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

**July 31-August 1, 2008**
**Angel Fire Resort**
**Angel Fire**

The third meeting of the New Mexico Finance Authority (NMFA) Oversight Committee was called to order by Senator Mary Kay Papen, chair, at 9:45 a.m. on Thursday, July 31, in a conference room at the Angel Fire Resort in Angel Fire.

| **Present** | **Absent** |
| --- | --- |
| Sen. Mary Kay Papen, Chair | Rep. Elias Barela |
| Rep. Daniel P. Silva, Vice Chair | Sen. Joseph J. Carraro |
| Rep. Janice E. Arnold-Jones | Rep. Jane E. Powdrell-Culbert |
| Rep. Richard J. Berry | Sen. Lidio G. Rainaldi |
| Sen. Clinton D. Harden, Jr. | Sen. David Ulibarri |
| Rep. Dona G. Irwin | |
| Rep. Patricia A. Lundstrom (7-31) | |
| Sen. Nancy Rodriguez | |
| Rep. Henry Kiki Saavedra | |
| Sen. H. Diane Snyder | |
| Rep. Don L. Tripp | |
| Rep. Richard D. Vigil (8-1) | |

**Advisory Members**

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| Rep. Jose A. Campos | Sen. Vernon D. Asbill |
| Rep. Ernest H. Chavez | Sen. Pete Campos |
| Rep. Anna M. Crook | Sen. Kent L. Cravens |
| Sen. Dianna J. Duran | Rep. Daniel R. Foley |
| Rep. Candy Spence Ezzell | Sen. Stuart Ingle |
| Sen. Mary Jane M. Garcia | Rep. Ben Lujan |
| Rep. Thomas A. Garcia | Rep. W. Ken Martinez |
| Rep. Roberto "Bobby" J. Gonzales | Sen. Steven P. Neville |
| Sen. Richard C. Martinez | Rep. Edward C. Sandoval |
| Sen. Leonard Lee Rawson | Rep. James R.J. Strickler |
| Rep. Sheryl Williams Stapleton | Sen. James G. Taylor |
| Rep. Luciano "Lucky" Varela | Rep. Thomas C. Taylor |

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

**Staff**

Doris Faust, Legislative Council Service (LCS)
Tom Bunting, LCS
Larry Matlock, LCS
Tom Pollard, LCS

**Guest Legislators**
Rep. Andrew J. Barreras
Rep. Ray Begaye (8-1)

**Guests**
The guest list is in the original meeting file.

**<u>Thursday, July 31</u>**

**Call to Order and Welcome**
Senator Papen called the meeting to order. She welcomed the members, staff and audience and thanked the officials of Angel Fire for inviting the committee. The committee members introduced themselves. Senator Papen turned the meeting over to Representative Thomas A. Garcia to act as chair.

**Approval of Minutes and Committee Business**
The minutes from the second meeting of the NMFA Oversight Committee were approved with no opposition.

**2008 Overview of Local Capital Projects and Capital Needs**
Angel Fire Mayor Larry Leahy explained that it is hard to maintain the infrastructure with such a small population and the necessity of many miles of road maintenance in an immense area. His capital outlay requests include $350,000 for a wood chipper and a second gravel truck to deliver slash, as well as a packer truck to pick up trash.

One recent achievement is that the Water Trust Board has given Angel Fire a grant to bring effluent from the treatment plant to the golf course. Mayor Leahy would like to make Plaza del Sol the village center by moving it down to a lake on the south side of north Angel Fire Road. The marshy lowlands to the right would impound the water, which could then be moved to the golf course. If moved from the lake to the ski mountain, this water could be used to make snow during the winter. Angel Fire would then be one of the first ski areas using recycled water to make snow.

Representative Lundstrom was curious about a town with 1,500 full-time residents that swells to over 10,000 residents during the winter months. Mayor Leahy responded, "We live in fear during the weeks approaching Christmas and Spring Break. We pay significant overtime during those periods. We take care of the influx in lodging, lots of condos and second homes. Solid waste is the biggest challenge.".

Mayor Leahy said that his community will need $9 million to address drainage issues, which is part of a five-year plan. He also asked for funding for a hook and ladder track, explaining, "We have $320,000 in grant money for that vehicle, but we still need $300,000 to $350,000 more.".

