TRANSPORTATION INFRASTRUCTURE REVENUE SUBCOMMITTEE

2013
INTERIM
FINAL REPORT

New Mexico Legislature
Legislative Council Service
411 State Capitol
Santa Fe, New Mexico 87501

TRANSPORTATION INFRASTRUCTURE REVENUE SUBCOMMITTEE
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2013 Interim

The Transportation Infrastructure Revenue Subcommittee held five meetings in 2013. Bill endorsements were completed at the subcommittee's final meeting on November 12.

The subcommittee was created by the New Mexico Legislative Council on April 30, 2013 to identify current and new sources of transportation revenue and to develop recommendations to meet the needs of the state's transportation infrastructure. The subcommittee heard various proposals and other presentations on the status of the state's transportation infrastructure.

The New Mexico Section of the American Society of Civil Engineers (ASCE) presented the results of the New Mexico 2012 Infrastructure Report Card, which includes the categories of aviation, bridges, rail, roads and transit. The assessment of the condition of New Mexico's overall infrastructure for 2012 resulted in a composite grade of C. The assessment for roads resulted in a grade of C. The report states that 22% of New Mexico's major roads are in poor or fair condition and that driving on rough roads costs New Mexico motorists $397 million a year in extra vehicle repairs and operating costs, which is equivalent to $291 per motorist.

Secretary-Designate of Transportation Tom Church and his staff presented the gap between what the Department of Transportation's budget is for transportation maintenance and construction, and what the state actually needs. The gap between the budget and the need for transportation maintenance is $268 million. The gap between the budget and the need for transportation construction is $608 million.

TRIP, a nonprofit organization that researches, evaluates and distributes economic and technical data on surface transportation issues, identified 50 transportation projects throughout the state that are most needed to support New Mexico's economic growth. The top three projects include the U.S. 491 expansion to four lanes from Twin Lakes to Naschitti, reconstruction of U.S. 64 from Farmington to McGee Park and reconstruction of the I-25 Gibson, Cesar Chavez and the Lead and Coal interchanges. The total cost, as estimated by TRIP, to complete the top 10 projects is $751 million. The total cost of all 50 projects is $1.89 billion.

A presentation also was made by representatives from the National Conference of State Legislatures and the United States Chamber of Commerce on the challenges that all states are facing in regard to transportation infrastructure. The nation as a whole is spending one-third to one-half of what is needed to maintain and improve the nation's transportation system. The value of the gas tax has fallen, especially in New Mexico, which is providing less and less revenue for transportation infrastructure. Citing the ASCE report card, in 2010, deteriorating surface transportation infrastructure cost U.S. households and businesses nearly $130 billion in vehicle operating, safety and environmental costs and time delays. If current trends continue, these costs will grow exponentially and accumulate in coming years.

James Whitty, manager of the Office of Innovative Partnerships and Alternative Funding at the Oregon Department of Transportation, made a presentation on Oregon's efforts to move from a gas tax to a "vehicle miles traveled" tax, or VMT. Oregon began studying the idea in 2001 because per-gallon taxes often do not keep up with inflation, and those taxes are bringing in less money as cars become more fuel-efficient. The Oregon legislature passed, and the governor signed, a pilot project to begin in 2015 using 5,000 volunteers who will choose from several options to keep track of the miles they drive. The VMT is intended to be revenue neutral. Oregon's current gas tax is $.30 per gallon, and the VMT will be $1.5 cents per mile.

Several presentations were made to the subcommittee on public-private partnerships (PPP), a partnership between private and governmental entities to finance an infrastructure project. PPPs allow the private sector to take on responsibilities and risks usually undertaken by the state, including financing. A PPP can complete large-scale transportation projects that cannot be fully funded through traditional means, but it is not a funding source to create new revenue. The subcommittee was advised that PPPs are not ideal for all transportation projects, but have been shown to reduce upfront public costs through accelerated or more efficient project delivery. PPPs do not create new money for states, and a state will still have to pay back the private investment with revenue that can come from various sources, such as existing taxes or tolls.

2013 WORK PLAN AND MEETING SCHEDULE

2013 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
TRANSPORTATION INFRASTRUCTURE REVENUE SUBCOMMITTEE

Members*

Rep. Roberto "Bobby" J. Gonzales, Chair
Sen. John Arthur Smith, Vice Chair
Rep. Ernest H. Chavez
Sen. Lee S. Cotter
Sen. Timothy M. Keller
Rep. Larry A. Larrañaga
Rep. Patricia A. Lundstrom
Sen. William H. Payne
Rep. Jane E. Powdrell-Culbert
Sen. Clemente Sanchez

Advisory Members

Sen. Jacob R. Candelaria
Sen. Carlos R. Cisneros
Rep. Sharon Clahchischilliage
Rep. Nathan "Nate" Cote
Rep. Anna M. Crook
Sen. Ron Griggs
Rep. Edward C. Sandoval
Sen. William E. Sharer

Work Plan

The Transportation Infrastructure Revenue Subcommittee was created by the New Mexico Legislative Council on April 30, 2013 to identify current and new sources of transportation revenue and develop recommendations to meet the needs of the state's transportation infrastructure.

During the 2013 interim, the Transportation Infrastructure Revenue Subcommittee proposes to review and discuss the following topics, as time permits:

(1) existing sources and methods of funding for transportation infrastructure and ways to increase revenue from those existing sources and methods, including the gasoline tax, the special fuels tax, the motor vehicle excise tax and the weight distance tax;

(2) trends that are causing a decline in the amount of funding from existing revenue sources, including the uncertainty of the availability and amount of federal funds;

(3) short-term and long-term needs for maintaining and improving the state's transportation infrastructure, the levels of funding necessary to meet those needs and the challenges in obtaining the necessary levels of funding;

(4) areas of greatest cost in the state's transportation infrastructure and opportunities for eliminating unnecessary costs;

(5) safety and liability issues due to aging and outdated equipment, bridges and roadways and options to better monitor and control speeding in construction zones;

(6) technological advances in transportation-related technology, including

"weigh-in-motion" sensor systems that calculate the weight per axle of a truck as it drives over a sensor pad;

(7) the economic impact that the transportation infrastructure industry has on the state, including potential job creation;

(8) ideas and perspectives from local governments;

(9) the feasibility of a more comprehensive rail and bus transit system to reduce congestion and use of surface streets in larger cities;

(10) the benefits, issues and opportunities for improvement in commuter travel on the New Mexico RailRunner;

(11) alternative methods and sources of funding studied or implemented in other states to identify which methods and sources may be best utilized in New Mexico, including:

(a) fees or taxes on alternative fuel or electric vehicles;

(b) imposition of "vehicle miles traveled", or VMT fees, where motorists are charged a fee for every mile driven within the state rather than for the amount of gasoline they consume;

(c) authorization of tolling or high-occupancy toll lanes;

(d) design-build contracts, which are arrangements whereby a single bid is accepted for both the design and construction of a project;

(e) public/private partnerships; and

(f) tax incentives to encourage employees to work from home and reduce wear on roadways; and

(12) other potential sources of funding and new strategies for financing transportation infrastructure in the state.

*Updated to reflect change in membership.

Transportation Infrastructure Revenue Subcommittee
2013 Approved Meeting Schedule

Date	Location
July 22	Santa Fe, State Capitol, Room 307
August 28	Santa Fe, State Capitol, Room 307
September 10	Santa Fe, State Capitol, Room 307
October 8	Santa Fe, State Capitol, Room 322
November 12	Santa Fe, State Capitol, Room 322

AGENDAS

TENTATIVE AGENDA
for the
FIRST MEETING
of the
TRANSPORTATION INFRASTRUCTURE REVENUE SUBCOMMITTEE

July 22, 2013
Room 307, State Capitol
Santa Fe, New Mexico

Monday, July 22

9:00 a.m.		**Call to Order and Welcoming Remarks** —Representative Roberto "Bobby" J. Gonzales, Chair
9:30 a.m.	(1)	**History of Funding Levels for Transportation Infrastructure in the State** —Tom Church, Secretary-Designate, Department of Transportation (DOT)
10:00 a.m.	(2)	**Sources of Funding, Revenue and Expenditures** —Clinton Turner, Chief Economist, DOT —Marcos Trujillo, Bond and Debt Service Manager, Financial Control Bureau, DOT
11:00 a.m.	(3)	**Statewide Transportation Improvement Plan and the Long-Range Plan** —Mike Sandoval, Director, Transportation Planning and Safety Division, DOT —Elias Archuleta, Acting Chief Engineer, DOT
12:00 noon		**Adjourn**

Revised: August 27, 2013

TENTATIVE AGENDA
for the
SECOND MEETING
of the
TRANSPORTATION INFRASTRUCTURE REVENUE SUBCOMMITTEE

August 28, 2013
Room 307, State Capitol
Santa Fe, New Mexico

<u>Wednesday, August 28</u>

9:30 a.m.		**Call to Order** —Representative Roberto "Bobby" J. Gonzales, Chair
9:35 a.m.	(1)	**<u>The Top 50 Surface Transportation Projects to Support Economic Growth and Quality of Life in New Mexico</u>** —Carolyn Kelly, Associate Director of Research and Communication, The Road Information Program
10:15 a.m.	(2)	**<u>Evaluating Public-Private Partnerships for Transportation: An Analytical Approach for State Legislators</u>** —Jim Reed, Group Director for Environment, Energy and Transportation, National Conference of State Legislatures
11:15 a.m.	(3)	**<u>Transportation and Safety Issues on Tribal Lands</u>** —Gregg P. Shutiva, Governor, Pueblo of Acoma —Ty Vicenti, President, Jicarilla Apache Nation
12:00 noon	(4)	**<u>American Society of Civil Engineers: New Mexico Infrastructure Report Card</u>** —Sonya L. Cooper, Ph.D., P.E., Report Card Chair, New Mexico Report Card Committee (NMRCC) —Jane M. Lucero, AICP, Aviation Chair, NMRCC —Kenneth R. White, Ph.D., P.E., Bridges Chair, NMRCC —Ruinian Jiang, Ph.D., P.E., Roads Chair, NMRCC —Steven Metro, P.E., RPLS, Rail Chair, NMRCC
1:00 p.m.		**Adjourn**

Revised: September 9, 2013

TENTATIVE AGENDA
for the
THIRD MEETING
of the
TRANSPORTATION INFRASTRUCTURE REVENUE SUBCOMMITTEE

September 10, 2013
Room 307, State Capitol
Santa Fe, New Mexico

Tuesday, September 10

9:30 a.m.		**Call to Order** —Representative Roberto "Bobby" J. Gonzales, Chair
9:35 a.m.	(1)	**Is Oregon's Per-Mile Road Usage Charge the Future of Road Funding in the United States?** —James Whitty, Manager, Office of Innovative Partnerships and Alternative Funding, Oregon Department of Transportation
10:45 a.m.	(2)	**State of the Rail Runner** —Dewey Cave, Executive Director, Mid-Region Council of Governments —Terry Doyle, Director, Rio Metro Regional Transit District
11:45 a.m.	(3)	**Public-Private Partnerships — Industry Perspectives** —Earl L. Mahfuz, Financial Management Consultant, CDM Smith —Christopher Frieberg, Vice President, Project Development, Kiewit Infrastructure Company —Dave Bunch, Market Group Lead, Kiewit Infrastructure Company
1:00 p.m.		**Adjourn**

TENTATIVE AGENDA
for the
FOURTH MEETING
of the
TRANSPORTATION INFRASTRUCTURE REVENUE SUBCOMMITTEE

October 8, 2013
Room 307, State Capitol
Santa Fe, New Mexico

Tuesday, October 8

9:30 a.m. **Call to Order**
—Representative Roberto "Bobby" J. Gonzales, Chair

9:35 a.m. (1) **Flood Damage Update**
—Tom Church, Secretary-Designate, Department of Transportation (DOT)

10:00 a.m. (2) **Transportation System Needs**
—Ernest Archuleta, P.E., Operations Division Director, DOT
—Elias Archuleta, P.E., Acting Chief Engineer, DOT

11:00 a.m. (3) **Federal Funding Expectations for Transportation Infrastructure**
—Don Martinez, New Mexico Division Administrator, Federal Highway Administration

11:30 a.m. (4) **It's Time to Cross That Bridge: State Transportation Challenges and Opportunities in the Federal Context**
—Jaime Rall, Senior Policy Specialist and Staff to the Natural Resources and Infrastructure Committee, National Conference of State Legislatures
—Janet Kavinoky, Executive Director, Transportation and Infrastructure, United States Chamber of Commerce

1:00 p.m. **Adjourn**

TENTATIVE AGENDA
for the
FIFTH MEETING
of the
TRANSPORTATION INFRASTRUCTURE REVENUE SUBCOMMITTEE

November 12, 2013
Room 322, State Capitol
Santa Fe

Tuesday, November 12

9:30 a.m.		**Call to Order** —Representative Roberto "Bobby" J. Gonzales, Chair
9:35 a.m.	(1)	**Preserving the Amtrak Southwest Chief Route** —Bill Sauble, Vice Chair, Colfax County Commission —Mark Anderson, Director of Program, Philmont Scout Ranch —Ray Lang, Senior Director, National State Relations, Amtrak —Les Montoya, County Manager, San Miguel County
10:30 a.m.	(2)	**New Mexico Passenger Transportation Association** —Jon Bulthius, President, New Mexico Passenger Transportation Association
11:00 a.m.	(3)	**Streamlining Fueling for the Growing Natural Gas Vehicle Market** —Sherrie Merrow, Co-Chair, New Mexico Natural Gas Vehicle Coalition (NMNGVC) —Colin Messer, Clean Energy Program Manager, Energy, Minerals and Natural Resources Department; Co-Chair, NMNGVC —Blake Littauer, Manager, Transit Business Development, Clean Energy Fuels
11:30 a.m.	(4)	**Legislative Proposal — Public/Private Partnerships** —Senator Timothy M. Keller
12:00 noon		**Adjourn**

MINUTES

MINUTES
of the
FIRST MEETING
of the
TRANSPORTATION INFRASTRUCTURE REVENUE SUBCOMMITTEE

July 22, 2013
State Capitol, Santa Fe

The first meeting of the Transportation Infrastructure Revenue Subcommittee (TRANS) was called to order at 9:00 a.m. by Representative Roberto "Bobby" J. Gonzales, chair, on Monday, July 22, in Room 307 of the State Capitol.

Present	**Absent**
Rep. Roberto "Bobby" J. Gonzales, Chair	Sen. John Arthur Smith, Vice Chair
Rep. Ernest H. Chavez	Sen. Timothy M. Keller
Sen. Lee S. Cotter	Sen. William H. Payne
Rep. Larry A. Larrañaga	
Rep. Patricia A. Lundstrom	
Rep. Jane E. Powdrell-Culbert	
Sen. Clemente Sanchez	

Advisory Members

Sen. Carlos R. Cisneros	Sen. Jacob R. Candelaria
Rep. Nathan "Nate" Cote	Rep. Sharon Clahchischilliage
Rep. Anna M. Crook	Sen. Ron Griggs
Rep. Edward C. Sandoval	Sen. William E. Sharer

Guest Legislator
Rep. Tim D. Lewis

Staff
Pam Stokes, Legislative Council Service (LCS)
Amy Chavez-Romero, LCS
Renée Gregorio, LCS

Guests
The guest list is in the meeting file.

Handouts
Copies of all handouts are in the meeting file.

Monday, July 22

Representative Gonzales began the meeting by having all members, staff and those in the audience introduce themselves. He also expressed gratitude to the New Mexico Legislative Council for forming the TRANS, which has been desired by legislators for some time. He stressed that in the current economic climate, the state cannot depend on the federal government for funding at the same levels as in the past and the state needs to look at ways of increasing revenue for transportation needs.

History of Funding Levels for Transportation Infrastructure in the State

Tom Church, secretary-designate of transportation, stated that he has been with the Department of Transportation (DOT) for 20 years, first as an employee in finance and administration and then moving through the ranks. He proposed that he introduce DOT staff members who will be working on issues with the TRANS. But first he spoke of the DOT's revenues and expenditures as being flat, with only one-half to one percent growth. He specified that the DOT does not usually receive general funds but that there have been a few years that it has received general fund money for one-time improvements. He added that the State Road Fund (SRF) is made up of revenue from gas taxes, fuel taxes, weight distance taxes and registrations, and in each of these sources, there has not been any major increase in over 20 years. He asserted that the SRF has grown one-half to one percent per year and inflation has grown four percent per year. Mr. Church stated that the DOT has taken on significant debt on top of this; the DOT reduced the construction program by half to cover this debt. He ended by pointing out that New Mexico ranks fourth in the nation in a study done by the Reason Foundation in efficiency in highway construction, but New Mexico has a huge system and a small population to support that system.

