

MINUTES
of the
SEVENTH MEETING
of the
NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE
December 9, 2004

The seventh meeting of the New Mexico finance authority (NMFA) oversight committee was called to order by Senator Mary Kay Papen, chair, at 9:35 a.m. on Thursday, December 9, in room 322 of the state capitol.

Present

Sen. Mary Kay Papen, chair
Rep. Daniel P. Silva, vice chair
Sen. Kent L. Cravens
Rep. Roberto J. "Bobby" Gonzales
Sen. Clinton D. Harden, Jr.
Sen. Shannon Robinson
Sen. Nancy Rodriguez
Rep. Henry Kiki Saavedra
Rep. Sheryl Williams Stapleton

Absent

Sen. Pete Campos
Rep. Dona G. Irwin
Rep. Brian K. Moore
Sen. Richard C. Martinez
Rep. Earlene Roberts
Sen. H. Diane Snyder
Rep. Don Tripp

Advisory members

Rep. Donald E. Bratton
Rep. Anna M. Crook
Sen. Dianna J. Duran
Rep. Mary Helen Garcia
Sen. Mary Jane M. Garcia
Rep. Ben Lujan
Rep. Patricia A. Lundstrom
Sen. Leonard Lee Rawson
Rep. Harriet Ruiz
Sen. Bernadette M. Sanchez
Rep. Edward C. Sandoval
Rep. Luciano "Lucky" Varela

Rep. Jose A. Campos
Sen. Joseph A. Fidel
Sen. Stuart Ingle
Sen. Don Kidd
Rep. Robert White

Staff

Renée Gregorio
Larry Matlock

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Thursday, December 9

NMFA Annual Report

Bill Sisneros, executive director of NMFA, and Mark Valenzuela, director of intergovernmental affairs, presented highlights from the authority's recently completed annual report, which by statute was due on December 1. Mr. Valenzuela indicated that NMFA's financing has grown by 56.4 percent in dollars and 27.3 percent in projects over the past year. He reviewed the authority's programs and progress in these programs over the past year. (See the handout for project details.) He added that NMFA is seeking a legislative appropriation of \$4 million, \$2 million to match federal dollars for FY 04, and another \$2 million for FY05. He reminded the committee that NMFA has had no defaults on any of its loans to date.

Mr. Sisneros remarked that the legislature is ahead of rest of country in terms of its commitment of the governmental gross receipts tax (GGRT) to the public project revolving fund. He added that other states are using New Mexico as a model in this regard and that this commitment helps to raise the state's status with financial rating agencies. He said that the GGRT allows NMFA to pledge collateral but that efforts are underway to pledge the GGRT for other purposes. He stressed that the GGRT is already a pledged collateral source and that the state needs to protect this fund and its financial integrity.

Mr. Valenzuela reviewed financing highlights, detailing the strength of the PPRF and the authority's methods of leveraging funds to bring down the overall cost of borrowing.

In response to a question by Representative Silva related to financing for Albuquerque's water authority, Mr. Valenzuela said that NMFA pulled together financing out of the drinking water revolving loan fund, which is partially federally funded. He added that the water authority received \$118 million from PPRF and \$12 million from the DWRLF.

Marquita Russel of NMFA said that the total rate to the Albuquerque-Bernalillo county water authority was about three percent, and that there were no insurance costs to them or costs of issuance. NMFA took the burden of these costs and absorbed them through the PPRF program. In response to a question from Representative Silva on the length of this loan, she replied that it is a 20-year loan.

Mr. Valenzuela reviewed NMFA's programs—the PPRF, the DWRLF, the water and wastewater grant fund and the water and wastewater planning fund. (See the annual report for more details.) He remarked that NMFA receives a portion of cigarette tax for some of its programs, which are all health care related, and that it uses the portion it receives to help staff and administer programs.

In reviewing the water trust board's (WTB) activities, Mr. Valenzuela said that NMFA recognizes that the WTB is in its infancy and needs direction, but that it is accomplishing the task of leveraging federal funding. He added that larger regional systems have received most of the funding to date.

