oversight Committee was called to order by Representative Patricia A. Lundstrom, chair, at 9:25 a.m. on Wednesday, July 1, 2009, at the Taos Convention Center in Taos.

Present

Rep. Patricia A. Lundstrom, Chair
Sen. Mary Kay Papen, Vice Chair
Rep. Elias Barela
Sen. Sue Wilson Beffort
Rep. Richard J. Berry
Sen. Kent L. Cravens
Rep. Anna M. Crook
Rep. Brian Egolf
Sen. Tim Eichenberg
Sen. Clinton D. Harden, Jr.
Rep. Dona G. Irwin
Rep. Jane E. Powdrell-Culbert
Rep. Benjamin H. Rodefer
Rep. James R. J. Strickler
Sen. David Ulibarri
Rep. Richard D. Vigil (July 2)

Absent

Sen. Stephen H. Fischmann
Sen. George K. Munoz
Sen. Nancy Rodriguez
Rep. Henry Kiki Saavedra

Advisory Members

Sen. Dianna J. Duran
Rep. Candy Spence Ezzell
Rep. Mary Helen Garcia
Sen. Mary Jane M. Garcia
Rep. Thomas A. Garcia
Sen. Timothy M. Keller
Rep. Ben Lujan
Rep. Andy Nunez
Rep. Edward C. Sandoval
Rep. Luciano "Lucky" Varela

Rep. Janice E. Arnold-Jones
Rep. Jose A. Campos
Rep. Ernest H. Chavez
Sen. Stuart Ingle
Sen. Richard C. Martinez
Rep. W. Ken Martinez
Sen. John M. Sapien
Rep. Sheryl Williams Stapleton
Rep. Thomas C. Taylor

Guest Legislators

Rep. Ray Begaye (July 1)

Rep. Roberto "Bobby" J. Gonzales

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

Staff

Sebastian Dunlap

Doris Faust

Sandy Mitchell

Tom Pollard

Wednesday, July 1

Call to Order

Representative Lundstrom called the meeting to order and asked the committee members to introduce themselves.

Overview of Local Capital Projects and Capital Needs

Mayor Darren Cordova discussed current and upcoming capital projects in Taos. The most significant project is a geothermal energy plant that will use effluent from the town's wastewater treatment plant to create steam that will power a turbine for energy production. The goal is to make Taos energy independent. Other current and upcoming projects include a multiphased recreational park (Salazar Eco-Park), a biosolid composting facility, a membrane bioreactor system for the wastewater treatment plant, a nitrate reduction project for wastewater treatment, a pediatric clinic, expansion of Fire Station #2 and water system improvements.

The most important capital needs of the town include construction of the Weimer Area Waterline for an area annexed over 10 years ago that still has no water service, renovation of the Mary Medina Building to house a new police station, construction of the Salazar Road extension, construction of phase 2 of the Alexander and Reed Roadway project, replacement of a deteriorated fire truck and expansion of the public library.

The town has received \$500,000 in federal funding for its Transportation Division and has an application pending for a \$500,000 grant to install solar applications at town facilities. The town applied for but was denied funding under the American Recovery and Reinvestment Act of 2009 (ARRA) Drinking Water and Clean Water Revolving Loan Funds to upgrade its wastewater treatment plant and construct the Weimer Area Waterline.

Regional capital needs include providing broadband service and extending the Rail Runner to north central New Mexico. Mayor Cordova said he is collaborating with mayors throughout the region to conduct a feasibility study on extending the Rail Runner.

Daniel R. Barrone, chair, Taos County Commission, discussed the capital projects and

needs for Taos County. The county is planning to replace its current administrative complex, which was built in 1979. The current facility has become too expensive to operate, maintain and renovate. The county's next priority is to upgrade roads and road equipment. Mr. Barrone described how moisture and thaw in the area cause roads in the county to deteriorate faster than in other areas of the state. The county has received 10 acres of land from the DOT. The county would like to work in partnership with governmental or private entities to develop the land as a rest area or a visitor center. The county would also like to replace antiquated sheriffs' vehicles.

Sammy Pacheco, county manager, Taos County, spoke briefly on earthship biotecture and how Taos County has been at the forefront in this environmental initiative. He also commented on how legislation passed a few years ago in New Mexico has contributed to these efforts. Mr. Pacheco thanked the committee for supporting the NMFA in its efforts to support Taos County.