Sources of Funding, Revenue and Expenditures

Clint Turner, chief economist at the DOT, began by speaking about SRF revenue, which showed a spike in fiscal year (FY) 2005 due to a major tax increase in FY 2003. He said that during the "biggest recession in modern history", revenues fell and have not recovered. He alluded to continued low growth and does not have the expectation of reaching the peak level again that was arrived at in FY 2007 of nearly $400 million in revenues.

Mr. Turner then noted the four major SRF revenue sources in declining order of yield: gasoline tax yields the biggest revenue, then diesel or special fuels, then weight distance, then vehicle registrations. These four sources account for 92 percent of the SRF's revenue. He said that there has not been a rate change with the gasoline tax and that the overall revenue trend is either flat or slightly down. He then pointed out that now that gasoline prices are higher, with the advancement in fleet miles per gallon in the passenger car fleet, revenues will be affected. Also, there has been a 38 percent rate increase in weight distance tax revenue, a significant increase in vehicle registrations as of 2005 and some growth in diesel tax revenue, which is nationally driven from travel on Interstates 10 and 40. (See the handout for details of all funding sources and where the funding goes, which is not always to the SRF.)

At this point, TRANS members asked a few questions, which raised the following points.

- New Mexico's vehicle registration is low among the 50 states, even with recent increases;
- Arizona structures its registration fees more like a property tax; New Mexico fees are based on the weight and age of the vehicle; and
- New Mexico is the seventh lowest state in gasoline tax; not all states impose weight distance tax.

Marcos Trujillo, bond and debt service manager at the Financial Control Bureau of the DOT, set forth how state revenue integrates with federal funding. He noted that in 2004, a tax increase occurred that netted additional revenue to help fund a new bond program as well as to assist in maintenance needs. Alongside this increase, diesel and weight distance taxes and vehicle registrations increased. The DOT also worked at closing out federal projects during FY 2010-2012, which caused an increase in federal revenue reimbursement.

In reviewing expenditures over time, Mr. Trujillo stated that the DOT has continued to use limited resources for its roads, as shown by the contractual services expenditures. Over the past 16 years, the DOT's expenditures have been consistent while revenues have remained flat. The DOT's bond program began in 1998, when the department began issuing debt for state highway projects. New Mexico was one of the first states to issue a grant anticipation revenue bond, which pledged solely federal revenue, but none of these bonds have been issued since 2001, Mr. Trujillo noted. Two bonds were issued for the Waste Isolation Pilot Plant (WIPP), which bonds were used to enhance the truck corridor and have been defeased.

In a chart showing annual debt service by revenue source, Mr. Trujillo pointed out the SRF blue line, which showed that the SRF had been contributing $40 million for several consecutive fiscal years, which contribution was reduced by $10 million in FY 2011. In FY 2025 and FY 2026, there is a huge spike in debt service for the SRF. In addition, the debt service for the New Mexico Rail Runner is paid by the SRF; no federal money is used for these bonds.

TRANS members asked some questions at this juncture. The issues discussed are included in the following:

- the DOT contends that it is not worth restructuring bonds because of the cost of penalties in doing so;
- last year, the DOT refinanced, reducing the interest rate from five percent down to one percent, which netted about $30 million;
- the counties are paying gross receipts tax for the Rail Runner; local governments do not carry this debt;
- the DOT negotiated with the Burlington Northern Santa Fe Railway (BNSF) to get reimbursed for the track from Lamy to the Colorado border, which was returned to the BNSF; the BNSF refunded $5 million in earnest money to New Mexico;

- the DOT has an agreement with the New Mexico Finance Authority (NMFA) to issue and maintain all of DOT's debt, and in 2013, the DOT renegotiated with the NMFA, so that the department never pays more than $8,000 per year for servicing bonds; the DOT also hired a bond counsel and a financial adviser, which netted a savings of $2.4 million by not having to pay the NMFA's fees; and
- the annual liability for the New Mexico Rail Runner will increase significantly in the next budget cycle, and the insurance will increase from about $8 million to $12 million per year; the DOT will provide the TRANS with details on these payments.

Mr. Trujillo indicated that the authorization of $1.585 billion in bonds increased the debt service between 2003 and 2004. The DOT issued $1.35 billion in bonds for construction projects and refunded bonds amounting to $437.9 million, which created capacity for new issuances. Summarizing how the DOT has reduced overall costs, Mr. Trujillo recapped actions that the department has taken, including two cases of refinancing, which saved approximately $55 million, and renegotiating the escrow agreement with the BNSF for the Rail Runner, which replaces $50.4 million in taxable bonds with a line of credit, reducing annual cost and potentially saving the DOT approximately $19 million over the life of the bond program.

TRANS members then engaged in several questions, leading to the following points and requests:

- Rail Runner ridership is consistent and growing but does not justify the cost, as in most public transportation venues; service levels are rated high; operating costs are at $25 million per year for the commuter service; for the initial purchase and liability of the track, right-of-way acquisition, engines and stock for the railroad, the state has incurred $40 million in debt over 20 years;
- the legislature increased the SRF by $40 million for maintenance, which involves the sale of synthetic variable rate bonds for which the DOT pays insurance to keep interest rates set, but the rates have dropped three percent since that decision;
- that another method of tax collection for road maintenance should be looked at;
- a request for details on how the SRF has been eroded over time;
- about $120 million goes into the general fund now from the excise tax on new vehicles;
- a request for a detailed breakdown on how and where federal funds are spent;
- a request for a cost breakdown and number of miles on state road maintenance;
- $4 million is put into the SRF from driver's license fees;
- the differing years for renewal of driver's licenses creates an up-and-down pattern in revenue, but it is not a major force;
- the DOT is trying to develop current shovel-ready projects so that when funding becomes available, projects will be there;
- WIPP funding ended in 2012, but now the maintenance of four highway lanes costs $30 million per year to meet the safety standards for hauling hazardous waste, and this needs to be factored into the federal contribution;

- in Carlsbad's efforts to establish the above-ground waste facility, there will be more traffic as a result of that expansion, with the accompanying wear and tear on the roads from the trucking of this material and a subsequent need for the federal government to direct funding to the state;
- a request for operating costs for the Rail Runner; a rough estimate of the revenue collected is about $22 million per year, and the costs for operation and infrastructure are about $64 million per year;
- the majority of the special fuels tax goes into the SRF;
- the DOT receives a mix of federal funding, including Federal Highway Administration (FHWA) funding, Federal Aviation Administration funding, National Traffic Safety Administration funding and Federal Transit Administration (FTA) funding;
- there have been two years in the past seven in which the DOT received severance tax funding;
- if federal funding is reduced, New Mexico needs a plan; and
- there is a need to look at what is proactive in terms of liability expenses per highway district so that the liability does not become an overwhelming part of the budget.

Statewide Transportation Improvement Plan (STIP) and the Long-Range Plan

Mike Sandoval, director of the Transportation Planning and Safety Division at the DOT, discussed the planning structure, which is made up of the planning processes of the DOT, metropolitan planning organizations (MPOs) and regional transportation planning organizations (RTPOs). He noted that the next MPO is likely to be in Roswell, based on the most recent census data, and that Los Lunas chose not to be its own MPO this year and instead joined forces with the mid-region MPO. The DOT provides funding to MPOs and RTPOs for planning by reviewing its formula and agreeing to funding levels. He added that the mid-region MPO receives about $800,000 for planning. In contrast, El Paso, which is the smallest MPO, receives $50,000. For the RTPOs, the DOT provides $70,000 per year, which is likely due to increase a bit. To receive funding, the MPOs and RTPOs first have to put a plan together for how they will spend their funds in the next fiscal year. Several requirements need to be met by the planning organizations, including federal requirements, participation with the DOT and environmental certifications; the DOT assists organizations with meeting these requirements.

Mr. Sandoval then spoke about the statewide long-range plan, which is being revised to have an end date of 2040. All MPOs and RTPOs will be included in the state plan. The plan is based on three factors: economy, water availability and vehicle technology. He remarked that gasoline taxes are a big part of the DOT's revenue. Also, cars that are more fuel efficient provide less revenue for the DOT, and the shift from diesel to natural gas would lessen revenue received from the diesel tax. Mr. Sandoval commented that statewide planning is often based on differing scenarios, such as if one of the military bases closes. Also involved is estimating revenue, considering transportation alternatives and identifying short-, medium- and long-term goals in relation to transportation needs, road maintenance and the building of public transportation.

The STIP includes short-term planning, which provides a lot of detail as to what will happen over the next four years. It contains all federally funded and regionally significant projects for which funding levels are determined by federal authorization. The STIP includes all projects from the transportation improvement plans from all of the MPOs. The amount appropriated is what is authorized by Congress for transportation purposes; there is then a ratio determined for the amount of appropriated funds that can be obligated within any fiscal year, ensuring that spending levels are balanced with the income into the federal Highway Trust Fund.

At this juncture, Mr. Church mentioned that the DOT is often asked, "Why can't you do my road?". He clarified that the entire regional and metropolitan planning process is composed of regional and county personnel who develop plans that then feed into the state plan. The DOT works with highway districts, MPOs and RTPOs to develop STIP long-range plans, and the department is fiscally constrained. Anything federally funded or regionally significant is in the plan, which includes commuter-related projects that affect several regions. Because the funding levels are established by the federal budget bill, the state does not have the flexibility to change projects that are planned.

Mr. Church also expressed consternation over the reduction of federal funding by one-third, a significant concern for the state. He explained that what happens during the processing of some recession bills is that the appropriation is the necessary amount but differs from the amount the state could receive because of the obligation limit. (See the handout for an example of the obligation limit in effect.)

TRANS members jumped in with some questions at this point, which points are summarized in the following:

- the STIP is a four-year program that is renewed every two years and that operates on a quarterly cycle to allow amendments to appropriations either to increase funding or to add in emergency projects; the program is still fiscally constrained, so if a project is added in, another has to be dropped or reduced;
- the obligation limit is set at 90 percent for a fiscal year, so the state can obligate only that percentage, but the remaining 10 percent is still appropriated and can be spent in the next fiscal year as long as the DOT does not go over that year's obligation limit;
- for a $90 million program, the DOT prepares $20 million to $30 million in projects to keep the plan steady, with projects ready for the following year; and
- for the STIP program, the DOT has the authority to spend $100 million from the designated categories and needs to dedicate a certain amount in each category; in future years, the DOT has the authority to spend in these categories, which leaves 10 percent "on the table" for future spending.

Elias Archuleta, acting chief engineer at the DOT, then spoke of details of the STIP projects, stating that for each phase or project in the STIP program, it is required that there be a project description, an estimated total project cost, the amount of federal funds to be obligated by fiscal year and the chief administering agency for the project. There are a variety of required types of projects under the STIP, which projects are all funded under 23 U.S.C. (See the handout for all these federal programs.) These projects also include federal categories funded by the FTA and projects that are regionally significant, such as the Paseo del Norte project. Such regionally significant projects include major roadways; projects requiring action by the FHWA or FTA; and projects adding capacity to existing roadways. In terms of programming for projects in metropolitan areas, the MPO, in cooperation with the state and public transportation operators, programs projects into the STIP. He added that the DOT does not differentiate between large and small MPOs in this programming.

Mr. Archuleta next discussed program management issues, reporting that the STIP covers immediate needs based on condition and capacity for a four-year period. The STIP is reevaluated and updated every two years as conditions change. He emphasized that the DOT tries to design $20 million to $25 million ahead in each fiscal year because it can get an additional $10 million to $20 million in funding by having projects ready. He said that the DOT received $18 million extra in funding two years ago because of this method of operating. Mr. Church added that the DOT's focus has been to maximize the federal obligation and that the department has closed old projects to release obligation authority, which has yielded $270 million.

In conclusion, Mr. Archuleta made a few points: the lead agency is responsible for carrying out projects to completion and must comply with federal regulations and requirements; and FHWA funds are paid on a reimbursement basis, which is important for local entities as they may or may not be able to put money up front for projects, which can cause issues with project delivery.

TRANS members asked questions of the presenters, leading to the following points:

- the STIP is based on condition and capacity, and because jobs cannot be created without good infrastructure, the DOT could consider adding economic development and job creation to its criteria;
- a suggestion to have the DOT compile a list of regionally significant criteria, including economic development criteria, and to ask for a joint meeting with the Jobs Council;
- each MPO receives approximately $200,000 for planning purposes; the pot of money for MPOs stays the same, and as more MPOs are created, the same pot of money will have to be distributed, which is one reason that Albuquerque and Los Lunas are sticking together as one MPO;
- the Transportation Alternatives Program is new under the Moving Ahead for Progress in the 21st Century Act (MAP-21) and is a cost-reimbursement program that combines several other previous programs; under it, money is set aside for recreational trails as a statewide program administered by the Energy, Minerals and Natural Resources Department;
- the Cable Median Barrier Program is funded out of the federal Highway Safety Improvement Program, under which there is a statewide selection process for local

projects, and replacing outdated barriers along the interstate system is a part of this program;
- the DOT is doing well in addressing deficient bridges by consolidating this funding into the FHWA Historic Preservation Program;
- MAP-21 will affect budget and apportionment for only two years, and the bottom-line apportionment for New Mexico remains the same;
- there are only a few Governor Richardson's Investment Partnership (GRIP) projects remaining, some of which are in an unfunded category and some of which are in process; the DOT will provide details;
- in general, GRIP legislation has authorized $1.58 billion in bonding authority with a list of 42 projects; the DOT engaged with the NMFA and issued bonds as projects became ready; although there is about $285 million remaining in authorizations for bonds, there is an issue as to whether the state can actually pay back these bonds;
- the unfunded GRIP projects are being addressed through STIP; the DOT has reallocated money through closing projects; the legislature could look at the project list and determine which projects to keep;
- water availability is a factor in long-range planning because of its relationship to the economic health of a community and this is related to estimating budgets and revenue;
- tax increases are not in the interest of the executive branch; other ways need to be found to mitigate lack of funds, such as public-private partnerships and making existing revenue streams more productive; and
- the state's liability costs are increasing due to the state being held accountable for accidents on its roads because of lack of maintenance.

Work Plan Review

Representative Gonzales gave TRANS members an opportunity to comment on the work plan, and members suggested that TRANS:

- look to tap into other areas for highway maintenance and repair, such as public school capital outlay;
- look at revamping the state's tax structure and method of tax collection;
- review other states' initiatives that support transportation funding;
- study the impact of industries, such as oil and gas and URENCO USA, on the state's roads;
- hold a joint meeting with the Jobs Council toward the end of the interim;
- have a work session with the State Transportation Commission (STC), as it is the commission that approves the STIP projects and budgets and directs staff and is a different branch of government that needs to be included; and
- consider having staff make a presentation regarding statewide capital outlay and projects of regional significance and why transportation projects are not included.

Next, Representative Gonzales asked audience members for input. Key remarks include the following:

- it is not in local communities' interest to compete with schools for funding but rather to create a transportation funding category;
- transportation issues should not be political, as these projects are important to the entire state; and
- the state needs to treat transportation infrastructure funding as an enterprise fund; it cannot borrow any more without finding a new revenue stream.

Representative Gonzales then closed the meeting by stating that it is critical that New Mexico help itself. He challenged everyone to think creatively. He emphasized that renewable energy is right at the state's fingertips and that what is needed is to find new revenue sources, to be innovative and to use the national laboratories as resources for research. He stressed that he wants TRANS to be strong and that he would extend invitations to the STC, to Native Americans and to the executive branch so that the facts can be looked at collaboratively and innovative solutions found.

Adjournment

There being no further business before the subcommittee, the meeting adjourned at 12:35 p.m.

MINUTES
of the
SECOND MEETING
of the
TRANSPORTATION INFRASTRUCTURE REVENUE SUBCOMMITTEE

August 28, 2013
State Capitol, Santa Fe

The second meeting of the Transportation Infrastructure Revenue Subcommittee (TRANS) was called to order by Representative Roberto "Bobby" J. Gonzales, chair, on Wednesday, August 28, 2013, in Room 307 of the State Capitol.

Present	**Absent**
Rep. Roberto "Bobby" J. Gonzales, Chair	Sen. John Arthur Smith, Vice Chair
Rep. Ernest H. Chavez	Sen. Timothy M. Keller
Sen. Lee S. Cotter	
Sen. Ron Griggs	
Rep. Larry A. Larrañaga	
Rep. Patricia A. Lundstrom	
Rep. Jane E. Powdrell-Culbert	
Sen. Clemente Sanchez	

Advisory Members

Rep. Sharon Clahchischilliage	Sen. Jacob R. Candelaria
Rep. Nathan "Nate" Cote	Sen. Carlos R. Cisneros
Rep. Edward C. Sandoval	Rep. Anna M. Crook
	Sen. William H. Payne
	Sen. William E. Sharer

Staff
Pam Stokes, Legislative Council Service (LCS)
Amy Chavez-Romero, LCS
Renée Gregorio, LCS

Guests
The guest list is in the meeting file.

