

**MINUTES
of the
THIRD MEETING
of the
NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE**

**August 26-27, 2019
Martha Liebert Community Room
124 Calle Malinche
Bernalillo**

The third meeting of the New Mexico Finance Authority (NMFA) Oversight Committee was called to order by Representative Tomás E. Salazar, chair, on August 26, 2019 at 9:03 a.m. at the Martha Liebert Community Room in Bernalillo.

Present

Rep. Tomás E. Salazar, Chair
Sen. Jacob R. Candelaria, Vice Chair (8/26)
Rep. Alonzo Baldonado
Sen. Craig W. Brandt
Sen. Joseph Cervantes
Rep. Jack Chatfield
Rep. Rebecca Dow
Rep. Harry Garcia (8/26)
Sen. Ron Griggs
Rep. Susan K. Herrera
Sen. Michael Padilla
Rep. Jane E. Powdrell-Culbert
Sen. Nancy Rodriguez
Rep. Patricia Roybal Caballero
Sen. William E. Sharer

Absent

Rep. Micaela Lara Cadena
Rep. D. Wonda Johnson
Rep. Raymundo Lara
Sen. Richard C. Martinez
Rep. Patricio Ruiloba
Rep. Linda M. Trujillo

Advisory Members

Rep. Kelly K. Fajardo
Rep. Natalie Figueroa (8/27)
Sen. Bill Tallman

Rep. Doreen Y. Gallegos
Rep. Georgene Louis
Rep. Willie D. Madrid
Sen. Mary Kay Papen
Rep. Andrea Romero
Sen. Clemente "Memé" Sanchez
Rep. Sheryl Williams Stapleton
Rep. Candie G. Sweetser
Sen. Pat Woods

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

Staff

Jeff Eaton, Research and Fiscal Policy Analyst, Legislative Council Service (LCS)

Tom Kricka, Bill Drafter, LCS

Erin Bond, Research Assistant, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file and are posted on the legislature's website.

Monday, August 26

Welcome and Introductions

Representative Salazar welcomed members of the committee and asked members and staff to introduce themselves.

Jack Torres, mayor, Town of Bernalillo, welcomed the committee to Bernalillo and noted that several buildings in Bernalillo, including the meeting space, were built by the Works Progress Administration. He said that Bernalillo celebrated its seventieth year of incorporation this year and currently has a population of approximately 9,200. Mayor Torres listed several areas of concern, including the prevalence of storefront lenders in Bernalillo; the potential impacts to Bernalillo if a bypass from Interstate 40 to United States Route 550 is created; and the effects of Albuquerque's recent decision to hire law enforcement officers from surrounding communities.

Members discussed the dangers of storefront lenders, such as high interest rates. Mayor Torres noted that Native American and Hispanic populations are frequently targeted, as are individuals who do not have bank accounts. Members noted the importance of financial literacy education.

Members spoke on the difficulty of hiring law enforcement officers around the state. Several members discussed the possibility of allowing retired officers to return to work.

Economic Development Partnership: Town of Bernalillo Riverwalk Development and Surrounding Areas

Zach Snyder, president, Snyder Construction, and Jason Couillard, chief financial officer, Snyder Construction, informed the committee of the development of a riverwalk along the Rio Grande in Bernalillo. Known as @Rio, the development will include multifamily and single-family housing, retail and restaurants and recreation such as rafting and biking. Approximately one-half of the service industry spaces have commitments; the remainder will be filled when construction is completed. Mr. Snyder stated that commitments include St. Clair Winery and

Laguna Burger and that other tenants will be announced in future press releases. Mr. Snyder noted that Bernalillo's proximity to Albuquerque and Santa Fe as well as the high traffic flows make the location attractive to both individuals and potential clients.

Mr. Couillard explained that industrial revenue bonds have been crucial to funding @Rio, which has the potential to improve Bernalillo. He stated that Snyder Construction and @Rio are still looking for opportunities to collaborate with local and state government.

In response to questions from the committee, Mr. Snyder stated that working with local governments has been a positive experience. However, bureaucracy and high turnover rates in state and federal agencies have caused delays, he noted. @Rio and Snyder Construction were able to create a plan with the Cultural Affairs Department and the Town of Bernalillo to develop a parking lot to share between @Rio and the Coronado Historic Site, he said.