Mayor Cordova was asked to explain why the town's funding request for its water project was denied. He said that he does not know why it was denied, but that the project was ranked very high. Representative Lundstrom asked that a letter be drafted to ask how projects were awarded.

In response to questioning about a veteran's cemetery, Mr. Pacheco stated that Taos County has donated approximately 25 acres for such a purpose.

Mayor Cordova was asked about the number of residents that would be served by the Weimer Area Waterline. He said that currently 600 residents are without water service in the area.

Mayor Cordova was also asked about the town's relationship with Pueblo of Taos. The mayor responded that they had a good relationship, and he described the progress they were making on an airport expansion project that had been held up because of pueblo concerns but was now moving ahead.

Approval of Minutes

The minutes from the committee's first meeting were approved without objection.

NMFA Role in Federal Stimulus Funding Under the ARRA

Marquita Russell, chief of programs, NMFA, and John Brooks, director of commercial lending, NMFA, discussed the NMFA's role with the ARRA funding. Under the ARRA, the state will receive \$19.5 million for water infrastructure projects. The law requires that grant recipients must deliver at least 50 percent of the funds as additional subsidization. The ARRA has funding parameters that also must be met. These parameters include serving small and disadvantaged systems, giving priority to shovel-ready projects, giving at least 20 percent of the funds to green infrastructure projects and subjecting the projects to the federal Davis-Bacon Wage Act and "Buy American" requirements. All the ARRA-funded projects must be under construction by February 17, 2010; otherwise, the funds will revert back to the federal

government.

To implement the additional subsidization requirement, each applicant will receive 40 percent in principal forgiveness for compliance with the Buy American provisions of the ARRA and a 10 percent subsidy for compliance with the Davis-Bacon Wage Act. An additional 20 percent of principal forgiveness will be provided to green projects and an additional subsidy (determined through an affordability ratio) will be provided to certain disadvantaged systems. No project will receive more than 80 percent in total principal forgiveness.

Reporting requirements under the ARRA are significant. Projects are subject to both regular reporting and federal reporting requirements. All dollars spent on economic recovery will be subject to unprecedented levels of transparency and accountability.

Ms. Russell and Mr. Brooks went over the eight projects awarded funding, the amount of money they will receive, the subsidies they will receive and the amount of money they will pay back.

Ms. Russell was asked whether the NMFA will have to verify that it takes 40 percent of the cost estimate to satisfy the Buy American requirements. She replied that the NMFA only has to ensure that the Buy American requirements are being met; it does not have to verify the cost of meeting those requirements.

Ms. Russell was asked to explain the purpose of technical set-asides and whether the set-asides are required by the federal government. She replied that they are not required, but rather discretionary, and that the state applied for the maximum amount. Andy Edmondson, technical services manager, Drinking Water Bureau, New Mexico Department of Environment (NMED), addressed the committee concerning the use of technical set-asides. He said the money is needed to support staff. Representative Lundstrom asked Mr. Edmondson to provide the committee with information showing what the technical set-asides are used being for.

Members of the committee asked why money is going to municipalities rather than rural areas and small communities and what can be done to help smaller areas. Ms. Russell explained that the timing and planning requirements under the ARRA made it difficult for small communities to receive funding. She said the NMFA directs them to use a uniform funding application and Water Trust Board funding to receive assistance.

Senator Ulibarri and Representative Lundstrom asked that the NMFA provide a list of the project requests that were submitted but did not get funded.

Dedication of UNM Solar Array Project

The committee toured the UNM solar array project during lunch.

Finance Tools for Economic Development Through the ARRA

Ms. Russell discussed the bonds made available through the ARRA. These include new

recovery zone facility bonds, Build America bonds, recovery zone economic development bonds, "new" clean renewable energy bonds (CREBs), qualified energy conservation bonds, qualified zone academy bonds and qualified school construction bonds. All bonds must be issued by December 31, 2010. The NMFA will need to establish rules and policies to implement use of the bonds.

Ms. Russell explained that the recovery zone facility bonds are tax-exempt private activity bonds. They can be sold to banks and will be used for business projects in recovery zones.

The Build America bonds are tax credit bonds that may be issued by state and local governments. The recovery zone economic development bonds are a subset of the Build America bonds and may be issued to finance development within a recovery zone.

