

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

**December 13, 2010
Room 307, State Capitol
Santa Fe, New Mexico**

The sixth meeting of the New Mexico Finance Authority (NMFA) Oversight Committee was called to order by Senator Mary Kay Papen, chair, on December 13, 2010 at 9:10 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. Anna M. Crook
Sen. Stephen H. Fischmann
Rep. Roberto "Bobby" J. Gonzales
Sen. Clinton D. Harden, Jr.
Rep. Jane E. Powdrell-Culbert
Sen. Nancy Rodriguez
Rep. Henry Kiki Saavedra
Rep. James R.J. Strickler
Sen. David Ulibarri
Rep. Richard D. Vigil
Rep. James P. White

Advisory Members

Rep. Janice E. Arnold-Jones
Rep. Ernest H. Chavez
Rep. Candy Spence Ezzell
Rep. Thomas A. Garcia
Sen. Timothy M. Keller
Sen. Richard C. Martinez
Rep. W. Ken Martinez
Rep. Andy Nuñez
Rep. Edward C. Sandoval
Rep. Sheryl Williams Stapleton
Rep. Luciano "Lucky" Varela

Guest Legislator

Sen. Rod Adair

Absent

Sen. Sue Wilson Beffort
Sen. Kent L. Cravens
Rep. Brian F. Egolf, Jr.
Sen. Tim Eichenberg
Rep. Dona G. Irwin
Sen. George K. Munoz
Rep. Benjamin H. Rodefer

Rep. Elias Barela
Rep. Jose A. Campos
Sen. Dianna J. Duran
Rep. Mary Helen Garcia
Sen. Mary Jane M. Garcia
Sen. Stuart Ingle
Rep. Ben Lujan
Sen. John M. Sapien
Rep. Thomas C. Taylor

Staff

Doris Faust, Legislative Council Service (LCS)
Tom Pollard, LCS
Claudia Armijo, 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.

Minutes Approval

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

Monday, December 13

Senator Papen welcomed the members and guests. She reminded the members that the meeting would be audiocast and asked that they keep side conversations to a minimum. She asked the members to introduce themselves, which they did, and she reminded them to turn their microphones on and off before and after speaking.

NMFA Proposed Legislation

William Sisneros, chief executive officer of the NMFA, and Matthew Jaramillo, the NMFA's director of government affairs, addressed the members regarding legislative proposals for the 2011 legislative session.

Mr. Jaramillo began by telling the members that the NMFA is seeking endorsement of three authorization bills, one appropriation and three bills providing for statutory amendments.

The first proposed legislative initiative presented by Mr. Jaramillo was discussion draft number .183536.1SA, which would extend the imposition, collection and distribution of the daily capital outlay tax through 2014 when all bonds secured by the tax have matured. The Public Project Revolving Fund (PPRF) currently holds the State Fair Commission pari-mutual improvement revenue bonds issue in 2004 with a principal amount of \$5,555,556. Unless the legislature extends the daily capital outlay tax or makes other arrangements for payment, there will be a loss of debt service revenue for the last two years and a potential default for the PPRF.

The entire Horse Racing Act is set to expire on June 1, 2012, so the NMFA seeks to extend the portion of that act that imposes the daily capital outlay tax for two years so it can pay the debt service through 2014. After brief discussion, the committee voted without opposition to endorse the legislation, and the bill will be carried by Senator Papen.

The second proposed legislative initiative presented by Mr. Jaramillo was discussion draft number .182926.2SA, which authorizes the NMFA to make loans from the PPRF for public projects over \$1 million, including:

- 1) buildings, equipment and infrastructure;
- 2) refinancing;
- 3) water, wastewater and water rights;
- 4) solid waste;
- 5) roads; and
- 6) land projects.

The bill was endorsed by the committee without opposition, and it will be carried by Representative Varela.

The third proposed legislative initiative presented by Mr. Jaramillo was discussion draft number .182927.2SA, which authorizes the NMFA to make loans from the Economic Development Revolving Fund for projects that benefit counties across the state. Thirteen projects this year are seeking authorization. This bill is also known as the "Smart Money" bill. The bill was endorsed by the committee without opposition, and it will be carried by Senator Papen.

The fourth proposed legislative initiative presented by Mr. Jaramillo was discussion draft number .182928.1SA, which authorizes the NMFA to make loans or grants from the Water Project Fund and Acequia Project Fund to community water organizations, acequias, cities and counties for various water system improvements, including:

- 1) storage, conveyance and delivery;
- 2) treatment, recycling and conservation; and
- 3) restoration.