Senator Rawson remarked on the Elephant Butte regional system for water and wastewater, stating that phase 1 line extensions are needed to make it operational and to achieve a customer base. He said the community has enough money to build the plant, but not the

lines. He indicated that help is needed to get this project done. Mr. Sisneros replied that the NMFA team will look at this project and provide him with further information and assistance.

Senator Harden mentioned that the original intent was for the larger portion of funding through the WTB to go to rural water. He questioned whether WTB is doing what the legislation intended. Mr. Valenzuela replied that the WTB set up a criteria subcommittee on how to allocate funding to these project types and is reviewing criteria for funding as a result of the committee's suggestions at the November meeting.

Mr. Valenzuela reviewed details of the GRIP program, which is a \$1.6 billion program that has provided a \$60 million increase to the state road fund (SRF) this past session. He said that NMFA's role with GRIP is strictly on the financing side; DOT is responsible for the highway projects.

Keith Mellor, chief financial officer, NMFA, added that the GRIP program has new money of over \$700 million and \$400 million in refunding. Mr. Valenzuela added that of the \$950 million of existing debt, \$430 million was refinanced and taken off the books, but that NMFA will provide the committee with exact numbers.

Senator Harden noted that when GRIP legislation was passed, there was a fee or tax increase and that this source of revenue was to retire this debt. He asked if this was working. Mr. Valenzuela answered that DOT's chief economist said that it looks like that revenue is coming in as expected.

In response to questions about earnings from GRIP, Mr. Mellor said that the big earner for DOT is the escrow account. Representative Silva questioned if the profit goes directly back to the GRIP program; Mr. Valenzuela said the profit goes into the SRF.

Representative Varela questioned NMFA's annual budget for FY 04, asking if this is the extent of reporting on the budget. Mr. Valenzuela remarked that NMFA could provide for FY 05 if the committee requested it. Representative Varela answered that it is important for the committee to see the planned budget as well. Mr. Valenzuela said NMFA would provide this to the committee.

In response to questions on bonding, Mr. Mellor said that the GRIP program received a pronouncement in October from the government accounting standard board that DOT would carry the bonds, while NMFA would carry the cash balances. He added that there is no recurring revenue to the grant fund, that there has not been a legislative appropriation every year and that NMFA would be asking for \$25 million in capital funding for this program.

Discussion ensued regarding how NMFA can lower costs to fit within the income restraints of municipalities seeking funding. Mr. Sisneros indicated that an issue that needs attention is contract compliance. He said that NMFA needs to track project progress so that when it comes to the second phase of funding, NMFA knows the entity's success record with previous phases. He said that the volume is so great that NMFA needs a more sophisticated method to ensure contract compliance.

Speaker Lujan asked about the consequences if the legislature had not passed GRIP legislation. Mr. Valenzuela quickly replied that a tremendous infrastructure need in New Mexico would not be addressed without GRIP. He added that although DOT receives \$170 million federally, the infrastructure needs have grown greatly and this money only addresses federally eligible roads. He indicated that the needs assessment is in the range of \$12-15 billion, and the NMFA would not have been able to do anything without the new financing mechanisms that this program provides.

Senator Rawson questioned NMFA's use of a negative in the unemployment insurance column, even though Mr. Mellor stated that NMFA pays its unemployment insurance premium on a cash basis. He stated that NMFA is current on all unemployment premiums and that allocating out to the programs causes the negative.

NMFA's Audit Report

Mr. Mellor reported on the current status of the audit for NMFA, which is due by December 15, and will be mailed out to committee members at that time. He provided a draft of financials in a handout that also includes financial statements with and without GRIP.

Representative Varela asked about the annual report data and the difference in cash basis versus accrual reporting. Mr. Mellor said that the audited financial statement is on an accrual basis, and the books are on a cash basis.

Approval of Minutes

At the request of Senator Papen, chair, Speaker Lujan appointed Representative Bratton to be a voting member for the day's meeting. At that, the committee voted to approve both the October and November minutes.

