

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

**August 3-4, 2009  
Gallup-McKinley County Public Schools Administration Building  
640 South Boardman  
Gallup**

The third meeting of the New Mexico Finance Authority (NMFA) Oversight Committee was called to order by Representative Patricia A. Lundstrom, chair, at 9:27 a.m. on Monday, August 3, 2009, at the Gallup-McKinley County Public Schools Administration Building.

**Present**

Rep. Patricia A. Lundstrom, Chair  
Sen. Mary Kay Papen, Vice Chair  
Sen. Sue Wilson Beffort (8-3)  
Rep. Richard J. Berry  
Rep. Anna M. Crook  
Rep. Brian F. Egolf, Jr.  
Sen. Stephen H. Fischmann  
Sen. Clinton D. Harden, Jr.  
Sen. George K. Munoz  
Rep. Jane E. Powdrell-Culbert  
Rep. Benjamin H. Rodefer  
Sen. Nancy Rodriguez (8-3)  
Rep. Henry Kiki Saavedra  
Rep. James R.J. Strickler  
Sen. David Ulibarri

**Absent**

Rep. Elias Barela  
Sen. Kent L. Cravens  
Sen. Tim Eichenberg  
Rep. Dona G. Irwin  
Rep. Richard D. Vigil

**Advisory**

Rep. Janice E. Arnold-Jones  
Rep. Ernest H. Chavez  
Sen. Dianna J. Duran  
Sen. Mary Jane M. Garcia  
Rep. Thomas A. Garcia (8-3)  
Sen. Timothy M. Keller  
Rep. Ben Lujan  
Sen. Richard C. Martinez  
Rep. W. Ken Martinez (8-3)  
Rep. Andy Nuñez  
Rep. Edward C. Sandoval (8-3)  
Rep. Thomas C. Taylor (8-3)

Rep. Jose A. Campos  
Rep. Candy Spence Ezzell  
Rep. Mary Helen Garcia  
Sen. Stuart Ingle  
Sen. John M. Sapien  
Rep. Sheryl Williams Stapleton  
Rep. Luciano "Lucky" Varela

**Guest Legislators**

Sen. Rod Adair (8-3)

Rep. Sandra D. Jeff (8-3)

Sen. Cisco McSorley (8-4)

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

**Staff**

Doris Faust (8-4)

Renee Gregorio

Sandy Mitchell

Tom Pollard

**Monday, August 3****Call to Order**

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

**Overview of Local Capital Projects and Capital Needs**

Mayor Harry Mendoza discussed the 2009 capital improvement plan for the City of Gallup. Facility projects include Americans with Disabilities Act (ADA) improvements for the city hall annex, El Moro Theater and Red Rock State Park; repairs to Red Rock State Park arena; and artificial turf for the Washington Park football field. Infrastructure projects include the 2nd Street and Park Avenue traffic light, 2nd Street sidewalk construction, Clay Street bridge replacement and Sky City public housing street rehabilitation.

Judi Starkovich, executive director of administrative services, City of Gallup, discussed city revenue and expenditures. In 2009, revenues increased 5.35 percent. Even though it is a small community, Gallup is a retail hub for surrounding areas. Most of the city's revenue is derived from gross receipts taxes. The population is approximately 20,000, but facilities in the city must be able to accommodate about 1.5 times that number. Expenditures in 2009 increased 2.79 percent. The city has experienced an increase in personnel expenses over the last few years.

Lance Allgood, executive director, Gallup Joint Utilities, discussed the Navajo-Gallup water supply project, a collaborative project to supply water to outlying communities. The Water Trust Board has approved funding for the project, but now that non-city components of the system are ready for funding and development, the Navajo Nation needs to be accorded a central role in construction and eventual ownership of the non-municipal facilities that are being constructed. Statutory restrictions, however, have prevented the award of Water Trust Board grants to the Navajo Nation. There would not be the same problem with grants administered by the Department of Environment. Therefore, the city would like administration of the funds to be transferred to the Department of Environment.