A recovery zone is an area: (1) with significant poverty, unemployment, home foreclosures or general distress; (2) that is economically distressed because of a military base closure or realignment; or (3) that has previously received a designation as an empowerment zone or renewal community. In June, the treasury released its guidance on the use of recovery zone allocations and provided final figures to be suballocated to counties and large municipalities based upon actual job loss in 2008. One-third of New Mexico's counties did not receive a suballocation because they did not have job loss as defined by the treasury. New Mexico was among 31 states and territories that received the minimum amount required under the ARRA.

The new clean renewable energy bonds will be issued for projects that generate electricity. Allocations will be split among cooperatives, governments and public power providers.

Qualified energy conservation bonds will be issued to finance: (1) improvements that reduce energy consumption in public buildings; (2) green community programs and green technologies and infrastructure; (3) electricity production from renewable energy resources for rural areas; and (4) grants to support development of green technologies.

The ARRA extends and expands qualified zone academy bonds, which are tax credit bonds issued to support public school programs and improvements. Qualified school construction bonds are a new category of tax credit bonds, which will be issued to fund construction, rehabilitation or repair of public school facilities.

Ms. Russell was asked whether there is an appeal process for counties that did not receive a suballocation. Ms. Russell said that she was not sure, but she would find out.

Ms. Russell was asked about the marketability of CREBs. She said that they are too difficult to use in the current market. Representative Lundstrom asked Ms. Russell to research how CREBs could be made more marketable.

Ms. Russell was also asked about providing guidance to counties and municipalities on designating recovery zones. Ms. Russell said that the NMFA is working on developing that information, and that the NMFA will get it to the committee when the guidance is completed.

Representative Lundstrom asked Ms. Russell if she could prepare a list of critical questions to share with the committee concerning the financing tools she discussed. She also asked for a paragraph explaining the purpose of these tools and whether there is an appeals process for zero allocations. Representative Lundstrom said that she would like to discuss program development at the November meeting.

William Sisneros, chief executive officer, NMFA, was asked how these funding tools would work without the NMFA. Mr. Sisneros said that maybe the NMED could offer some of the products, but there would not be one centralized place such as the NMFA. The response time would also be very slow.

Proposed NMFA Rules for Funding Charter Schools Through the Public Project Revolving Fund (PPRF)

Ms. Russell presented to the committee the proposed amendments to the PPRF rules to incorporate charter school lease-purchase financing. She explained that there is a need for such financing because state law requires that, on or after July 1, 2015, a new or renewed charter school be in a public building or in a facility that meets adequacy standards and that is subject to a lease-purchase agreement. She explained how Senate Bill 584 made amendments to the New Mexico Finance Authority Act to expand the definition of a qualified entity to allow charter schools to be eligible for PPRF loans, and how House Bill 76 requires the NMFA to adopt rules establishing criteria for determining the eligibility for funding of a charter school. House Bill 76 authorized loans for nine charter school projects.

The proposed rules for charter school funding require a charter school to include as part of its application for funding a business plan, current audits, evidence of annual lease payments budgeted in the chartering school district, certification by the applicant of a good faith effort to identify another qualified school to lease the facility if the charter school's charter is revoked or not renewed, an appraisal acceptable to the NMFA, the last five years of quarterly reports to the Public Education Department and certification of the Public Education Department's approval of the terms of the proposed lease-purchase agreement. The lease-purchase agreements shall not exceed 30 years. The charter school will be required to meet accountability standards and to establish and maintain a repair and replacement fund. The charter school must also notify the NMFA of any adverse action taken by the Public Education Department.

Committee members expressed an interest in hearing from the charter schools on how the proposed rules will affect them. Ms. Russell was questioned on how the nine pilot projects under House Bill 76 were chosen. She stated that she was not sure how the legislature decided on those particular school projects, but that the NMFA did not screen them. Senator Cravens and Representative Lundstrom said that they would like more information on what criteria was used for that selecting the pilot projects. Representative Sandoval shared his knowledge on the

background of House Bill 76. He said that schools that were ready and qualified were chosen as the pilot projects. Representative Lundstrom requested that Ms. Russell and Mr. Sisneros appear at the next meeting with charter school representatives to further discuss this topic.

Committee members expressed concern about the financial risks involved with these projects. Mr. Sisneros admitted that there is a risk, but that the NMFA will be careful about addressing it. He said that this is a pilot project, and they may need to modify the rules later.

