

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

**October 8, 2013  
Room 307, State Capitol**

The fourth meeting of the Transportation Infrastructure Revenue Subcommittee (TRANS) was called to order at 9:35 a.m. by Representative Roberto "Bobby" J. Gonzales, chair, on Tuesday, October 8, 2013, in Room 307 of the State Capitol.

**Present**

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

**Absent**

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

**Advisory Members**

Sen. Carlos R. Cisneros  
Rep. Nathan "Nate" Cote  
Rep. Anna M. Crook  
Rep. Edward C. Sandoval

Sen. Jacob R. Candelaria  
Rep. Sharon Clahchischilliage  
Sen. William H. Payne  
Sen. William E. Sharer

**Staff**

Pam Stokes, Legislative Council Service (LCS)  
Amy Chavez-Romero, LCS  
Branden Ibarra, LCS  
Mark Edwards, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Copies of the handouts are in the meeting file.

**Tuesday, October 8**

**Minutes**

A motion to approve the minutes of the third TRANS meeting on September 10, 2013 was approved without objection.

## **Flood Damage Update**

Tom Church, secretary-designate, Department of Transportation (DOT), and Ernest Archuleta, director, Operations Division, DOT, gave an overview of the damage and associated costs resulting from recent flooding across New Mexico. They stated that:

- two people in southeastern New Mexico lost their lives trying to drive through flood water and getting swept off the road;
- almost 300 miles of road stretches were lost to flooding erosion;
- the DOT had crews working 24 hours a day for 12 days during the initial response to the flooding. This included a dozen crew members living out of a cabin for several days while working on the road to the village of Mogollon; and
- a request has been made to the Federal Emergency Management Agency (FEMA) for \$19 million in disaster relief funds. FEMA has already released \$2 million, and the DOT is waiting for a response on the rest of the request.

Secretary-Designate Church and Operations Division Director Archuleta then discussed various types of flood damage that occurred using photographic examples from each DOT district across the state. A recurring issue cited was that culverts that normally divert rain water got clogged with debris during a flood event, causing overflowing of the road at that spot, which then creates erosion. Secretary-Designate Church and Operations Division Director Archuleta highlighted the following examples of the recent flooding:

- DOT District 1: N.M. 159 near Mogollon lost a lane as the road became a new streambed;
- DOT District 2: a section of N.M. 294 near Taiban became an impassable lake;
- DOT District 3: U.S. 60 near Bernardo was overflowed;
- DOT District 4: a break in the diversion channel to Storrie Lake occurred near Las Vegas;
- DOT District 5: rock slides onto N.M. 68 near the Pueblo of Picuris and N.M. 4 occurred; and
- DOT District 6: there was an overflowing washout of Navajo Route 491 at Naschitti.

Following this overview, subcommittee members asked for a more detailed description of the road damage, the costs involved in repairs and the funding available.

Secretary-Designate Church and Operations Division Director Archuleta then elaborated upon their initial descriptions. They explained that much of the initial, visible road damage was caused by erosion. When the DOT clears the debris from these sites, it can normally determine what needs to be done to open the road and proceeds to make an emergency or temporary repair. Instances across the state during this summer's flooding included washed-out culverts and road lanes and a complete road closure that stranded the village of Mogollon for three days. However, on many stretches of roads during the flooding this year, the ground became saturated. In those

places, the true condition of the roads will not be known until the freeze and thaw cycle has run its course. Secretary-Designate Church said it will likely take until next summer before the DOT has a full picture of the subsidence problems caused by the flooding.

Subcommittee members asked whether inadequate road maintenance contributed to the damage and whether regular cleaning of culverts would have made a difference. DOT representatives acknowledged that lack of maintenance might have contributed to the damage on some roads.

DOT representatives used the collapse of a road near Tohajiilee as an example of the temporary nature of an emergency repair. They explained that the DOT is required to make emergency repairs to that road, but subsequently, the drainage pipes for that road collapsed from additional flooding. Ultimately, an emergency repair of the emergency repair was required.

Secretary-Designate Church and Operations Division Director Archuleta provided the subcommittee with a detailed description of the costs and available funding with respect to the recent flooding. They stated that the DOT has submitted a request for \$19.9 million in emergency assistance funding from FEMA. The request is eligible under FEMA regulations, but there is no guarantee that FEMA will make the total amount available. The DOT has received an initial \$2 million from FEMA, but is waiting to hear about the rest.