Representative Lundstrom asked Ray Romero, general counsel, NMFA, to share his knowledge on this issue with the committee. Mr. Romero said that the law requires an entity receiving grants from the Water Trust Board for a water system to maintain the system for 20 years. Imposing this restriction on the Navajo Nation would infringe on its sovereignty. Possible legislative solutions are to remove the 20-year requirement or to transfer administration of the funds to the Department of Environment. One committee member suggested that Mr. Romero bring these options to the attention of the Water and Natural Resources Committee. Representative Lundstrom asked the mayor of Gallup to work with the NMFA and committee staff to prepare a bill to deal with this issue.

### **NMFA Updated Procurement Policy and Contract Approval Process**

Mr. Romero and William C. Sisneros, executive director, NMFA, discussed the procurement, contract and reimbursement policies of the NMFA. The NMFA is not governed by the Procurement Code. It has adopted its own procurement policies. The authority uses a competitive process for the procurement of all tangible property, services and professional services, with the exception of certain small purchases, emergency procurement, sole-source procurement and existing contract procurement. The steps for competitive proposals are: (1) request for proposals (RFP); (2) public notice of the RFP; (3) receipt of proposals; (4) evaluation of proposals; (5) post-submission negotiations; (6) award of a contract; (7) execution of a contract; and (8) protest. Procurement may also be made through several other methods. Cooperative procurement occurs when the NMFA piggybacks on an existing contract between a contractor and another governmental entity or state instrumentality. The NMFA may also make a procurement through a memorandum of understanding or joint powers agreement. The NMFA maintains a procurement file for each procurement for a minimum of six years.

Committee members asked questions on the procedures for amending the procurement process, on whether there are any written criteria for emergency procurement and on auditing procedures. Mr. Sisneros then introduced Matthew Jaramillo, the new director of governmental affairs for the NMFA. Mr. Jaramillo said that he was available to help the committee at any time.

### **New Mexico Department of Transportation (DOT) Cambridge Systematics Update**

Gary Giron, secretary of transportation; Estevan Gonzales, chief of staff, DOT, and Max Valerio, deputy secretary, Programs and Infrastructure, DOT, discussed the Cambridge Systematics report on transportation issues in New Mexico. House Memorial 5, which was passed last session, requested that a technical committee be formed to develop data and information regarding influences on the future outlook of transportation in New Mexico and alternative funding strategies. The committee has concluded the first of five meetings. It will submit its recommendations to the legislature and the governor by November 15. The DOT and Cambridge Systematics are providing technical support to the technical committee.

The presenters provided the committee with charts showing a 50-state comparison of state highway and local transportation funding. The major revenue sources for the DOT are the gasoline tax, the special fuels tax, the weight-distance tax and vehicle registration fees. Current

transportation needs outweigh the available funding. Federal revenue streams are decreasing, and more pressure is being placed on the states to cover shortfalls. The current level of funding will not sustain New Mexico's transportation needs into the future. The gasoline tax in New Mexico is among the lowest in the nation; however, gasoline prices in New Mexico are among the highest. The presenters stated that there is no correlation between the gasoline tax and the price at the pump.

The presenters were asked about the amount of money that the gasoline tax brings into the state. They said that for each cent of gasoline tax, the state receives \$6.3 million. The presenters were asked to explain the difference in the price of gasoline in different parts of the state. The presenters speculated that distribution costs might explain part of the difference, but they did not know the answer to this question. Representative Lundstrom asked staff to find out if there was a study by the attorney general on this issue.

The presenters were asked to provide an estimate on the cost of performing maintenance on secondary roads. They said the DOT needs about \$284 million per year for road maintenance, but the department budget for maintenance is only \$100 million. The DOT has a gap in maintenance funding of about \$184 million. They said that New Mexico roads are suffering because of the lack of money for maintenance.

The presenters were asked what is the largest revenue generator for the DOT. They said it is the gasoline tax. Senator Harden said that he would like to see historical data on the various taxes and fees and the amount of money generated by those sources of funding.

### **Approval of Minutes**

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

### **Sustainable Transportation — Keeping New Mexico Mobile**

Charlotte Pollard, deputy director, New Mexico First; Bill Hartman, chair, New Mexico First Sustainable Transportation Town Hall; and Bob Kuipers, planner, Northwest New Mexico Council of Governments, discussed the results of a town hall on sustainable transportation in New Mexico. The town hall was convened by the DOT and the New Mexico Association of Regional Councils. Participants included state policymakers, local leaders and citizens, business and industry leaders, technical specialists and people with a special interest in transportation.