Handouts
Copies of all handouts are in the meeting file.

Wednesday, August 28

The Top 50 Surface Transportation Projects to Support Economic Growth and Quality of Life in New Mexico

Carolyn Kelly, associate director of research and communication at TRIP, a national transportation research group out of Washington, D.C., summarized findings of a recent report on New Mexico's top 50 surface transportation projects, which focuses largely on those projects needed to support economic growth in the state. Ms. Kelly indicated that the projects cited in the report include the expansion and modernization of roads, highways, bridges and public transit systems with the intention of boosting quality of life, creating jobs and increasing public safety for all New Mexicans. She said that TRIP worked closely with New Mexico's Department of Transportation (DOT), which provided a list of 70 projects that TRIP then ranked. Project ranking criteria included short-term economic benefits, the level of improvement in the condition of the transportation facility, the degree of improvement in access and mobility and the long-term improvement provided either regionally or statewide in economic performance and competitiveness. Ms. Kelly highlighted a few of the top 10 most needed projects, which include the expansion of United States (U.S.) Highway 491 to four lanes from Twin Lakes to Naschitti, reconstruction of U.S. Highway 64 from Farmington to McGee Park, construction of a bus transit system in Albuquerque's central corridor, construction of a four-lane road over the Animas River in Farmington and a new river crossing in Los Lunas from Interstate 25 to New Mexico Highway 47. (See the handout for ranking of the top 10 projects as determined by TRIP; a listing of the top 50 projects can be found in the appendix to the report.)

Ms. Kelly spoke of the benefits of these transportation improvements, which include economic benefits as a result of reduced congestion and improved access as well as improved regional economic competitiveness; increased tourism and business travel as a result of the enhanced condition and reliability of the transportation system; and an increase in the welfare of residents due to better access to higher-paying jobs, improved mobility and a wider selection of competitively priced goods. She also mentioned an analysis done by the Federal Highway Administration (FHA) that determined that every $1 billion invested in highway construction supports 27,800 jobs; and for every $1.00 spent on road, highway and bridge improvements, there is a resulting benefit of $5.20, which takes the form of reductions in vehicle, road and bridge maintenance costs, delays, fuel consumption and emissions and improvements in safety.

Stressing that vast needs exist in the state, Ms. Kelly remarked that the funding falls far short of these needs, meaning that many of the critical projects will remain incomplete. Needed projects include 24% of the state's major roads, which are deficient, as well as 8% of bridges that were rated as structurally deficient and 9% as functionally obsolete. With an increasing population and an increase in annual vehicle miles of travel in the state as well as an unemployment rate that nearly doubled between 2007 and 2013, it is essential that the state's transportation system deficiencies are addressed.

TRANS members next asked several questions, and the following points were raised:

- Mexico is willing to work with neighboring states on highway infrastructure needs, and New Mexico needs to focus on raising revenue before considering partnering with Mexico;
- a request for a breakdown of the number of jobs created by each project that includes drilling down to identify the multiplier jobs as well as the amount of gross receipts tax earned and the public-private funding opportunities;
- a request for information from the DOT on using rights of way for high-voltage transmission lines;
- alternative modes of funding are increasingly necessary, given the fact that fuel-efficient vehicles are more and more prevalent, which unfortunately leads to decreased revenue, and given that the trucking industry is considering a transition from special fuels to natural gas and the railroads from diesel to natural gas;
- both Virginia and Maryland have taken bold initiatives to fund their transportation systems, mainly by passing significant transportation legislation that institutes new tax plans and public-private partnerships;
- with international trade being increased via the building of a port on Mexico's west coast, New Mexico needs to ensure that it can provide transportation once products come into the U.S.;
- related to heavy cargo on the roads, the Western States Trucking Alliance is looking at adding extra axles and increasing the number of trailers on trucks so there is less damage to the roads; and
- a request for information on higher weight allowances and whether the trucking industry is helping to pay for maintenance on the affected roads and bridges, particularly in the southern part of the state.

Finally, Representative Lundstrom made a motion that a letter be written conveying the contents of this report to the media, particularly newspapers. Representative Larrañaga seconded the motion, and the subcommittee voted in favor of the motion with no objection.

Evaluating Public-Private Partnerships for Transportation: An Analytical Approach for State Legislators

Jim Reed, group director for environment, energy and transportation, National Conference of State Legislatures (NCSL), began by discussing the range of topics on which the NCSL can advise legislators and legislative staff. He added that the NCSL recently met in Atlanta, and at that time, it set its policy program for the upcoming year. Within this, he highlighted what he named a "transportation funding crisis", which is of great concern and includes such issues as a national recession, state budget shortfalls, declining gas revenues, a political reluctance to raise gas taxes, aging infrastructure and underinvestment in it, the ending of spending from the federal American Recovery and Reinvestment Act of 2009 stimulus money and a lack of adequate federal funding for transportation.

He then reviewed the average annual state sources of revenue for transportation by percentages, with motor fuels taxes at 28%, federal funding at 27%, bonding and borrowing at 12% and, on the lower end of the scale, state general fund contributions at 4% and local government contributions at 2%. In terms of borrowing, he spoke of the state's use of Grant Anticipation Revenue Vehicles, or GARVEE bonds, which relies on anticipated federal funding, and said that federal credit assistance provided under the Transportation Infrastructure Financing and Innovation Act has been expanded significantly.

With the NCSL's "Public-Private Partnerships (PPP) for Transportation: A Toolkit for Legislators" as background material, Mr. Reed moved into describing the PPP option for financing, which can bring private equity to the table that would have to be paid back. He said that with the PPP option, there is a savings because of the lower initial project cost and quicker project completion. He added that a long-term maintenance and operation contract can be part of the PPP, which is beneficial, and that with the PPP option, a greater degree of private sector practices and innovations are brought into public projects, which can increase efficiency.

At present, 33 states have created enabling legislation for PPPs, much of which is broad enabling legislation, and the remainder is more limited or project-specific. More recently, there has been an increase in PPP interest, with 22 states considering PPP-related bills in 2013. Mr. Reed added that currently there are 11 major PPP projects in five states, with $30 billion coming to bid in the next 18 months.

Because of this increase in legislative interest across the states, the NCSL created a study group in 2009 that looked specifically at publicly held surface transportation systems, although he said that the PPP approach is being applied to other areas as well, such as schools and government office buildings. The working group served to link up legislators, legislative staff and private sector entities to analyze needs and develop nonpartisan materials to help in legislative decision-making. (See the handout for specifics on the partners involved.)

Mr. Reed gave details on what the legislators' toolkit contains, which includes a context for understanding PPPs, state government roles in the PPP process, principles for good governance and a focus on roadways. The toolkit was released in December 2010 and has been updated regularly since that time. Mr. Reed reiterated that one main assumption of the group was the states' primary responsibility for PPP policy and implementation decisions, rather than the federal government. He emphasized the importance of creating enabling legislation that is solid, balanced and comprehensive to aid in the PPP proposal process and to ensure protection of the public. He added that PPPs are not ideal for all transportation projects but are generally better for larger projects. Additionally, he said that PPPs do not create new money for states, that it is more about procurement and that the public sector will have to pay back the private investment through such revenue-generating means as taxes or tolls.

In defining PPPs, Mr. Reed stated that they are contractual agreements between public and private sector partners that allow more private sector participation than is traditionally allowed. A government agency generally contracts with a private company to construct or make improvements to a facility or system. He added that there are a variety of approaches and that the private sector takes on additional functions and risks that the government would generally undertake. In discussing the differing roles, Mr. Reed said that the legislative role is one of deciding what the state's engagement with PPPs will be, creating a policy framework and garnering legislative approval. Executive roles include implementation of PPP legislation as well as the formation of programs, projects, procurement, contracting and oversight. Shared roles would then include building the public sector capacity, funding PPP project analyses, ensuring public outreach and stakeholder participation and selecting and approving projects, which are often delegated to the executive, though some states require legislative approval. (See the handout for details on states requiring legislative approval or involvement.)

Mr. Reed mentioned that there are pros and cons to requiring legislative approval. On the pro side, approval protects the public interest and promotes accountability; on the con side, this approval can add uncertainty to the process, which may discourage private investment. He emphasized that legislation can be crafted to protect the public interest and provide structured legislative involvement in reporting, overview and oversight rather than project approval. Among the benefits to the PPP approach are a cost and time savings (see page 10 of the complete toolkit package), where up to 40% can be saved over the project's lifetime; risk transfer (see page 5 of the full toolkit for a comparison table); project acceleration; improved quality; and public control and accountability. Among the concerns Mr. Reed spoke of are loss of public control, private profits at public expense, allowing a private entity to take future public revenues, risk of bankruptcy, accountability and transparency, foreign companies, toll road controversies and concerns over specific contract terms.

In conclusion, Mr. Reed delineated the main principles that promote a sound public policy approach to PPPs. These include being informed on the PPP approach; considering how to protect the public interest throughout the process; educating all stakeholders; approaching PPP decisions with a long-term perspective; allowing the transportation program to drive PPP projects, not just raising short-term revenue; ensuring comprehensive project analyses; being transparent about financial issues; and setting solid ground rules and transparency in the procurement process. Mr. Reed cited Maryland as a state that did a study for two years before implementing PPP legislation just this year. He ended by saying that many states have offices, most of which are housed in DOT offices, that specialize in the PPP process, but some are in other agencies, such as the treasury department.

TRANS members then engaged in questioning, and the following points were brought forth:

- the PPP approach has often been associated with tolling, but as PPPs have matured in the U.S., the system's funding has become fragmented, with most engaging a variety of federal and state funding sources;
- a request to dig deeper into how statutes in other states are constructed related to the kinds of contractors that can be involved in the PPP process;
- many PPP projects could engage in borrowing, either through general obligation or severance tax bonding, for example, and funding streams need to be identified and deemed acceptable;

- there is a lot of debate around issues of restrictions in federal legislation that often included a "no compete" clause that would not allow states to build or upgrade a road that "competed" with a toll road; many of these clauses have since been removed, even though there is still a reluctance to convert a highway paid with federal funds to a toll road;
- the NCSL has not done model legislation for PPPs, but it came up with guiding principles that include a listing of elements in other states' statutes;
- the biggest opposition to PPPs has come from the tolling question; issues among unions over prevailing wages; and anti-private, anti-corporate groups concerned with turning over public assets to private concerns;
- the DOT's transportation plan is the State Transportation Improvement Program, which is a six-year plan; the DOT has presented issues and ideas on PPP legislation to the governor for policy recommendations;
- in terms of a PPP-funded project, many entities, including state, federal and local governments, would likely be involved in managing the final roadway; a financing plan is developed that includes all possible sources of revenue; in the end, the state owns the project and often pays for maintenance that the private entity would accomplish;
- the main concern about high-occupancy vehicle lanes on roadways is underutilization;
- a request to the DOT for a report that compares PPP project delivery to traditional project delivery so that legislators can derive a policy framework and really understand the use of PPP as a financing tool;
- the DOT has a strong legal staff, but it has not worked with private entities in funding transportation projects and would need legislation to "provide both an umbrella and a mat";
- at present, New Mexico does not have the authority to toll any of its interstates; there would have to be an adequate alternate free route to do this, which would mean building many miles of roads;
- 30% of vehicle miles in this state are from trucks; and
- the legislature needs to know the administration's position on PPP funding for state highway infrastructure.

Senator Sanchez made a motion to approve the minutes from the subcommittee's first meeting, which was seconded by Representative Cote and unanimously approved.

Transportation and Safety Issues on Tribal Lands

Joe Aragon, first lieutenant governor for the Pueblo of Acoma, and Ty Vicenti, president of the Jicarilla Apache Nation, briefed members on issues related to public safety in the Pueblo of Acoma and the Jicarilla Apache Nation. Lieutenant Governor Aragon began by reviewing issues related to transportation and safety on tribal lands, in particular how emergency responders are compromised because of the railroad that cuts through the pueblo. The fire, ambulance and emergency medical technician departments are all located on the south side of the pueblo, while a large section of the village is on the north side. He said that if a freight train was passing through tribal lands and there was an emergency, the pueblo responders could not get through. The pueblo cannot provide emergency services for its own people or for those on the north side of the interstate, he added. A study was completed in August 2005 that evaluated 13 transportation routes where a bridge could be constructed, Lieutenant Governor Aragon reported, and bridge construction over Burlington Northern Santa Fe Railroad (BNSF) tracks one mile south of Interstate 40 at Exit 100 was approved by the tribal council. The pueblo sought and received $2 million in GRIP funding for this project, he stated, which allowed it to accomplish a completed survey, rights of way, environmental assessments and needed analyses. By 2012, the project was deemed construction-ready. Although millions of dollars have already been spent on this project, Lieutenant Governor Aragon reported that the pueblo has not secured the needed funding. At this point, the project will cost $28 million. He added that the pueblo has tried securing funds through BNSF for in-kind work and is seeking a letter of support from the state for the Transportation Investment Generating Economic Recovery (TIGER) discretionary grants offered through the U.S. DOT. He said that the Pueblo of Acoma Tribal Council recognizes this as a top priority for the safety of the community. In conclusion, Lieutenant Governor Aragon urged members to attend to the Mesa Hill Bridge and Road Extension project to ensure that first responders get the direct road access they need.

In response to Lieutenant Governor Aragon's testimony, several questions were raised and the following points made:

- in discussions with BNSF on this project, the pueblo has been told how heavy the needs are nationwide, although BNSF will provide some support for the pueblo to access federal funding;
- New Mexico's DOT receives a small pot of money each year from the FHA to address safety issues at railroad crossings based on certain criteria, which amounts to $1.5 million for the entire state, and the DOT sees this as a problem area but does not have funds to support this project; and
- the project is construction-ready and the pueblo has submitted applications for TIGER grants and will request legislative funding.

Next, President Vicenti expressed concern to members over the condition of New Mexico Highway 537 from Dulce to New Mexico Highway 550. He indicated that the Jicarilla Apache Nation has continuously expressed concern to the DOT over the road, which has been under construction over the past several years and is one of the most neglected roads in the state. In a graph prepared by the Jicarilla Apache Nation's police department, President Vicenti referred to December as the month with the highest number of incidents, at well over 40, with the average monthly incident rate at 20 per month. He added that Fridays and Sundays have the highest number of incidents as most residents use the highway on those days. Among those using the road are residents and athletes of Dulce, residents of Chama and southern Colorado and heavy cargo trucks, which use the road daily. President Vicenti indicated that the DOT did resurface the road but that this only made conditions worse, with the base course lifting and creating a highly uneven surface. He added that winter months are particularly dangerous and that roads are not cleared in a timely fashion. President Vicenti indicated that the tribe has the capability to clear the roads if it has the funding to do so, that the tribe seeks the support of the DOT in ensuring that the road is routinely maintained, monitored and inspected and that vegetation is mowed in a timely manner to prevent accidents and vehicle damage.

American Society of Civil Engineers: New Mexico Infrastructure Report Card

Sonya L. Cooper, report card chair, Jane M. Lucero, aviation chair, David Jauregui, bridges member, Ruinian Jiang, roads chair, and Steven Metro, rail chair, constitute the New Mexico Report Card Committee (NMRCC), and they presented the report card results in their respective subject areas. Ms. Cooper introduced the report card as a way for the engineering profession to serve the public and to assist in protecting public health and safety. The following is a summary of each subject area as presented to members of the TRANS; for more specifics, please refer to the full handout, "Infrastructure Report Card", from the American Society of Civil Engineers (ASCE), which also contains data on many other subject areas.

Ms. Lucero spoke on the aviation category, which received an overall grade of D+, as compared to the national average in this category of D. She explained that the grade is due to the existence of many aging taxiways as well as the fact that the amount of discretionary funding that New Mexico receives from federal aviation is significantly lower than other states in the region. Ms. Lucero emphasized that this grade does not indicate that New Mexico's airports are unsafe. She also mentioned that another concern was the potential closing of contract towers, which would mean that funding would have to be taken out of the federal program to cover tower operating costs. She explained that the Federal Aviation Administration has a funding formula and that New Mexico is large in land mass but not in population, which leads to some of its funding capability. She said that the NMRCC works with its federal partners to try to get more discretionary funding to the state but that New Mexico is still about $3 million to $4 million below the funding that its neighbors receive.