The Water Trust Board will finalize the recommendation list. Seventy-five applications for project funding have been submitted, and 70 are viable. Those have been vetted through the Water Trust Board staff. The bill was endorsed without opposition, and it will be carried by Representative Nuñez.

The fifth proposed legislative initiative presented by Mr. Jaramillo was discussion draft number .182929.1SA, which would appropriate \$2 million from the PPRF to the Drinking Water

State Revolving Loan Fund for expenditure in fiscal year 2011 and subsequent years. The bill provides state matching funds for the federal Safe Drinking Water Act of 1974 and to carry out the purposes of the Drinking Water State Revolving Loan Fund Act. The bill was endorsed by the committee with no opposition, and the bill will be carried by Representative Crook.

The sixth proposed legislative initiative presented by Mr. Jaramillo was discussion draft number .182930.1SA, which seeks to increase eligibility for funding to:

- 1) political subdivisions, including regional or local public water utility authorities;
- 2) qualifying entities, including an inter-community water or natural gas supply association or corporation organized under Chapter 3, Article 28 NMSA 1978; and
- 3) associations of "qualified entities" created pursuant to the Joint Powers Agreement Act or other authorizing legislation for the exercise of their common powers. The bill was endorsed by the committee without opposition, and the bill will be carried by Representative Gonzales.

The seventh proposed legislative initiative presented by Mr. Jaramillo was discussion draft number .183539.1SA, which seeks to amend the Statewide Economic Development Finance Act (SWEDFA) to change the reference of "project" to "state project" and require prior approval of the legislature for "state projects" and not for "standard projects".

The legislature would still authorize "state funded" private projects to:

- 1) allow the NMFA greater administration of new federally funded economic development programs, including the state small business credit initiative;
- 2) permit the NMFA to meet the needs, demands and opportunities of business and financial institutions in real time; and
- 3) increase flexibility to leverage private money.

The SWEDFA currently requires prior approval of the New Mexico Legislature for all projects (standard or state) receiving financing assistance with money in the Economic Development Revolving Fund.

The members expressed serious concerns over the provisions allowing the NMFA to approve projects without legislative approval. Consequently, the members agreed, without opposition, to table the bill.

NMFA Project Authorization Subcommittee Report

Senator Fischmann and Mr. Jaramillo presented the legislative proposal that resulted

from the work of a small working group organized to review issues related to legislators' concerns over the PPRF project selection and criteria. Senator Fischmann reminded the members that he and Representatives Crook and Gonzales had participated in the working group with NMFA staff to evaluate issues relating to the PPRF. As a consequence of the working group's efforts, two discussion drafts were drafted for the committee's review. Discussion draft number .183465B.2 was presented to the members by Senator Fischmann. The bill would require quarterly reporting of the PPRF projects and the fund's status. The bill would also remove the requirement for specific prior approval of projects for PPRF funding. A similar bill, number .183465A.2, would require reporting also, but it would not mandate that the reporting occur on a quarterly basis. The members discussed the merits of the proposals and ultimately agreed on the endorsement of the bill requiring quarterly reporting. There was a motion to endorse the bill requiring quarterly reporting and to add a two-year sunset clause. The motion was seconded and the bill was endorsed. Representative Vigil opposed the motion to endorse.

Proposed Community Development Financial Institutions Act Legislation

Next, Senator Keller presented a bill to the committee for endorsement that would authorize the NMFA to form one or more nonprofit or for-profit financing entities for participating in the federal Community Development Financial Institutions Fund (CDFI) programs. Senator Keller reminded the members that this proposed legislation had been presented to the committee at a prior meeting. He also reminded the members that there are currently about 10 CDFIs in New Mexico, and as a result of this legislation, the NMFA could work alone on projects or in concert with other CDFIs in the state. After a brief discussion, the proposed legislation was endorsed by the committee, with Representative Lundstrom in opposition. Senator Keller and Representative Vigil will co-sponsor the bill.

New Mexico Renewable Transmission Authority (RETA) Proposed Legislation

Jeremy Turner, executive director for the RETA, addressed the members regarding proposed 2011 legislation in discussion draft number .183264.1SA, which relates to the RETA's ability to transfer funds, to authorize energy transmission bonds to be sold at, above or below par and to provide for confidentiality for certain proprietary information.

Mr. Turner advised that the proposed changes are needed to improve the RETA statute. Currently, the act only allows for bonds to be issued at par. The proposed request allows for bonds to be issued at, above or below par to allow for flexibility as market conditions dictate.