Colfax County Commissioners Whitney O. Hite and Bill Tomlin and Colfax County Manager Don Day presented their capital outlay needs. Mr. Day thanked the NMFA for its support and asked for help with new projects, including a new fire station in the far southeast corner of the county. The county also needs a new hospital, although renovating the miner's hospital is an option. Although the project is still in the planning stage, the county is committed to providing a viable medical center as well as building a medical training facility.

Commissioner Tomlin explained that infrastructure is the biggest challenge in a county that has over 520 miles of road to be maintained. The county is trying to build a new judicial center and is renovating the county building without raising taxes. He will be approaching the legislature for supplemental funding to cover the higher cost of concrete, gasoline and transportation involved in the projects.

Mora County Manager Miguel Martinez said that his county is just emerging from financial hardship. It has begun construction of a solid waste transfer station, as well as a new Mora County complex, which will have over 42,000 square feet and will contain the sheriff's department, county offices, some state offices and district and magistrate courts. Funding remains a perpetual challenge. Half of the money has been secured from the legislature. The groundbreaking ceremony is expected in early October.

Representative Lundstrom, wanting to know the true savings of a program, asked Mark Valenzuela of the NMFA to add a tracking process to the requirements for LEEDS buildings to find exactly how much money in cost savings could reasonably be expected. She asked, "Does it work and justify the cost for our rural communities?". Mr. Valenzuela agreed, although he said it would require outside expertise to track and monitor how effective it is compared to a traditional construction project.

Mayor Linda Calhoun of Red River said that her town is completely surrounded by national forest, so it is always short of land and is always trying to acquire more. The town needs 19 acres for an advanced treatment plant as well as a cemetery.

The town also needs $166,000 to refurbish its 1979 model fire truck. The street roller, two police units and an ambulance will be paid off in 2012.

Current projects include construction on the new $600,000 fire station, which is not moving fast, but at least the equipment will be inside by this fall. The Department of Transportation's Aviation Division contributed $300,000 for a heliport to begin construction in a couple of weeks.

The town's future needs include $375,000 for a ladder truck, treatment plant upgrades, a disinfectant system, roof repairs, road maintenance and snow removal equipment, adding meeting rooms to the conference center and storm drain maintenance.

On questions from Representative Ezzell about the difficulty of hiring auditors, Mayor Billie Odom of Eagle Nest, Mayor Leahy and Mayor Calhoun all explained that they have had great difficulties hiring auditors to fulfill compliance requirements for the state auditor. Representative Lundstrom explained that a village like Red River has to go through the same compliance as the City of Albuquerque. Representative Silva noted that it is a distinct disadvantage for small communities because the City of Albuquerque has its own auditors, while small towns do not. Representative Lundstrom moved for the committee to ask for a waiver on the due dates for these communities to give them more flexibility. The request should be sent to the state auditor and the chair of the task force. Senator Harden seconded the motion, which passed with no opposition.

Mayor Odom also complained about infrastructure difficulties, saying that the extension of sewer lines to the annex areas is a high priority. Although the village has only 306 residents, the wastewater system must be able to support a population of over 5,000. The town has one GRIP II project in the form of road improvements for school bus routes.

She would like to expand water distribution to the annexed areas and expand storage facilities and will need a loan for acquisition of land for effluent disposal.

**Statewide Economic Development Fund Update, Project Review, Confidentiality Requirements, Obstacles to the Effectiveness of the Fund, Legislative Proposals**

William Sisneros, chief executive officer of the NMFA, gave the committee two handouts, one entitled, "NMFA Going Forward, July 31, 2008" and the other a list labeled, "Total Legislative Appropriations". They are in the meeting file.

Mr. Sisneros explained that the NMFA is "staying ahead of the curve" during difficult economic times. He noted that the state treasurer had made an appearance at this meeting because of a meeting of the Public Employees Retirement Association Board taking place in the meeting room next door. In light of problems in the financial markets, Mr. Sisneros wants to be certain that the NMFA is a sustainable and consistent asset to the state.

Economists from Goldman Sachs are planning a two-year downturn cycle because of lack of confidence in the financial system. But even with the debacle in the insurance companies, the NMFA took a $153 million bond issue without insurance. The NMFA's strong AA+ rating allowed the bonds to be sold in a matter of hours. Insurance is purchased for the benefit of the bond holders, not the State of New Mexico.

