

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

**October 11-12, 2012**  
**Room 307, State Capitol**  
**Santa Fe**

The fourth meeting of the New Mexico Finance Authority (NMFA) Oversight Committee was called to order by Senator Mary Kay Papen, chair, on October 11, 2012 at 9:00 a.m. in Room 307 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. Stephen H. Fischmann (10/11)  
Rep. Roberto "Bobby" J. Gonzales  
Rep. Yvette Herrell  
Rep. Dona G. Irwin  
Sen. Howie C. Morales (10/12)  
Rep. Jane E. Powdrell-Culbert  
Rep. Debbie A. Rodella (10/12)  
Rep. Richard D. Vigil  
Rep. James P. White

**Advisory Members**

Rep. Anna M. Crook  
Rep. Mary Helen Garcia  
Rep. Thomas A. Garcia  
Rep. Rick Little (10/11)  
Sen. Lynda M. Lovejoy  
Sen. Richard C. Martinez  
Rep. Andy Nunez  
Rep. Edward C. Sandoval  
Rep. Sheryl Williams Stapleton

**Guest Legislator**

Sen. Timothy M. Keller

**Absent**

Sen. Sue Wilson Beffort  
Sen. Tim Eichenberg  
Rep. Candy Spence Ezzell  
Sen. Nancy Rodriguez  
Rep. Henry "Kiki" Saavedra  
Rep. James R.J. Strickler  
Sen. David Ulibarri

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

(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.

**Thursday, October 11**

After introductions, the committee received testimony.

**Securities Division Update**

J. Dee Dennis, Jr., superintendent of the Regulation and Licensing Department (RLD), and Daniel Tanaka, director, Securities Division of the RLD, addressed the committee. Mr. Tanaka spoke from a prepared statement, which is in the meeting file.

There was discussion of Clifton Gunderson, the firm that was contracted to perform the external audit of the NMFA, and why it is not held responsible for the contents of the false audit. Mr. Tanaka stated that the firm had an obligation to inform the Office of the State Auditor (OSA) as well as the oversight body of any inability on its part to complete the audit. He also stated that the reasons Clifton Gunderson did not notify the appropriate agencies remain unknown. The committee then raised concerns about the public arrests of both John Duff and Greg Campbell and discussed the grand jury's failure to indict Mr. Duff.

The committee members then reviewed the NMFA's audit process for the 2011 fake audit and questioned Mr. Tanaka on the sequence of events, including the reasons given for why an audit committee was not held, how the audit was released to the public and why the NMFA's chief executive officer (CEO) and chief operating officer (COO) did not sign off on the audit at the time. There was also discussion of both the audit committee's and the NMFA board's culpability in the fake audit. Finally, the committee members addressed the \$40 million reversion of funds from the Public Project Revolving Fund (PPRF) to the general fund.

**Hewitt EnnisKnupp Preliminary Report**

Jeanna Cullins and Nancy Williams, partners in Hewitt EnnisKnupp (Hewitt), introduced themselves to the committee. Ms. Williams informed the committee that she was pleased to present an update on the progress of the independent governance review. She stated that the review involved three areas: the scope and schedule of the special audit, NMFA governance and organizational structure and NMFA policies, procedures and practices.

Next, Ms. Cullins addressed the committee and stated that Hewitt has reviewed the contract between the OSA and PricewaterhouseCoopers (PwC) but has not been provided with the work plan or the methodology as they relate to the special audit. As such, Hewitt's review is based solely on the contract between the OSA and PwC. She stated that the initial understanding was that PwC would be conducting the special audit, but after reviewing the contract, Hewitt has concluded that PwC is acting only as an advisor and consultant to the OSA. Ms. Cullins informed the committee that this type of engagement is not uncommon but that an independent audit conducted by an entity that is not connected to the broader governance sphere of the NMFA would be more transparent and preferable. She then outlined the services that PwC will be providing for the OSA, namely a forensic consulting service and a comprehensive analysis and risk assessment service. Finally, Ms. Cullins reviewed four omissions from the OSA's contract with PwC that Hewitt believes should be addressed in order to improve the usefulness of the special audit: the scope of PwC's work does not include an investigation into whether any funds were actually stolen or embezzled from the NMFA; the risks to the NMFA that PwC is to identify do not include the risk of corruption and whether any corruption took place; the contract does not require PwC to state what materials it reviewed and what materials it did not have access to that would be considered relevant to its scope of work; and there is no requirement that PwC provide all of its findings to the OSA or provide all of its findings in a written report.

