

**MINUTES
of the
SECOND MEETING
of the
TRANSPORTATION INFRASTRUCTURE REVENUE SUBCOMMITTEE**

**August 28, 2013
State Capitol, Santa Fe**

The second meeting of the Transportation Infrastructure Revenue Subcommittee (TRANS) was called to order by Representative Roberto "Bobby" J. Gonzales, chair, on Wednesday, August 28, 2013, in Room 307 of the State Capitol.

Present

Rep. Roberto "Bobby" J. Gonzales, Chair
Rep. Ernest H. Chavez
Sen. Lee S. Cotter
Sen. Ron Griggs
Rep. Larry A. Larrañaga
Rep. Patricia A. Lundstrom
Rep. Jane E. Powdrell-Culbert
Sen. Clemente Sanchez

Absent

Sen. John Arthur Smith, Vice Chair
Sen. Timothy M. Keller

Advisory Members

Rep. Sharon Clahchischilliage
Rep. Nathan "Nate" Cote
Rep. Edward C. Sandoval

Sen. Jacob R. Candelaria
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Sen. William H. Payne
Sen. William E. Sharer

Staff

Pam Stokes, Legislative Council Service (LCS)
Amy Chavez-Romero, LCS
Renée Gregorio, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Wednesday, August 28

The Top 50 Surface Transportation Projects to Support Economic Growth and Quality of Life in New Mexico

Carolyn Kelly, associate director of research and communication at TRIP, a national transportation research group out of Washington, D.C., summarized findings of a recent report on New Mexico's top 50 surface transportation projects, which focuses largely on those projects needed to support economic growth in the state. Ms. Kelly indicated that the projects cited in the report include the expansion and modernization of roads, highways, bridges and public transit systems with the intention of boosting quality of life, creating jobs and increasing public safety for all New Mexicans. She said that TRIP worked closely with New Mexico's Department of Transportation (DOT), which provided a list of 70 projects that TRIP then ranked. Project ranking criteria included short-term economic benefits, the level of improvement in the condition of the transportation facility, the degree of improvement in access and mobility and the long-term improvement provided either regionally or statewide in economic performance and competitiveness. Ms. Kelly highlighted a few of the top 10 most needed projects, which include the expansion of United States (U.S.) Highway 491 to four lanes from Twin Lakes to Naschitti, reconstruction of U.S. Highway 64 from Farmington to McGee Park, construction of a bus transit system in Albuquerque's central corridor, construction of a four-lane road over the Animas River in Farmington and a new river crossing in Los Lunas from Interstate 25 to New Mexico Highway 47. (See the handout for ranking of the top 10 projects as determined by TRIP; a listing of the top 50 projects can be found in the appendix to the report.)

Ms. Kelly spoke of the benefits of these transportation improvements, which include economic benefits as a result of reduced congestion and improved access as well as improved regional economic competitiveness; increased tourism and business travel as a result of the enhanced condition and reliability of the transportation system; and an increase in the welfare of residents due to better access to higher-paying jobs, improved mobility and a wider selection of competitively priced goods. She also mentioned an analysis done by the Federal Highway Administration (FHA) that determined that every \$1 billion invested in highway construction supports 27,800 jobs; and for every \$1.00 spent on road, highway and bridge improvements, there is a resulting benefit of \$5.20, which takes the form of reductions in vehicle, road and bridge maintenance costs, delays, fuel consumption and emissions and improvements in safety.

Stressing that vast needs exist in the state, Ms. Kelly remarked that the funding falls far short of these needs, meaning that many of the critical projects will remain incomplete. Needed projects include 24% of the state's major roads, which are deficient, as well as 8% of bridges that were rated as structurally deficient and 9% as functionally obsolete. With an increasing population and an increase in annual vehicle miles of travel in the state as well as an unemployment rate that nearly doubled between 2007 and 2013, it is essential that the state's transportation system deficiencies are addressed.

