

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

**November 30-December 1, 2011
Room 322, State Capitol
Santa Fe**

The fifth meeting of the New Mexico Finance Authority (NMFA) Oversight Committee was called to order by Representative Patricia A. Lundstrom, chair, on November 30, 2011 at 9:19 a.m. at the State Capitol in Santa Fe.

Present

Rep. Patricia A. Lundstrom, Chair
Sen. Mary Kay Papen, Vice Chair
Rep. Alonzo Baldonado
Sen. Sue Wilson Beffort (12/1)
Sen. Stephen H. Fischmann
Sen. Howie C. Morales (11/30)
Rep. Jane E. Powdrell-Culbert
Rep. Debbie A. Rodella
Sen. Nancy Rodriguez
Rep. Henry Kiki Saavedra
Rep. James R.J. Strickler
Rep. Richard D. Vigil
Rep. James P. White

Advisory Members

Rep. Ernest H. Chavez
Rep. Anna M. Crook
Rep. David L. Doyle (11/30)
Rep. Mary Helen Garcia
Sen. Mary Jane M. Garcia
Rep. Thomas A. Garcia (11/30)
Rep. Rick Little
Sen. Richard C. Martinez
Rep. Andy Nuñez
Rep. Edward C. Sandoval
Rep. Sheryl Williams Stapleton (12/1)

Absent

Sen. Tim Eichenberg
Rep. Candy Spence Ezzell
Rep. Roberto "Bobby" J. Gonzales
Sen. Clinton D. Harden, Jr.
Rep. Yvette Herrell
Rep. Dona G. Irwin
Sen. David Ulibarri

Sen. William F. Burt
Sen. Lynda M. Lovejoy
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.)

Approval of Minutes

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

Staff

Doris Faust, Staff Attorney, Legislative Council Service (LCS)

Lisa Sullivan, Staff Attorney, LCS

Tom Pollard, Economist, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and written testimony are in the meeting file.

Wednesday, November 30

Representative Lundstrom called the meeting to order and welcomed the members and guests. In order to establish a voting quorum, Representatives Crook and Mary Helen Garcia were designated as voting members for the fifth meeting of the NMFA Oversight Committee.

Transportation Infrastructure Needs and Funding

Alvin C. Dominguez, secretary of transportation, informed the committee that the State Transportation Commission chair regrettably could not attend.

Secretary Dominguez distributed a handout and discussed the budget of the Department of Transportation (DOT). He said that for fiscal year 2013, the projected revenue estimates are almost \$19 million, or 4.5 percent, higher than the previous fiscal year's revenue estimates. He also said that the federal government will reduce its funding of transportation in the state in fiscal year 2013.

Secretary Dominguez stated that he would inform the committee at a later date about why the estimated revenues from vehicle registration and transaction fees would be lower in fiscal year 2013 than the previous year. In response to a committee member's question about why vehicle registration and transaction fees are listed as separate fees, Secretary Dominguez replied that the vehicle excise tax proceeds are paid to the general fund. Secretary Dominguez stated that he would support legislation for vehicle excise tax proceeds to go directly to the State Road Fund.

Committee members discussed with Secretary Dominguez the ways that road user revenues could be boosted. Secretary Dominguez stated that the State Transportation Commission is examining how to collect road user revenues in a better and more comprehensive

way. The committee discussed the necessity of improving the collection of road user taxes and fees, including weight distance fees from commercial vehicles. Secretary Dominguez agreed that much more revenue could be gained from weight distance fees that currently are not collected.

In response to the proposition that more fuel-efficient cars would lead to decreased gas tax revenues, committee members discussed with Secretary Dominguez the possibility that the gasoline tax in the state could be calculated as a percentage of the price of gas so that gasoline tax revenues could rise as the price of gas rises instead of remaining at the flat \$.18 per gallon tax that currently is collected.

Deputy Secretary of Transportation Paul Gray discussed the costs of maintenance activities, as listed on page 7 of the handout. Deputy Secretary Gray informed the committee that the DOT needs an estimated \$200 million to cover all maintenance gaps, which are listed on page 8 of the handout, including routine pavement, roadway and sign maintenance, pavement striping, pavement preservation, the chip seal program, emergency response, equipment replacement and repair and bridge maintenance. Deputy Secretary Gray also said that the DOT needs approximately \$314 million for construction gaps, which are listed on page 9 of the handout, to cover the costs of highway and bridge reconstruction and replacement.