Committee members discussed who will be performing the financial audit for fiscal year (FY) 2011 and FY 2012. It was determined that requests for proposals (RFPs) had been issued by the NMFA for a firm to prepare the financial audits and that it has retained REDW, a regional auditing office with a strong New Mexico presence. The committee members then discussed how the lack of a financial audit would negatively impact the NMFA's ability to issue bonds and stressed the importance of having the financial audits completed.

### **OSA Update about Forensic Examination and Financial Audit Process**

Hector Balderas, state auditor, addressed the committee and made remarks about the previous presentation to the committee made by the representatives from Hewitt. He then provided the committee with an update on the forensic engagement and outlined the two phases of the engagement. Phase one consists of the forensic consulting engagement, which involves the financial statements for the period ending June 30, 2011 that were falsely presented by the NMFA as having been audited by Clifton Gunderson. Phase two of the engagement involves an analysis of the NMFA's internal controls, policies and procedures and the NMFA's policies and procedures as they relate to the NMFA's bond counsel, disclosure counsel and financial advisers. Mr. Balderas stated that PwC is anticipated to provide its final report to the OSA by November 16, 2012.

Mr. Balderas then gave the committee a detailed overview of the financial auditing process and specifically addressed the status of the NMFA's financial audits. He informed the committee that the NMFA failed to submit its auditor recommendation and audit contract for the FY 2011 and FY 2012 financial audits by the required deadlines. On August 17, 2012, the NMFA issued an RFP for external audit service for FY 2011, with the option to renew the contract for two additional fiscal years. The NMFA board approved the selection of REDW to conduct its financial audits on September 11, 2012 and the OSA approved the recommendation

and contract on October 9, 2012. Mr. Balderas reported to the committee that the OSA's forensic engagement and REDW's performance of the financial audits will progress simultaneously. He then gave REDW's planned deadlines for completion of the financial audits, with the financial audit for FY 2011 expected to be completed on December 15, 2012 and the financial audit for FY 2012 expected to be completed on March 31, 2013. Mr. Balderas reviewed issues that the NMFA has had in the past with submitting financial audits. He then provided an overview of the current penalties for late audits and made suggestions to the committee on how best to enforce these penalties as well as the need for mandatory audit committees for agencies like the NMFA. Finally, he outlined the state auditor's At-Risk Designation Program, which was created to help combat the problem of late audits.

Committee members discussed the lack of notification and what the state auditor can do to inform oversight boards and committees once it has been determined that an audit has not been submitted. There was also discussion of the problems that smaller communities have with obtaining current financial audits and of a possible option for smaller entities to come together for the audit process, which would make it more feasible to consistently complete current financial audits. Concerns were raised by committee members about whether the rating agencies are content with the OSA performing the forensic audit rather than an outside agency. Committee members also communicated that there had been some misunderstanding in that it was initially thought that PwC would be conducting the forensic audit. They stressed the need for communication between the OSA and Hewitt. A motion was made and seconded that the LCS staff be directed to draft a letter to the NMFA and the OSA requesting that the scope of PwC's work be amended to include an investigation into whether any funds were stolen from the NMFA; the risks to the NMFA of corruption and whether any corruption took place; what materials PwC reviewed and what materials it did not have access to that would be considered relevant to its scope of work; and a requirement that PwC provide all of its findings of the OSA or provide all of its findings in a written report that would be shared with the NMFA Oversight Committee.