TRANS members next asked several questions, and the following points were raised:

- Mexico is willing to work with neighboring states on highway infrastructure needs, and New Mexico needs to focus on raising revenue before considering partnering with Mexico;
- a request for a breakdown of the number of jobs created by each project that includes drilling down to identify the multiplier jobs as well as the amount of gross receipts tax earned and the public-private funding opportunities;
- a request for information from the DOT on using rights of way for high-voltage transmission lines;
- alternative modes of funding are increasingly necessary, given the fact that fuel-efficient vehicles are more and more prevalent, which unfortunately leads to decreased revenue, and given that the trucking industry is considering a transition from special fuels to natural gas and the railroads from diesel to natural gas;
- both Virginia and Maryland have taken bold initiatives to fund their transportation systems, mainly by passing significant transportation legislation that institutes new tax plans and public-private partnerships;
- with international trade being increased via the building of a port on Mexico's west coast, New Mexico needs to ensure that it can provide transportation once products come into the U.S.;
- related to heavy cargo on the roads, the Western States Trucking Alliance is looking at adding extra axles and increasing the number of trailers on trucks so there is less damage to the roads; and
- a request for information on higher weight allowances and whether the trucking industry is helping to pay for maintenance on the affected roads and bridges, particularly in the southern part of the state.

Finally, Representative Lundstrom made a motion that a letter be written conveying the contents of this report to the media, particularly newspapers. Representative Larrañaga seconded the motion, and the subcommittee voted in favor of the motion with no objection.

Evaluating Public-Private Partnerships for Transportation: An Analytical Approach for State Legislators

Jim Reed, group director for environment, energy and transportation, National Conference of State Legislatures (NCSL), began by discussing the range of topics on which the NCSL can advise legislators and legislative staff. He added that the NCSL recently met in Atlanta, and at that time, it set its policy program for the upcoming year. Within this, he highlighted what he named a "transportation funding crisis", which is of great concern and includes such issues as a national recession, state budget shortfalls, declining gas revenues, a political reluctance to raise gas taxes, aging infrastructure and underinvestment in it, the ending of spending from the federal American Recovery and Reinvestment Act of 2009 stimulus money and a lack of adequate federal funding for transportation.

He then reviewed the average annual state sources of revenue for transportation by percentages, with motor fuels taxes at 28%, federal funding at 27%, bonding and borrowing at

12% and, on the lower end of the scale, state general fund contributions at 4% and local government contributions at 2%. In terms of borrowing, he spoke of the state's use of Grant Anticipation Revenue Vehicles, or GARVEE bonds, which relies on anticipated federal funding, and said that federal credit assistance provided under the Transportation Infrastructure Financing and Innovation Act has been expanded significantly.

With the NCSL's "Public-Private Partnerships (PPP) for Transportation: A Toolkit for Legislators" as background material, Mr. Reed moved into describing the PPP option for financing, which can bring private equity to the table that would have to be paid back. He said that with the PPP option, there is a savings because of the lower initial project cost and quicker project completion. He added that a long-term maintenance and operation contract can be part of the PPP, which is beneficial, and that with the PPP option, a greater degree of private sector practices and innovations are brought into public projects, which can increase efficiency.

At present, 33 states have created enabling legislation for PPPs, much of which is broad enabling legislation, and the remainder is more limited or project-specific. More recently, there has been an increase in PPP interest, with 22 states considering PPP-related bills in 2013. Mr. Reed added that currently there are 11 major PPP projects in five states, with \$30 billion coming to bid in the next 18 months.

Because of this increase in legislative interest across the states, the NCSL created a study group in 2009 that looked specifically at publicly held surface transportation systems, although he said that the PPP approach is being applied to other areas as well, such as schools and government office buildings. The working group served to link up legislators, legislative staff and private sector entities to analyze needs and develop nonpartisan materials to help in legislative decision-making. (See the handout for specifics on the partners involved.)

Mr. Reed gave details on what the legislators' toolkit contains, which includes a context for understanding PPPs, state government roles in the PPP process, principles for good governance and a focus on roadways. The toolkit was released in December 2010 and has been updated regularly since that time. Mr. Reed reiterated that one main assumption of the group was the states' primary responsibility for PPP policy and implementation decisions, rather than the federal government. He emphasized the importance of creating enabling legislation that is solid, balanced and comprehensive to aid in the PPP proposal process and to ensure protection of the public. He added that PPPs are not ideal for all transportation projects but are generally better for larger projects. Additionally, he said that PPPs do not create new money for states, that it is more about procurement and that the public sector will have to pay back the private investment through such revenue-generating means as taxes or tolls.