Mr. Jauregui reported on the bridges category, first by giving statistics on existing bridges from data collected and maintained by the federal DOT. Of a total of 3,715 bridges, 686 are deficient. He explained that "structurally deficient" (SD) means a bridge has a condition rating less than or equal to 4 on a scale ranging from 0 to 9, with 4 being poor; the state has 319 SD bridges. He added that "functionally obsolete" (FO) means a bridge was not designed according to current standards and has inadequate widths; the state has 367 FO bridges. With an overall grade of C- in the bridges category, Mr. Jauregui specified that New Mexico's bridges received a grade of D- in operation and maintenance. He added that the state does not have as many fractured critical bridges as the entire nation does but that New Mexico is not designing bridges with resilience in mind, since earthquakes do not control design in this state. To repair or replace both the SD and FO bridges in New Mexico would cost a total of $178 million, he added. The state received an F in the funding category, partly because the gas tax is fixed rather than indexed and is decreasing due to population. The planning category came in with a D because many of New Mexico's bridges are reaching the end of their design life, he said. Some of the main concerns include the recruitment and retention of qualified bridge inspectors (not generally a well-paid position in the state) and compliance with national performance metrics and reporting requirements, since the FHA is rigorously auditing the state DOTs in bridge management, he added.

Mr. Metro gave highlights on the rail category, stating that even though the rail system is primarily private, it is an important component of New Mexico's transportation system that includes the capability of moving natural resources, freight and people. In terms of Class 1 railroads, which include BNSF and the Union Pacific Railroad (UPRR), the main issue is with capacity rather than condition. The Rail Runner, which is owned by the state, is definitely a plus to the state in terms of transit and tourism, Mr. Metro said, but it is not supporting itself.

Among the recommendations cited in the rail category are to support legislation that creates PPPs, such as the fuel tax exemptions for the UPRR and BNSF, said Mr. Metro. Also recommended is support for the federal short-line credit extension that would allow short-line railroads to invest in rail infrastructure and to advocate for the Rail Runner service by publicizing its benefits and providing multimodal access and transit-oriented facilities around its stations. In response to a question about the D+ rating that the Rail Runner received in this report, Mr. Metro said that the primary concern is due to not enough funding for infrastructure and that tracks and bridges are load-deficient and need to be upgraded.

Mr. Jiang summarized the roads category report card, saying that New Mexico's roads received a final grade of C as compared to a national average of D. He indicated that although population and subsequent vehicle traffic have increased in New Mexico by 61%, there has not been much increase in road length during the same time period. The areas of public safety, funding and planning received the lowest grades (D) in the assessment. Cited were roadway conditions contributing to traffic fatalities, an insufficient level of funding to address projected needs and a reduction in the amount of funding available for construction projects due to the DOT's requirement to service its outstanding bonding debt.

Mr. Jiang spoke of areas of concern for the state that include giving priority to maintaining and repairing roads and bridges and seeking highly efficient methods of transportation, ensuring that road improvements are sufficiently invested in through funding resources for roads in the form of taxes and fees and recruiting and retaining a quality work force through providing education, growth opportunities and competitive salaries.

Ms. Cooper informed members that Rail Runner ridership is evaluated in the transit section of the report. She also said that instead of this evaluation being accomplished every seven years, ASCE New Mexico would like to develop a plan to measure progress in all these categories on a yearly basis.

Members asked questions and made comments, including the following points:

- many of the report's recommendations speak to finding mechanisms for new funding and allowing an increase in revenue to drive funding for infrastructure, but what is missing is the concept of cutting costs; and
- a request that all legislators be provided with a copy of the full Infrastructure Report Card booklet.

Ms. Stokes spoke briefly on the agenda items for the next TRANS meeting, which will be in Santa Fe on September 10 and includes a presentation on a pilot program that the State of Oregon initiated to raise revenue in a different way; a presentation by the NCSL on new transportation revenue; a status report on the Rail Runner; and possibly a concept proposal for PPP legislation.

Adjournment

There being no further business before the subcommittee, the TRANS meeting adjourned at 1:40 p.m.

MINUTES
of the
THIRD MEETING
of the
TRANSPORTATION INFRASTRUCTURE REVENUE SUBCOMMITTEE

September 10, 2013
Room 307, State Capitol

The third meeting of the Transportation Infrastructure Revenue Subcommittee (TRANS) was called to order by Representative Roberto "Bobby" J. Gonzales, chair, on Tuesday, September 10, 2013, in Room 307 of the State Capitol.

Present	**Absent**
Rep. Roberto "Bobby" J. Gonzales, Chair	Sen. John Arthur Smith, Vice Chair
Rep. Ernest H. Chavez	
Sen. Lee S. Cotter	
Sen. Ron Griggs	
Sen. Timothy M. Keller	
Rep. Larry A. Larrañaga	
Rep. Patricia A. Lundstrom	
Rep. Jane E. Powdrell-Culbert	
Sen. Clemente Sanchez	

Advisory Members

Sen. Jacob R. Candelaria	Rep. Sharon Clahchischilliage
Sen. Carlos R. Cisneros	Sen. William H. Payne
Rep. Nathan "Nate" Cote	Sen. William E. Sharer
Rep. Anna M. Crook	
Rep. Edward C. Sandoval	

Staff
Pam Stokes, Legislative Council Service (LCS)
Amy Chavez-Romero, LCS
Renée Gregorio, LCS

Guests
The guest list is in the meeting file.

Handouts
Copies of all handouts are in the meeting file.

Tuesday, September 10

Is Oregon's Per-Mile Road Usage Charge the Future of Road Funding in the United States?

James Whitty, manager, Office of Innovative Partnerships and Alternative Funding at the Oregon Department of Transportation (ODOT), began by saying that he would present the results of a 12-year effort to determine a new way to raise revenue for Oregon's road system, which started in 2001 and culminated in the recent passage of legislation to implement the system. He gave highlights on the ODOT's policy history as related to user payment, which included a gas tax enacted in 1919, a weight mile tax enacted in 1933, a cost allocation study completed in 1937 and gas tax increases over time. He said, however, that taxing gas is not the only approach to raising revenue and many states are adopting flat-fee alternatives. He opined that this is really a matter of legislative choice; in Oregon, the legislature wanted to go with a user-pay system.

Initially, Oregon's legislation established a Road User Fee Task Force (RUFTF) in 2001 whose charge was to develop policy recommendations for a new revenue system based on road use. The legislature, he said, had an idea that the vehicle fleet would change, and the RUFTF made recommendations that resulted in a per-mile charge that replaced the gas tax as well as allowing for a fuel tax refund for pilot participants who were paying a mileage fee. The ODOT was directed by this legislation to administer the RUFTF and implement pilot programs based on policy recommendations.

Mr. Whitty reported next on what the ODOT learned about mileage reporting, describing basic, advanced, switchable and simplified options. He added that states that have annual vehicle inspections already collect data on mileage. He said that some electrical and high-end vehicles already have a meter installed in them or a separate device can be purchased and installed; Oregon used the latter option in its pilot program. In reviewing payment options for the road usage charge, Mr. Whitty said payment is no different than for any other services that are paid by invoice.

He then highlighted the policy issues for the ODOT's first pilot for the per-mile charge system, which occurred in 2006-2007. Among its choices were to replace the fuel tax and to use electronic data collection, one method of reporting, location-based mileage reporting, government-selected technology, government operations and one method for billing. The original pilot had a pay-at-the-pump model using a global positioning system (GPS) device to collect mileage, he added. Data were then transferred at the fuel pump and the charge was determined there and added to the fuel bill, and the gas tax was deducted. He said that there was negative public reaction, especially to privacy issues related to the GPS device. In the national reviews Oregon received at the time, many indicated that the system was viable but most reviewers were not enamored with the pay-at-pump model or use of a GPS device.

In response, Mr. Whitty said that the second pilot represented many different policy choices. One shift was to multiple choices for reporting so that the motorist has the choice; mileage reporting was shifted to either basic or location-based; technology was changed to market-selected rather than government; a choice was given for using either government operations or private sector; and multiple methods of billing were embraced, again to give the motorist more choice. This second pilot began in November 2012 and lasted through February 2013, and it involved participation from eight state legislator volunteers and 36 others. He said that this time there was not a GPS option at the basic level and private sector firms provided mileage reporting devices and account management. Participants went online and selected how they wanted to report miles and pay, he explained, and the fuel tax was deducted as applicable. He said that the billing was done on a quarterly basis.

Regarding the implementation of the Oregon road usage charge legislation, Mr. Whitty assessed it as a simple and easy system to use for motorists. The legislation asked for the participation of 5,000 volunteer light vehicles, charged a rate of $.015 per mile, included a rebate of fuel taxes paid, asked the marketplace to supply reporting technologies, assessed penalties for nonpayment and protected personal information. In terms of privacy issues, Mr. Whitty indicated that the American Civil Liberties Union (ACLU) initially came forward as an opponent of this legislation because the protections were not strong enough; the ACLU insisted on the destruction of mileage data, which was added.

Mr. Whitty spoke of five issues involved in choosing a rate structure for the road usage charge: fairness or simplicity; totally or partially replacing the fuel tax; low entry rate or average rate; single rate or multiple rates; and complete policy or multiple steps. Oregon chose fairness; partially replacing the fuel tax; using an average and single rate; and using multiple steps in the policy.

He then discussed the unfairness of the fuel tax and the loss in revenue as more vehicles are hybrids or are more fuel-efficient. The goal, then, of the road usage charge is to maintain the gas tax for fuel-inefficient vehicles and establish a distance-based charge for fuel-efficient vehicles. He said that these two systems can be run together. He added that the drivers that object to a distance-based charge generally live in rural areas and drive big vehicles; he suggested that these drivers should pay the fuel tax, since the distance-based charge is a problem for them. He also said that a flat rate would give this group a deal, but that the fuel-efficient vehicle drivers would then object.

Mr. Whitty indicated that ODOT is inviting all western states to participate in the Western Road Usage Charge Consortium, which will research multijurisdictional issues and the potential for a regional system. He invited all states to the Oregon Road Usage Charge Summit to be held on November 13, which will include informative discussion on Oregon's system and workshops for vendors.

Subcommittee members asked several questions, and the following points were discussed:

- in terms of generating revenue through this shift, the pilot program was designed to be revenue-neutral; positive net revenue will be reached in the second year of implementation of the legislation; any large revenue generation is difficult to predict and depends on how fast people will opt into buying fuel-efficient vehicles and then when the road usage charge can be implemented for vehicles getting 40 or 45 miles per gallon (MPG) rather than the initial number of 55 MPG;

- Oregon did not address any applications of the road usage charge for nonresidents traveling within the state at this time;
- the ODOT held many focus groups on this initiative, which helped immensely with communicating and educating the population on the issues and decisions behind the legislation and helped to appease any negativity;
- how to handle state roads on Native American land, which Oregon did not address. The question remains as to how New Mexico could handle this, either by excluding miles driven on Native American land or being dependent on the type of reporting the driver has chosen; the bottom line is that Native Americans need to be at the table;
- Oregon did not address a benefit for low-income people or seniors, but New Mexico could;
- those with beautiful 1948 pickup trucks could not obtain the needed reporting device, which cannot be adapted to older vehicles;
- largely rural areas are more sensitive to road usage charges; it is necessary to have strong communication across the state's differing constituencies;
- the possibility of engaging in scenario planning with New Mexico's state-owned vehicles and a state agency to pilot a similar program to Oregon's; there is already a pilot project going on in the General Services Department using GPS systems in state vehicles to collect information for repair and maintenance that might be adapted to pick up other information;
- one way for New Mexico to begin testing the waters for such legislation could be to begin with an appropriation bill for a study that would accomplish piloting the program with state vehicles, with the help of Oregon in crafting this; and
- meanwhile, New Mexico still needs to look at more immediate means of generating revenue for its roads.

State of the Rail Runner

Dewey Cave, executive director of the Mid-Region Council of Governments (MRCOG), and Terry Doyle, director of Rio Metro Regional Transit District (RMRTD), gave a brief history of the Rail Runner, alongside specifics of its budget and expenditures.

Mr. Cave began by citing March 2005 as the formation of the Mid-Region Transit District, from which the RMRTD assumed operations management through establishing a memorandum of understanding to provide staffing and began service in 2006. He said that the original operational costs were borne by the state and that up until fiscal year (FY) 2012, the New Mexico Department of Transportation (NMDOT) paid a portion of operational costs using federal and state money. He added that the Rio Metro Region receives about $10 million annually in funding for the Rail Runner and that the need for state funds to support its operation has been eliminated because of this. He ended by saying that the financial position of the Rail Runner has been stabilized.

Mr. Doyle gave some budget specifics, referring to the table in the handout, and stated that the RMRTD is attempting to build a cash reserve for the Rail Runner to take care of some of its capital improvement needs. He went through all revenues in detail, including capital and operating revenues from federal flex funds for which there is a suballocation available for the Albuquerque area. He said that the federal 5317 revenues represent new federal money coming into the state. He added that federal 5307 and 5317 revenues can only be used for capital maintenance on the railway and equipment as well as for vehicles. He stated that the Burlington Northern Santa Fe Railroad (BNSF) and Amtrak leases include a fee that these railroads pay to the state, which money is used for track maintenance. In addition, Mr. Doyle spoke of a fare increase that lost the Rail Runner some ridership in April 2012; he also said that approximately $3.1 million is the projected revenue through the fare box for FY 2014. He said that the 7,000 jobs lost statewide have affected this revenue, as the Rail Runner serves both federal and state employees who commute. Advertising revenue for FY 2014 is at $75,000.

Expenditures for the Rail Runner in FY 2014 are budgeted at $25 million annually. Mr. Doyle said that of that total, the Herzog transit contract receives over $16 million for handling track maintenance. Mr. Doyle stressed the importance of the railroad being maintained to a specific class. He reviewed capital improvements in the budget for maintenance of equipment and line improvements. In conclusion, Mr. Doyle pointed to the ridership levels per year and month, with the best year being in 2011, with over 1.2 million passengers.

Subcommittee members asked questions, and the following points were addressed:

- because of the Rail Runner, the equivalent of approximately an interstate lane of traffic is being removed from the road during peak travel times; the MRCOG could provide figures on an annual basis for how this might affect accident reduction;
- the RMRTD and NMDOT have worked together on safety issues, which include a safety campaign in conjunction with federal programs, awareness campaigns, television advertisements and improvements of railroad crossings, including fencing;
- from a fare box recovery standpoint, the Rail Runner's 8% of revenue derived from fares puts it in the middle of its peer group of smaller railroad systems;
- in terms of increasing ridership, some of the job sectors that need to be addressed include the health care industry and education (neither of which is served by current timetables); providing more connective services would also help;
- successful rail networks generally have a lot of residents near stations, which is challenging in New Mexico; a change in land use components so that the Rail Runner could grow differently and more creatively is needed;
- there is a need to look at corridors of connectivity to the stations so that commuting time could be decreased and ridership increased;
- WiFi issues continue on the Rail Runner, largely because of vandalism at the Waldo Canyon site;
- as related to the Zia Road stop, a draft traffic study is being reviewed that should be completed by year's end and that should help to ensure that the area is safe when the station does open; the Las Soleras stop seems to be at a standstill;

- the City of Albuquerque is in charge of construction at the Montano crossing; it is likely that train service could begin there by late December or early January;
- regarding track leases, the BNSF retains a permanent freight easement and pays the NMDOT fees each year depending on how much freight it moves; Amtrak pays a fixed rate for its trains and pays the NMDOT as host railroad; and
- ridership is measured by ticket takers and conductors doing physical counts; there is also a pilot project in place that automatically counts passenger boardings; it costs $7,000 per year for personnel to collect these numbers.

Representative Lundstrom made a motion that the August 28 meeting minutes be approved, which was seconded by Representative Larrañaga and unanimously approved by the subcommittee. Representative Gonzales announced that one federal transportation investment generating economic recovery discretionary grant was awarded to the state and went to the Pueblo of Taos. He also announced that the next Western States Transportation Alliance meeting is in Albuquerque on November 3 through November 5, which would be a good opportunity for the TRANS to attend, although it conflicts with the TRANS meeting on November 4, so this needs to be reviewed.