The subcommittee asked several questions about the DOT's funding needs for fiscal year (FY) 2014. Concerns were raised about funding for potential future emergency repairs, including repairs necessary due to snow damage this winter. In addition, subcommittee members raised concerns about the need to make permanent repairs for roads that have only temporary or emergency repairs.

DOT representatives relayed that emergency repairs are funded from maintenance funds. In recent years, that money has been spent on wildfire response, but this year those funds have been used in response to the floods. The DOT might find it necessary to request the ability to move funds between different budget categories this winter to address snow and ice problems. With regard to permanent repairs, DOT representatives stated that an ambient temperature of 70 degrees is required to lay new roads. As emergency or temporary repairs are now in place for all flood-damaged roads, the DOT will wait until the end of the freeze and thaw cycle in the spring to start permanent repairs.

Several questions were raised by the subcommittee as to whether the DOT might seek capital outlay funding to cover these repairs. It was noted that as the problems were statewide, the repairs might qualify.

Secretary-Designate Church clarified that the DOT is not seeking capital outlay funding. He said that department budget requests were already submitted and that the DOT does not generally make capital outlay requests.

Responding to a question about whether the DOT would be looking for a FY 2014 appropriation from the general fund for these repairs, the response was that the DOT is waiting to see what can be recovered from the federal agencies.

The subcommittee then continued its discussion regarding the overall flooding damage to roads in New Mexico. Concerns were raised about:

- whether any agency is developing a statewide evaluation of road damage, including tribal and local roads not included in the state or federal road systems; and
- whether the necessary repairs for damage revealed after the freeze and thaw cycle, or the need for long-term repairs, would be eligible for funding from FEMA.

In response to the first concern, Secretary-Designate Church stated that the DOT, the local FEMA office and the Federal Highway Administration (FHWA) had created a statewide estimate of the damage and were waiting for FEMA's federal office to review it. Don Martinez, New Mexico division administrator for the FHWA, noted that the federal Department of Homeland Security is responsible for conducting comprehensive damage assessments, which include private property.

In response to the second concern, Secretary-Designate Church suggested that FEMA funding would likely be inadequate. As an example, he noted that FEMA's past funding for fire damage was lower than the actual costs involved. He also stated that while the DOT has obtained some equipment from FEMA, FEMA does not pay for basic infrastructure. Further, he commented that the large requests stemming from flooding in Colorado will likely impact FEMA's response to other emergencies, including emergencies in New Mexico. In answer to a specific question, Secretary-Designate Church said the DOT would work on an estimate by the beginning of the upcoming legislative session for the funding needed by the DOT to make road repairs through the winter.

The subcommittee then discussed the issues faced by the DOT in meeting regular maintenance requirements and responding to emergencies. The DOT noted an example of working with contractors to reduce the cost of emergency repair on the I-40 sinkhole, but otherwise did not have a solution to this conflict.

Without objection, the subcommittee approved a motion to send a letter from the subcommittee to the Legislative Finance Committee (LFC) requesting a proposed appropriation from the general fund to repair roads damaged by this year's floods. After further discussion about alternative funding, it was suggested that various members would discuss the issue with the State Board of Finance.

### **Transportation System Needs**

Secretary-Designate Church, Operations Division Director Archuleta and Elias Archuleta, the DOT acting chief engineer, provided an overview of the gaps between the department's

maintenance and construction goals and its actual funding, using the FY 2014 operating budget as a baseline.

The DOT representatives noted that maintenance includes an ongoing rotation of pothole repair, crack sealing, sign replacement and snow removal, but not structural road repair or rehabilitation. Emergency repairs are also included as a maintenance cost. Operations Division Director Archuleta made the following general observations at the beginning of the DOT's presentation:

- a rule of thumb is every \$1.00 spent on maintenance saves \$4.00 down the road on repair;
- the DOT would like to establish a 20-year maintenance program with the goal of extending the designed life of the roads from 20 years to 25 years; and
- prior to this year's flooding, approximately 30% of New Mexico's road system was deficient. The road deficiency rate is likely to go up, and the DOT has a contract in place to get a comprehensive look at what the deficiency rate is now.