In defining PPPs, Mr. Reed stated that they are contractual agreements between public and private sector partners that allow more private sector participation than is traditionally allowed. A government agency generally contracts with a private company to construct or make improvements to a facility or system. He added that there are a variety of approaches and that the

private sector takes on additional functions and risks that the government would generally undertake. In discussing the differing roles, Mr. Reed said that the legislative role is one of deciding what the state's engagement with PPPs will be, creating a policy framework and garnering legislative approval. Executive roles include implementation of PPP legislation as well as the formation of programs, projects, procurement, contracting and oversight. Shared roles would then include building the public sector capacity, funding PPP project analyses, ensuring public outreach and stakeholder participation and selecting and approving projects, which are often delegated to the executive, though some states require legislative approval. (See the handout for details on states requiring legislative approval or involvement.)

Mr. Reed mentioned that there are pros and cons to requiring legislative approval. On the pro side, approval protects the public interest and promotes accountability; on the con side, this approval can add uncertainty to the process, which may discourage private investment. He emphasized that legislation can be crafted to protect the public interest and provide structured legislative involvement in reporting, overview and oversight rather than project approval. Among the benefits to the PPP approach are a cost and time savings (see page 10 of the complete toolkit package), where up to 40% can be saved over the project's lifetime; risk transfer (see page 5 of the full toolkit for a comparison table); project acceleration; improved quality; and public control and accountability. Among the concerns Mr. Reed spoke of are loss of public control, private profits at public expense, allowing a private entity to take future public revenues, risk of bankruptcy, accountability and transparency, foreign companies, toll road controversies and concerns over specific contract terms.

In conclusion, Mr. Reed delineated the main principles that promote a sound public policy approach to PPPs. These include being informed on the PPP approach; considering how to protect the public interest throughout the process; educating all stakeholders; approaching PPP decisions with a long-term perspective; allowing the transportation program to drive PPP projects, not just raising short-term revenue; ensuring comprehensive project analyses; being transparent about financial issues; and setting solid ground rules and transparency in the procurement process. Mr. Reed cited Maryland as a state that did a study for two years before implementing PPP legislation just this year. He ended by saying that many states have offices, most of which are housed in DOT offices, that specialize in the PPP process, but some are in other agencies, such as the treasury department.

TRANS members then engaged in questioning, and the following points were brought forth:

- the PPP approach has often been associated with tolling, but as PPPs have matured in the U.S., the system's funding has become fragmented, with most engaging a variety of federal and state funding sources;
- a request to dig deeper into how statutes in other states are constructed related to the kinds of contractors that can be involved in the PPP process;

- many PPP projects could engage in borrowing, either through general obligation or severance tax bonding, for example, and funding streams need to be identified and deemed acceptable;
- there is a lot of debate around issues of restrictions in federal legislation that often included a "no compete" clause that would not allow states to build or upgrade a road that "competed" with a toll road; many of these clauses have since been removed, even though there is still a reluctance to convert a highway paid with federal funds to a toll road;
- the NCSL has not done model legislation for PPPs, but it came up with guiding principles that include a listing of elements in other states' statutes;
- the biggest opposition to PPPs has come from the tolling question; issues among unions over prevailing wages; and anti-private, anti-corporate groups concerned with turning over public assets to private concerns;
- the DOT's transportation plan is the State Transportation Improvement Program, which is a six-year plan; the DOT has presented issues and ideas on PPP legislation to the governor for policy recommendations;
- in terms of a PPP-funded project, many entities, including state, federal and local governments, would likely be involved in managing the final roadway; a financing plan is developed that includes all possible sources of revenue; in the end, the state owns the project and often pays for maintenance that the private entity would accomplish;
- the main concern about high-occupancy vehicle lanes on roadways is underutilization;
- a request to the DOT for a report that compares PPP project delivery to traditional project delivery so that legislators can derive a policy framework and really understand the use of PPP as a financing tool;
- the DOT has a strong legal staff, but it has not worked with private entities in funding transportation projects and would need legislation to "provide both an umbrella and a mat";
- at present, New Mexico does not have the authority to toll any of its interstates; there would have to be an adequate alternate free route to do this, which would mean building many miles of roads;
- 30% of vehicle miles in this state are from trucks; and
- the legislature needs to know the administration's position on PPP funding for state highway infrastructure.

Senator Sanchez made a motion to approve the minutes from the subcommittee's first meeting, which was seconded by Representative Cote and unanimously approved.