Credit Enhancement Account

Jeremy Turner, director of finance, NMFA, gave a presentation on the credit enhancement portion of the cigarette tax. He covered the revenue history and distributions from that tax (see page 2 of the handout). He explained that credit enhancement was set up through the legislature to enhance the issuance of university of New Mexico (UNM) health center bonds and to deal with the fact that the cigarette tax is a declining revenue stream. NMFA looks at cigarette bonds issued and at debt service needed on a monthly basis. The credit enhancement portion reverts back to the general fund monthly if not needed. He added that NMFA's portion of the cigarette tax pays debt service on the \$3 million bond issue for the UNM law library and cancer center. What remains is used for health-related programs. (See the handout for a graph of debt service payments for NMFA's portion.)

In response to questions from Representative Varela, Mr. Turner said that the taxation and revenue department handles credit enhancement and distribution of the tax and that NMFA takes care of reversions to the general fund. Representative Varela requested a report on how much has been transferred to the general fund thus far. Senator Papen requested that numbers be provided to the committee that represent the decrease of smokers over time. Speaker Lujan added that a report could be requested from the co-chairs of the tobacco committee that includes figures on the decline of use as well as the decline on transfer of sales to reservations. Mr. Turner agreed to provide these figures to the committee.

Water Innovation Fund Progress Report

Mark Valenzuela gave a brief presentation on the progress of the water innovation fund, which received a \$10 million appropriation during the 2004 legislative session for water resource infrastructure projects. The requests that have come in for consideration total \$84 million, he reported. Of these, 25 will receive funding. Mr. Valenzuela added that the fund was formed with the intent of better management of water in New Mexico. (See the handout for proposals and types of projects received.)

Representative Lundstrom asked for a copy of the criteria used for selection, which Mr. Valenzuela said would be provided.

Representative Gonzales noted that one school was included in the projects to be funded and wondered if this funding would be offset from other funding the school receives as part of the new funding formula. Legislative council service staff responded that because this appropriation was not made directly from the legislature to the school district, the offset would not apply.

Senator Rawson expressed concern that the selections seemed to be political and questioned the criteria for selection, asking for a more comprehensive report. Mr. Valenzuela indicated that such a report would be provided. He added that NMFA's job is to administer these projects, not select them.

Water Efficient Technology Act

Peter Mallory, lobbyist, spoke to the committee in support of the drafting of the Water Efficient Technology Act, given the need to address conservation. The bill enacts a fee for the diversion or withdrawal of water that would be used for conservation. Two bills have been drafted, one that applies the fee to everyone, reaching 85 percent of those who use water. In one bill, the money would go to the water trust board, in the other to NMFA. One applies specifically to agricultural water use. Both versions allow bonding off the revenue stream, which generates about \$200 million to be used for conservation. Mr. Mallory stated that the central issue is really whether all agree that there is a sufficient problem with water availability that we have to address conservation. He added that the policy decision made is that those who use the resource should contribute to conservation. He said that the general consensus among New Mexicans is that there is a real issue about long-term prospects for water being able to support our population. He reported that polling data indicates general support for paying for this resource by the population.

Senator Robinson questioned the metering aspects of the bill and warned Mr. Mallory that the bill's timing may be off.

Mr. Mallory replied that he is not aware of any current metering, and that the funds generated by this legislation could be used for metering and that regulating the resource is needed.

Beth Bardwell, program officer for the world wildlife fund, added that one version of the bill takes agriculture out of the assessment, and it provides that one will have to contribute to receive those monies on water conservation.

Discussion ensued in which the definition of qualified entity was clarified, and Ms. Bardwell clarified that at present there is a requirement for certain wells to be metered, but for individuals homes there is no requirement. In answer to further questions, she said that there is an analysis of revenue generated in the handout, and that the taxation and revenue department would collect the fee as it would be considered a tax.

Representative Silva asked why acequias would be exempt, to which Ms. Bardwell replied that their unique status distinguishes them from other water users.

Committee members expressed concern over exempting certain entities and not others that may not be so clearly defined. Representative Saavedra remarked that his south valley constituents, for example, would not be exempt. He said that they have a unique way of watering their fields.

