

MINUTES
of the
FIFTH MEETING
of the
NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE
October 18, 2004

The fifth meeting of the New Mexico finance authority (NMFA) oversight committee was called to order by Senator Mary Kay Papen, chair, at 9:10 a.m. on Monday, October 18, in room 311 of the state capitol. Committee members were asked to introduce themselves and guests were welcomed.

PRESENT

Sen. Mary Kay Papen, chair
Rep. Daniel P. Silva, vice chair
Rep. Roberto "Bobby" J. Gonzales
Sen. Clinton D. Harden, Jr.
Rep. Dona G. Irwin
Rep. Brian K. Moore
Rep. Earlene Roberts
Sen. Shannon Robinson
Sen. Nancy Rodriguez
Rep. Henry Kiki Saavedra
Sen. H. Diane Snyder
Rep. Sheryl Williams Stapleton

ABSENT

Sen. Pete Campos
Sen. Kent L. Cravens
Rep. Don Tripp

Advisory Members

Rep. Donald E. Bratton
Rep. Anna M. Crook
Rep. Mary Helen Garcia
Sen. Mary Jane M. Garcia
Sen. Stuart Ingle
Rep. Ben Lujan
Rep. Patricia A. Lundstrom
Rep. Harriet Ruiz
Sen. Bernadette M. Sanchez
Rep. Edward C. Sandoval
Rep. Luciano "Lucky" Varela

Rep. Jose A. Campos
Sen. Dianna J. Duran
Sen. Joseph A. Fidel
Sen. Don Kidd
Sen. Leonard Lee Rawson
Rep. Robert White

Staff

Renée Gregorio
Janice McCrary

Guest Legislator

Representative Donald L. Whitaker

Guests

The guest list is in the meeting file.

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

Monday, October 18 — Room 311, State Capitol
CAPITAL OUTLAY INFORMATION GATHERING AND PRIORITIZATION
Agency Procedures — Commission on Higher Education

Miguel Hidalgo, facilities director, commission on higher education (CHE), presented information on the 2004-2005 capital outlay process for higher education. Annually, New Mexico's higher education institutions are asked to submit capital project requests to the CHE. Institutions include all public four-year and two-year post-secondary institutions, vocational-technical institutes and constitutional special schools (New Mexico school for the deaf, New Mexico military institute and New Mexico school for the visually handicapped). Before submittal, the governing board of the institution must approve the requests. CHE has received approximately \$400 million in requests. In addition, the institution is required to submit a copy of its five-year plan.

CHE reviews each request and schedules site visits in the fall. In early October, CHE compiled a list of CHE-recommended projects totaling approximately \$100 million. Each institution is provided the recommendation and is offered an opportunity for appeal.

CHE reported that the general obligation bond approved in the 2004 legislative session totals \$94 million and will be voted on in November. General obligation bonds have been a successful method of providing funding for higher education needs and are repaid from property taxes levied by the municipalities and counties of New Mexico. He estimated that the cost to property owners is about \$8.00 for each \$100,000 of assessed value. Mr. Hidalgo estimated that there is approximately \$857 million of deferred maintenance and construction needs at institutions. The optimum solution, according to Mr. Hidalgo, would be a dedicated revenue stream to allow an aggressive schedule of implementation over five years.

Mr. Hidalgo responded to questions from the committee. Discussion was held on the possibility of allowing institutions to get together to prioritize needs so that funding can cover larger projects. Also, it was stressed how important it is for institutions to bring the same story to the legislature as they provide to CHE. Otherwise, projects may get funded that are not

necessarily a priority.

Institutions must funnel all capital improvement projects through CHE. These institutions will indicate whether there are other funds to assist in funding the project. If there are other sources of revenue, then CHE only requests that portion of the funding not covered by other sources. All projects are subject to the Procurement Code.

The Role of Councils of Governments (COG) in the Capital Process

Lawrence Rael, president of the Mid Region Council of Governments (MRCOG) and chair of the New Mexico Association of Regional Councils (NewMARC), addressed the committee with information about the role that councils of governments (COG) can and do play in the capital process. The audit conducted by the state auditor two years ago brought the inefficiencies of the current system into the public view. This report focused the COGs on ways these organizations might help manage the process from request to status of funded projects.