Although he is not proposing it for the 2009 legislative session, Mr. Sisneros does have a strategy to seek a bond rating of AAA.

The committee recessed for lunch at 12:27 p.m., after which Mr. Sisneros continued his presentation, aided by Marquita Russel, programs director of the NMFA, and Mr. Valenzuela, director of governmental affairs and legislative finance strategy for the NMFA.

Representative Lundstrom asked about the next GRIP bond issuance. Mr. Sisneros reported that the letter of credit for the GRIP program is for two years only and that an internal task force with consultants will identify other tools. Representative Silva asked about the GRIP shortfall. Mr. Sisneros reported that the shortfall is between $400 and $500 million.

Representative Arnold-Jones asked if the NMFA has sufficient reserves. Mr. Sisneros assured her that the NMFA has a better structure than any other bond program in the country. She expressed concern over the agency's structure, saying that the board is not independent because it is appointed by the governor. Ms. Russel explained that the board has the independent authority to approve the actions of NMFA and that the rating agencies consider it independent. External and internal auditors and outside contractors look for discrepancies and conflicts, all of which results in a very high bond rating. "The governor appoints the board, but the legislature passes the laws under which we operate."

**Lease-Purchase Financing of Capitol Buildings and Charter Schools**

Mr. Pollard and Jeremy Turner, chief financial advisor for the NMFA, gave a presentation on lease-purchase financing for legislative and executive branch buildings. Mr. Turner's handout is in the meeting file.

Constitutional amendments approved in 2006 (Article 9, Section 11 for school districts or charter schools and Article 9, Section 8 for state entities) provide that lease-purchases entered into by the state, school districts or charter schools for the acquisition of a building or other real property are not a debt otherwise prohibited by the constitution if:

- there is no legal obligation for the lessee to continue the lease from year to year or to purchase the property; and

- the agreement provides that the lease shall be terminated if sufficient appropriations or operating revenues are not made available to meet current lease payments.

Lease-purchases of the type authorized by the constitutional amendment are not "general obligations" of the state, municipality or school district. General obligations require voter approval, pledge the full faith and credit of the state or local government and any failure of the governmental entity to pay would be a default. This is usually the most highly rated debt a government can issue. Lease-purchases generally carry only slightly lower credit ratings (higher interest rates) than general obligations because no borrower has ever failed to appropriate required payments.

The legislature provided the statutory authorization for school districts and charter schools with the passage of the Public School Lease Purchase Act in 2007 (Chapter 22, Article 26A), which in part provides for:

- a requirement for approval of a lease-purchase by a school district, charter school board and the Public Education Department (PED);
- authorization for districts to apply any legally available funds to lease-purchases, including general funds, bond proceeds, state grants, impact aid, investment income, etc. Also, state funds are made available from the Public School Capital Outlay Fund to assist charter schools in making lease payments; and
- authorization for districts to pass a specific 10 mill lease-purchase property tax. Charter schools may not levy this tax, but can benefit from the tax passed by the district in which it is located.

The NMFA Act was amended in 2001 to authorize the NMFA to acquire and construct buildings and other real property for lease to state agencies, school districts, charter schools and other qualified entities and to issue bonds secured by lease payments received.

For purposes of illustration, a basic "build versus lease" analysis was presented for a facility to be built on state land in Santa Fe.

- The project would relocate the Human Services Department (HSD) from leased to state-owned space. One hundred percent of HSD employees in Santa Fe are currently in private lease space.
- The HSD leases about 173,000 square feet in Santa Fe, at an average of $21.80 per square foot, making approximately $3.8 million annually in lease payments.
- A 160,000 square-foot state building, costing approximately $40 million (160,000 sq. ft. at $250 per sq. ft.), would be constructed on state land to consolidate the HSD administration from scattered private leased space.
- The construction financing of the HSD building could be accomplished through a redirection of current lease payments, totaling approximately $3.8 million annually, to paying debt service on lease-purchase revenue bonds issued by the NMFA.
- In addition to debt service on construction bonds issued by the NMFA, the state would also pay $6.00 per square foot annually for maintenance and would spend another $75.00 per square foot at the end of 20 years for substantial renovations to enable the building to last 40+ years.

- No new state appropriations for building construction would be required; current lease payments would simply be redirected to lease-purchase.

- This financing could save the state approximately $47 million ($18 million, present value) in recurring revenue over the next 30 years, plus at least $40 million for the value (present value) of the new state building.