Senator Harden questioned what other states are doing regarding water conservation. Ms. Bardwell replied that there are other state programs, and that about four states have a groundwater conservation fee. She added that Montana is currently considering similar legislation that imposes a fee.

In response to concern over adjudication not being completed in New Mexico, Ms. Bardwell said that the fee is based on the measured use where it is measured, and that in the absence of metered use, it would be based on a declared, adjudicated water right. She added that the west is just beginning to address these issues, and that states are all trying to figure out how to deal with water shortages.

Discussion followed in which Representative Gonzales expressed concern over costs that individuals already pay for permitting, drilling and maintenance. Mr. Mallory agreed that all users are paying for that use, and that this fee will be in addition to those costs, but also based on the recognition that we need to extend this resource.

Senator Papen reiterated the concern over the fact that the whole state has not been adjudicated. She added that the state needs to make a tremendous push to get that done in the next few years. She expressed concern over showing favoritism in certain areas of the state. Senator Garcia pointed out that her community is the only one in the southern part of the state that has never been organized into acequia associations.

Mr. Mallory replied that they would look at this issue again, but that the problem with adjudication is that it never gets completed, and if the state does not do anything about conservation until adjudications are done, nothing will ever be done about conservation.

GRIP Update

Keith Mellor, chief financial officer, NMFA, gave an update on GRIP, detailing all escrow restructuring transactions and the savings that came from these. (See handout for these details.)

Representative Silva asked about the use of profits and why they were not being put into projects. Mr. Mellor replied that legal counsel advised that the proceeds have to be used for

debt service, not specific projects, and that the department of transportation (DOT) receives a credit that passes into the state road fund.

Mr. Mellor reviewed investment results from inception to date, then specifically gave results for the month of October, going over annual rate yields again for this month. He continued by itemizing costs of issuing GRIP bonds, broken down by expense category. He said that from a budget of \$2.6 million, to date there has been \$2.3 million in expenses, with a balance in the account of \$260,000.

Speaker Lujan asked about bond rating fluctuation, to which Mr. Mellor said that to market the bonds, they have to be rated and that this is done through S&P, Moody's and Fitch. He added that they analyze the deal and come up with a credit rating, and that bond rating fees are what these agencies charge to rate bonds.

Senator Papen reiterated that the committee has requested a progress report from DOT showing projects that have begun, including drawdowns, and that the committee has never received such a report.

Mr. Mellor indicated that NMFA has not seen such a report either and that only a few drawdowns have been made, and that NMFA receives contracting invoices, but not information on specific projects. He added that he would speak to DOT to get this information for the committee.

Vince Martinez of DOT said that all requirements for reporting will be provided in one document that will be updated quarterly. Andres Aragon Viamonte, DOT, indicated that all projects are currently on schedule.

Economic Development Legislation

Bill Sisneros highlighted the proposed economic development legislation that was presented to the oversight committee at the November meeting in Portales. He reminded committee members that they gave a conceptual approval to this legislation at that meeting and added that NMFA would like the committee to sponsor this legislation.

Mr. Sisneros explained that existing law includes both the Local Economic Development Act (LEDA) and the Statewide Economic Development Finance Act (SWEDFA), but that these statutes need funding. NMFA is requesting \$35 million to accomplish this. The new legislation would also amend LEDA and SWEDFA to allow NMFA financing flexibility. He added that Dr. Tom Pollard has been tracking lost opportunities in the state, including visiting with bankers who are very willing to identify projects to bring to the table. In surveying bankers, NMFA has been looking at the best method for the state to assist banks in lending to businesses that would not otherwise qualify for a commercial loan.

In response to concern over risk-taking and potential loan defaults, Mr. Sisneros replied that there will be an aggressive due diligence process. He reminded the committee that NMFA has a zero default record with the PPRF program, and that they will look carefully at selecting. He added that all projects will be preauthorized by the legislature, and that a full list will be provided to the committee, as with the PPRF.