Recommendations resulting from the town hall included: (1) increasing public awareness of the costs and benefits of a sustainable transportation system; (2) enabling public/private partnerships to identify and implement beneficial projects; (3) spending transportation-related revenues on transportation needs and redirecting currently diverted funds; (4) redirecting gross receipts taxes on transportation projects to support transportation needs; (5) increasing transportation infrastructure funding by redirecting the current motor vehicle excise tax to the State Road Fund; (6) establishing a state transit fund by increasing the motor vehicle excise tax; (7) indexing specific transportation revenue sources to account for inflation; (8) creating a permanent transportation trust fund that can be drawn on in the future for transportation needs;

and (9) continuing to evaluate funding options and tax collection compliance.

Mr. Kuipers explained how revenues are declining at the same time that material and construction costs are rising. Without sufficient funds, transportation facilities in the state will deteriorate. He shared how regional planning organizations (RPOs) support state and local leaders in generating solutions to these problems. RPOs provide a unified voice to local member governments, improve statewide collaboration and communication, create effective partnerships with the DOT and help research and leverage matching funds for transportation development. New Mexico has seven RPOs. He stated that the statewide RPO network wants the NMFA Oversight Committee and the state legislature to consider the consequences of inaction (i.e., further deterioration of highways and bridges, more congestion and a decline in product movement) and to prepare for the future.

Committee members asked the presenters for further information concerning RPOs and metropolitan planning organizations (MPOs), including how they are funded, how they are designated, who their members are, what they do, how they prioritize projects, whether the membership of MPOs and council of governments (COGs) are the same and what happens when the priorities of RPOs and COGs conflict. Representative Lundstrom asked Patricia Oliver Wright, director, Planning Division, DOT, to provide the committee with information concerning the responsibilities of MPOs and their recommendations.

Committee members also asked about the solutions the town hall generated. Ms. Pollard explained that the ideas that came out of the town hall were practical solutions generated by a group of citizens, not technical specialists.

### **Status of the Federal Highway Trust Fund and Its Impact on New Mexico Transportation Funding and the DOT Budget**

Mr. Giron, Mr. Gonzales, Mr. Valerio and Robert Ortiz, deputy secretary, DOT, discussed the federal Highway Trust Fund. They reported that Congress has approved a bill to fix the shortfall in the Highway Trust Fund and that President Obama is expected to sign it. They discussed the uncertainty over future federal transportation money. The federal Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) expires September 30, 2009, and reauthorization legislation or an extension bill has yet to be passed. The presenters said Congress needs to be urged to act quickly on reauthorization and to provide funding levels that address the needs of New Mexico. Representative Lundstrom asked committee staff to work with the DOT to draft a letter to New Mexico's congressional delegation concerning federal transportation funding.

The presenters discussed the visit to New Mexico on August 19 of Congressman James L. Oberstar, who chairs the U.S. House Committee on Transportation and Infrastructure. They said he is sponsoring a bill to increase transportation funding, but it needs to be amended to benefit rural states like New Mexico. Nine rural western states will not receive any large urban funds because they do not have a city with a population greater than 200,000.

The presenters were asked about the authority of the MPOs to affect DOT policy and about whether the state has given the MPOs that authority. Committee members discussed the role state and local officials play in deciding what transportation projects get funded. Committee members also discussed the funding formula used for distributing federal highway money and whether the state has discretion to alter the formula.

### **Transportation Funding Issues**

Mr. Giron, Mr. Gonzales, Mr. Valerio and Mr. Ortiz discussed the methodology for funding distributions. The federal government apportions transportation money to the states using a formula based on population, vehicle miles traveled and lane miles. The New Mexico DOT uses this same formula for its distribution of transportation funds. The federal government also requires mandatory allocations to large urban areas with a population greater than 200,000 and to certain mandatory programs that provide for research and planning.