Members of the committee noted the importance of maintaining the Rio Grande as a healthy riparian ecosystem. Mr. Snyder explained that Snyder Construction has worked closely with the University of New Mexico's (UNM's) Bosque Ecosystem Monitoring Program to clean up and test the @Rio location, adding that Snyder Construction also works with the Department of Environment to obtain the necessary permits and water rights.

Mr. Snyder informed the committee that Snyder Construction discovered the potential for development along the Rio Grande while appraising land for the Bosque Brewing Company, which is an anchor tenant for @Rio, and said that acquisition of the properties took approximately four years.

Benefits and Uses of the Public Project Revolving Fund (PPRF)

Zach Dillenback, chief lending officer, NMFA, provided an overview of the PPRF Loan Program, which is the NMFA's flagship program. He explained that the PPRF Loan Program makes loans to municipalities, counties, state agencies and other qualified entities and that projects have included roads, convention centers, hotels and hospitals. PPRF loans can range from less than \$10,000 to more than \$100 million, he said, but entities seeking more than \$1 million in PPRF funding must receive prior legislative authorization. Mr. Dillenback noted that in order to obtain a loan, an entity must pledge an enduring revenue stream for security, debt service coverage and loan cash flow.

Mr. Dillenback stated that the PPRF Loan Program accounts for 89% of the NMFA's total assets and 93% of the NMFA's operating revenue, noting that since the program's creation in 1994, the PPRF Loan Program has loaned more than \$3.4 billion to qualified entities. He said that as of July 31, 2019, 852 loans totaling \$1.5 billion were outstanding and that most of these loans are to municipalities, counties and school districts; a variety of revenue streams are pledged to the repayment of these loans, including enterprise system revenue, general obligation bond proceeds and gross receipts tax revenue.

Mr. Dillenback said that the NMFA also provides funding to "disadvantaged" entities through the PPRF Loan Program, explaining that disadvantaged funding is provided at below market rates to qualifying entities based on the applicant's median household income in comparison to the state's median household income and that the majority of disadvantaged funding goes to school districts.

Mr. Dillenback explained that debt service reserve funds are a requirement for many PPRF loans unless certain conditions exist, adding that debt service reserve funds of a borrower guard against declines that may affect a borrower's ability to make scheduled payments. Mr. Dillenback noted that the "call" features of PPRF loans are matched to the call features of any bonds that may be used to reimburse the PPRF. The NMFA follows an audit policy to determine in advance any potential problems with an entity and may include special conditions as features of a loan agreement, he said.

Mr. Dillenback said that the PPRF supports special purpose programs by "backstopping" bonds such as Bernalillo County Metropolitan Court bonds, energy efficiency and renewable energy bonds and rural county cancer treatment bonds.

In response to questions from the committee, Mr. Dillenback explained that PPRF funds are available on a first come, first served basis. The NMFA does not track how much PPRF funding goes to rural areas, he noted, but NMFA loan officers do meet with rural communities to discuss what tools and opportunities are available. He said that while PPRF loans to state agencies technically reduce the total loans available to other entities, the NMFA has not reached total loan capacity.

To improve the likelihood of PPRF loan approval, Mr. Dillenback explained that the NMFA values long-established or "historic" revenue streams, adding that because PPRF loans are not premium priced, loans are not made if it is determined that an applicant is a high credit risk. He said that the NMFA prefers to work out the details with an entity before an application is made; thus, there are few formal rejections. Projects to provide broadband internet service may qualify for a PPRF loan, but the internet service provided must be though a public utility company, he said.

NMFA Community Partnerships in the Middle Rio Grande Corridor

Mr. Dillenback spoke on the PPRF loans made to entities in the Mid-Region Council of Governments. He highlighted the City of Rio Rancho, which used a water rights acquisition fee to undertake and close four PPRF loans. He explained that Rio Rancho and Albuquerque have created special assessment districts (SADs), which allow the city to levy a special assessment tax on property owners to cover the costs of infrastructure development, and that the PPRF has funded four SAD loans for Rio Rancho and six for Albuquerque. Mr. Dillenback noted that Albuquerque also partnered with the NMFA for work on the Albuquerque International Sunport, the Albuquerque Convention Center and Isotopes Park.

In response to questions from the committee, Mr. Dillenback explained that Rio Rancho's PPRF loans for obtaining water rights are still outstanding, adding that when an entity has multiple loans from the NMFA, the entity must effectively manage all loan payments.

Members of the committee discussed the possibility of unincorporated villages obtaining SAD designation from their counties, which could make these villages eligible for grants or loans. Mr. Dillenback noted that SADs are designated improvement districts created through the approval process of a municipal governing body or board of county commissioners.

