

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

**November 29-30, 2012  
Room 322, State Capitol  
Santa Fe**

The fifth meeting of the New Mexico Finance Authority (NMFA) Oversight Committee was called to order by Senator Mary Kay Papen, chair, on November 29, 2012 at 9:12 a.m. in Room 322 of the State Capitol in Santa Fe, New Mexico.

**Present**

Sen. Mary Kay Papen, Chair  
Rep. Patricia A. Lundstrom, Vice Chair  
Rep. Alonzo Baldonado  
Sen. Sue Wilson Beffort  
Rep. Roberto "Bobby" J. Gonzales  
Sen. Howie C. Morales (11/29)  
Rep. Jane E. Powdrell-Culbert  
Rep. Debbie A. Rodella  
Sen. Nancy Rodriguez  
Rep. James R.J. Strickler  
Sen. David Ulibarri (11/29)  
Rep. Richard D. Vigil  
Rep. James P. White

**Advisory Members**

Rep. Ernest H. Chavez  
Rep. Anna M. Crook  
Rep. Thomas A. Garcia  
Rep. Rick Little  
Sen. Lynda M. Lovejoy  
Rep. W. Ken Martinez (11/29)  
Rep. Andy Nuñez  
Rep. Edward C. Sandoval  
Rep. Sheryl Williams Stapleton (11/29)

**Absent**

Sen. Tim Eichenberg  
Rep. Candy Spence Ezzell  
Sen. Stephen H. Fischmann  
Rep. Yvette Herrell  
Rep. Dona G. Irwin  
Rep. Henry Kiki Saavedra

Sen. William F. Burt  
Rep. David L. Doyle  
Rep. Mary Helen Garcia  
Sen. Mary Jane M. Garcia  
Sen. Eric G. Griego  
Rep. Ben Lujan  
Sen. Richard C. Martinez  
Sen. George K. Munoz  
Sen. Steven P. Neville  
Sen. William H. Payne  
Rep. Thomas C. Taylor

**Guest Legislator**

Rep. Miguel P. Garcia (11/29)

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

**Staff**

Lisa Sullivan, Legislative Council Service (LCS)  
Doris Faust, LCS  
Tom Pollard, LCS  
Elizabeth Katz, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are in the meeting file and posted on the New Mexico Legislature web site.

**Approval of Minutes**

Because the committee will not meet again this year, the minutes for this meeting have not been officially approved by the committee.

**Thursday, November 29****Call to Order**

Senator Papen welcomed committee members, presenters and guests and asked that the committee members introduce themselves. She then introduced the first presenter, Hector Balderas, state auditor.

**Office of the State Auditor's (OSA) Report on Special Audit**

Mr. Balderas provided the committee with an update on the special audit and informed the committee that PricewaterhouseCoopers (PwC) has submitted a draft report on its findings and recommendations associated with phases one and two of the investigation. The OSA received the draft report on November 16, 2012, and the report is currently under review. He stated that both the OSA and PwC are working closely to finalize the report and, barring unforeseen circumstances, the OSA will release the report to the NMFA on December 14, 2012. Mr. Balderas then outlined the scope of work that PwC was contracted to perform and the information contained in the weekly status reports that PwC provided to the OSA. He also summarized the investigative work performed by PwC, informing the committee that PwC conducted transaction testing designed to identify transactions that could provide evidence of embezzlement or errors in financial reporting. He discussed the related financial audit test being done by REDW, LLC, the firm with which the NMFA has contracted to complete the fiscal year 2011 and fiscal year 2012 financial audits.

The committee discussed details of the transaction testing performed by PwC. The committee questioned whether PwC was looking at NMFA procedures or specific transactions. Mr. Balderas responded that PwC looked at a sampling of actual NMFA transactions. The committee also questioned Mr. Balderas on whether the Clifton Gunderson, LLP, work papers would be made available to REDW. Mr. Balderas replied that he is unsure if the papers legally could be made public, but that he would look into the matter.

Bruce Bleakman, principal partner, REDW, addressed the committee and stated that REDW's concern is in ensuring that nothing is contained in the Clifton Gunderson, LLP, work

papers that could affect the report that REDW will issue. He informed the committee that his office is working very closely with the OSA to ensure that the report is not affected.

### **Approval of Minutes and Committee Business**

Upon a motion made and seconded, the minutes of the October meeting were approved.