New Mexico Renewable Energy Transmission Authority (RETA) — Budget, Regional Issues, Financing Diagram and Discussion of Legislative Proposal

Jeremy Turner, executive director, RETA, presented the operating budget for the RETA, which is included in the meeting file. He then talked about regional issues. He said that New Mexico, with proper planning, is in a good position to export power. He said that Arizona is looking for wind power, and New Mexico could provide it. He said that the state needs to identify corridors where power can be provided to the public and where high-voltage transmission lines could be built.

The Western Governors' Association completed its phase I report in June 2009, which plans for the development of high-voltage transmission lines. Several high-voltage lines are being studied. They include the High Plains Express line from Wyoming into New Mexico, the SunZia line from Arizona into New Mexico and the Santa Fe line from Kansas through New Mexico to Nevada. Participation by the RETA is contingent on capacity for New Mexico power.

Mr. Turner also discussed the green grid initiative, which is eligible for \$100 million of stimulus funding. The initiative requires a state match of 50 percent. It is a long-term approach to a smart grid.

In response to a question concerning the mapping of wind velocity, Mr. Turner explained that maps can cost approximately \$60,000. He was then asked whether the RETA will be using existing easements for the routing of transmission lines or going after new easements. He said that the RETA will try to use existing easements when possible.

Mr. Turner was asked about the development of wind power in Texas and whether New Mexico should follow its example. Mr. Turner responded that New Mexico does not have as much capacity as Texas.

Update on House Memorial 5 Study

Representative Gonzales provided the committee with an overview of House Memorial 5. The memorial provides for the secretary of transportation to appoint a technical committee to develop data on the future outlook of transportation in New Mexico, to identify alternative funding strategies and to study tying together land use and transportation improvements to manage growth in jobs and housing. He said that construction costs have continued to rise, but state and federal revenues have not kept up. Therefore, new funding options need to be addressed.

Robert Ortiz, deputy secretary, DOT, said the technical committee will hold a meeting in mid-July, two meetings in August and two in September. He said the committee will prepare a draft report in October and present its final report in November.

Representative Lundstrom stated that transportation issues and funding options will be further addressed by the committee at its August meeting.

The committee recessed at 5:05 p.m.

Thursday, July 2

The meeting was called to order by the chair at 8:00 a.m. Representative Lundstrom turned the meeting over to Representative Gonzales to act as chair.

Overview of the NMFA Compensation and Employee Classification

Dora C de Baca, chief of support services, NMFA, provided an overview of the compensation program of the NMFA. She discussed hiring procedures and employee evaluations. She informed the committee that it does not give employees cost-of-living adjustments or monetary bonuses. It does, however, provide merit pay based on performance evaluations. The merit increases are between three and five percent. If an employee's performance rating is 60 percent or below, no increase is awarded. She said that the authority maintains a classification and compensation plan. Job descriptions are the core of the plan, serving as the basis for recruitment, training, promotion, advancement within a pay range and evaluation of job performance. Job descriptions are revised as needed and salary surveys are conducted every two years by an outside consultant. Benefits provided by the authority include health, dental, life, vision, employee assistance, short- and long-term disability and tuition reimbursement.

In response to questions concerning merit pay increases, Ms. C de Baca informed the committee that there is no limit on the number of employees who may receive a merit increase. She was asked to provide the committee with the number of employees who have received a ranking of "superior performance" or "exceeds expectations". She was also asked how salaries of employees of the NMFA compare with that of state employees. She said that they are fairly comparable. Ms. C de Baca was asked to provide the committee with the job descriptions and pay grades of its 38 employees.

Representative Varela asked Gene Moser, analyst for the Legislative Finance Committee (LFC), to look at the compensation plans of quasi-governmental agencies. Representative Varela said that he would like to know what types of protections those employees have if they are being dismissed.

Policy Discussion of the NMFA's Status as a Quasi-Governmental Agency and the Implications of the State Budget Act on the NMFA

Mr. Sisneros discussed the ramifications of subjecting the NMFA to the state budget act.

The ramifications include: (1) potential state liability on NMFA bonds; (2) undermining rating agency and investor confidence; and (3) creating constitutional problems with some NMFA bond programs.