The presenters provided the committee with a chart showing the distribution of federal highway funds. Thirty-four percent of the money comes right off the top for state mandatory debt service. Fourteen percent goes toward other state mandatory uses (safety, consultants and construction contingencies). Forty-one percent is distributed to the six transportation districts. Because of the federal requirements, six percent goes to large urban areas (Albuquerque and Las Cruces) and five percent goes toward state research and planning (RPOs and MPOs).

The presenters also discussed the status of Governor Richardson's Investment Partnership (GRIP) and the American Recovery and Reinvestment Act of 2009 (ARRA) projects. GRIP is facing a funding shortfall estimated at \$300 million to \$350 million. Eight ARRA projects have been awarded since February, representing approximately \$125 million. The State Transportation Commission (STC) will be identifying projects for the remaining ARRA funds available for DOT discretion.

Committee members commented on the advantage that metropolitan areas have under the federal funding formula. The presenters agreed that urban areas do have an advantage. They said that the STC could alter the formula the state uses to distribute the federal highway dollars somewhat, but it cannot alter the money that comes off the top for large urban areas. Representative Lundstrom instructed committee staff to write a letter to the DOT asking for its recommendation concerning the use of a rural density factor. Committee members also asked the DOT to provide the committee with a breakdown of the actual distribution of federal funds based on how the formula is utilized.

The chair instructed staff to invite the director of the Mid-Region Council of Governments (MRCOG), the COG policy chair and the MPO policy chair to appear before the committee to discuss the selection of projects and the operation of MPOs.

Committee members were invited to tour the Gallup Motor Transportation Division Port of Entry.

## **Tuesday, August 4**

Representative Lundstrom called the meeting to order at 8:50 a.m. She turned the meeting over to Senator Munoz to act as chair.

### **Governmental Gross Receipts Tax (GGRT): A Historical Analysis and the Role of the GGRT in the Public Project Revolving Fund (PPRF) Program**

Mr. Sisneros introduced to the committee Greg Campbell, comptroller, NMFA; John Duff, chief financial officer, NMFA; Michael Zavelle, chief of investor relations, NMFA; and Jerome L. Trojan, chief operating officer, NMFA. Mr. Sisneros described the changing strategy taking place at the NMFA. It is becoming an employee-driven system rather than consultant-driven. The NMFA now has the technical expertise to do reviews of products. Products are reviewed by its finance and loan committee. Then, in an open discussion, the NMFA board goes through the testing of products.

Mr. Campbell discussed the GGRT in relation to the NMFA. By law, 75 percent of the net receipts attributable to the GGRT is distributed to the PPRF administered by the NMFA. The ratings agencies ask the NMFA to supply information as to the top payers of the tax. The top payor of the GGRT is the Albuquerque Bernalillo County Water Utility Authority. The majority of the tax is paid on water. The GGRT is pledged as revenue under the bond indentures for the PPRF program. This provides strong credit enhancement.

In response to questions about the decline in money received from the larger payers of the GGRT, the presenters reported that smaller payers have become a larger portion of the total GGRT collected. They said this is probably healthy and does not affect the total amount of money collected. The committee also asked about the increase in money collected from the Albuquerque Bernalillo County Water Utility Authority shown for 2008. The presenters said that the sharp rise shown on their chart is because of a reporting issue, not because of a huge increase in money collected in 2008.

The presenters answered questions regarding the reporting of information concerning the GGRT to the NMFA. The presenters said they are looking for entities to provide more reporting to the NMFA. Representative Lundstrom made a motion, seconded by Senator Keller and approved by the committee, instructing staff to send a letter to the Taxation and Revenue Department asking the department to provide information to the NMFA regarding the makeup of the GGRT.

### **PPRF Capacity Model**

Mr. Duff and Mr. Zavelle discussed how the PPRF program works. The NMFA makes loans to cities, counties and other governmental entities to finance infrastructure projects. For small loans, the NMFA funds the loans and then periodically issues bonds to replenish its cash. The loans are pledged as security to the bondholders. For large loans (\$5 million or more), the NMFA does not fund the loans until bonds are sold and the borrowers pay the same interest rate on the loans as the NMFA pays on the bonds it has sold. The NMFA is limited in the number of

loans it can make by prudent business principles and by the need to maintain high bond ratings. Currently, PPRF bond ratings are just one notch below triple-A. The presenters discussed the factors affecting the PPRF credit rating. The factors include:

- debt service coverage and credit quality of the pledged loans;
- credit enhancements, including:
  - the GGRT; and
  - a contingent liquidity account;
- the strength of the NMFA's management team;
- the breadth of depth of the NMFA's lending and financial management policies; and
- the overall financial health of the NMFA.