### **Hewitt EnnisKnupp (Hewitt) Report on NMFA Audit Process and Governance Best Practices**

Nancy Williams, partner, Jeanna Cullins, partner, and Scott Miller, associate partner, Hewitt, introduced themselves to the committee. Ms. Williams informed the committee that Hewitt was retained by the LCS to perform an external review of the NMFA on behalf of the committee. She stated that the review began with a substantial document request from the NMFA and thanked the NMFA staff and board for their cooperation. A report of Hewitt's findings was presented to each committee member. The report contained a series of recommendations for the NMFA regarding NMFA policies, procedures and governance. Ms. Williams stated that the recommendations were not listed in the order of importance, but that higher priority items were marked with an asterisk.

Mr. Miller gave committee members an overview of Hewitt's recommendations. The five items that were marked as high priority were: 1) to create a position description for internal auditor that incorporates requirements specified by The Institute of Internal Auditors; 2) to adopt a comprehensive Audit Committee charter; 3) to record official minutes of Audit Committee meetings; 4) to establish specialized training sessions for Audit Committee members; and 5) to establish annual work plans for the board.

The committee questioned Mr. Miller on the details of the recommendation to cross-train the NMFA staff and whether the obligation to fill vacant executive positions falls to the NMFA board. He replied that the NMFA has six to seven different divisions, and, in order to have NMFA personnel move between divisions, the staff needs to have some understanding of each division. As to the vacant executive positions, he stated that filling those positions is the purview of the chief executive officer (CEO), but the board may have discussed with the CEO the option of leaving those positions vacant. The committee raised concerns over the fact that the amount of projects per employee at the NMFA has gone up 40% in the last five years, the need to hire more employees and the lack of available funds in the budget.

The committee then discussed the changes that need to be implemented in the Audit Committee and the need for an internal auditor. John Gasparich, interim CEO, NMFA, addressed the committee and stated that the NMFA is in the process of drafting a charter and writing a description for the internal auditor position that it hopes to have filled by early 2013. He also stated that although the CEO may select the internal auditor, the internal auditor will report directly to the Audit Committee and will have no part in management. A motion was made and seconded to reserve funds in the Feed Bill (House Bill 1) of the 2013 legislative session to have Hewitt return and review the implementation of its recommendations in one-year's time.

### **NMFA Management and the Fraudulent Audit**

Rick May, former CEO, NMFA, addressed the committee. He spoke from a prepared statement that is in the meeting file. The committee discussed the frequency of Audit Committee meetings. Mr. May stated that the Audit Committee was the responsibility of Greg Campbell, former controller, NMFA, and partially the responsibility of John Duff, former chief operating officer, NMFA. The committee addressed concerns regarding Mr. Campbell's role in the fraudulent audit versus the role of other members of senior management. The committee questioned Mr. May on the work of Clifton Gunderson, LLP, the firm originally contracted to perform the 2011 external audit, and whether the firm had been paid for its services, even though the 2011 audit was not completed. Mr. May responded that, to his knowledge, the firm had been partially compensated for its work. Finally, the committee raised concerns about NMFA spending, to which Mr. May responded that there has been a concerted effort by certain authorities to portray the NMFA in a negative light.

### **Legislation Regarding NMFA Board Member Qualifications and Appointments**

Senator Timothy M. Keller and Representative White addressed the committee and gave a brief overview of the proposed bill. Senator Keller informed the committee that the purpose of the bill is to correct a few of the structural NMFA board's governance issues. He stated that the legislation before the committee had been generated with the help of the Hewitt report and through experience with the State Investment Council. The proposed bill would allow the legislature to have four appointees on the board, ensure that board seats are staggered, increase the requirement for expertise, make meeting attendance mandatory and prohibit conflicts of interest.

Concerns were raised by committee members regarding a provision in the bill that board members would be appointed with the advice and consent of only the senate. There was also discussion of the attendance requirements, which would allow the removal of a board member after three consecutive meeting absences. The committee requested that the bill specify that the absences must take place within one calendar year in order to trigger removal from the board. The committee considered the new qualifications for NMFA board members, the frequency of board meetings, the approval of the financial audit in an open board meeting and the ratification of the minutes from that board meeting. Committee members requested that the frequency of board meetings be set to a minimum of quarterly. They also requested that the bill specify that the financial audit will be approved in an open board meeting, that the minutes of that meeting be ratified and that a copy of the audit be sent to the NMFA Oversight Committee. The suggestions of the committee were taken into account, and it was decided that the proposed bill would be heard again for endorsement after the discussed changes had been made.

### **NMFA Legislation**

Mr. Gasparich provided the committee with a brief overview of the NMFA's proposed legislation. The first piece of legislation concerns the federal State Small Business Credit Initiative that, in conjunction with the Economic Development Department and the NMFA, provides loans to small businesses. The proposed bill would extend the date by which the NMFA may issue these loans without specific legislative authority. The committee members discussed the bill, and a motion was made and seconded to endorse the bill with an amendment to provide for yearly reporting to the NMFA Oversight Committee of which projects are being funded.