Secretary Dominguez informed the committee about the major unfunded mega-projects and highway interchanges that are deemed necessary, including sections of Interstate 25; Interstate 40; Interstate 10; and U.S. Highways 491, 180 and 54, as listed on page 10 of the handout. He also pointed out the critical unfunded pavement preservation projects in Districts 1 through 6, as listed on page 11 of the handout.

A committee member noted that, in general, New Mexico's highways are in better shape than in other states. Another member asked about instituting toll roads, as there are in other states. Secretary Dominguez responded that the DOT has analyzed the costs and benefits of toll roads, but that estimates for New Mexico's largest city, Albuquerque, show that the state would lose money from converting to toll roads. Toll roads work only in cities with significantly larger populations, such as Houston and Dallas.

Secretary Dominguez stated that road projects are prioritized based on safety concerns. However, if a municipality offers to contribute toward a proposed road project, then the project could rise in priority.

Committee members discussed the possibility of using recycled tires for road construction projects. While the DOT does use a spray-on asphalt made from liquefied rubber to cover roads as part of maintenance, the facility in Phoenix that liquefies the rubber charges more for the small quantity that the DOT receives.

Border Authority — Job Creation Program; Budget; Public-Private Partnerships

William Mattiace, executive director, Border Authority, introduced fellow staff members Marco Herrera and Laura Shapiro.

Mr. Mattiace asserted that the Border Authority will not request an appropriation other than the annual agency budget request. His goal is to make the Border Authority self-sustaining in three years. A committee member suggested that it may be prudent for the Border Authority to request an additional appropriation for recurring costs that are on the books, of which Mr. Mattiace might be unaware, having served as the executive director for only a month.

Mr. Mattiace distributed a handout containing the Border Authority's budget. The Border Authority receives 31 percent of its operating income from parking lot fees. The Border Authority also receives \$500 per month in rent from the U.S. Department of Homeland Security.

Mr. Mattiace stated that while the state collects \$18.00 from cars entering the state from Mexico with Mexican products, the Border Authority does not receive any of that revenue.

Mr. Mattiace agreed with a committee member that it might be a good idea to consider collecting a fee for cattle crossings because approximately 350,000 to 400,000 cattle cross into the state from Mexico each year.

Presently, the Border Authority employs three staff members. The Border Authority is looking to employ a fourth staff member who is fluent in Spanish and has an engineering background.

Approval of Rules Governing the Administration of NMFA Co-Lending Activities Under the State Small Business Credit Initiative

Marquita Russel, chief of programs, NMFA, presented the NMFA's proposed co-lending rules. A motion for the NMFA Oversight Committee to approve the rules was made and seconded. The motion passed unanimously.

NMFA Options to Increase Economic Development

Rick May, chief executive officer, NMFA, distributed a handout dated November 20, 2011. He began his presentation by asserting that the lack of planning dollars is a fundamental flaw in how the state deals with infrastructure improvements. While the NMFA provides some planning dollars, it is not enough to guarantee the success of infrastructure improvements.

Mr. May stated that the two core initiatives of the NMFA are: (1) infrastructure programs; and (2) economic development programs. Ms. Russel stated that the NMFA offers advice about bonds and tax credits to help businesses navigate the finance system. Mr. May stated that, so far, no businesses have defaulted on loans provided by the NMFA.

Mr. May stated that the NMFA tries to have a flat budget, consistent with state agencies. Accordingly, three employees were laid off and two other positions remain unfilled. In a further effort to protect against deficits, the NMFA is looking to trim travel budgets.

Mr. May predicted that economic growth will be spurred by manufacturers and businesses that are eligible for certain tax-exempt bonds.