DOT staff members then gave a more detailed description of the funding shortfalls in the maintenance programs listed in a handout provided by the DOT. It was noted that the DOT's entire yearly budget could be consumed by maintenance costs. The DOT's handout lists a 2014 maintenance budget of \$90.8 million with a \$268 million shortfall. Two examples were used to highlight the issue:

- first, the DOT has a goal to complete maintenance on 125 bridges each year, but its budget only allows for eight bridges per year. Thus, it takes 15 years to complete the one-year goal; and
- second, the average designed life of the DOT's equipment, such as loaders and backhoes, is 12 years, but the available procurement budget means the department is keeping equipment for 19 years. This creates greater repair costs and limits bond funding for new equipment.

DOT staff next addressed issues pertaining to bridge safety. DOT staff indicated that the DOT has contracts with universities to inspect the bridges for structural damage on a two- to three-year cycle. Those inspections are used by the DOT to assess needed maintenance and repair. Secretary-Designate Church stated that every bridge suspected of having water damage from the recent flooding had been inspected.

In response to a subcommittee member's question regarding the DOT's exposure to tort liability, the DOT staff stated that the DOT's budget includes liability insurance in case it is sued for negligence. However, a recent court ruling has included negligent road design as cause of action, which may raise the cost of insurance.

In response to a question regarding the DOT's staffing needs, DOT staff indicated that at least with regard to the DOT's emergency repair responsibilities, there is no need to increase authorization for full-time employees at this time. The department is currently experiencing a 13% vacancy rate.

The next item of discussion was the projected needs for repair, replacement and new capacity in New Mexico's road system, such as bridge replacement, new road lanes and highway interchange expansion. The discussion of the DOT's construction goals was divided between work on roadways and bridges. Acting Chief Engineer Archuleta led the DOT's presentation. He stated that the DOT strives to meet a repair and replacement schedule to maintain a 20-year life for roadways and a 50-year life for bridges.

In addition, Acting Chief Engineer Archuleta stated that the DOT estimates the demand for road construction will be about \$595 million per year over the next 20 years. Using its 2014 budget as a benchmark, the shortfall per year would then exceed \$295 million per year.

Acting Chief Engineer Archuleta next discussed the DOT's bridge repair goal for the next 10 years, with an estimated need of \$37 million per year and shortfall of almost \$4 million per year. Further, the DOT projected a need to replace 25 bridges per year, estimated at over \$54 million per year with an annual shortfall of over \$40 million per year.

DOT representatives noted that the need for bridge replacement is complicated by determinations of structural impairment, adequate design and functionality. Secretary-Designate Church contrasted the DOT's FY 2014 total construction budget of \$197 million with the DOT's estimate that \$342 million would be needed to bring 158 bridges up to current standards.

In response to questions and comments from the subcommittee, DOT staff provided further explanation of the bridge replacement challenges apart from structural damage. They noted that a bridge can be structurally sound, but its functionality may be in question due to a need for wider lanes or improved entryways to meet changing traffic demands. Further, they noted that a bridge can be structurally sound and functional, but that it might not meet current design standards.

DOT staff explained that under a recent Supreme Court decision, these conditions increase the risk of liability for the department. Therefore, the DOT combines bridges with damage impairment, outdated design and functionality impairment under the category of "functionally obsolete". DOT representatives indicated that the increased risk of liability creates pressure on the DOT to expedite its replacement schedule beyond what would be needed to meet the planned 50-year design life schedule. The challenge is exacerbated because design standards are set by federal guidelines that are subject to change.

Aggregating the budget challenges faced by the DOT, Secretary-Designate Church stated that the department has a total annual funding gap of \$608 million for its operation, maintenance,

repair and construction programs. Responding to a subcommittee member's question, Secretary-Designate Church clarified that the \$608 million funding gap included the federal money that the state receives.

The subcommittee next had a general discussion regarding funding alternatives. In response to a question on the accuracy of the DOT cost estimates, Secretary-Designate Church elaborated on how they were derived. He stated that the figures presented with regard to flood damage evaluations include assessments by federal evaluators and health inspectors. He also remarked that the operations and maintenance figures are in line with the DOT's experience over the last 20 years of the gaps between operational demands and actual budgets.

Secretary-Designate Church was asked whether the DOT would submit a request for an appropriation to the State Road Fund to meet the projected \$300 million road construction shortfall. He stated that the DOT was not planning to make such a request. He elaborated that in the DOT's experience, appropriations to the State Road Fund typically do not represent additional funding to the DOT budget; rather, appropriations come in the form of earmarks that reallocate funds from other established categories in the DOT budget. Therefore, Secretary-Designate Church stated that the DOT would recommend that efforts to allocate new funds toward the DOT's construction programs be channeled through other means.