Mr. Rael said that COGs could perform three very important roles. In order to be effective, the authority of these roles would best be designated by the legislature.

The first role would be to bridge the gap between the local government needs and priorities and the legislative process. This would allow COGs to assist local governments in preparing legislative requests but would still require local government prioritization.

The second role would serve to assist the process that happens after the project is funded and signed into law. The COGs could assist by providing an educational arm to ensure that local government is aware of what must be accomplished in order to access the funds. The COGs could help track expenditures and help verify that the local government records and the department of finance and administration's (DFA) records are in agreement. This information would be available to the legislature.

The third role would be to assess regional needs and provide a mechanism to help governments join hands to get regional projects completed. He cited the example of the north and south valley sewer extension project, which was a joint project between the city of Albuquerque and Bernalillo county.

The committee expressed genuine concern that these proposals would eliminate the need of local governments to communicate directly with their representation, which is something very important to legislators. Further, the concern was expressed that this could create another bureaucracy. There was a general feeling that while the planning process does need an overhaul, a "one-size fits all" approach will not work.

Mr. Rael explained that the organization of COGs exists in state statute and is recognized by the federal government to act as a local planning agency. The MRCOG received \$73,000

annually from DFA to assist with regional planning. COGs across New Mexico are currently assisting local governments with the ICIP process. Currently, there are seven COGs throughout New Mexico.

Agency Procedures — Indian Affairs Department

Michelle Brown-Yazzie, deputy cabinet secretary, Indian Affairs Department (IAD), presented information on the role the IAD plans to have in acting as the coordinating agency for intergovernmental and interagency programs concerning tribal governments and the state. Ms. Brown-Yazzie outlined several issues surrounding capital outlay projects awarded to tribes.

There is a serious backlog of projects dating back to 1992 that have not been completed. However, the money is still obligated. Ms. Brown-Yazzie provided a handout detailing these projects. Further, the current system for processing joint powers agreements necessary for reimbursements is very cumbersome. The IAD is currently working to streamline the process. IAD has experienced high levels of staff turnover during the past two years. With the turnover, IAD has not developed specific policies and procedures to ensure a consistent process for implementation or to train tribes on these processes.

A major issue is the need for a tribal government to front the money on projects and then request reimbursement, because many times, the tribal government does not have the money. IAD has requested a legal opinion to determine if it must be a reimbursement process or if the funds can be provided in advance.

The issue is whether a fiscal agent other than the tribe could be used. Once again, tribal sovereignty plays a large part in determining if this can be done. Also, an issue exists where capital projects are funded and then the tribe has no money to provide operating funds. This results in buildings standing empty because there is no money to pay to operate the programs.

Agency Procedures — Aging and Long-Term Services Department

Bob Lujan, administrative services director, and Bernadine Salazar, management analyst, both of the Aging and Long-Term Services Department (ALTSD), presented information regarding the 2005 capital outlay request process and a list of projects approved by the legislature in 2003 and 2004. The department is awaiting the results of the November 2 referendum for the portion of projects to be funded through general obligation bonds.

The ALTSD compiles requests for capital outlay from agency programs, local governments or other organizations serving the aging population. These organizations are encouraged to submit five-year plans that are as comprehensive as possible. These requests must address ownership and a method of determining costs. These are compiled and reviewed simultaneously by the Area Agencies on Aging and the ALTSD to determine priorities. These lists are reviewed by the department and area agencies to review the prioritization. The final list

of priorities is compiled by the department's Policy Advisory Committee and presented for inclusion in the governor's capital outlay request.

Questions were directed to Mr. Lujan and Ms. Salazar regarding the accessibility of the funds to recipients. Mr. Lujan reported that almost 100 percent of general funds had been disbursed and that the department is awaiting the results of the general obligation bond question on the November ballot. He reiterated that the list handed out includes those projects approved on the governor's list as well as projects funded by individual legislators.

Members of the committee questioned Mr. Lujan about how needs are assessed and how the funds are prioritized. Mr. Lujan described the process called Independent Critical Needs Assessment that looks at a project and has a set of criteria to rank it among other needs.