Mr. May said that the NMFA has done an analysis showing that more per capita dollars from the Public Project Revolving Fund go to rural counties. He added that the NMFA staff has worked hard on outreach in rural areas. In a couple of months, the NMFA will implement a new approach to improve outreach. A committee member expressed concern about the NMFA's ability to reach the most rural areas of the state. Mr. May stated that, by law, the NMFA may provide funding to qualified entities, which are defined as those political subdivisions recognized by the state. For frontier communities that are not defined as political subdivisions, the NMFA cannot provide loans. However, if regional areas could be combined into a larger entity to be recognized by the state, then the NMFA could reach those areas with funding. Representative Lundstrom directed the NMFA to coordinate with concerned committee members about improving outreach to rural areas before implementing the new approach.

Representative Lundstrom asked Mr. May to provide data on how many jobs have been created by NMFA-funded loans. Ms. Russel said more than 700 jobs have been created to date. When Representative Lundstrom asked for the methodology, Ms. Russel stated that the NMFA relied on a regression analysis by Rutgers University.

Water Project Fund Status Update and Project Approval Criteria, Process and Time Line

Jana Amacher, senior program administrator, NMFA, distributed two handouts. First, she covered a handout titled "Water Trust Board projects", showing that since 2002, 108 entities have received approval for 221 funding awards totaling \$228,145,667. The second handout, titled "Water Project Fund", described the Water Project Fund and the Water Trust Board and its processes. January 11, 2012 is when the Water Trust Board will meet to review the compiled list of water projects. The chair and co-chair inquired about whether the Water Trust Board could begin its cycle earlier so that the NMFA Oversight Committee could review the list of water projects by the last interim committee meeting. Representative Lundstrom suggested a motion to direct the Water Trust Board to provide the list of water projects to the NMFA Oversight Committee before the end of the interim. William Fulginiti, chair, Water Trust Board, stated that the Water Trust Board could try to make it a priority.

A motion was made and seconded for the NMFA to investigate appropriating \$200,000 from the Water Trust Fund to the Acequias Project Fund. The motion passed without opposition.

Minutes

A motion was made and seconded to approve the minutes from the October 2011 meeting. The motion passed unanimously.

NMFA Loan Activity Report

Matthew Jaramillo, director of government affairs, NMFA, distributed a handout titled "New Mexico Finance Authority Public Project Revolving Fund ("PPRF") Detail Listing of Projects — FY 2011-2012". Mr. Jaramillo stated that the interest rate received by a community depends on the state's median household income as found in census data. The handout shows that the interest rate varied from 0.031 percent on a \$152,250 loan in Otero County, of which \$135,000 consisted of "disadvantage funding", to 4.372 percent on a \$1,637,195 loan in Santa Fe County. Representative Lundstrom suggested an additional column showing how much money NMFA financing saved the community.

Mr. Jaramillo stated that the NMFA tries to close on loans within 90 days of NMFA board approval. Closing sometimes involves legal work.

The committee recessed at 3:18 p.m.

Thursday, December 1

The meeting reconvened at 9:10 a.m.

Colonias Infrastructure Project Fund Update

Doug Moore, chair, Colonias Infrastructure Board, made a joint presentation with Mr. Jaramillo.

Mr. Jaramillo said that the NMFA is taking over the administration of the colonias infrastructure program from the Department of Finance and Administration (DFA). The DFA implemented procedures for administering the program, which the NMFA will adapt for its purposes.

Mr. Jaramillo stated that the NMFA estimates that \$12.2 million will be available to use on colonias infrastructure projects in fiscal year 2012. Applicants for Colonias Infrastructure Project Fund money must fall within the federal definition of "colonias", which Mr. Jaramillo described as communities within 150 miles of the U.S.-Mexico border with 25,000 or fewer residents and that lack vital infrastructure such as running water, wastewater treatment and electricity. In addition, a community must have received a colonias designation prior to 1990 in order to qualify as an applicant. Mr. Moore estimated that, under those terms, there are about 150 colonias in the state.

Mr. Moore stated that no applications from colonias have yet been received. The Colonias Infrastructure Board seeks to approve applications for projects that are shovel-ready so that funded projects do not drag on or are not completed. While the board seeks to implement procedures for accepting or rejecting applications, it wants to stay flexible and help communities that lack organization to seek help but that need help the most. Some communities that are not organized may only consist of 30 families. Such communities may need organizational help from the counties in which they are located. In response to a committee member's question, Mr.