Public-Private Partnerships — Industry Perspectives

Earl L. Mahfuz, financial management consultant at CDM Smith, and Christopher Frieberg, vice president of project development at Kiewit Infrastructure Company, gave industry views on public-private partnerships (PPP). Mr. Mahfuz began by defining a PPP as an agreement between a public agency and a private entity that allows for greater participation by the private sector in providing the delivery of projects. He said that a PPP is more than a traditional design-bid-build arrangement where the public sector takes all of the risks except construction. In a traditionally funded project, there is an emphasis on public financing and a low-bid selection process, and operation and maintenance (O&M) are the responsibility of the public agency. With a PPP, the risk is shared and the emphasis is on private financing, he added. Also, he said, a PPP agreement defines the performance specifications. In delineating what PPPs are not, Mr. Mahfuz stated that a PPP is not a new source of revenue; is not a means of privatizing public infrastructure, since the government continues to own the project; is not a fit for every project or a guaranteed success; and is not a "silver bullet" for state and local needs.

Mr. Mahfuz highlighted the benefits of PPPs as cost savings; an accelerated schedule for project delivery; innovative technology; budget and cost certainty; predictable and high service quality; life-cycle project perspective; and a leveraging of all partners' strengths to come up with the best formula for a project. Among the challenges of PPPs are public acceptance; the necessity for enabling legislation; a gap in terms of knowledge between the public and private sectors and a learning process for both; a different approach for project management and oversight; and the reliability of traffic and revenue.

There are several legal considerations with PPPs, which Mr. Mahfuz focused on next. The first is the need for enabling legislation that includes a contracting authority, financing and funding and a procurement process that is viable. Among the considerations for PPPs that need to be attended to are multi-year contracting, the state's debt limitations, public policy and the fact that all stakeholders need to be kept informed, he added.

Among the technical considerations Mr. Mahfuz spoke of are project screening, performance standards and O&M considerations. He said that many states are making money with these agreements and converting assets into revenue-generating projects. He emphasized the need to screen projects and to have clear, objective measures. In terms of O&M, he mentioned that the public entity involved in the project must ensure that safety is paramount. He also said that many types of ownership arrangements can be made between the public and private entities; for example, some states with cell towers own them at the end of the contract while others do not.

Mr. Mahfuz described a case study where Florida had a PPP arrangement with a design-build-finance-operate-maintain (DBFOM) contract, which was the largest construction contract in that state's history. He described this project as the first "availability-based" PPP in the U.S., with no public money being paid until project completion. He added that the price for the project came in at $275 million below the estimates of the Florida DOT.

He said that many states are making construction choices that give the traveling public more choices than just toll roads, such as managed lanes and general purpose free lanes. He encouraged discretion in terms of deciding if a project would benefit from a PPP and then how to structure the PPP, which requires a team of professionals. He encouraged New Mexico to study the structures that already exist and to modify these to fit New Mexico law. He also cautioned the state as an owner of the project to be careful to make good decisions, to assess risk and to be aware and open-minded. He concluded that to get legislation through, it is necessary to align the PPP strategy with that of the state's legislative and executive leadership.

Mr. Frieberg said he would be discussing PPPs from an industry perspective as a vice president of an organization with strong local ties in New Mexico with an office here for nearly 40 years. He started off by mentioning the Minnesota DOT's planning document, which states that its DOT will be having persistent budget challenges because many revenue sources are either seeing no growth or are declining. He added that Kiewit is looking at every avenue to maintain and to build transportation infrastructure, including collaboration and comparison of delivery models. He compared delivery models and talked about the construction manager general contractor model that is collaborative and minimizes risk because a contractor is involved early on in the process. He added that it is possible to do pre-construction with minimal funding, then to engage in construction later. The design-build model passes on the risk of design and construction to the contractor. In speaking of the benefits of PPPs, Mr. Frieberg said it is about transferring risk to the private sector and that other benefits include an ability to leverage future dollars, improve service delivery and make the pricing and timing more certain and that the model is predictable and competitive.

Mr. Frieberg then gave the example of a Canadian PPP project. He described the Canadian market as more mature than that in the U.S., with several provinces doing well with oil shale development and mining. He said that the preferred PPP model is one that returns a high value for money invested and that the project size for the Canadian PPP has a $40 million minimum. For the Canadian PPP, projects must have private sector involvement in at least two of the elements of DBFOM. He added that this model follows the same structure across provinces, so there is consistency that the market understands. He said that there are over 200 projects in procurement, with strong governmental support for the projects. He gave a comparison of risk allocation that shows how more risk is transferred to the private sector in PPPs. He then referred to a project evaluation criteria checklist that industry often uses and that includes such criteria as strong legislative policy; strong need and local support; obtaining permits or having them in a process that shows that a project is within an overall region or the state plan for development; financial sense with assurance of adequate revenue; a process with extensive industry input; legal agreement that protects all parties; risk allocation; technical feasibility, without unusual construction or technology challenges; an effective team; an ability to self-perform the needed work; and a budget that is affordable and equitable. He reiterated what Mr. Mahfuz had said earlier: that PPP is another delivery model, not a silver bullet and not a funding source, but that great innovation is possible here. He concluded by saying that PPPs are complicated and it takes expertise and effort to structure, procure and deliver within this model.

Subcommittee members engaged in questions, and the following points were made:

- with PPPs, there is one procurement where both the state and federal governments are aligned with the procurement model and delivery;
- if New Mexico were to take on the PPP model, the NMDOT would need legal and financial counsel, much like the assistance needed when a bond deal is structured;
- states handle right-of-way issues in different ways by establishing terms and conditions up front through the contract process;
- in order for PPP legislation to be successful, communication with industry contractors and taxpayers is essential, as is educating legislators on the various approaches, and contractors must be allowed to bring innovation forward, leverage their resources and still get the work they need;
- in Kentucky, there were issues with PPP and local unions not wanting this delivery method, but without the PPP, the project could not get done at all, so it was more accepted;
- when PPP legislation was first being crafted, almost all projects were unsolicited, which meant a lot of resources were used and few projects actually went through; Virginia legislation changed this to allow for solicitation, and Georgia copied this;
- regarding PPP legislation, it is advisable not to start from scratch — there are many states to look at and model after;
- although the cost of financing to the private sector is generally higher than to government, the advantage comes when looking at options as opposed to a traditional pay-as-you-go project; often, getting the project done earlier leads to cost savings on construction;
- generally, states do not lose on PPP projects that are well-structured, and, in any case, the state owns the project;

- the subcommittee would benefit from being walked through an example of a PPP step-by-step, comparing a specific project done through various delivery methods, including a PPP; and
- the NMDOT has not received or solicited any PPP projects and it would take a private interest to step in and be willing to pay a fee or concession because otherwise it would be another debt, which the state could not handle.

Adjournment

There being no further business before the subcommittee, the TRANS meeting adjourned at 2:04 p.m.

MINUTES
of the
FOURTH MEETING
of the
TRANSPORTATION INFRASTRUCTURE REVENUE SUBCOMMITTEE

October 8, 2013
Room 307, State Capitol

The fourth meeting of the Transportation Infrastructure Revenue Subcommittee (TRANS) was called to order at 9:35 a.m. by Representative Roberto "Bobby" J. Gonzales, chair, on Tuesday, October 8, 2013, in Room 307 of the State Capitol.

Present	**Absent**
Rep. Roberto "Bobby" J. Gonzales, Chair	Sen. John Arthur Smith, Vice Chair
Rep. Ernest H. Chavez	Sen. Ron Griggs
Sen. Lee S. Cotter	Sen. Timothy M. Keller
Rep. Larry A. Larrañaga	
Rep. Patricia A. Lundstrom	
Rep. Jane E. Powdrell-Culbert	
Sen. Clemente Sanchez	

Advisory Members

Sen. Carlos R. Cisneros	Sen. Jacob R. Candelaria
Rep. Nathan "Nate" Cote	Rep. Sharon Clahchischilliage
Rep. Anna M. Crook	Sen. William H. Payne
Rep. Edward C. Sandoval	Sen. William E. Sharer

Staff
Pam Stokes, Legislative Council Service (LCS)
Amy Chavez-Romero, LCS
Branden Ibarra, LCS
Mark Edwards, LCS

Guests
The guest list is in the meeting file.

Handouts
Copies of the handouts are in the meeting file.

Tuesday, October 8

Minutes
A motion to approve the minutes of the third TRANS meeting on September 10, 2013 was approved without objection.

Flood Damage Update

Tom Church, secretary-designate, Department of Transportation (DOT), and Ernest Archuleta, director, Operations Division, DOT, gave an overview of the damage and associated costs resulting from recent flooding across New Mexico. They stated that:

- two people in southeastern New Mexico lost their lives trying to drive through flood water and getting swept off the road;
- almost 300 miles of road stretches were lost to flooding erosion;
- the DOT had crews working 24 hours a day for 12 days during the initial response to the flooding. This included a dozen crew members living out of a cabin for several days while working on the road to the village of Mogollon; and
- a request has been made to the Federal Emergency Management Agency (FEMA) for $19 million in disaster relief funds. FEMA has already released $2 million, and the DOT is waiting for a response on the rest of the request.

Secretary-Designate Church and Operations Division Director Archuleta then discussed various types of flood damage that occurred using photographic examples from each DOT district across the state. A recurring issue cited was that culverts that normally divert rain water got clogged with debris during a flood event, causing overflooding of the road at that spot, which then creates erosion. Secretary-Designate Church and Operations Division Director Archuleta highlighted the following examples of the recent flooding:

- DOT District 1: N.M. 159 near Mogollon lost a lane as the road became a new streambed;
- DOT District 2: a section of N.M. 294 near Taiban became an impassable lake;
- DOT District 3: U.S. 60 near Bernardo was overflooded;
- DOT District 4: a break in the diversion channel to Storrie Lake occurred near Las Vegas;
- DOT District 5: rock slides onto N.M. 68 near the Pueblo of Picuris and N.M. 4 occurred; and
- DOT District 6: there was an overflooding washout of Navajo Route 491 at Naschitti.

Following this overview, subcommittee members asked for a more detailed description of the road damage, the costs involved in repairs and the funding available.

Secretary-Designate Church and Operations Division Director Archuleta then elaborated upon their initial descriptions. They explained that much of the initial, visible road damage was caused by erosion. When the DOT clears the debris from these sites, it can normally determine what needs to be done to open the road and proceeds to make an emergency or temporary repair. Instances across the state during this summer's flooding included washed-out culverts and road lanes and a complete road closure that stranded the village of Mogollon for three days. However, on many stretches of roads during the flooding this year, the ground became saturated. In those places, the true condition of the roads will not be known until the freeze and thaw cycle has run its course. Secretary-Designate Church said it will likely take until next summer before the DOT has a full picture of the subsidence problems caused by the flooding.

Subcommittee members asked whether inadequate road maintenance contributed to the damage and whether regular cleaning of culverts would have made a difference. DOT representatives acknowledged that lack of maintenance might have contributed to the damage on some roads.

DOT representatives used the collapse of a road near Tohajiilee as an example of the temporary nature of an emergency repair. They explained that the DOT is required to make emergency repairs to that road, but subsequently, the drainage pipes for that road collapsed from additional flooding. Ultimately, an emergency repair of the emergency repair was required.

Secretary-Designate Church and Operations Division Director Archuleta provided the subcommittee with a detailed description of the costs and available funding with respect to the recent flooding. They stated that the DOT has submitted a request for $19.9 million in emergency assistance funding from FEMA. The request is eligible under FEMA regulations, but there is no guarantee that FEMA will make the total amount available. The DOT has received an initial $2 million from FEMA, but is waiting to hear about the rest.

The subcommittee asked several questions about the DOT's funding needs for fiscal year (FY) 2014. Concerns were raised about funding for potential future emergency repairs, including repairs necessary due to snow damage this winter. In addition, subcommittee members raised concerns about the need to make permanent repairs for roads that have only temporary or emergency repairs.

DOT representatives relayed that emergency repairs are funded from maintenance funds. In recent years, that money has been spent on wildfire response, but this year those funds have been used in response to the floods. The DOT might find it necessary to request the ability to move funds between different budget categories this winter to address snow and ice problems. With regard to permanent repairs, DOT representatives stated that an ambient temperature of 70 degrees is required to lay new roads. As emergency or temporary repairs are now in place for all flood-damaged roads, the DOT will wait until the end of the freeze and thaw cycle in the spring to start permanent repairs.

Several questions were raised by the subcommittee as to whether the DOT might seek capital outlay funding to cover these repairs. It was noted that as the problems were statewide, the repairs might qualify.

Secretary-Designate Church clarified that the DOT is not seeking capital outlay funding. He said that department budget requests were already submitted and that the DOT does not generally make capital outlay requests.

Responding to a question about whether the DOT would be looking for a FY 2014 appropriation from the general fund for these repairs, the response was that the DOT is waiting to see what can be recovered from the federal agencies.

The subcommittee then continued its discussion regarding the overall flooding damage to roads in New Mexico. Concerns were raised about:

- whether any agency is developing a statewide evaluation of road damage, including tribal and local roads not included in the state or federal road systems; and
- whether the necessary repairs for damage revealed after the freeze and thaw cycle, or the need for long-term repairs, would be eligible for funding from FEMA.

In response to the first concern, Secretary-Designate Church stated that the DOT, the local FEMA office and the Federal Highway Administration (FHWA) had created a statewide estimate of the damage and were waiting for FEMA's federal office to review it. Don Martinez, New Mexico division administrator for the FHWA, noted that the federal Department of Homeland Security is responsible for conducting comprehensive damage assessments, which include private property.

In response to the second concern, Secretary-Designate Church suggested that FEMA funding would likely be inadequate. As an example, he noted that FEMA's past funding for fire damage was lower than the actual costs involved. He also stated that while the DOT has obtained some equipment from FEMA, FEMA does not pay for basic infrastructure. Further, he commented that the large requests stemming from flooding in Colorado will likely impact FEMA's response to other emergencies, including emergencies in New Mexico. In answer to a specific question, Secretary-Designate Church said the DOT would work on an estimate by the beginning of the upcoming legislative session for the funding needed by the DOT to make road repairs through the winter.

The subcommittee then discussed the issues faced by the DOT in meeting regular maintenance requirements and responding to emergencies. The DOT noted an example of working with contractors to reduce the cost of emergency repair on the I-40 sinkhole, but otherwise did not have a solution to this conflict.

Without objection, the subcommittee approved a motion to send a letter from the subcommittee to the Legislative Finance Committee (LFC) requesting a proposed appropriation from the general fund to repair roads damaged by this year's floods. After further discussion about alternative funding, it was suggested that various members would discuss the issue with the State Board of Finance.

Transportation System Needs

Secretary-Designate Church, Operations Division Director Archuleta and Elias Archuleta, the DOT acting chief engineer, provided an overview of the gaps between the department's maintenance and construction goals and its actual funding, using the FY 2014 operating budget as a baseline.

The DOT representatives noted that maintenance includes an ongoing rotation of pothole repair, crack sealing, sign replacement and snow removal, but not structural road repair or rehabilitation. Emergency repairs are also included as a maintenance cost. Operations Division Director Archuleta made the following general observations at the beginning of the DOT's presentation:

- a rule of thumb is every $1.00 spent on maintenance saves $4.00 down the road on repair;
- the DOT would like to establish a 20-year maintenance program with the goal of extending the designed life of the roads from 20 years to 25 years; and
- prior to this year's flooding, approximately 30% of New Mexico's road system was deficient. The road deficiency rate is likely to go up, and the DOT has a contract in place to get a comprehensive look at what the deficiency rate is now.

DOT staff members then gave a more detailed description of the funding shortfalls in the maintenance programs listed in a handout provided by the DOT. It was noted that the DOT's entire yearly budget could be consumed by maintenance costs. The DOT's handout lists a 2014 maintenance budget of $90.8 million with a $268 million shortfall. Two examples were used to highlight the issue:

- first, the DOT has a goal to complete maintenance on 125 bridges each year, but its budget only allows for eight bridges per year. Thus, it takes 15 years to complete the one-year goal; and
- second, the average designed life of the DOT's equipment, such as loaders and backhoes, is 12 years, but the available procurement budget means the department is keeping equipment for 19 years. This creates greater repair costs and limits bond funding for new equipment.

DOT staff next addressed issues pertaining to bridge safety. DOT staff indicated that the DOT has contracts with universities to inspect the bridges for structural damage on a two- to three-year cycle. Those inspections are used by the DOT to assess needed maintenance and repair. Secretary-Designate Church stated that every bridge suspected of having water damage from the recent flooding had been inspected.

In response to a subcommittee member's question regarding the DOT's exposure to tort liability, the DOT staff stated that the DOT's budget includes liability insurance in case it is sued for negligence. However, a recent court ruling has included negligent road design as cause of action, which may raise the cost of insurance.

In response to a question regarding the DOT's staffing needs, DOT staff indicated that at least with regard to the DOT's emergency repair responsibilities, there is no need to increase authorization for full-time employees at this time. The department is currently experiencing a 13% vacancy rate.