This same buy versus lease analysis applies to charter schools. Keys to success of charter school facility lease-purchase financing include:

- defining the long-term need for new charter school facilities and utilizing existing district and/or other public facilities when practical;

- demonstrating the benefit to own rather than lease new charter school facilities;

- dedicating a creditworthy revenue stream for charter school lease-purchase payments; and

- utilizing the most advantageous financing tools to finance acquisition or construction of charter school facilities using lease-purchase payments.

Don Moya, deputy secretary of the PED, and Antonio Ortiz, program manager for the PED Capital Outlay Bureau, presented on the subject of challenges facing charter schools. Mr. Moya explained that the biggest challenge is limited access to capital outlay funds, because charter schools have no taxing authority, unlike public school districts. By statute, all charter schools must be in public facilities by 2010, and if none are available, they will still have to meet state adequacy standards.

Linda Perry, president of the Moreno Valley Education Foundation, said that it is difficult to raise funds for construction. 22 acres of land for the charter school was donated by a ski resort. Although the school's capital campaign was kicked off in 2003, construction on phase one of the multipurpose building has not yet begun. She said that lease-purchasing for their facilities would be very advantageous.

Dr. Jacque Boyd, director of the Moreno Valley Charter School, gave a presentation on the school's success: placing in the top 300 of the top 1,000 high schools in the United States, coming in fifty-first for the entire nation and serving a population of 85 students. There is a maximum of 20 students per class, with most ranging between 15 and 20 students. The school has made adequate yearly progress every year, and 100 percent of the last graduating class entered higher education. The school has no dropouts, although an occasional student will receive a GED.

After considering a host of different designs, a design has been chosen for the multipurpose building that will cost $2.1 million. State adequacy standards could be met for $1.4 million.

With $675,000 from House Bill 33 and $240,000 in capital outlay funds, along with $531,000 approved by the Public School Capital Outlay Oversight Task Force, the new building will become a reality in three or four phases.

In response to questions from the committee, Dr. Boyd explained that the school has no lunch room. Students eat lunches they bring from home and microwaves are provided in the classrooms. The school has no gym or other sports facilities. Students ride mountain bikes for physical education. In winter, they wear snowshoes and go for hikes. Spring can be spent climbing boulders. "Our kids without a gym are more fit and active than the majority of high schools in the state."

Senator Harden congratulated Ms. Perry and Dr. Boyd for their efforts to make the Moreno Valley Charter School the number-one high school in the state, and they received the applause of the committee members.

**Water Project Fund Update**

Rick Martinez, deputy secretary of the department of Finance and Administration (DFA) began his presentation by giving the committee members a handout entitled, "Water Project Fund Update". The handout is in the meeting file.

In 2006, the Water Trust Fund (WTF) received a general fund appropriation for $40 million. In November 2006, a constitutional amendment was adopted that made the WTF a permanent fund. The Water Project Fund (WPF) was created in the NMFA, which provides staff support and makes loans and grants to qualified entities for projects prioritized by the board and authorized by the legislature. The WPF received $32,246,303 in severance tax bond proceeds for FY 2008.

An annual distribution from the WTF of $4 million is combined with the severance tax bond proceeds to make up the WPF. Ten percent of the money goes to adjudication and 90 percent to authorized water projects.

The amount that has been drawn down is $23 million. Mr. Martinez praised the NMFA's technical expertise, saying in the past it was hard to know if a project was actually funded.

A uniform application process was approved by the Capital Outlay Committee, which was produced by a team from the NMFA and DFA. It triggers a flow to different agencies to determine what they qualify for, including all funding streams. It helps when projects come before the Water Trust Board because the financing has also been vetted.

**New Markets Tax Credit Update and Application Process**

Ms. Russel began her presentation at 5:00 p.m. by giving the committee a handout, which can be found in the meeting file.

In order to qualify for this federal tax credit program, the NMFA set up a for-profit corporation that is also a single-purpose limited liability company. Cash from the sale of tax credits is made available to lend to eligible businesses in low-income communities. Eight applications were reviewed out of the 11 submitted through the automated online process. The requests ranged from $25 million to $3 million. It was not a bad return, considering that there really was not any advertising. Since only $20 million is available, the requests will be taken in prioritized order. The current policy limit is $16.5 million. A second program aimed at rural projects should be in place by January 2009.