Several subcommittee members expressed a desire to avoid piecemeal responses to the funding challenges outlined by the DOT. Subcommittee members also noted that much of the DOT's annual budget is based on federal matching funds and highlighted that the uncertainty of federal funds makes it difficult to gauge the state's future need to make up the projected budget shortfalls. Other subcommittee members expressed the concern that the scope of the DOT's budget challenge is too large for a comprehensive response.

A general discussion of possible funding sources ensued. Subcommittee members discussed the possibility of creating a new fund to be used for the anticipated repair needs next spring and summer. The subcommittee also had a brief discussion of the benefits and limitations of using short-term severance tax bonds or general obligation bonds to finance the DOT's projects. Subcommittee members suggested that the DOT provide a detailed request to the legislature identifying the DOT's needs and proposed funding sources.

Subcommittee members also discussed the issue of using taxes for road construction. A question was asked about how New Mexico's gasoline and diesel taxes compare to those in other states. David Abbey, director, LFC, indicated that New Mexico currently has approximately the seventeenth-lowest fuel taxes.

Without objection, the subcommittee approved a motion requiring LCS staff, in consultation with the LFC and the DOT, to research methods to generate an additional \$50 million per year for three years for road and bridge maintenance, repair and construction.

## **Federal Funding Expectations for Transportation Infrastructure**

Mr. Martinez made a presentation on federal highway funds available under the federal Moving Ahead for Progress in the 21st Century Act (MAP-21) and the requirements for the funds.

Mr. Martinez explained that MAP-21 runs on a reimbursement basis. When the DOT does work that is eligible under the program, it can submit a voucher for reimbursement. In FY 2013, New Mexico was eligible for \$332.6 million. According to Mr. Martinez, approximately \$80 million was available to the DOT; \$122 million was used for debt service payments for bonds issued previously by New Mexico under the Governor Richardson's Investment Partnership (GRIP); and the rest was distributed to four certified metropolitan planning organizations (MPOs) in Albuquerque; Santa Fe; Las Cruces and El Paso; and Farmington. Mr. Martinez said that debt servicing for GRIP is an ongoing expenditure against both federal and state funds. New Mexico's share was \$40 million in FY 2013. GRIP debt is scheduled to be retired by FY 2027.

Mr. Martinez explained that MAP-21 consolidates a number of programs. MAP-21 has performance-based standards that are developed by the federal, state and MPO agencies. The state must make periodic reports to the FHWA regarding the progress toward those standards. Within those standards, the following two have specific budget impacts:

- meeting the state's goal for limiting fatalities and serious injury; and
- meeting minimum requirements for highway pavement and bridge conditions.

Failure to make adequate progress on either goal would require the state to spend a specified portion of its funds toward meeting or exceeding that standard.

Responding to questions from the subcommittee, Mr. Martinez added that MAP-21 is a two-year authorizing act that ends on October 31, 2014. Mr. Martinez stated that he had no information regarding congressional hearings for an extension for MAP-21. However, he noted that the programmatic structure is in place and that the United States Department of Transportation is currently promulgating rules for distribution. He said the level of federal funding that Congress will provide is still to be determined.

With regard to specific questions on federal reimbursement of the DOT's vouchers, Secretary-Designate Church stated that:

- the DOT's billing through the Statewide Human Resources, Accounting and Management Reporting (SHARE) system is more consistent; and
- the DOT is not experiencing any delays in getting reimbursed.

## **"It's Time to Cross That Bridge: State Transportation Challenges and Opportunities in the Federal Context"**

Janet Kavinsky, executive director, transportation and infrastructure, United States Chamber of Commerce (U.S. Chamber), provided an overview with regard to federal transportation funding. She said that the prospect for federal highway funding is unclear. There has been no regular federal budget process for several years. She emphasized that the federal programs have been dependent on the fluctuating federal appropriation process. Ms. Kavinsky added that the federal general fund is not a likely source for new transportation funds. She said that most of that money is already dedicated to entitlement payments, military expenditures and servicing the national debt.