### **Spaceport Authority Budget and Proposed Legislation**

Christine Anderson, executive director, Spaceport Authority (SA), presented to the committee. She first addressed the SA's 2014 operational budget and outlined the major revenue sources and expenditures. She then reviewed the spaceport funding to date. The spaceport has received \$209 million from the state, \$132.6 million from the severance tax capital funds and \$76.4 million from the gross receipts tax capital funds. The SA has also received \$40,000 in federal funding, \$4.5 million in state operating funds and \$200,000 in private revenue. Ms. Anderson then reviewed the SA's severance bond status and the gross receipts tax bond status and reported on space flight informed consent. She stated that space flight informed consent is a waiver that fully informs participants of the risks of space flight prior to flying; it pertains only to space flight participants and holds harmless space flight companies in cases other than gross negligence or malintent. She then stressed the need for more robust informed consent legislation in New Mexico, which would allow New Mexico to remain competitive with other states that already have such legislation in place. She informed the committee that this legislation has failed to pass in both the 2011 and 2012 legislative sessions. Finally, she provided an overview of the spaceport status and gave a time line for when the spaceport will be fully operational.

Committee members discussed what specifically the remaining bond money would be used for. Ms. Anderson replied that it would be used to complete the southern road. There was then discussion of the informed consent legislation, and it was decided that the committee would not be voting on any legislation until the November meeting. The committee questioned where past opposition against this piece of legislation came from and the effects that it may have on the space industry in New Mexico.

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

Robert Busch, chair, New Mexico Renewable Energy Transmission Authority (RETA), Jeremy Turner, executive director, RETA, and Angela Gonzalez-Rodarte, assistant director, RETA, introduced themselves to the committee. Mr. Turner gave an update on RETA and explained how it helps bring economic investment into New Mexico through letters of support, memoranda of understanding, financial assistance and lease agreements. He then outlined the ways in which RETA has benefited developers and how it has encouraged investment in New Mexico. He informed the committee of the public-private partnership that RETA has made with Goldman Sachs Infrastructure Partner II (GSIP) to develop critical infrastructure in New Mexico. This project is intended to address transmission constraints identified by renewable energy developers. Mr. Turner stated that GSIP has invested approximately \$5 million in private capital to develop this project. He then reviewed the funding that RETA has received since its inception in 2007 and highlighted that 2009 was the last year that RETA received state funding. He presented the committee with RETA's operational budget and stated that RETA will be in need of aid from the legislature in the coming years if it is going to continue to be operational. He outlined the future goals of RETA and stressed the goal of RETA becoming self-sufficient within the next five years through fees generated by projects with which RETA is involved. Finally, Mr. Turner addressed strategic options for RETA moving forward: to fund one year of operations through a \$500,000 appropriation; to fund five years of operations through a \$2.5 million appropriation; to evaluate the ongoing revenue stream to fund operations with a possible sunset; and, in the case of a non-appropriation, to require debt to be assumed by an alternative agency along with deposition of physical assets.

Mr. Busch addressed the committee and stressed the importance of mining New Mexico's energy resources. He spoke about the current agreement that RETA has with GSIP and the amount of economic development and capital investment that the project would bring to New Mexico. He stated that there is a need for transmission lines in New Mexico and that the building of these lines is a time-consuming process but said that the payoff for the state would be high. He reiterated RETA's goal of being self-sufficient within the next five years and the importance of receiving funding so that New Mexico will not lose the investments that RETA has secured.

The committee discussed how RETA's bonds are currently secured and what would happen to RETA's outstanding debt should it be unable to continue operations. There was some discussion of making RETA a part of the NMFA, which was not supported by committee members. Committee members requested that RETA provide a specified budget immediately in order to have appropriation legislation drafted.

## **Border Authority Budget and Proposed Legislation**

William Mattiace, executive director, Border Authority (NMBA), Erika De La O-Medina, deputy director, NMBA, and Marco Herrera, logistics manager, NMBA, introduced themselves to the committee. Mr. Mattiace directed the committee's attention to a handout that detailed the NMBA's infrastructure capital improvement plan for FY 2014 through FY 2018. Mr. Herrera then directed the committee's attention to the budget for FY 2013, which was also outlined in the handout. Mr. Mattiace provided the committee with an update on the NMBA and stressed the NMBA's ability to understand the cultural and political environment of the border and its objective of developing a network of public and private contacts to help "open doors". He highlighted the issues that arise with seasonal visitors and said that the NMBA will continue to facilitate the seasonal movement of visitors between the U.S. and Mexico.

There was discussion from committee members regarding whether there are NMBA infrastructure projects that would be eligible for colonias money.

With no further business for the day, the meeting recessed at 3:30 p.m.