The committee recessed at 5:09 p.m.

**Friday, August 1**

The meeting was called to order at 9:03 a.m. by Senator Harden, acting chair. Representative Henry Saavedra moved to forbid committee members from speaking "on that point". Senator Harden put the motion up for a vote. The motion passed with only three dissenting after a brief debate.

**Transportation Funding — Revenue Forecast, Bonding Concerns**

Gary Giron, deputy secretary of the Department of Transportation (DOT), and Bill Mueller, chief economist for the DOT, gave the committee their handout and began their presentation at 9:06 a.m. The handout, which Mr. Giron followed very closely, is in the meeting file.

The State Road Fund has four major revenue sources that make up 94 percent of the revenue. They are:

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|---|---|
| Gasoline: | 28% |
| Special Fuels: | 26% |
| Weight/Distance: | 21% |
| Vehicle Registrations: | 19%. |

The first half of calendar year 2008 has seen a gasoline decline response to increased prices. The forecast for gasoline is flat. The increases in special fuels, weight/distance and vehicle registrations in FY 2003 were due to enhancements designed specifically to provide funds for the $1.6 billion GRIP debt service and some additional maintenance money.

Oil price increases are creating reduced demand for gasoline and are impacting the DOT's revenue. Forecasts have flattened out revenue from gasoline and other revenues, but growth in total revenues continues at a reduced rate.

The governor has proposed an appropriation of $200 million for the DOT to cover the increased GRIP costs.

**GRIP Update, Project Financing and Status**

Max Valerio, chief engineer of the DOT, gave the committee members his handout that is in the meeting file. The legislators' questions and Mr. Valerio's answers were focused on individual projects in the legislators' districts.

Representative Tripp, noticing the increase in the cost of materials, asked how much of the inflated cost of materials was caused by dumping so much money into the system on so many projects simultaneously. Mr. Valerio explained that the DOT costs were below the national average up until 2007. National averages for inflation have been in the forties and fifties, while New Mexico averages have consistently remained in the thirties and forties. 2007 marks the first year that New Mexico matches the national average of 42 percent.

**NMFA Operations, Budget and Investments**

Mr. Sisneros, John Duff, chief financial officer, Chief Operating Officer Jerry Trojan and Greg Campbell gave the last presentation of the day. They gave the committee copies of the NMFA's annual report for 2007, which is in the meeting file. Mr. Valenzuela, present during yesterday's meeting, was unable to attend.

The NMFA's budget, which should be a historic document telling the story of the organization, was approved on June 26, 2008. The NMFA did well on its site visit by the rating agency. The NMFA's board continues to be active and forceful in giving guidance.

Mr. Trojan suggested combining the drinking water program with the clean water program to cross-collateralize them for bonds, which would require legislative authorization.

Mr. Sisneros explained that he wants to combine projects to create new pools of money that will be coordinated with the Department of Environment. Leveraging the money coming in will create a new supply of money.

Personnel costs from 2008 to 2009 are increasing by 10 percent, which reflects normal growth of salary positions and merit increases. Employee benefits are up nine percent, which would have been higher except that the NMFA changed its insurance carrier after the last one projected a 30 percent increase. In-state travel is also costing more because of the increase in the price of fuel. Teleconferencing and videoconferencing will help to reduce travel costs and the number of trips.

Mr. Sisneros is expecting a decrease in contractual services because of the creation of an in-house legal services operation, which is just beginning to pay benefits.

He blamed the increase in operating costs on higher rent paid for the NMFA's office space. A new server room with stand-alone air conditioning is another increased operational cost.

Representative Arnold-Jones noticed that the NMFA's web site does not have current audits posted. Mr. Trojan agreed to remedy the problem. Representative Arnold-Jones suggested that the committee create a subcommittee to meet with staff from the board. These members of the subcommittee would sign confidentiality agreements to look at troublesome issues that usually cannot be covered in public meetings for reasons of confidentiality. Mr. Sisneros suggested instead that the committee could be the body to which the NMFA brings its projects on a monthly basis, since the committee already has monthly meetings. Nondisclosure affidavits would be required.

Senator Papen thanked the committee members and staff and noted that Representative Campos is also the mayor of Santa Rosa and will be an excellent host for the committee's next meeting.

There being no further business before the committee, a motion to adjourn was made, seconded and passed with no opposition at 1:00 p.m.