Special Purpose Programs of the NMFA and a Detailed Look at Recent Legislative Changes

Mr. Dillenback informed the committee of special programs administered by the NMFA, including UNM Health Sciences Center cigarette tax bonds and the Rural County Cancer Treatment Fund. He reported that 2019 House Bill (HB) 6 increased the cigarette tax, reduced the cigar tax, brought e-cigarettes and nicotine liquids into the tobacco products tax base, altered cigarette tax distributions and modified the gross receipts tax exemption for hospitals. Mr. Dillenback explained that while the gains in state and governmental gross receipts tax revenue benefit programs run by the NMFA, loans made by the NMFA to hospitals are negatively impacted.

Mr. Dillenback said that standalone bonds issued by the NMFA include state building bonds, energy efficiency and renewable energy bonds and Bernalillo County Metropolitan Court bonds, adding that the court facility fee revenue, which is deposited into the fund that issues Bernalillo County Metropolitan Court bonds, has seen a decline in recent years and is currently less than the bond's debt service.

Mr. Dillenback discussed recent changes from HB 479 (2019), which de-earmarked local option gross receipts taxes.

In response to questions from the committee, Mr. Dillenback explained that while state parks have bonding capacity through the PPRF, that capacity must be authorized by the legislature, noting that state parks could be included in the 2020 list of entities approved for PPRF loans.

Members discussed changes due to HB 479 and discussed possible solutions to high gross receipts tax rates in rural towns.

In reply to inquiries, Mr. Dillenback stated that the courts may need to consider ways to supplement fee revenue to avoid default.

NMFA Board Update

Katherine Miller, chair, NMFA board, discussed recent developments at the NMFA board, noting that all appointments to the board are completed and that the first meeting with the new membership was held on August 22, 2019. Ms. Miller stated that the NMFA received a clean audit performed by an outside auditor, which showed that the NMFA was in a healthy financial position. Ms. Miller also provided a brief overview of the types of bonds used by the NMFA and the amounts loaned from each fund.

Ms. Miller stated that the NMFA's new online application and accounting system, EnABLE, will be the system of record for fiscal year 2020, adding that as of September 1, applications for the Water Trust Fund can be completed online and that the PPRF online application will be available by October 1.

The Bond Side: Funding the PPRF

Michael Zavelle, chief financial strategist, NMFA, spoke on the bonds issued by the PPRF that are issued to reimburse the PPRF, to fund PPRF loans and to refinance callable PPRF loans. He said that multiple PPRF revenues and assets are pledged to all bond repayments, so there are no standalone PPRF bonds.

Mr. Zavelle noted that the PPRF's high ratings from credit rating agencies such as Standard & Poor's help to lower borrowing costs, which in turn lowers the cost of infrastructure projects. He said that these ratings are largely driven by the PPRF's portion of governmental gross receipts tax collections and that limiting the PPRF's revenue from governmental gross receipts tax would result in either reduced lending capacity or reduced credit ratings and increased costs for infrastructure projects. Under current conditions, however, the PPRF's long-term capacity is increasing, he said.

Mr. Zavelle said that the NMFA's reputation and credit ratings attract national investors and underwriters and that the NMFA's website provides robust information for curious investors and underwriters.

In response to questions from the committee, Mr. Zavelle explained that the NMFA's issuance block sizes may be too small to attract some investors, while local investors claim that the NMFA is overweighted. However, he said, many factors can influence a potential investor.

Recess

The committee recessed at 4:33 p.m.

Tuesday, August 27

Reconvene

Representative Salazar reconvened the meeting at 9:03 a.m.

United States Department of Agriculture (USDA) Rural Development: NMFA Partnership Opportunities

Arthur A. Garcia, state director, New Mexico, USDA Rural Development; Kim Giang-Umezu, program director, Community Programs and Community Facility Programs, USDA Rural Development; and Ray Melton, program director, Business and Cooperative Programs, USDA Rural Development, presented on the USDA Rural Development State Office. Mr. Garcia stated that the office offers a variety of programs to help rural populations; eligible individuals and companies can combine both state funds and USDA funds to provide a higher overall level of project funding.