Moore stated that the board at its organizational meeting decided to help as many people as possible.

The Colonias Infrastructure Board is still developing the application process and procedures. Mr. Moore anticipates the following time line:

- (1) on December 3, 2011, the application committee will meet to discuss the application procedures and policy;
- (2) December 7, 2011 will be the close of the comment period on policy;
- (3) shortly thereafter, copies of the policy and application will be provided to the NMFA Oversight Committee;
- (4) on December 14, 2011, the policy committee will meet to review the draft language of the application;
- (5) on December 16, 2011, the policy committee should have a draft for the full Colonias Infrastructure Board to review;
- (6) on January 10, 2012, the last policy review committee meeting will take place;
- (7) on January 12, 2012, there will be an application workshop;
- (8) on January 13, 2012, there will be a full board meeting;
- (9) on January 30, 2012, the policy will be filed;
- (10) hopefully, shortly thereafter, applications will be taken;
- (11) ideally, the application round will close in March; and
- (12) hopefully, shortly thereafter, the Colonias Infrastructure Board will start selecting projects that are worthy and shovel-ready and that meet all of the statutory and procedural requirements.

Mr. Moore is concerned about being inundated with applications for projects that are not shovel-ready. One criterion for applicants is a commitment of 20 percent matching funds. Representative Lundstrom agreed that there needs to be comprehensive infrastructure planning by the community so that the funding can be used to build projects immediately and to completion, rather than being long-term construction projects. Representative Lundstrom requested that Mr. Moore provide a funding flow chart, which is particularly important if federal funds are to be leveraged. Representative Lundstrom also directed Mr. Jaramillo and Mr. Moore to provide the committee with a full report listing the state funds given to colonias, and the names of their recipients, from the time state funding for colonias began. Mr. Moore agreed to provide the committee with the list of applicants and awards and a description of the rationale for each award. Representative Lundstrom also requested that Mr. Moore and Mr. Jaramillo present to the House Appropriations and Finance Committee during the 2012 regular session.

Following a discussion about the existence of different colonias around the state, some of which are farther than 150 miles from the border, Senator Garcia informed the committee of two types of colonias: (1) colonias established in the 1840s in remote locations lacking infrastructure, such as utilities and roads; and (2) colonias developed more recently in border areas by unethical developers who sold lots with no available infrastructure. Some of the unethical developers did pay for some infrastructure following a lawsuit by then-Attorney

General Tom Udall. However, many of the colonias continue to lack infrastructure. According to Mr. Jaramillo, there is no further recourse against unethical developers who failed to provide infrastructure.

A committee member asked about helping the northern New Mexico community of Lumberton, which has 50 or fewer people, and has no potable water or electricity. Mr. Moore said that the purpose of the colonias infrastructure funds is to help extremely impoverished communities that cannot help themselves, balanced with the idea that it is not the role of government to solve everybody's problems and poor planning.

A motion was made and seconded for a letter to be sent to the state's congressional delegation to change the federal definition of "colonias" to include severely impoverished communities that are not within 150 miles of the border. The motion passed, with the opposition of Senators Papen, Fischmann and Rodriguez and Representatives Strickler and Mary Helen Garcia.

The committee discussed the diversion from the Severance Tax Permanent Fund of five percent of severance tax proceeds to the Colonias Infrastructure Project Fund and five percent of severance tax proceeds to the Tribal Infrastructure Project Fund. Some committee members were concerned about the solvency of the Severance Tax Permanent Fund. Senator Beffort said she wants to introduce a memorial to study the solvency of the Severance Tax Permanent Fund and the land grant permanent funds. She stated that those permanent funds are supposed to be there for residents' grandchildren and their grandchildren. Representative Lundstrom indicated that she would sign off on that memorial.