Representative Bratton expressed concern that entities applying for funding would not have a tax structure and that these partnerships would be high-risk. Mr. Sisneros replied that they are looking at leveraging a public-private partnership and reviewed potential financing mechanisms. Mr. Valenzuela pointed out that they put together a hypothetical project. (See page 14 of the handout.) He added that the funding they are seeking would be from non-recurring general fund monies and that NMFA could leverage that amount, turn it over in 15 years, and make it grow.

Dwayne Brown, attorney, said the legislation is a work in progress and that this draft is a first cut that includes all the ideas discussed, setting forth a structure so that a statewide exception to the anti-donation clause could be implemented. He added that the legislation has been modeled after LEDA and that it allows for an exception for economic development.

Representative Crook questioned how banks will be selected to do the lending. Mr. Sisneros said that NMFA would be the financing arm and will not be looking for projects. The economic development department will choose and lenders will also bring projects to NMFA. He said that banks will do most of the work on evaluation. There will be a formal application process with quite a bit of financial disclosure. Mr. Valenzuela added that the process will be very detailed and clear and that legislative authorization will be part of this.

Discussion ensued in which Mr. Sisneros made it clear that NMFA would work closely with the banking community to ensure they have a good record of lending and would be a worthy partner in the effort to help communities grow.

Speaker Lujan asked about exceptions, in particular if utility companies were excluded. Mr. Brown said that there is an exclusion for utility finance and that this cannot be done at present under city-county revenue bonds. He added that they will look at this in the next draft.

In response to questions, Mr. Sisneros said that NMFA would go out to all banking institutions to set parameters, as NMFA would not be the primary lender. The banks would decide the right financing mechanism for the business. Ms. Russell added that for those businesses lacking equity, NMFA hopes to partner up strongly. Mr. Sisneros said that NMFA will also need to work more directly with rural areas.

Legislation Endorsed by NMFA Oversight Committee

1. The State Economic Development Assistance Act (initial draft by Dwayne Brown, no 202 number yet). Representative Silva and Senator Papen will sponsor.
2. .153140, the public project revolving fund authorization bill. Representative Varela and Senator Garcia will sponsor.
3. .153111, an appropriation for drinking water system financing. Representative Gonzales and Senator Snyder will sponsor.
4. .153110, water and wastewater planning fund grants, expanding eligible projects to include water conservation planning. Representative Sandoval will sponsor.
5. .153112, water and wastewater project grant fund authorization bill, including an appropriation to the fund. Passed last session without the appropriation, so this

- includes eligible entities from that bill as well as another 18 entities. Senator Rawson requested that Elephant Butte be clearly included. Senator Cravens requested that Placitas be added. Representative Silva asked that a Chama wastewater project be included. Mark Valenzuela reminded committee members that they could add projects during the session. Representatives Cervantes and Mary Helen Garcia will co-sponsor in the house and Senator Papen will sponsor in the senate.
6. .152829, water trust board amendments to enabling act that allow entities who have a regional plan in development to apply for loans from the WTB and allow donations to the water project fund. On page 5, lines 3 and 4, strike underscored language. Senator Harden will sponsor with this change.
 7. .152830, water project fund authorization bill, without the appropriation. Representatives Crook and Gonzales will co-sponsor and Senators Cravens and Papen will co-sponsor.
 8. .153098, the Water Efficient Technology Act. Representative Mimi Stewart and Senator Robinson will sponsor. (Opposition noted: Saavedra, Silva and Bratton)
 9. .153096, funding bill for behavioral health capital fund. Representatives Sandoval and Ruiz will co-sponsor in the house; Senators Papen and Sanchez will co-sponsor in the senate.
 10. Sanitary Projects Act amendments, duplication of last year's bill. Senator Snyder will sponsor.
 11. .153119, the Municipal Arena Funding Act, which gives NMFA authorization to provide financing for a municipal arena; municipality imposes arena surcharge through vendor contracts. Representatives Silva and Saavedra will co-sponsor. (Opposition noted: Harden, Rawson, Cravens, Bratton)

There being no other business, the committee adjourned at 4:40 pm.