The next item of discussion was the projected needs for repair, replacement and new capacity in New Mexico's road system, such as bridge replacement, new road lanes and highway interchange expansion. The discussion of the DOT's construction goals was divided between work on roadways and bridges. Acting Chief Engineer Archuleta led the DOT's presentation. He stated that the DOT strives to meet a repair and replacement schedule to maintain a 20-year life for roadways and a 50-year life for bridges.

In addition, Acting Chief Engineer Archuleta stated that the DOT estimates the demand for road construction will be about $595 million per year over the next 20 years. Using its 2014 budget as a benchmark, the shortfall per year would then exceed $295 million per year.

Acting Chief Engineer Archuleta next discussed the DOT's bridge repair goal for the next 10 years, with an estimated need of $37 million per year and shortfall of almost $4 million per year. Further, the DOT projected a need to replace 25 bridges per year, estimated at over $54 million per year with an annual shortfall of over $40 million per year.

DOT representatives noted that the need for bridge replacement is complicated by determinations of structural impairment, adequate design and functionality. Secretary-Designate Church contrasted the DOT's FY 2014 total construction budget of $197 million with the DOT's estimate that $342 million would be needed to bring 158 bridges up to current standards.

In response to questions and comments from the subcommittee, DOT staff provided further explanation of the bridge replacement challenges apart from structural damage. They noted that a bridge can be structurally sound, but its functionality may be in question due to a need for wider lanes or improved entryways to meet changing traffic demands. Further, they noted that a bridge can be structurally sound and functional, but that it might not meet current design standards.

DOT staff explained that under a recent Supreme Court decision, these conditions increase the risk of liability for the department. Therefore, the DOT combines bridges with damage impairment, outdated design and functionality impairment under the category of "functionally obsolete". DOT representatives indicated that the increased risk of liability creates pressure on the DOT to expedite its replacement schedule beyond what would be needed to meet the planned 50-year design life schedule. The challenge is exacerbated because design standards are set by federal guidelines that are subject to change.

Aggregating the budget challenges faced by the DOT, Secretary-Designate Church stated that the department has a total annual funding gap of $608 million for its operation, maintenance, repair and construction programs. Responding to a subcommittee member's question, Secretary-Designate Church clarified that the $608 million funding gap included the federal money that the state receives.

The subcommittee next had a general discussion regarding funding alternatives. In response to a question on the accuracy of the DOT cost estimates, Secretary-Designate Church elaborated on how they were derived. He stated that the figures presented with regard to flood damage evaluations include assessments by federal evaluators and health inspectors. He also remarked that the operations and maintenance figures are in line with the DOT's experience over the last 20 years of the gaps between operational demands and actual budgets.

Secretary-Designate Church was asked whether the DOT would submit a request for an appropriation to the State Road Fund to meet the projected $300 million road construction shortfall. He stated that the DOT was not planning to make such a request. He elaborated that in the DOT's experience, appropriations to the State Road Fund typically do not represent additional funding to the DOT budget; rather, appropriations come in the form of earmarks that reallocate funds from other established categories in the DOT budget. Therefore, Secretary-Designate Church stated that the DOT would recommend that efforts to allocate new funds toward the DOT's construction programs be channeled through other means.

Several subcommittee members expressed a desire to avoid piecemeal responses to the funding challenges outlined by the DOT. Subcommittee members also noted that much of the DOT's annual budget is based on federal matching funds and highlighted that the uncertainty of federal funds makes it difficult to gauge the state's future need to make up the projected budget shortfalls. Other subcommittee members expressed the concern that the scope of the DOT's budget challenge is too large for a comprehensive response.

A general discussion of possible funding sources ensued. Subcommittee members discussed the possibility of creating a new fund to be used for the anticipated repair needs next spring and summer. The subcommittee also had a brief discussion of the benefits and limitations of using short-term severance tax bonds or general obligation bonds to finance the DOT's projects. Subcommittee members suggested that the DOT provide a detailed request to the legislature identifying the DOT's needs and proposed funding sources.

Subcommittee members also discussed the issue of using taxes for road construction. A question was asked about how New Mexico's gasoline and diesel taxes compare to those in other states. David Abbey, director, LFC, indicated that New Mexico currently has approximately the seventeenth-lowest fuel taxes.

Without objection, the subcommittee approved a motion requiring LCS staff, in consultation with the LFC and the DOT, to research methods to generate an additional $50 million per year for three years for road and bridge maintenance, repair and construction.

Federal Funding Expectations for Transportation Infrastructure

Mr. Martinez made a presentation on federal highway funds available under the federal Moving Ahead for Progress in the 21st Century Act (MAP-21) and the requirements for the funds.

Mr. Martinez explained that MAP-21 runs on a reimbursement basis. When the DOT does work that is eligible under the program, it can submit a voucher for reimbursement. In FY 2013, New Mexico was eligible for $332.6 million. According to Mr. Martinez, approximately $80 million was available to the DOT; $122 million was used for debt service payments for bonds issued previously by New Mexico under the Governor Richardson's Investment Partnership (GRIP); and the rest was distributed to four certified metropolitan planning organizations (MPOs) in Albuquerque; Santa Fe; Las Cruces and El Paso; and Farmington. Mr. Martinez said that debt servicing for GRIP is an ongoing expenditure against both federal and state funds. New Mexico's share was $40 million in FY 2013. GRIP debt is scheduled to be retired by FY 2027.

Mr. Martinez explained that MAP-21 consolidates a number of programs. MAP-21 has performance-based standards that are developed by the federal, state and MPO agencies. The state must make periodic reports to the FHWA regarding the progress toward those standards. Within those standards, the following two have specific budget impacts:

- meeting the state's goal for limiting fatalities and serious injury; and
- meeting minimum requirements for highway pavement and bridge conditions.

Failure to make adequate progress on either goal would require the state to spend a specified portion of its funds toward meeting or exceeding that standard.

Responding to questions from the subcommittee, Mr. Martinez added that MAP-21 is a two-year authorizing act that ends on October 31, 2014. Mr. Martinez stated that he had no information regarding congressional hearings for an extension for MAP-21. However, he noted that the programmatic structure is in place and that the United States Department of Transportation is currently promulgating rules for distribution. He said the level of federal funding that Congress will provide is still to be determined.

With regard to specific questions on federal reimbursement of the DOT's vouchers, Secretary-Designate Church stated that:

- the DOT's billing through the Statewide Human Resources, Accounting and Management Reporting (SHARE) system is more consistent; and
- the DOT is not experiencing any delays in getting reimbursed.

"It's Time to Cross That Bridge: State Transportation Challenges and Opportunities in the Federal Context"

Janet Kavinoky, executive director, transportation and infrastructure, United States Chamber of Commerce (U.S. Chamber), provided an overview with regard to federal transportation funding. She said that the prospect for federal highway funding is unclear. There has been no regular federal budget process for several years. She emphasized that the federal programs have been dependent on the fluctuating federal appropriation process. Ms. Kavinoky added that the federal general fund is not a likely source for new transportation funds. She said that most of that money is already dedicated to entitlement payments, military expenditures and servicing the national debt.

Ms. Kavinoky drew attention to an approaching "fiscal cliff" for federal highway assistance. She said that if no new funding is provided to the federal programs by 2015, the entire federal highway budget will be consumed by existing obligations. As such, it is possible that new projects will not be feasible.

Ms. Kavinoky noted that a large part of the budget shortfall for highways can be attributed to the system's reliance on fuel taxes. A combination over the years of increased fuel efficiency and steady inflation has eaten into the buying power of road funding that relies on fuel taxes. To maintain the highway system, the U.S. Chamber, various trucking associations and others requested Congress to increase user taxes such as fuel taxes. Congress has not acted on those requests so far.

Jaime Rall, senior policy specialist, National Conference of State Legislatures (NCSL), made a presentation on the following three topics: 1) the growing shortfall in transportation funding; 2) the differing approaches that various states are using to meet the shortfall; and 3) alternative approaches to transportation financing.

Ms. Rall stated that the nation as a whole is spending one-third to one-half of what is needed to maintain and improve the nation's transportation system. She highlighted that without new congressional action, the federal Highway Trust Fund is anticipated to become insolvent in FY 2015. She noted that the combination of budget shortfalls within both state and federal highway programs means the states are facing a fiscal cliff with regard to transportation funding.

Ms. Rall agreed with the point made by Ms. Kavinoky that a large part of the funding shortfall stems from a reliance on fuel taxes at both the state and federal levels. She pointed to three factors from which this reliance contributes to budget shortfalls over time, stating that:

- fuel taxes are typically per-unit taxes generating revenue through consumption rather than costs;
- fuel efficiency increases have leveled gasoline and diesel consumption, thereby limiting growth in fuel tax revenues; and
- highway construction costs have been experiencing inflation.

Ms. Rall stated that New Mexico ranks below the national fuel tax average, ranking eighth-lowest in combined fuel taxes and fourteenth-lowest in diesel tax. She also stated that New Mexico has seen a larger drop in the value of its gas tax than any state, except Alaska, over the last 20 years.

Ms. Rall outlined the traditional methods that states have used to generate highway funds. She explained that New Mexico employs a combination of user fees, including fuel taxes, vehicle registration and title fees and weight distance taxes on trucking.

Ms. Rall said that a few states are experimenting with changing how they tax fuel, rather than raising their current rates. Two approaches to a "variable rate" structure are being explored. Maryland and Vermont are now using a gas tax rate tied to an index of how the economy is performing. In another approach, Virginia has changed its gas tax to percentage of the cost as opposed to a flat tax per gallon. Ms. Rall mentioned that concern for the variable rate approach is that neither method is guaranteed to raise revenues in proportion to rising or falling construction costs. Ms. Rall added that Oregon is experimenting with a vehicle miles traveled tax. Oregon implemented a pilot program where residents volunteer to have the locations of their cars and trucks tracked by the state using a global positioning system. At the end of each month, the participants are billed for the actual miles traveled. The pilot program is limited to 5,000 vehicles.

Ms. Rall briefly discussed transportation financing methods such as public-private partnerships. She emphasized that though states are increasingly using those methods to preserve funds for transportation, those methods do not necessarily generate funds.

Subcommittee members asked questions about the possible insolvency of the federal highway assistance programs and the potential effect that this would have on New Mexico's highway projects. In response, Ms. Rall noted that some states are more dependent on federal funds than others. As an example, she stated that the Rhode Island highway program is highly dependent on federal funding and is making adjustments to its construction schedule accordingly.

Secretary-Designate Church noted that a key concern in New Mexico is the retirement of the GRIP debt. Currently, the federal apportionment of that debt is $122 million a year. If federal funds are eliminated, the state's budget would be impacted.

A subcommittee member asked whether there is support for a Western States Transportation Alliance proposal to hold the states harmless if the reauthorization of the federal gas tax in 2016 is not reauthorized. Ms. Rall responded that the NCSL is tracking a number of states that have proposed or enacted their own "replacement laws" if the federal tax is not reauthorized. Ms. Rall also noted that the NCSL has a committee on MAP-21 reauthorization that might be an avenue to raise states' concerns to Congress.

Subcommittee members asked about the types of new gas taxes enacted by other states. Ms. Rall stated that four states have added a percentage of the retail cost to their gas taxes. She said some of these states were indexing their fuel taxes to inflation. Wyoming opted for a straight increase in its cents per gallon tax.

There being no further business before the subcommittee, the meeting was adjourned without objection.

MINUTES
of the
FIFTH MEETING
of the
TRANSPORTATION INFRASTRUCTURE REVENUE SUBCOMMITTEE

November 12, 2013
Room 322, State Capitol
Santa Fe

The fifth meeting of the Transportation Infrastructure Revenue Subcommittee (TRANS) was called to order at 9:35 a.m. by Representative Roberto "Bobby" J. Gonzales, chair, on Tuesday, November 12, 2013, in Room 322 of the State Capitol.

Present
Rep. Roberto "Bobby" J. Gonzales, Chair
Rep. Ernest H. Chavez
Sen. Lee S. Cotter
Rep. Anna M. Crook
Sen. Timothy M. Keller
Rep. Larry A. Larrañaga
Rep. Jane E. Powdrell-Culbert
Sen. Clemente Sanchez

Absent
Rep. Patricia A. Lundstrom
Sen. William H. Payne
Sen. John Arthur Smith

Advisory Members
Sen. Carlos R. Cisneros
Rep. Nathan "Nate" Cote
Sen. Ron Griggs
Rep. Edward C. Sandoval

Sen. Jacob R. Candelaria
Rep. Sharon Clahchischilliage
Sen. William E. Sharer

Guest Legislator
Rep. Tomás E. Salazar

Staff
Pam Stokes, Legislative Council Service (LCS)
Amy Chavez-Romero, LCS
Branden Ibarra, LCS
Mark Edwards, LCS

Guests
The guest list is in the meeting file.

Handouts
Handouts and other written testimony are in the meeting file.

Tuesday, November 12

Preserving the Amtrak Southwest Chief Route

Bill Sauble, vice chair, Colfax County Commission, and co-chair of the Southwest Chief Coalition, led a panel of presenters regarding potential loss of the Southwest Chief passenger rail service. Mr. Sauble started the discussion by informing the subcommittee that the contract between the Burlington Northern Santa Fe Railway (BNSF) and Amtrak that provides for the Southwest Chief will expire at the end of 2015. He stated that legislation would be needed to keep the Southwest Chief in operation. Acknowledging actions that the legislature has already taken in support of rail service in New Mexico, Mr. Sauble expressed his thanks for the passage of measures in previous sessions. Mr. Sauble then introduced a number of officials from communities served by the rail line and turned the presentation over to Ray Lang, the chief of government affairs for Amtrak.

Mr. Lang began with a brief overview of what Amtrak is and how it operates. He noted that Amtrak is a federally owned corporation created on May 1, 1971 by an act of Congress. Mr. Lang stated that Amtrak's purpose is to provide passenger service and relieve freight rail companies from what had been an unfunded obligation to provide that service. He explained that instead of building its own railroad track, Amtrak has a right of incremental access to any rail line in the U.S. He clarified that this right means that the freight lines that own the track can bill Amtrak for the incremental costs associated with having passenger lines run on their track, but they are not allowed to profit off of Amtrak service. Mr. Lang stated that Amtrak currently has agreements with six long-distance freight carriers and that there are only 15 long-distance Amtrak trains like the Southwest Chief left in the United States.

With respect to the Southwest Chief, Mr. Lang explained that it is a daily train that runs from Chicago to Los Angeles. Amtrak's agreement with BNSF ends on January 1, 2016. Amtrak has been informed by BNSF that BNSF will cease to maintain most of the line at a standard that allows for trains to move at 79 miles per hour. BNSF intends to discontinue use of some of the line and maintain most of the rest at a 30 miles-per-hour standard. Thirty miles per hour is slow for passenger trains and much too slow for the distances involved. He then specified that BNSF plans to maintain the track between La Junta and Trinidad, Colorado. BNSF does not use the track between Trinidad and Albuquerque, will not maintain it and would like to sell it. Instead, BNSF uses a parallel line, the Transcontinental, also known as the Transcon. He explained that the Transcon runs from Wichita to Amarillo and then south. Amtrak could use that route, but it would then have to run a different line to Albuquerque. He stated that Amtrak would prefer to maintain service to the nine cities that would be bypassed by the new route. He identified those cities as: Hutchinson, Dodge City and Garden City in Kansas; Lamar, La Junta and Trinidad in Colorado; and Raton, Las Vegas and Lamy in New Mexico.

Providing more detail to the issue, Mr. Lang described the track in Kansas as "244 miles of rail in very poor shape. It needs new track.". He noted that new track is expected to last 40 years. In Colorado, he explained that BNSF does run trains at 79 miles per hour over the track between Trinidad and La Junta. However, he asserted that it would take public funding to maintain the rest of the track in Colorado above a 30 miles-per-hour standard. For New Mexico, Mr. Lang noted that the rail line south of Lamy is owned by the state. Speaking only about the cost to maintain the track from the Colorado border to Lamy, he cited an annual cost of $6.2 million.

Mr. Lang then estimated the cost to keep the entire rail line from Hutchinson, Kansas, to Albuquerque, New Mexico, at close to $200 million, including maintenance and construction over the next 10 years. This would establish the rail line as useable for 40 years, and asked the subcommittee to think of it as providing a generation's worth of rail service. Then he referred the subcommittee to page nine of the Amtrak handout for a breakdown of the cost by state.