Mr. Sisneros provided the committee with a letter drafted by Robert G. Heyman, a lawyer with Sutin, Thayer and Browne, explaining these potential problems. The state is currently protected from liability on NMFA bonds because of statutory language creating the authority as a governmental instrumentality separate and apart from the state. The letter argues that the statutory language would not be sufficient to shield the state from liability if the state exercised substantial control over the NMFA's operations. By subjecting the NMFA to the budget act, both the executive and legislative branches would gain power over the operations of the NMFA, including the power over the portion of the NMFA's budget relating to the payment of debt service on the NMFA bonds.

Mr. Sisneros was asked to explain why this topic was being brought before the committee. He replied that the topic was being discussed because last session the legislature considered making the NMFA subject to the state budget act. Representative Varela explained to the committee that last session the legislature considered requiring quasi-governmental agencies to provide plans of operation for the following year. He said the intent was not to interfere with bonding. He said it is important for the legislature to see the authority's plan for the future. Mr. Sisneros replied that the NMFA provides budgets to the LFC and the NMFA Oversight Committee. He said it is not trying to conceal anything. Representative Lujan stated that the NMFA needs to have some independence to work. He said the NMFA has been functioning well, and he has concerns about the legislature trying to fix something that is not broken. Representative Lundstrom made a motion to form a small working group consisting of her, Senator Papen, Representative Varela and Senator Beffort to work with the NMFA on a rule to address the budget issue and bring it before the committee. The motion was seconded and adopted without objection.

Overview and Direction of NMFA Investments in a Volatile Market Environment

John Duff, Chief finance officer, NMFA, provided the committee with a briefing on the investment environment as it affects the authority and on the authority's investment strategies, policies and procedures. The recession has confronted the authority primarily with debt management issues rather than investment issues. Investment is long-term in focus and has as its goal the growth of funds from investment returns. Cash management is short-term in nature and focuses on making sure cash will be available to make future payments as required. Cash management, not investment principles, is applicable to the vast majority of funds managed in public finance situations. The authority's investment strategies are highly conservative. The investment policy focuses on three objectives: safety, liquidity and yield. The authority may invest only in investments permitted by statute. All authority investments must be made on a competitive basis.

Mr. Duff was asked how the authority was able to prevent losses when others were not. He said the NMFA's policies are very conservative and prevent any serious losses from

occurring.

Mr. Duff was asked whether there has been any economic impact modeling done on Governor Richardson's Investment Partnership (GRIP) bonds. He said that the DOT may have models. Mr. Sisneros said that the authority is developing a comprehensive model right now, and once it is completed, he will provide it to the committee.

The committee asked questions concerning commissions to brokers. Mr. Duff said that the authority does not pay commissions to brokers.

Transportation Funding — GRIP Update and ARRA Funding

Gary Giron, secretary of transportation, Tamara P. Haas, deputy chief engineer, DOT, and Mr. Ortiz provided an update on GRIP and the ARRA funding. Mr. Giron discussed the budget reductions that the department has experienced. He said that each of the six highway districts will have fewer operational dollars.

Mr. Ortiz described GRIP funding issues. He discussed how inflation has greatly increased the cost of construction. He said that the DOT wants to get projects out as quickly as possible to combat the effects of inflation. He explained that the department is using a line of credit rather than issuing bonds for its projects because it is cheaper. He said that the priorities of the department are to maintain the safety of the traveling public, finish GRIP projects and maintain the highway infrastructure.

The committee was provided a handout showing the federal stimulus funding for the department and the projects that are being funded.

Mr. Ortiz was asked how the department will handle future budget reductions. He said that the department can no longer do more with less. The DOT is at the point where it will just have to do less. It will probably make cuts on things like highway rest areas.

Mr. Giron was asked about the method for distributing funds to the districts. He said that it was based on a formula, and he will get that information to the committee. Committee members expressed concern that rural areas are not getting enough money.

Mr. Giron was also asked about using lines of credit rather than issuing bonds. In response to questioning, he informed the committee that the Bank of Albuquerque provides the lines of credit. He described the benefits of using lines of credit and the costs involved. He described how it is more economical because they are only paying interest on the money they have drawn.

The presenters were also asked about GRIP projects that will not be completed and how those projects were determined. The presenters informed the committee that the State Transportation Commission made the list of projects that will not be completed based on the availability of funds. Senator Harden expressed concern that the commission rather than the

legislature is deciding which projects will not be completed, and he asked staff to look into the issue.

There being no further business, the committee adjourned at 12:15 p.m.

- 11 -