## **Friday, October 12**

Senator Papen reconvened the meeting at 9:20 a.m.

## **NMFA Board and Internal Committees**

Nan Winter, chair, NMFA board, and John Gasparich, interim and acting CEO, NMFA, addressed the committee. Ms. Winter reviewed the board meetings that were held in July, August and September and highlighted the more important aspects of the board meetings. She informed the committee that October will be the first month since her appointment on July 18, 2012 that the board has only met once. She stated that on September 28, 2012, the board announced the selection of a new chief financial officer (CFO) and fired Rick May, the former CEO. Ms. Winter also informed the committee that Mr. Gasparich is currently helping in the search for a permanent CEO and internal auditor.

Mr. Gasparich introduced Donna Trujillo, the new CFO, NMFA, and stated that she is an experienced auditor and CFO. He also informed the committee that the NMFA is currently recruiting for an internal auditor. He stated that this individual will be hired by the board, will report to the board and will be in place to ensure that the NMFA's procedures and activities are scrutinized to avoid any future problems.

Committee members raised concerns about the forensic audit and the ability for it to be completed without a credible 2011 financial audit. The committee also discussed the time line for the completion of the 2011 and 2012 financial audits as well as what the NMFA is doing to expedite the completion of those audits. The committee questioned the responsibility of the NMFA board in everything that has transpired and asked whether the board selected the audit committee. Ms. Winter responded that at the time that she was appointed chair, an audit committee was already in place. She stated that after she was appointed, the board made

changes to the audit committee. The committee was reconfigured and is meeting regularly and there is now a certified public accountant on the committee.

Committee members then addressed a number of questions to Ms. Winter and Mr. Gasparich regarding staffing levels at the NMFA; the current NMFA financial advisers; a recommendation to provide the department of finance and administration with all of the NMFA budget materials; the evaluation of cash balances in the PPRF; and the need for a concrete plan of action by December that addresses the need to get the NMFA back to its core mission of assisting with projects for smaller, rural areas of the state.

### **Governmental Gross Receipts Tax (GGRT) Allocation to NMFA**

Mr. Gasparich presented to the committee. He gave an overview of the PPRF's program objectives and goals and a summary of the current program. He stated that the strength of the PPRF is a function of the stability of the GGRT, which is used purely as coverage, not as a source of debt service payment; strong program management and lending policies; a lack of defaults and delinquencies; and other credit improvements over time. He then explained the flow of funds through the PPRF. Next, Mr. Gasparich addressed the impacts that GGRT reallocation would have on the PPRF and the reduced capacity of the PPRF without the GGRT.

Concerns were raised by the committee members about the NMFA's continued reliance on the GGRT. There was also discussion regarding the time line on grant awards and how the delay in the process limits the amount of time that communities have to utilize these funds.

Marquita Russel, chief of programs, NMFA, discussed the proposed revision to the Local Government Planning Fund (LGPF) rules. She stated that there were changes made to the LGPF legislation in 2012 to ensure broader eligibility and that the primary changes to the LGPF rules center around how large of a grant an entity will be able to qualify for in the added categories. Ms. Russel then outlined the proposed changes to the LGPF rules. A motion was made, seconded and passed without objection to approve the changes in the LGPF rules.

### **Approval of Minutes**

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

### **NMFA Proposed Legislation**

Ms. Sullivan and Mr. Gasparich provided the committee with an overview of proposed legislation for the committee's endorsement. Concerns were raised about whether the committee would be able to review the list of projects eligible for funding from the Water Trust Fund.

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

Senator Keller presented the committee with a bill regarding NMFA board qualifications and appointments. He stated that the purpose of this bill is to look at the governance of the NMFA and any possible changes that the legislature could make. He informed the committee that the NMFA consists of entirely new individuals appointed in the last 18 months. Senator

Keller also pointed out that there is a lack of expertise on the board, which does not have a single CPA or investment banker on it. He then reviewed the bill with the committee and stated that this piece of legislation would not remove any member from the board but would replace members of the board as their terms expire.

**Adjournment**

There being no further business before the committee, the fourth meeting of the NMFA Oversight Committee for the 2012 interim adjourned at 12:15 p.m.