Mr. Lang acknowledged that Amtrak has known for a couple of years that the Southwest Chief service is in jeopardy, and it has been informing the impacted communities. He then presented a proposal developed by Amtrak to resolve the issue. The proposal is to split the cost into equal shares among the three states, New Mexico, Colorado and Kansas, and the two rail service providers, Amtrak and BNSF. Each share would be $40 million broken down to $4 million per year over 10 years. He stated that having a relief rail line for the Transcon might be worth $4 million a year to BNSF. He then raised the question of whether it would be worth $4 million a year to each of the states to keep the passenger service. He pointed out that Kansas had applied for a $29 million grant from the U.S. Department of Transportation's Transportation Investment Generating Economic Recovery (TIGER) program. He then referred to that application an example that one of the affected states is thinking about the issue on a similar scale. He stated that had the TIGER grant been approved, it would have kept up the Kansas portion of the rail line.

Mr. Lang closed by asserting that if the funding issue is not resolved, the rail line will be abandoned; and he expressed the opinion that it should be preserved for future freight opportunities.

Mr. Lang was then asked at what point would he believe he had a commitment from each of the parties to the proposal. He answered that only Amtrak had committed to the funding proposal so far. He said that initial reaction from the respective state departments of transportation was that Amtrak should seek federal funding, but that there had not been much response from the federal government.

Mr. Lang remarked that, as the situation stands, Amtrak would have to maintain the track on its own starting in 2016, and that it will not be able to do that for long. As an alternative, he indicated that Amtrak is looking to reroute its service, which would entail a substantial cost as well. He noted that if Amtrak rerouted the service to the Transcon, it would have to spend funds for additional track. He explained that the passenger trains would overtake the freight trains using that line. Therefore, he said the passenger service would need new side lines to pass around the slower moving freight service.

The next presenter was Mark Anderson, director of programs for the Philmont Scout Ranch. Mr. Anderson announced that Philmont is celebrating its seventy-fifth anniversary this year and expects to host its one millionth backpacker or camper by next July. He said that the ranch employs 1,000 people annually. Mr. Anderson estimated that annually approximately 4,400 campers rely on the rail service to reach Raton on their way to the ranch. He explained that that figure had practical implications for Philmont, given the approaching deadline to secure passenger rail service. He said that Philmont is currently completing its reservations for the 2015 camping season. Given the lead time for reservations, he pointed out that many people making their reservations next fall will also need to look for alternate transportation if the Southwest Chief service is not secured.

The last presenter was Harold Garcia, public works supervisor for San Miguel County. Mr. Garcia emphasized the potential benefits of continued freight hauling on the rail line and cited two examples for San Miguel County. In the first example, he said the county has established a 53-acre business park that can be served by two different rail spurs. Mr. Garcia indicated that the access to freight rail service is an important marketing tool to attract future businesses to San Miguel County. In the second example, he remarked on how freight rail may lower the cost of county services. He pointed out that the county is currently using double-haul trucks to transport solid waste but is considering the use of freight rail to reduce costs.

Mr. Sauble then gave the following summary of what the Southwest Chief Coalition is seeking from the state:

- a focused study, possibly with a consultant on contract, on the funding and legislation that would be required for New Mexico to continue the Southwest Chief service;

- collaboration between the state government and New Mexico's congressional delegation to maintain the track. He noted that the entire congressional delegation wrote in support of the TIGER grant for Kansas;

- a $4 million a year commitment along the lines of the Amtrak proposal to win agreement from the other states; and

- a dedicated permanent fund to maintain the rail line, with the possibility for bonding capacity.

There followed a series of questions and remarks by TRANS members.

Mr. Lang was asked what would happen if New Mexico commits to the Amtrak proposal but other states do not. He responded that a 60% response would not work and that the proposal would only be a viable solution if all of the parties work together as a partnership. Mr. Lang expressed his view that momentum is building for a partnership but that each state appears to be waiting for one of the others to take the lead.

A subcommittee member asked what the presenters thought was needed from the upcoming legislative session. Mr. Sauble replied that they are seeking a set of incremental steps, the first being a study using a third-party consultant to give detailed answers as to the costs, available funding mechanisms and identifying any required legislation.

Another subcommittee member noted that the memorials the legislature had passed in support of maintaining the Southwest Chief had been sent to the governors, legislatures and congressional delegations of the impacted states and asked if the presenters had seen any response. Mr. Lang replied that Amtrak had met with each of the state transportation departments about the issue, eliciting a joint response letter suggesting that Amtrak bring the issue to the respective state congressional delegations. He remarked that the response from the congressional delegations was similar, except that the suggestion was that Amtrak seek state assistance for the Southwest Chief.

In a further response, Mr. Sauble pointed out that the Southwest Chief Coalition had been collecting resolutions of support from various communities serviced by the rail service.

A follow-up question by a subcommittee member asked whether any local governments had committed funding toward retaining the Southwest Chief. Mr. Sauble and Mr. Garcia, speaking about the actions of their respective local governments, stated that both Colfax and San Miguel counties have included the Southwest Chief in their infrastructure capital improvement plans. Mr. Sauble also highlighted that Raton has been using city funds to improve its rail station.

The subcommittee then engaged in a short discussion on who should conduct the cost and legislative needs study. The discussion concluded with a statement that either the Department of Transportation (DOT) or the Legislative Finance Committee would be better situated to conduct a study.

Subcommittee members then asked Mr. Lang a few questions about the economics of passenger rail service.

Mr. Lang was asked whether passenger rail use is in decline. Mr. Lang stated that passenger ridership is actually growing, that Amtrak had set a new record for ridership in 10 of the last 11 years and that year it had reached an all-time high of 39 million passengers. In terms of economic viability, Mr. Lang noted that passenger fees used to cover only 50% of Amtrak's costs but that in recent years that has grown to 89%.

A second question was whether a rail line can be revived at a later time once it has been discontinued. Mr. Lang replied that it is a question of cost; in his opinion, once a line is abandoned, it is lost forever. He pointed out that the essential element for a rail line is a narrow right of way for transportation. He asserted that once that right of way falls into private hands, it is nearly impossible to retrieve. As an analogy, Mr. Lang pointed out that a particularly difficult problem in urban areas is to find corridors for commuter mass transit lines. He noted that it can cost millions of dollars per mile to start a line from scratch, whereas those same funds can maintain 20 to 30 miles of existing track.

A subcommittee member asked what other sources of funding were available to refurbish the track for the Southwest Chief. Mr. Lang replied that efforts had been made to acquire federal funding, but they had been unsuccessful so far. He informed the subcommittee the federal transportation bill had no new funding for long-distance trains. However, he pointed out that the 2012 U.S. Senate version of the bill would have given the states the flexibility to use federal rail funding for long-distance trains. However, despite the benefit to rural states, the provision did not survive in conference. He indicated that the states need to be more vocal in their support of the measure and of additional federal rail funding.

He then turned the subcommittee's attention to why the Kansas application for a TIGER grant likely failed. He explained that under the terms of a TIGER grant, once any money is spent on a project, the applicant is required to maintain the service for 20 years. He indicated that the review board for the Federal Railroad Administration (FRA) recognized that Amtrak's willingness to commit to a 20% share of the obligation was "a big deal". However, the FRA turned down the application because it did not see a corresponding commitment from all three of the states serviced by the line. He speculated that an application from all three states might receive a favorable review.

A member of the subcommittee then asked if there were any analyses on the Southwest Chief's economic impact in New Mexico. Mr. Sauble reported that a commissioned economic impact study had been issued the night before. He asked that Ford Robbins, the New Mexico section leader for the Southwest Chief Coalition, speak about the findings of the study which included:

- visitor spending from passengers arriving via the Southwest Chief creates an estimated \$29.3 million annually in economic output in northern New Mexico communities; \$17.4 million of that is direct spending; and

- the visitor and tourist traffic generated through the Southwest Chief employs 368 people in northern New Mexico communities.

Mr. Robbins stated that he is worried not only about losing the spending and employment cited in the Impact study, but also about potential loss of future economic growth.

At this point, Mr. Lang resumed clarifications regarding his presentation and Amtrak's operating needs for the Southwest Chief. He explained that the individual cost estimates for each state were based on lengths of track and on different needs. Starting from Hutchinson, Kansas, he stated that:

- the track in Kansas needs to be upgraded from a freight standard allowing 30 miles-per-hour trains to a passenger standard allowing 79 miles-per-hour trains;

- in Colorado, BNSF will continue to maintain a portion of the Southwest Chief's track line that it uses for other purposes, but the rest will need to be upgraded; and

- the track in New Mexico from the Colorado border to Albuquerque will need to be completely replaced and maintained.

He said that the Southwest Chief track west of Albuquerque will not be affected by BNSF's decision and that BNSF will continue to maintain the line going west from Albuquerque at the 79 miles per hour standard.

There followed a discussion on when the state needs to commit to funding to avoid losing the Southwest Chief rail service. Commenting on the idea that New Mexico would need to act in concert with other states to succeed, a subcommittee member noted that a proposal for capital outlay contingent on other actors would require careful consideration.

The subcommittee discussion then turned to New Mexico's previous effort to purchase the track and its effects on an effort to keep the Southwest Chief service. According to Secretary-Designate of Transportation Tom Church, the state had placed $5 million in an escrow account toward eventual purchase of the track. However, after receiving estimates of the maintenance cost, a decision was made to forgo purchase and the payment was returned. The secretary said that the DOT had received three contract bids for maintenance in 2009, ranging from $5.6 million to $6.9 million per year for routine maintenance. Expanding on why maintenance of the track would be costly, Secretary-Designate Church noted that it was 182 miles of rail line with some very antiquated components.

The subcommittee then discussed whether the anti-donation clause of the Constitution of New Mexico would affect a state effort to rebuild or maintain the track without purchasing it. One subcommittee member noted that one of the exceptions in the anti-donation clause was for creating new employment and remarked that looking at the exception clauses would take some careful analysis. Mr. Lang stated that an explicit provision concerning railroads was common in state constitutions and was a manifestation of the "robber baron days" of land speculation during the initial growth of the rail lines in the United States. A subcommittee member remarked that purchasing the track might be an issue to reexamine and suggested that it might be done using New Mexico Finance Authority (NMFA) bonding.

Speaking to the possibility of using the Transcon through Amarillo and Clovis, Mr. Lang stated that Amtrak does not want to create a competition between currently served and potentially served communities. Therefore, Amtrak has not spoken to them about an alternative service route. He did clarify that the Southwest Chief is a modernized version of the former Super Chief service from Chicago to Los Angeles and does not follow the same route served by the discontinued San Francisco Chief service that used to run through Clovis. A subcommittee member noted that the rail line through Clovis is already heavily used by nearly 100 freight trains.

Returning to the cost to New Mexico to keep the Southwest Chief service, Mr. Lang referred to the figures on page 9 of his handouts. His estimates under the Amtrak proposal are that costs in New Mexico would be $3.9 million per year for 10 years in an initial replacement and refurbishment of the line and $6.7 million per year in maintenance.

Referring to the economic impact study, a subcommittee member noted that the long-term cost/benefit comparison showed $6.7 million in annual state costs in exchange for nearly $30 million in economic activity. The member also pointed out that direct and indirect state tax revenues generated by the Southwest Chief were estimated at $2.2 million. The subcommittee member then remarked that the return on investment of the Amtrak proposal seemed analogous to the return on investment arguments that had been made for the Union Pacific tax breaks for the southern rail line and the state's commitment to the spaceport. The member then noted that if the investment arguments stand up to review, sources of funding might include the NMFA's substantial bonding capacity and the small surplus in this year's state budget.

At this point, the subcommittee entered into a general discussion identifying constitutional and funding issues that would need to be addressed, specifically:

- whether the anti-donation clause would need to be amended to allow the state to participate in the Amtrak proposal;

- whether the anti-donation clause would prohibit state expenditures for maintenance as well as construction, or if a public/private partnership (PPP) could be designed to avoid the constitutional issue;

- whether local municipalities and counties would contribute to keep the service; and

- whether state participation in the Amtrak proposal would create a negative precedent whereby a freight carrier could threaten to abandon a passenger line in order to get the state to upgrade the track.

Mr. Sauble stated that the Southwest Chief Coalition's analysis was that an argument could be made that the state's participation would fall under the job creation and economic development exception. A subcommittee member followed up on this idea by pointing out that the Cumbres and Toltec Scenic Railroad had received state funds as an economic development investment.

At this point, the chair asked if anyone in attendance would like to make a brief public comment. Four people responded.

Chris Candelario, mayor pro tem for the City of Raton, commented that two of his city's major businesses had closed in recent years, the mine and the racetrack. He emphasized that Raton's infrastructure capital improvement plan includes the rail station because the city needs it.

John Olivas, chair of the Mora County Commission, said his county supports the Amtrak proposal and highlighted the need to keep BNSF involved as a partner in the rail line as it is Mora

County's single largest tax contributor. He stated that Mora County stands to lose approximately $2 million in tax revenue over 10 years from that source alone if it loses the rail line.

Landon Newton, Colfax County commissioner, said his county would also lose a big part of its tax revenue with the loss of the rail line. He further remarked that the railroad has historic importance to the county, having been a key part of its economy under the old Atchison, Topeka, and Santa Fe Railway. He also noted that the Southwest Chief provided a first glimpse of New Mexico for many people.

David Coss, mayor of Santa Fe, informed the subcommittee that the Santa Fe City Council had passed a resolution in support of keeping the Southwest Chief service. Further, he stated, the New Mexico Municipal League had also showed support as part of its official policy.

In the interlude between the first and second panels, the subcommittee reviewed the minutes from its last meeting. With the provision that Representative Crook should be listed as a full member of the subcommittee and not an advisory member, the minutes of October 8, 2013 were approved without objection.

New Mexico Passenger Transportation Association

Jon Bulthius, president, New Mexico Passenger Transportation Association (NMPTA), and Stan Cooper, an NMPTA board member representing the American Association of Retired Persons (AARP), gave the subcommittee a brief overview of transit services and challenges in New Mexico.

Mr. Bulthius started by explaining that the NMPTA is an association of transit providers across New Mexico. He stated that the NMPTA has over 80 members who provide a range of services. He used the Taos Chile Line, the Rail Runner and the Gallup Express as examples.

Mr. Bulthius identified three population groups, the elderly, veterans and youth, as dependent on transit services. He pointed out that schoolchildren in Santa Fe often use the Santa Fe Trails system for after-school transportation.

Highlighting a challenge for New Mexico, Mr. Bulthius spoke to what he termed a "tsunami in growth" in the senior citizen population. He stated that senior citizens currently constitute 13.1% of the state's population and that this percentage is projected to double by 2030.

Mr. Cooper remarked that an ongoing debate within his area of transportation policy is about when senior citizens should give up their car keys. He noted that that question is always coupled with: once they give them up, how do they get around?

Mr. Bulthius then explained that the NMPTA's purpose in appearing in front of the subcommittee is to highlight a need for partnership between local communities and the state to provide transit. He cited a growing demand for transit services that is happening at the same time that federal transit funding is shrinking, together creating the need for a state-focused partnership.

Mr. Bulthius pointed out that an additional benefit of investing in transit systems for the state would be to leverage the growth in alternative fuels. He noted that transit systems are good customers for natural gas and other alternative fuels for vehicles. Mr. Bulthius ended his prepared remarks by offering the NMPTA as a potential partner to the legislature as it grapples with upcoming transportation issues.

In response to follow-up questions by subcommittee members, Mr. Bulthius clarified that the NMPTA is not expecting to pursue specific legislation in the 2014 legislative session. However, the NMPTA would likely seek the creation of a transit fund like the State Road Fund in 2015. He also said that, in reference to the previous presentation on the Southwest Chief, the NMPTA board has not taken a position regarding alternative routes.

Mr. Cooper was asked if there were any statistics regarding the percentage of senior citizens that use transit. He replied that an old study by the University of New Mexico found that most seniors used their cars to get around. He indicated that part of that study was in survey form and that many respondents expected to quit driving at the age of 85 and then rely on family help. However, he stated that such expectation was unrealistic. He pointed out that the AARP had published many guidelines on how people could approach a conversation with elderly parents about giving up their cars. He noted that those conversations were much more difficult without available transit services as an alternative.

In closing, Mr. Bulthius answered questions by subcommittee members about the NMPTA's presence in less populous areas of the state. Mr. Bulthius allowed that parts of the state are not currently covered by NMPTA members. He also noted that some areas, such as Torrance County, had lost transit services, which is a problem spreading across the state.

Streamlining Fueling for the Growing Natural Gas Vehicle Market

Sherrie Merrow, co-chair of the New Mexico Natural Gas Vehicle Coalition (NMNGVC), Colin Messer, clean energy program manager for the Energy, Minerals and Natural Resources Department (EMNRD) and co-chair of the NMNGVC, and Blake Littauer, Transit Business Development Division of Clean Energy Fuels, gave a presentation on changing how fuel taxes are collected in New Mexico. Copies of their handouts are posted online.