Transportation and Safety Issues on Tribal Lands

Joe Aragon, first lieutenant governor for the Pueblo of Acoma, and Ty Vicenti, president of the Jicarilla Apache Nation, briefed members on issues related to public safety in the Pueblo of Acoma and the Jicarilla Apache Nation. Lieutenant Governor Aragon began by reviewing issues related to transportation and safety on tribal lands, in particular how emergency responders

are compromised because of the railroad that cuts through the pueblo. The fire, ambulance and emergency medical technician departments are all located on the south side of the pueblo, while a large section of the village is on the north side. He said that if a freight train was passing through tribal lands and there was an emergency, the pueblo responders could not get through. The pueblo cannot provide emergency services for its own people or for those on the north side of the interstate, he added. A study was completed in August 2005 that evaluated 13 transportation routes where a bridge could be constructed, Lieutenant Governor Aragon reported, and bridge construction over Burlington Northern Santa Fe Railroad (BNSF) tracks one mile south of Interstate 40 at Exit 100 was approved by the tribal council. The pueblo sought and received \$2 million in GRIP funding for this project, he stated, which allowed it to accomplish a completed survey, rights of way, environmental assessments and needed analyses. By 2012, the project was deemed construction-ready. Although millions of dollars have already been spent on this project, Lieutenant Governor Aragon reported that the pueblo has not secured the needed funding. At this point, the project will cost \$28 million. He added that the pueblo has tried securing funds through BNSF for in-kind work and is seeking a letter of support from the state for the Transportation Investment Generating Economic Recovery (TIGER) discretionary grants offered through the U.S. DOT. He said that the Pueblo of Acoma Tribal Council recognizes this as a top priority for the safety of the community. In conclusion, Lieutenant Governor Aragon urged members to attend to the Mesa Hill Bridge and Road Extension project to ensure that first responders get the direct road access they need.

In response to Lieutenant Governor Aragon's testimony, several questions were raised and the following points made:

- in discussions with BNSF on this project, the pueblo has been told how heavy the needs are nationwide, although BNSF will provide some support for the pueblo to access federal funding;
- New Mexico's DOT receives a small pot of money each year from the FHA to address safety issues at railroad crossings based on certain criteria, which amounts to \$1.5 million for the entire state, and the DOT sees this as a problem area but does not have funds to support this project; and
- the project is construction-ready and the pueblo has submitted applications for TIGER grants and will request legislative funding.

Next, President Vicenti expressed concern to members over the condition of New Mexico Highway 537 from Dulce to New Mexico Highway 550. He indicated that the Jicarilla Apache Nation has continuously expressed concern to the DOT over the road, which has been under construction over the past several years and is one of the most neglected roads in the state. In a graph prepared by the Jicarilla Apache Nation's police department, President Vicenti referred to December as the month with the highest number of incidents, at well over 40, with the average monthly incident rate at 20 per month. He added that Fridays and Sundays have the highest number of incidents as most residents use the highway on those days. Among those using the road are residents and athletes of Dulce, residents of Chama and southern Colorado and heavy

cargo trucks, which use the road daily. President Vicenti indicated that the DOT did resurface the road but that this only made conditions worse, with the base course lifting and creating a highly uneven surface. He added that winter months are particularly dangerous and that roads are not cleared in a timely fashion. President Vicenti indicated that the tribe has the capability to clear the roads if it has the funding to do so, that the tribe seeks the support of the DOT in ensuring that the road is routinely maintained, monitored and inspected and that vegetation is mowed in a timely manner to prevent accidents and vehicle damage.

American Society of Civil Engineers: New Mexico Infrastructure Report Card

Sonya L. Cooper, report card chair, Jane M. Lucero, aviation chair, David Jauregui, bridges member, Ruinian Jiang, roads chair, and Steven Metro, rail chair, constitute the New Mexico Report Card Committee (NMRCC), and they presented the report card results in their respective subject areas. Ms. Cooper introduced the report card as a way for the engineering profession to serve the public and to assist in protecting public health and safety. The following is a summary of each subject area as presented to members of the TRANS; for more specifics, please refer to the full handout, "Infrastructure Report Card", from the American Society of Civil Engineers (ASCE), which also contains data on many other subject areas.

Ms. Lucero spoke on the aviation category, which received an overall grade of D+, as compared to the national average in this category of D. She explained that the grade is due to the existence of many aging taxiways as well as the fact that the amount of discretionary funding that New Mexico receives from federal aviation is significantly lower than other states in the region. Ms. Lucero emphasized that this grade does not indicate that New Mexico's airports are unsafe. She also mentioned that another concern was the potential closing of contract towers, which would mean that funding would have to be taken out of the federal program to cover tower operating costs. She explained that the Federal Aviation Administration has a funding formula and that New Mexico is large in land mass but not in population, which leads to some of its funding capability. She said that the NMRCC works with its federal partners to try to get more discretionary funding to the state but that New Mexico is still about \$3 million to \$4 million below the funding that its neighbors receive.