The presenters explained that the capital ratio is the most significant indicator of the NMFA's financial health. This figure is the relationship between the NMFA's total assets and its equity. By policy, the NMFA must maintain a ratio of between eight and 12 percent. The capital ratio times the NMFA share of the GGRT equals the amount of new loan volume that will maintain the same capital ratio. Therefore, if the NMFA has a 10 percent capital ratio and \$25 million in GGRT is received in a particular year, \$250 million in new loans will keep the ratio stable at 10 percent.

Committee members asked the presenters when and how the upgrades in the PPRF bond ratings occurred. The presenters said the upgrades occurred during the past five years. The NMFA would continually go back to the ratings agencies, determine what needed to be done to get upgraded and then work on those things. It averaged about one upgrade per year in the past five years. Mr. Sisneros told the committee that sovereignty issues make it difficult to obtain triple-A ratings. He said he would like to form a task force with tribal leaders to develop a proposal for dealing with the issue.

The presenters were asked about the increase in the terms of PPRF bonds in recent years. The presenters said that the determining factors in the length of a bond are the type of project and who is the borrower. The average term for the bonds that the NMFA issues is in the 12- to 15- year range. The NMFA does very few 30-year bonds. Committee members discussed the pros and cons of longer term bonds.

### **The Role of the Public Regulation Commission (PRC) in Transportation Issues**

Carol K. Sloan, PRC commissioner, District 4; Daniel Mayfield, chief of staff, PRC; Avelino A. Gutierrez, staff counsel, Legal Division, PRC; Bruno E. Carrara, general manager, Pipeline Safety Bureau, PRC; and David Baca, Jr., assistant prosecutor, New Mexico Insurance Fraud Bureau, PRC, discussed the role of the PRC in transportation issues.

The Constitution of New Mexico and the Motor Carrier Act delegate responsibility for the regulation of motor carriers for hire from point to point within the state to the PRC. The PRC also administers the Unified Carrier Registration Program (UCR). The UCR requires motor carriers operating commercial vehicles in interstate commerce to register in the state where the motor carrier maintains its principal place of business and to pay an annual fee. New Mexico is

one of 41 UCR states. In 2009, the PRC collected approximately \$1.9 million in UCR money. All UCR money collected is deposited in the State Road Fund each month. The PRC is also responsible for the regulation of railroad and pipeline safety.

The presenters were asked about the fees that the PRC collects and where the fees are deposited. The presenters were also asked about the regulation of pipelines on tribal lands. The presenters said the PRC has no jurisdiction to regulate the safety of pipelines on tribal lands. Committee members suggested this issue be brought to the attention of the Indian Affairs Committee.

### **NMFA Ratings Update**

Mr. Sisneros and Mr. Trojan provided an overview on the economy in New Mexico. The state is doing better than many of its neighbors. The state's economy has remained steady during the nation's economic downturn. The state's real estate market has held up better than other parts of the country. New Mexico has one of the lowest foreclosure rates in the country. Federal military operations in the state provide a stable source of employment and business activity. The PPRF program and its borrowers have been sheltered for the most part from economic instability. The NMFA's revenue streams have remained stable. The PPRF has maintained a strong credit rating because of the stability of the GGRT and strong program management and lending policies. The NMFA has conservative investment and debt management policies.

Mr. Sisneros provided the committee with an update on the release of funds to the Public Improvement District (PID) in Angel Fire. Litigation over the formation of the PID had halted the release of funds, but the NMFA is now prepared to go forward. Although state law prohibits the NMFA from using as security something that is the subject of litigation, Mr. Sisneros told the committee that he did not think the statute would apply to frivolous lawsuits. A committee member suggested that perhaps all the money should not be released at once. Mr. Sisneros agreed and said that the NMFA is taking that approach.

There being no further business, the committee adjourned at 12:20 p.m.