The ICIP Process

Ms. B. Jesse Monfort Bopp, Esq., Local Government Division, DFA, made a presentation about the infrastructure capital improvement planning process. Each municipality, county, tribe and special district is encouraged by the Local Government Division to prepare a community plan addressing the infrastructure needs for the next five years. This information is submitted to the Local Government Division, which publishes the information in a document entitled "Local Infrastructure Capital Improvement Plan (ICIP)". Other than the obvious benefit of embarking on a formal planning process, it provides a tool for communities to articulate their needs to legislators and the governor.

Ms. Bopp entertained questions about how many entities are participating in the process and what is required for participation. The infrastructure plan is intended to list all needs of the community. These needs may be funded in entirety or in part by state funds. The plan offers an opportunity for entities to think through and indicate the various sources of funding. Further, the Local Government Division offers technical assistance to smaller governments in the planning process.

CAPITAL OUTLAY REFORM EFFORTS

Report from the Legislative Finance Committee Subcommittee

Linda Kehoe, principal analyst, Legislative Finance Committee (LFC), presented a brief overview of reform efforts relating to the capital outlay process. In Spring 2002, the LFC asked for an audit regarding the status of all capital projects not expended. The LFC appointed a subcommittee to address the findings from the audit and to look at reforms proposed by the governor. Ms. Kehoe presented the LFC Capital Outlay Subcommittee Report dated October 7, 2004 which outlined a "conceptual" approach to reform. The options outlined in the document are not recommendations of the subcommittee.

There was considerable discussion around the subcommittee report. Ms. Kehoe

explained the efforts between the Local Government Division and the State Board of Finance in attempting to bring project records up-to-date and to be able to provide information to legislators regarding their projects. A question was raised about how language written in the capital request can impact the ability of the recipient to spend the money and how important it is to write the request for exactly what is needed. The committee summarized the activities by reiterating that, at this moment, nothing has changed in the way the capital funds are divided and funded by the legislature.

Capacity and Certification Issues and Statutory Changes

Mark Valdes, division director, State Board of Finance, presented information on 2005 bonding capacity, agency certification issues and proposed 2005 capital reform legislation. Because of strong severance tax revenues, severance tax bonding capacity is expected to be strong for 2005. The price of gas, oil and coal have exceeded all-time highs and the market has not indicated that these prices will weaken.

Mr. Valdes discussed the process for bond certification. In preparation of a new bond issue, a questionnaire is sent to each recipient of a bond-funded authorization asking questions about ownership, operation and use of a project to ascertain compliance with the anti-donation clause of the state constitution. Information is requested on total project cost and project readiness, among other things. If the recipient has an elected or appointed governing board or commission, a resolution must be adopted, certifying the need for the sale of bonds.

Mr. Valdes outlined proposed legislation that the State Board of Finance may be seeking during the 2005 legislative session. Details of these proposals are outlined in the handout. Mr. Valdes answered questions and described the reasoning for these proposals. The committee directed the staff to work with the State Board of Finance to determine the pros and cons on each of these proposals.

Update on Solicitation of Capital Requests and Monitoring

Robert Apodaca, Capital Projects Unit, DFA, discussed the efforts of the unit to work with the governor and legislature to develop capital priorities for the 2005 legislative session. The DFA has requested the top three priorities from municipalities, counties, tribal governments and special districts for capital projects. The objective of this effort is to determine that projects are well-planned, are fully funded projects or phases and can be completed within four years. A compilation of this effort will be distributed to legislators in December. He stressed that this process does not preclude entities from working with their legislators to fund additional priorities. Mr. Apodaca answered questions from the committee.

CAPITAL OUTLAY PROCESS
Language, Anti-Donation and Other Legal Issues

Robbie Heyman, bond counsel, state of New Mexico, was prepared to make a presentation regarding language, anti-donation and other legal issues. Because of time limitations, Mr. Heyman was asked if he would defer his presentation until the December meeting. He graciously agreed.

The remainder of the agenda was also deferred until a later date.

ADJOURNMENT

The committee adjourned at 5:00 p.m.