Mr. Jauregui reported on the bridges category, first by giving statistics on existing bridges from data collected and maintained by the federal DOT. Of a total of 3,715 bridges, 686 are deficient. He explained that "structurally deficient" (SD) means a bridge has a condition rating less than or equal to 4 on a scale ranging from 0 to 9, with 4 being poor; the state has 319 SD bridges. He added that "functionally obsolete" (FO) means a bridge was not designed according to current standards and has inadequate widths; the state has 367 FO bridges. With an overall grade of C- in the bridges category, Mr. Jauregui specified that New Mexico's bridges received a grade of D- in operation and maintenance. He added that the state does not have as many fractured critical bridges as the entire nation does but that New Mexico is not designing bridges with resilience in mind, since earthquakes do not control design in this state. To repair or replace both the SD and FO bridges in New Mexico would cost a total of \$178 million, he added. The state received an F in the funding category, partly because the gas tax is fixed rather than indexed

and is decreasing due to population. The planning category came in with a D because many of New Mexico's bridges are reaching the end of their design life, he said. Some of the main concerns include the recruitment and retention of qualified bridge inspectors (not generally a well-paid position in the state) and compliance with national performance metrics and reporting requirements, since the FHA is rigorously auditing the state DOTs in bridge management, he added.

Mr. Metro gave highlights on the rail category, stating that even though the rail system is primarily private, it is an important component of New Mexico's transportation system that includes the capability of moving natural resources, freight and people. In terms of Class 1 railroads, which include BNSF and the Union Pacific Railroad (UPRR), the main issue is with capacity rather than condition. The Rail Runner, which is owned by the state, is definitely a plus to the state in terms of transit and tourism, Mr. Metro said, but it is not supporting itself.

Among the recommendations cited in the rail category are to support legislation that creates PPPs, such as the fuel tax exemptions for the UPRR and BNSF, said Mr. Metro. Also recommended is support for the federal short-line credit extension that would allow short-line railroads to invest in rail infrastructure and to advocate for the Rail Runner service by publicizing its benefits and providing multimodal access and transit-oriented facilities around its stations. In response to a question about the D+ rating that the Rail Runner received in this report, Mr. Metro said that the primary concern is due to not enough funding for infrastructure and that tracks and bridges are load-deficient and need to be upgraded.

Mr. Jiang summarized the roads category report card, saying that New Mexico's roads received a final grade of C as compared to a national average of D. He indicated that although population and subsequent vehicle traffic have increased in New Mexico by 61%, there has not been much increase in road length during the same time period. The areas of public safety, funding and planning received the lowest grades (D) in the assessment. Cited were roadway conditions contributing to traffic fatalities, an insufficient level of funding to address projected needs and a reduction in the amount of funding available for construction projects due to the DOT's requirement to service its outstanding bonding debt.

Mr. Jiang spoke of areas of concern for the state that include giving priority to maintaining and repairing roads and bridges and seeking highly efficient methods of transportation, ensuring that road improvements are sufficiently invested in through funding resources for roads in the form of taxes and fees and recruiting and retaining a quality work force through providing education, growth opportunities and competitive salaries.

Ms. Cooper informed members that Rail Runner ridership is evaluated in the transit section of the report. She also said that instead of this evaluation being accomplished every seven years, ASCE New Mexico would like to develop a plan to measure progress in all these categories on a yearly basis.

Members asked questions and made comments, including the following points:

- many of the report's recommendations speak to finding mechanisms for new funding and allowing an increase in revenue to drive funding for infrastructure, but what is missing is the concept of cutting costs; and
- a request that all legislators be provided with a copy of the full Infrastructure Report Card booklet.

Ms. Stokes spoke briefly on the agenda items for the next TRANS meeting, which will be in Santa Fe on September 10 and includes a presentation on a pilot program that the State of Oregon initiated to raise revenue in a different way; a presentation by the NCSL on new transportation revenue; a status report on the Rail Runner; and possibly a concept proposal for PPP legislation.

Adjournment

There being no further business before the subcommittee, the TRANS meeting adjourned at 1:40 p.m.