The next two proposals were appropriation bills. The first would appropriate \$2 million from the Public Project Revolving Fund (PPRF) to the Drinking Water State Revolving Loan Fund, and the second would appropriate \$2 million from the PPRF to the Local Government Planning Fund (LGPF). A motion was made and seconded, and the proposed bills were endorsed by the committee. The final piece of legislation proposed was an annual bill that would authorize the NMFA to make loans from the PPRF. A motion was made and seconded, and the proposed legislation was endorsed by the committee.

### **NMFA Budget**

Mr. Gasparich and Donna Trujillo, chief financial officer, NMFA, presented information on the NMFA budget as of October 31, 2012. They outlined the salaries and benefits, contractual costs, other costs and revenue generated by the NMFA. They also provided the committee with projections of funds remaining through the fiscal year end. They then provided the committee with an estimation of costs associated with the false audit — over \$1.6 million.

### **NMFA Staffing Update**

Mr. Gasparich and Nann Winter, chair, NMFA board, addressed the committee. The NMFA's current staffing organizational chart was provided to the committee. The chart arranged employees by program and detailed where vacancies were within the programs. Mr. Gasparich addressed the vacancies and gave the committee a time frame for when the vacancies would be filled. The committee raised concerns about staffing levels at the NMFA, referring back to the Hewitt report. Committee members asked if the NMFA will be requesting extra funding to fill the vacant positions and if there are more vacant positions that are not indicated on the provided chart. Mr. Gasparich responded that the vacant positions indicated on the chart are those that the NMFA has approval to fill by the NMFA board.

### **NMFA Procurement, Contract and Reimbursement Policies**

Dan Opperman, general counsel, NMFA, addressed the committee. A document was presented to the committee that contained the NMFA's Procurement Code and, in red type, similar sections of the state Procurement Code. Mr. Opperman stated that the NMFA wishes to conduct all its business, including the purchase of goods and services, in as open and competitive a manner as possible. He informed the committee that the NMFA is not governed by the state Procurement Code, but desires to accomplish its purchase of goods and services in a manner that reflects the spirit of openness and fairness in the state Procurement Code. He also stated that the NMFA Procurement Code meets the unique needs of the NMFA and covers those purchases approved by the NMFA board, as presented to the board in the NMFA budget document.

### **NMFA Update on Department of Transportation (DOT) GRIP Bonds**

Michael Zavelle, chief financial strategist, NMFA, provided the committee with an update on the DOT GRIP bonds and the 2012A refunding bonds. He stated that \$241 million of closed lien and senior lien bonds fixed rate DOT GRIP bonds will be refunded to generate approximately \$26.7 million in net present value savings. Mr. Zavelle informed the committee that the 2012A senior lien bonds issue will be rated AAA by Standard & Poor's and Aa1 by Moody's Investors Services and that \$213 million in 2012A refunding bonds will be issued to provide up-front savings throughout the life of the refunded bonds. Mr. Zavelle provided the committee with the sources and uses of the 2012A bond issue and stated that an annual savings of \$27.7 million would be generated.

### **Comparison of NMFA and Marketplace Costs to Issue Bonds and Loan Rates**

Mr. Zavelle presented the committee with a handout that depicted New Mexico bonds and costs to issue bonds compared to NMFA costs to issue those bonds. He outlined the entities that should have used the NMFA, that should not have used the NMFA and that were not eligible to issue with the NMFA. He stated that there are many good reasons why an entity may choose not to use the NMFA, an obvious reason being if an entity's rating is very close to the NMFA's rating, it would be comparatively competitive in the market. He also explained that as an entity's rating goes down, using the NMFA makes more sense.

### **PPRF Loans Approved Under Temporary Protocol**

Mr. Zavelle provided committee members with a handout that detailed PPRF loans approved under the temporary protocol. The handout outlined the loans approved in August through November of this year, totaling \$15.7 million.

### **Colonias Infrastructure Funds Award Recipients**

Rick Martinez, director of business development, NMFA, addressed the committee. He informed the committee that 50% of the projects will be awarded this week. After the award funding in June 2012, the NMFA board thought that amendments should be made to the application for funding in order to streamline it. He stated that the requested changes have been made to the application and will be taken before the NMFA board next week. The committee questioned Mr. Martinez on how the NMFA is helping tribal communities obtain federal dollars. Mr. Martinez replied that the NMFA has provided tribal communities with examples on how to get federal money, has helped set up meetings and expects the tribes to be able to secure funds in the coming year.

With no further business for the day, the meeting recessed at 3:00 p.m.