Also, in order to clarify the statute, the bill will allow separate accounts and establish those accounts in the RETA instead of the state treasury. This amendment would ensure the RETA's future ability to issue bonds for multiple projects. The authority may create separate accounts within the Renewable Energy Transmission Bonding Fund in connection with any issuance of renewable energy transmission bonds and may deposit in such separate accounts revenues received by the RETA derived from the financing or leasing of eligible facilities.

Finally, the confidentiality provision sought is similar to the statutes of the:

- 1) New Mexico Lottery Authority at Section 6-24-13 NMSA 1978;
 - 2) NMFA (SWEDFA only) at Section 6-25-27 NMSA 1978;
 - 3) Economic Development Department at Section 9-15-10 NMSA 1978;
 - 4) Interstate Insurance Product Regulation Commission at Section 11-19-1 NMSA 1978;
- and
- 5) Economic Development Corporation at Section 53-7A-6 NMSA 1978.

Proprietary information and information obtained by the RETA that is proprietary, technical or business information shall be confidential and not subject to inspection pursuant to the Inspection of Public Records Act. Proprietary confidential information includes power purchase agreements, costs of production, costs of transmission, transmission service agreements, credit reviews, detailed power models and financing statements.

A motion was made and seconded to endorse the bill. One member opposed the legislation, and it passed by majority vote. The bill will be carried by Senator Harden.

Border Authority Proposed Legislation

William Hume, executive director of the Border Authority, addressed the members regarding proposed legislation. The legislative initiative presented by Mr. Hume was discussion draft number .182588.2SA, which relates to motor vehicles and provides for the issuance of special permits to operate overweight vehicles with reducible loads within six miles of a port-of-entry facility on New Mexico's border with Mexico. The bill would also impose penalties for violations.

Having heard testimony on the issue prior to today's meeting, members were familiar with the proposed legislation, but many shared their concerns regarding the inevitable wear and tear on New Mexico's roads as a result of trucks carrying heavier loads. Members asked Mr. Hume if he has considered a fund specifically for the costs of those repairs. After brief discussions, the members voted, without opposition, to endorse the bill, and it will be carried by Representative Nuñez and Senator Papen.

Representative Lundstrom reminded the members of the issues surrounding the proposed legislation in discussion draft number .183053.1SA, which is a technical clean-up bill necessary to ensure that the state is in compliance with the federal grants that are provided to the motor transportation police. The legislation is proposed by the Motor Transportation Division (MTD) of the Department of Public Safety and relates to the field enforcement inspection of commercial vehicles. The members were advised that the MTD has lost four cases in federal court following four suppression hearings. The federal court decisions concluded that the motor transportation police do not have the authority, whether by administrative rule or state statute, to conduct roadside inspections. In these four cases, more than 2,400 pounds of illegal contraband were

found in commercial vehicles. The motor transportation police must conduct roadside inspections in order to be compliant with agreements made with the federal government and the Federal Motor Carrier Safety Administration. Failing to conduct roadside inspections could potentially have an impact on the federal grants received by the motor transportation police and the Department of Public Safety. The state must have an effective commercial vehicle safety program and a commercial vehicle size and weight safety program.

There was lengthy discussion about the proposed legislation having federal constitutionality issues. Members noted that authorizing in statute searches that are typically allowed only at the border could raise concerns with the Fourth Amendment of the U.S. Constitution. United States courts have said that searches at the border can be more in-depth than other searches. Some members expressed concern that the language in the bill attempts to create a "movable border" for the purpose of searches. Ultimately, upon understanding the issues relayed by the motor transportation police, members agreed to endorse the bill and let it proceed through the appropriate legislative committees for further scrutiny. The bill was endorsed without opposition and will be carried by Representative Lundstrom and Senator Ulibarri.

Proposed Tort Liability Legislation Related to the Spaceport

Tom Horan, lobbyist for Virgin Galactic, spoke to the members regarding discussion draft number .183099.1, proposed legislation that would extend limited liability to manufacturers and suppliers providing services for the spaceport. Members asked questions regarding the ramifications of the proposed legislation. Mr. Horan noted that the intent is to encourage businesses to locate in New Mexico and provide services at the spaceport without fear of lawsuits. The committee endorsed the bill, with Senators Papen and Rodriguez in opposition, and it will be carried by Representative Nuñez.

The next bill, discussion draft number .182951.1, which would create the Student Launch Program Fund, was withdrawn by the sponsor in lieu of a motion for the committee to send a letter to the Spaceport Authority suggesting that it apply for grants for the program. The motion was unanimously approved by the members.

Prior to adjournment, there was a motion to approve the minutes from meeting on November 9, 2010. The motion passed unanimously, and the minutes were approved.

With no further business, the meeting was adjourned at 1:40 p.m.