Ms. Merrow stated that her purpose in appearing before the subcommittee was that the NMNGVC would like alternative vehicle fuels treated and taxed at the pump in a manner similar to other fuels. She indicated that the current taxing method is an impediment to the increased use of natural gas fuel despite its cost savings. Ms. Merrow noted that the price of natural gas is not connected to the price of oil and that its cost is lower. She estimated that if the entire transportation sector were converted to natural gas, its current use would double.

Ms. Merrow then gave the subcommittee a brief overview of the natural gas vehicle fuel industry. She stated that large, national corporations are now using, or converting their fleets to, natural gas vehicles. Ms. Merrow remarked that, although the increase has been slow, there is a growing number of natural gas stations across the country and natural gas vehicles are becoming a larger part of the national passenger fleet.

Highlighting New Mexico's natural gas vehicle fuel industry, Ms. Merrow stated that there are now 10 compressed natural gas (CNG) stations in the state, four of which are public stations. She also noted that New Mexico is the leader in promoting a multistate memorandum of understanding (MOU) under which signatory states commit to using natural gas vehicles for state vehicles whenever it is a feasible alternative. She stated that 16 states, including New Mexico, are now signatories to the MOU.

Ms. Merrow explained that there are two natural gas vehicle fuel products, CNG, which is used for passenger and moderately heavy commercial vehicles, and liquefied natural gas (LNG). She clarified that LNG is essentially frozen and takes up less space. She explained that the smaller fuel tanks required by LNG allow it to be used by heavy commercial vehicles such as 18-wheeler trucks. Ms. Merrow also asserted that natural gas fuels are safer than traditional petroleum fuels, being more difficult to set on fire or cause to explode.

Ms. Merrow then discussed the way that alternative fuels are taxed in New Mexico. She stated that New Mexico currently uses a decal or pay-at-the-pump system that assumes a number of miles traveled. She also noted that sometimes the pumps are not manned. Ms. Merrow explained that this system translates into a wide range of tax collection; the tax either gets charged or not, and sometimes the tax is double what the state had intended.

Ms. Merrow stated that the industry would like to have a cents-per-fuel-amount tax system that would be similar to that used for gasoline and diesel so that a customer can see the costs. She explained that the industry's intention was twofold:

1) to have the pay-at-the-pump experience be the same for natural gas users as it is for gasoline users; and

2) to base the tax on the equivalent fuel efficiency, or miles per gallon, purchased by the customer.

Referring to the draft of proposed legislation provided in the handouts, Ms. Merrow noted that on page 3, in Section 2(E), the equivalencies were defined as 5.66 pounds or 126.67 cubic feet of CNG as equivalent to one gallon of gasoline and as 6.06 pounds of LNG as equivalent to one gallon of diesel. She noted that the equivalency for CNG is currently reflected in the state's decal system but that the LNG equivalency is new. She indicated, however, that the LNG equivalency figure in the proposed legislation is in line with the federal fuel tax methodology in which LNG is taxed at 1.7 times the tax on diesel.

Commenting on the proposed legislation from his position at the EMNRD, Mr. Messer stated that the industry is expected to grow. Given that expectation, he said that New Mexico needs to be able to capture the fuel tax that will become available from natural gas fuel stations.

Ms. Merrow then clarified for the subcommittee that if the current decal program worked as intended, the industry proposal would not change the tax revenues from passenger vehicles. However, she stated that, for heavy weight classes, New Mexico is losing revenue. She cited as an example that there is no decal program for trucks weighing over 54,000 pounds.

Subcommittee members raised concerns about how fuel taxes are divided. One concern is that New Mexico receives 100% of decal receipts but splits per volume fuel taxes. Another concern is that LNG pays a higher federal tax, 1.7 times the amount for diesel at the federal level, and whether that should also be reflected in a state tax.

Ms. Merrow responded by stating that the natural gas fuel industry understood that the state would tax fuels at whatever rate it needed to. She said that the industry is seeking rates to be set so that the state would get the same revenue across vehicle fuels for the same amount of miles traveled. She noted that Texas and Oklahoma have already enacted statutes along these lines.

Mr. Littauer commented on this point. He said that his company is seeking transparency at the point of retail fuel sales. He added that the projections are for companies to save up to $1.00 per gallon equivalency by converting their fleets. He indicated that potential customers for vehicle natural gas want a simple way to make cost comparisons. As an example, he informed the subcommittee that UPS is waiting on a state-by-state basis until this issue is resolved before converting its fleet in any given state. He also noted that UPS is actively seeking federal legislation on this issue as well.

Mr. Littauer further noted that Clean Energy Fuels has focused on identifying customers who would convert "anchor fleets" to natural gas, as opposed to seeking established gasoline and diesel retailers to convert their stations. He stated that a new natural gas vehicle station would cost approximately $1 million. He cited the Santa Fe Trails bus fleet as an example of a conversion customer that would help make a new station viable.

Responding to a subcommittee member's question about other potential benefits of natural gas fuel, Ms. Merrow acknowledged that the industry is still developing engine maintenance comparisons. However, she noted that natural gas fuels are cleaner than traditional petroleum fuels, so fuel filters last longer.

Following a subcommittee member's question about how CNG is being taxed in other states, Ms. Merrow cited Florida and Texas as two different approaches. She stated that Florida is currently not taxing CNG in order to promote the industry. Texas, on the other hand, is taxing CNG at 15 cents-per-gallon equivalency. She stated that most states are following the Texas model.

A subcommittee member commented that the current decal system is intended to capture the road use from cross-border shipping and that under a per-gallon-equivalency tax, users would fill up in the state with the lowest tax. Ms. Merrow said that was being looked at under the International Fuel Tax Agreement (IFTA) but that no new IFTA rules had been promulgated yet.

In a similar vein, a subcommittee member noted that railroads have greater options for choosing where to site their fuel stations and wondered how states are treating them with regard to natural gas fuel taxes. Ms. Merrow stated that five railroad companies are engaged in pilot programs for natural gas fuels. She also noted that off-road vehicle taxes are usually based on a per-mile-traveled standard rather than a per-gallon-equivalency standard.

The subcommittee then turned to a discussion regarding the prospects for the proposed legislation. Ms. Merrow stated that she did not know why there might be opposition to the bill, but noted that some states are very satisfied with their own decal system. She reemphasized the point that New Mexico's fuel tax revenues should stay the same or slightly increase under the proposal. She further acknowledged that the legislative proposal is primarily a proactive effort to avoid future problems. She added that the natural gas vehicle industry has determined that a uniform standard of taxing fuels will help bring their product into the market. She said that similar legislation was introduced in 13 states last year and was passed in 11 of them.

A subcommittee member then commented that the definitions in the draft legislation might need to be expanded before introduction. The point was that the alternative definition for the CNG equivalency cites 126.67 cubic feet of compressed gas but not the temperature or pressure specifications.

A final comment by a subcommittee member was that the NMPTA should talk with the Office of the Governor about the legislation as well.

Senator Keller then moved for endorsement of the proposed legislation. Senator Sanchez seconded the motion, and it passed without objection.

Legislative Proposal — Public/Private Partnerships

Senator Keller reported to the subcommittee on draft legislation authorizing PPPs that would be a follow-up effort to the bill that he and Representative Larrañaga cosponsored last session.

Senator Keller highlighted various components of the proposed legislation and differences between it and previous legislation but stated that the draft bill is not yet ready for endorsement by the subcommittee. He remarked that some of the provisions are still being worked on. He also noted that some constituent groups would prefer much narrower PPP legislation and might present challenges to a larger bill.

Senator Keller then responded to a subcommittee member's question about performance payments, stating that, depending on the individual PPP contract, performance payments could be made either during the process of fulfilling the contract or at the end. Representative Larrañaga, cosponsor for the prospective bill, noted that an operational PPP, such as track maintenance for a commuter train, might be based on different factors than a typical construction project.

Representative Larrañaga further remarked that the PPP concept is not new. He stated that 35 states currently have some form of PPP authorizing statute and that many municipalities in New Mexico, including Albuquerque and Silver City, have PPP ordinances.

A subcommittee member asked whether the cosponsors were ready to convey a message to the governor, noting that the legislation has a broad reach. Following that comment, a subcommittee member noted that PPPs are an instrument for spending but not in themselves an appropriation of funding. The member asked that the sponsors, if they can clear up the unresolved issues in the bill, bring the bill to the attention of the interim Revenue Stabilization and Tax Policy Committee.

Senator Keller noted that a key unresolved issue is who gets to approve a PPP and that this particular draft gave that authorization to the NMFA and the Department of Finance and Administration.

After the chair reminded the subcommittee that a combined meeting with the Jobs Council was scheduled for December 2, the TRANS adjourned without objection.

ENDORSED LEGISLATION

HOUSE BILL

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

FOR THE TRANSPORTATION INFRASTRUCTURE REVENUE SUBCOMMITTEE

AN ACT

RELATING TO TAXATION; CHANGING THE DEFINITION OF "ALTERNATIVE FUEL" IN THE ALTERNATIVE FUEL TAX ACT TO INCLUDE AN ENERGY EQUIVALENCE FORMULA FOR COMPRESSED AND LIQUEFIED NATURAL GAS; ELIMINATING THE OPTION TO PAY THE ALTERNATIVE FUEL EXCISE TAX ON AN ANNUAL BASIS FOR CERTAIN ALTERNATIVE FUELS; AMENDING SECTIONS OF THE ALTERNATIVE FUEL TAX ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 7-16B-1 NMSA 1978 (being Laws 1995, Chapter 16, Section 1) is amended to read:

"7-16B-1. SHORT TITLE.--[~~Sections 1 through 10 of this act~~] Chapter 7, Article 16B NMSA 1978 may be cited as the "Alternative Fuel Tax Act"."

SECTION 2. Section 7-16B-3 NMSA 1978 (being Laws 1995, Chapter 16, Section 3, as amended) is amended to read:

"7-16B-3. DEFINITIONS.--As used in the Alternative Fuel Tax Act:

A. "alternative fuel" means liquefied petroleum gas, compressed natural gas, liquefied natural gas or a water-phased hydrocarbon fuel emulsion consisting of a hydrocarbon base and water in an amount not less than twenty percent by volume of the total water-phased fuel emulsion, all of which may be used for the generation of power to propel a motor vehicle on the highways;

B. "alternative fuel user" means any user who is a registrant, owner or operator of a motor vehicle propelled by alternative fuel;

C. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

D. "distributor" means any person who delivers or dispenses alternative fuel into the supply tank of a motor vehicle;

E. "gallon" means:

(1) for liquid alternative fuel, the quantity of liquid necessary to fill a standard United States gallon liquid measure, which is approximately 3.785 liters [~~for liquid alternative fuel~~]; provided [~~however~~] that:

(a) in the case of a water-phased

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hydrocarbon fuel emulsion, a gallon shall be measured only with respect to the hydrocarbon base portion of the emulsion and not to the water base portion [~~or~~]; and

(b) in the case of liquefied natural gas, a gallon shall be 6.06 pounds of liquefied natural gas; or

(2) for nonliquid alternative fuel, one hundred fourteen cubic feet [~~for nonliquid alternative fuel~~]; provided that in the case of compressed natural gas, a gallon shall be 5.66 pounds or 126.67 cubic feet of compressed natural gas;

F. "gross vehicle weight" means the weight of a motor vehicle or a combination motor vehicle without load, plus the weight of any load on the motor vehicle;

G. "highway" means every road, highway, thoroughfare, street or way, including toll roads, generally open to the use of the public as a matter of right for the purpose of motor vehicle travel and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair;

H. "motor vehicle" means any self-propelled vehicle or device subject to registration under Section 66-3-1 NMSA 1978 that is used or may be used on the public highways in whole or in part for the purpose of transporting persons or property and includes any connected trailer or semitrailer;

I. "person" means an individual or any other legal

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entity; "person" also means, to the extent permitted by law, any federal, state or other government or any department, agency or instrumentality of the state, county, municipality or any political subdivision thereof;

J. "registrant" means any person who has registered a motor vehicle pursuant to the laws of this state or of another state;

K. "sale" means any delivery, exchange, gift or other disposition;

L. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

M. "supply tank" means any tank or other receptacle in which or by which fuel may be carried and supplied to the fuel-furnishing device or apparatus of the propulsion mechanism of a motor vehicle when the tank or receptacle either contains alternative fuel or alternative fuel is delivered into it;

N. "use" means:

(1) the receipt or placing of alternative fuel by an alternative fuel user into the fuel supply tank of any motor vehicle registered, owned or operated by the alternative fuel user;

(2) the consumption by an alternative fuel user of alternative fuel in the propulsion of a motor vehicle on the highways of this state and any activity ancillary to that propulsion; or

(3) the importation of alternative fuel in the fuel supply tank of any motor vehicle as fuel for the propulsion of the motor vehicle on the highways;

O. "user" means any person other than the United States government or any of its agencies or instrumentalities; the state of New Mexico or any of its political subdivisions, agencies or instrumentalities; or an Indian nation, tribe or pueblo or any agency or instrumentality of an Indian nation, tribe or pueblo who uses alternative fuel to propel a motor vehicle on the highways; and

P. the definitions of "alternative fuel user" and "distributor" shall be construed so that a person may at the same time be an alternative fuel user and a distributor."

SECTION 3. Section 7-16B-4 NMSA 1978 (being Laws 1995, Chapter 16, Section 4) is amended to read:

"7-16B-4. IMPOSITION AND RATE OF TAX--DENOMINATION AS ALTERNATIVE FUEL EXCISE TAX.--

A. For the privilege of distributing alternative fuel in this state, there is imposed an excise tax at a rate provided in Subsection C of this section on each gallon of alternative fuel distributed in New Mexico.

B. The tax imposed by this section may be called the "alternative fuel excise tax".

C. For each gallon of alternative fuel distributed in New Mexico, the tax imposed by Subsection A of this section

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shall be:

(1) for the period beginning January 1, 1996 and ending December 31, 1997, three cents ($0.03) per gallon;

(2) for the period beginning January 1, 1998 and ending December 31, 1999, six cents ($0.06) per gallon;

(3) for the period beginning January 1, 2000 and ending December 31, 2001, nine cents ($0.09) per gallon; and

(4) for the period beginning January 1, 2002 and thereafter, twelve cents ($0.12) per gallon.

D. In lieu of the rates provided in Subsection C of this section, any user who registers, owns or operates a motor vehicle whose gross vehicle weight does not exceed fifty-four thousand pounds that is propelled by alternative fuel that is liquefied petroleum gas or a water-phased hydrocarbon fuel emulsion may pay the alternative fuel excise tax on an annual basis as follows:

(1) for the period beginning January 1, 1996 and ending December 31, 1997, the following schedule shall apply:

Gross Vehicle Weight	Annual Tax
0 to 6,000 pounds	$ 15.00
6,001 to 16,000 pounds	25.00
16,001 to 26,000 pounds	75.00
26,001 to 40,000 pounds	175.00
40,001 to 54,000 pounds	275.00;

(2) for the period beginning January 1, 1998 and

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ending December 31, 1999, the following schedule shall apply:

Gross Vehicle Weight	Annual Tax
0 to 6,000 pounds	$ 30.00
6,001 to 16,000 pounds	50.00
16,001 to 26,000 pounds	150.00
26,001 to 40,000 pounds	350.00
40,001 to 54,000 pounds	550.00;

(3) for the period beginning January 1, 2000 and ending December 31, 2001, the following schedule shall apply:

Gross Vehicle Weight	Annual Tax
0 to 6,000 pounds	$ 45.00
6,001 to 16,000 pounds	75.00
16,001 to 26,000 pounds	225.00
26,001 to 40,000 pounds	525.00
40,001 to 54,000 pounds	825.00; and

(4) for the period beginning January 1, 2002 and thereafter, the following schedule shall apply:

Gross Vehicle Weight	Annual Tax
0 to 6,000 pounds	$ 60.00
6,001 to 16,000 pounds	100.00
16,001 to 26,000 pounds	300.00
26,001 to 40,000 pounds	700.00
40,001 to 54,000 pounds	1,100.00.

E. To facilitate administration of the Alternative Fuel Tax Act, the annual tax provided for in Subsection D of this section may be prorated for periods of less than one year at the discretion of the secretary.

F. Alternative fuel purchased for distribution shall not be subject to the alternative fuel excise tax at the time of purchase or acquisition, but the tax shall be due on any alternative fuel at the time it is dispensed or delivered into the supply tank of a motor vehicle that is operated on the highways of this state."

SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of this section is July 1, 2014.

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