Ms. Kavinsky drew attention to an approaching "fiscal cliff" for federal highway assistance. She said that if no new funding is provided to the federal programs by 2015, the entire federal highway budget will be consumed by existing obligations. As such, it is possible that new projects will not be feasible.

Ms. Kavinsky noted that a large part of the budget shortfall for highways can be attributed to the system's reliance on fuel taxes. A combination over the years of increased fuel efficiency and steady inflation has eaten into the buying power of road funding that relies on fuel taxes. To maintain the highway system, the U.S. Chamber, various trucking associations and others requested Congress to increase user taxes such as fuel taxes. Congress has not acted on those requests so far.

Jaime Rall, senior policy specialist, National Conference of State Legislatures (NCSL), made a presentation on the following three topics: 1) the growing shortfall in transportation funding; 2) the differing approaches that various states are using to meet the shortfall; and 3) alternative approaches to transportation financing.

Ms. Rall stated that the nation as a whole is spending one-third to one-half of what is needed to maintain and improve the nation's transportation system. She highlighted that without new congressional action, the federal Highway Trust Fund is anticipated to become insolvent in FY 2015. She noted that the combination of budget shortfalls within both state and federal highway programs means the states are facing a fiscal cliff with regard to transportation funding.

Ms. Rall agreed with the point made by Ms. Kavinsky that a large part of the funding shortfall stems from a reliance on fuel taxes at both the state and federal levels. She pointed to three factors from which this reliance contributes to budget shortfalls over time, stating that:

- fuel taxes are typically per-unit taxes generating revenue through consumption rather than costs;
- fuel efficiency increases have leveled gasoline and diesel consumption, thereby limiting growth in fuel tax revenues; and
- highway construction costs have been experiencing inflation.

Ms. Rall stated that New Mexico ranks below the national fuel tax average, ranking eighth-lowest in combined fuel taxes and fourteenth-lowest in diesel tax. She also stated that New Mexico has seen a larger drop in the value of its gas tax than any state, except Alaska, over the last 20 years.

Ms. Rall outlined the traditional methods that states have used to generate highway funds. She explained that New Mexico employs a combination of user fees, including fuel taxes, vehicle registration and title fees and weight distance taxes on trucking.

Ms. Rall said that a few states are experimenting with changing how they tax fuel, rather than raising their current rates. Two approaches to a "variable rate" structure are being explored. Maryland and Vermont are now using a gas tax rate tied to an index of how the economy is performing. In another approach, Virginia has changed its gas tax to percentage of the cost as opposed to a flat tax per gallon. Ms. Rall mentioned that concern for the variable rate approach is that neither method is guaranteed to raise revenues in proportion to rising or falling construction costs. Ms. Rall added that Oregon is experimenting with a vehicle miles traveled tax. Oregon implemented a pilot program where residents volunteer to have the locations of their cars and trucks tracked by the state using a global positioning system. At the end of each month, the participants are billed for the actual miles traveled. The pilot program is limited to 5,000 vehicles.

Ms. Rall briefly discussed transportation financing methods such as public-private partnerships. She emphasized that though states are increasingly using those methods to preserve funds for transportation, those methods do not necessarily generate funds.

Subcommittee members asked questions about the possible insolvency of the federal highway assistance programs and the potential effect that this would have on New Mexico's highway projects. In response, Ms. Rall noted that some states are more dependent on federal funds than others. As an example, she stated that the Rhode Island highway program is highly dependent on federal funding and is making adjustments to its construction schedule accordingly.

Secretary-Designate Church noted that a key concern in New Mexico is the retirement of the GRIP debt. Currently, the federal apportionment of that debt is \$122 million a year. If federal funds are eliminated, the state's budget would be impacted.

A subcommittee member asked whether there is support for a Western States Transportation Alliance proposal to hold the states harmless if the reauthorization of the federal gas tax in 2016 is not reauthorized. Ms. Rall responded that the NCSL is tracking a number of states that have proposed or enacted their own "replacement laws" if the federal tax is not reauthorized. Ms. Rall also noted that the NCSL has a committee on MAP-21 reauthorization that might be an avenue to raise states' concerns to Congress.

Subcommittee members asked about the types of new gas taxes enacted by other states. Ms. Rall stated that four states have added a percentage of the retail cost to their gas taxes. She

said some of these states were indexing their fuel taxes to inflation. Wyoming opted for a straight increase in its cents per gallon tax.

There being no further business before the subcommittee, the meeting was adjourned without objection.