### **Friday, November 30**

Senator Papen reconvened the meeting at 8:40 a.m.

### **Programs for Outreach to Rural Communities**

Marquita Russel, chief of programs, and John Brooks, director of commercial lending, NMFA, introduced themselves to the committee. Ms. Russel stated that the NMFA provides a number of program benefits that target projects in rural and disadvantaged communities. She informed the committee that public borrowers with median household incomes (MHI) of less than or equal to 90% of the state MHI are able to access below-market interest rates. She then gave an overview of NMFA programs that benefit public entities and economic development in rural New Mexico communities. Mr. Brooks then outlined the NMFA's outreach efforts for commercial loans. Those efforts include holding a number of annual conferences and targeted group presentations to economic developers and banks across the state.

### **Spaceport Authority Legislation**

Christine Anderson, executive director, Spaceport Authority, provided the committee with an overview of space flight informed consent issues. She told the committee that the Spaceport's proposed legislation is identical to that presented to the committee last year, except the Spaceport Authority is now proposing to repeal the sunset clause on the last page of the bill.

The committee reviewed the proposed bill, discussed how much funding has gone into the Spaceport and questioned why the legislation has failed to pass in the legislature. Given that the main opposition to the bill has come from the trial lawyers, the committee asked Ms. Anderson if the Spaceport Authority has met with trial lawyers to come to an amicable solution. She replied that the Spaceport Authority has yet to meet with trial lawyers, but it is happy to do so. A motion was made to send the proposed bill back to the presenters to continue to work with all parties involved and to bring it back before the committee for endorsement before the session. A roll call vote was called. With three members opposing, the motion passed.

### **Water Project Fund Status Update and Project List**

Mr. Gasparich and Jana Amacher, director of water resources, NMFA, addressed the committee. Ms. Amacher stated that, in 2001, the legislature, through the Water Project Finance Act, created the Water Project Fund and the Water Trust Board. The Water Trust Board is charged with prioritizing projects for recommendation to the legislature for financing from the Water Project Fund and adopting rules and regulations governing the terms and conditions of grants or loans made from the Water Project Fund. Ms. Amacher then gave an overview of the current board membership and stated that funding from the Water Trust Board is supported through the financial framework of the Acequia Project Fund, the Water Project Fund and the Water Trust Fund for statewide water projects. She provided the committee with a comprehensive review of the application for funding process and stated that since 2002, 116 entities have received approval for 247 funding awards totaling over \$255 million.

The committee raised concerns over not being able to see the list of projects to be funded before the committee endorses the projects. Ms. Amacher responded that improvements are currently being made to the application process so that a list of projects to be funded will be made available before committee endorsement in coming years.

### **Approval of Revised Rules Governing the LGPF**

Ms. Russel informed the committee that when the board reviewed the proposed changes to the LGPF rules, it requested two additional changes. The first is to increase the amount of funds available to an entity from \$50,000 per 24-month period to \$100,000 per 24-month period, while keeping in place the \$50,000 per planning document cap. The second is to include metropolitan redevelopment plans as eligible "economic development plans". She stated that these requested changes are reflected in the rules, which have been marked to show the changes since the committee's adoption of the rules in October.

A motion was made and seconded to approve the revised LGPF rules.

### **New Mexico Renewable Energy Transmission Authority (RETA) Legislation**

Jeremy Turner, executive director, RETA, provided the committee with letters of support for the RETA and presented the committee with a revised operating budget for fiscal year 2014. The proposed legislation would appropriate \$393,200 from the general fund to the RETA operational fund. Arlo Corwin, president, Power Network New Mexico, spoke in support of the RETA and reviewed the benefits that the RETA brings to New Mexico.

A motion was made and seconded to endorse the proposed legislation.

### **Legislation Regarding NMFA Board Member Qualifications and Appointments**

Representative White and Ms. Faust addressed the committee. They reviewed the changes that had been made to the proposed bill per the committee's request. A motion was made and seconded to endorse the proposed legislation.

### **Update on Proposed Changes to New Markets Tax Credits (NMTC) Policies**

Ms. Russel reviewed what NMTC are and stated that NMTC program policies are vetted through the Finance New Mexico, LLC, advisory board, a nine-member board required by the federal Community Development Financial Institutions Fund to ensure that the federal Community Development Entity complies with the mission of federal laws. She then gave an overview of NMTC governing policies and the goals outlined in the policies. She addressed the proposed amendments to the policies and proposed revisions to economic impact criteria.

### **Adjournment**

There being no further business before the committee, the fifth meeting of the NMFA Oversight Committee for the 2012 interim adjourned at 12:10 p.m.