Mr. Melton offered an overview of the funding available through the USDA's Rural Business-Cooperative Service, including:

- rural business development grants, which are designed to provide technical assistance and training for small rural businesses and have no maximum grant amount;
- value-added producer grants, which help agricultural producers enter into value-added activities related to the processing and marketing of new products and cover 50% of total project costs;
- socially-disadvantaged group grants, which provide technical assistance to socially disadvantaged groups through cooperatives and cooperative development centers; and
- energy efficiency improvement loans and grants, which provide guaranteed loan financing and grant funding to agricultural producers and rural small businesses for renewable energy systems or for energy efficiency improvements.

Mr. Garcia stated that funding from NMFA programs can be used as matching funds required by some of the USDA programs and that the USDA Rural Development State Office can work with applicants to determine which loans and grants are most appropriate.

Ms. Giang-Umezu provided an overview of other programs available through the USDA Rural Development State Office, including:

- the Water and Waste Disposal Loan and Grant Program, which provides funding for clean and reliable drinking water systems, sanitary sewage disposal, sanitary solid waste disposal and storm water drainage to households and businesses in eligible rural areas; and
- the Community Facilities Direct Loan and Grant Program, which offers affordable funding to develop essential community facilities in rural areas.

Mr. Garcia stated that the USDA Rural Development State Office has several specialists to help applicants with loans or underwriting. New Mexico uses all of the funding allocated to it, but Mr. Garcia urged members of the committee to inform their constituents of the programs. He said that most of the office's outreach is limited to word of mouth or the internet, although there are field offices across the state.

In response to questions from the committee, Mr. Melton explained that the energy efficiency improvement loans and grants could help renovate and update buildings containing multiple businesses, but each business owner must work with the USDA Rural Development State Office individually. He added that the funds can be used to make energy efficiency updates but cannot be used for simple renovations to a building.

Mr. Garcia, in response to a question on farm labor housing direct loans and grants, informed the committee that the program has seen little use recently, noting that the program can be used to develop housing either on or off of a farm.

Members discussed using value-added producer grants or socially-disadvantaged group grants to develop commercial kitchens in a community. Mr. Garcia noted that Taos has a commercial kitchen because of a USDA Rural Development grant to a local nonprofit.

Mr. Garcia explained that many programs have different population sizes that can be served. He said that communities can request their congressional delegation to place a line in a bill declaring the community eligible for USDA funding if the community does not meet population requirements. Bakersfield, California, for example, is eligible for USDA funding because of a similar request, he said, despite its urban status.

Members discussed the need for additional funds for rural communities, as well as the necessity of grant writers and other staff who are able to complete the necessary paperwork, and a member said that councils of government and other coordinating bodies can prove useful, although encouraging communities to work together can be difficult.

Making Money Smarter — Subordinate Positions in "Smart Money" Loans to Private Businesses

Marquita Russel, chief of programs, NMFA, introduced David P. Buchholtz, attorney at law, Rodey Law Firm, and stated that Mr. Buchholtz was asked to prepare an opinion on the constitutionality of the NMFA's subordinate loan program when considering the Anti-Donation Clause of the Constitution of New Mexico.

Mr. Buchholtz stated that the NMFA is authorized to make subordinated loans under the Statewide Economic Development Finance Act, which allows the NMFA to make loans to eligible entities that pledge at least one revenue source to the repayment of the loan; the act also allows the NMFA to make such loans on a subordinated basis when establishing the priority of its loans. He said that the Anti-Donation Clause is interpreted to bar state and local governments from making a donation to any private corporation and to prohibit the lending or pledging of the credit of a governmental agency.

Mr. Buchholtz stated that the constitutionality question focused on whether the NMFA was lending or pledging credit, as the NMFA receives interest and a collateral pledge from the eligible entity. Mr. Buchholtz stated that at the time the clause was written, pledging of credit

meant that the governmental agency would guarantee the loan if the borrower defaulted. As the NMFA does not guarantee loans, he concluded that the NMFA's subordinate loan program would not be held unenforceable in a New Mexico court and does not violate the Anti-Donation Clause.

Mr. Buchholtz and the committee discussed the history of governmental agencies guaranteeing loans for railroads, which placed significant financial hardship on state and local governments.

In response to questions from the committee, Mr. Buchholtz explained that Local Economic Development Act (LEDA) funds, which have also faced criticisms of violating the Anti-Donation Clause, must be used in line with the laws and the Constitution of New Mexico. Members expressed concern that LEDA funds and other state resources may go to those most acquainted with the system rather than those in need; members also expressed concern that LEDA funds lack sufficient oversight.

Adjournment

There being no further business before the committee, the meeting adjourned at 11:29 a.m.