Spaceport Authority Legislation

Christine Anderson, executive director, Spaceport Authority, and Robert Desiderio, Sanchez, Mowrer & Desiderio, P.C., presented a discussion draft of the proposed changes to the Space Flight Informed Consent Act. Ms. Anderson indicated that the discussion draft was presented to the interim Courts, Corrections and Justice Committee and that all of its requirements were met. A motion was made and seconded to endorse the discussion draft of the bill, titled "Relating to Tort Claims; Expanding the Application of the Space Flight Informed Consent Act; Amending the Circumstances Under Which a Space Flight Entity is Liable Under the Space Flight Informed Consent Act". The motion passed without opposition, and the bill will be sponsored by Senator Papen.

NMFA Legislation

Senator Timothy M. Keller presented, along with Michelle Heff, founder and chief executive officer of the High Desert Discovery District, a discussion draft of proposed legislation that would allow the NMFA to apply to be designated by the federal government as a community development financial institution for lending purposes. Currently, the NMFA provides pre-seed money for businesses. Under Senator Keller's proposed legislation, the NMFA would provide funding in the form of equity or equity-with-debt features to businesses such as Ms. Heff's to commercialize research and development. Ms. Heff indicated that Mr. May agreed with the

concepts in the bill, but the NMFA board had not yet approved it. A motion was made and seconded to endorse the discussion draft of the bill, titled "Relating to Statewide Economic Development; Authorizing the New Mexico Finance Authority to Seek Certification to be a Community Development Financial Institution; Authorizing the New Mexico Finance Authority to Determine Eligibility for Certain Economic Development Funding". The motion passed with opposition from Representative Lundstrom and Senator Papen. Senator Keller will sponsor the bill.

Mr. May and Mr. Jaramillo presented the remaining NMFA bills.

A motion was made and seconded to endorse the discussion draft of the Public Project Revolving Fund bill, to which six school districts will be added as recipients. The motion passed and the bill, titled "Relating to Finance; Authorizing the New Mexico Finance Authority to Make Loans for Public Projects from the Public Project Revolving Fund; Declaring an Emergency", will be sponsored by Representative Lundstrom.

A motion was made and seconded to endorse the discussion draft of the Water Project Fund bill. The motion passed, and the bill, titled "Relating to Finance; Authorizing the New Mexico Finance Authority to Make Loans or Grants from the Water Project Fund for Certain Water Projects; Declaring an Emergency", will be sponsored by Representative Nuñez.

A motion was made and seconded to endorse the discussion draft of the Drinking Water State Revolving Loan Fund appropriation bill. The motion passed, and the bill, titled "Making an Appropriation for Drinking Water System Financing; Declaring an Emergency", will be sponsored by Representative White.

A motion was made and seconded to endorse the discussion draft of the Local Government Planning Fund appropriation bill. The motion passed, and the bill, titled "Making an Appropriation to the Local Government Planning Fund; Declaring an Emergency", will be sponsored by Representative Crook.

A motion was made and seconded to endorse the discussion draft of the bill that expands the purposes of the Local Government Planning Fund and removes the requirement that certain grants be repaid. The motion passed, and the bill, titled "Relating to the New Mexico Finance Authority; Expanding the Purpose of the Local Government Planning Fund to Include Infrastructure and Energy Audits; Removing the Requirement That Certain Grants be Repaid", will be sponsored by Representative Vigil.

Mr. May and Mr. Jaramillo also presented a discussion draft of proposed legislation that would allow the NMFA to receive a regular funding stream for indirect costs, in addition to the administrative costs it currently collects. The funding for the indirect costs would come from the five percent diverted from the Severance Tax Permanent Fund to the Water Trust Fund and the five percent diverted from the Severance Tax Permanent Fund to the Colonias Infrastructure Project Fund. Mr. May stated that the Water Trust Board incurs costs of \$750,000 per year, and that the Colonias Infrastructure Board is estimated to incur costs of \$300,000 per year. Those costs will not be covered by the current funding for administrative costs. Committee members expressed concerns about permanently transferring funds to the NMFA, a quasi-governmental entity, without legislative oversight over such a funding stream. A committee member suggested charging governmental entities, such as the counties in which recipient communities are located, for the boards' costs. A motion was made and seconded to table the bill, titled "Relating to Severance Tax Bonding; Authorizing the New Mexico Finance Authority to Recover Indirect Expenses of Administering the Water Project Fund and the Colonias Infrastructure Project Fund from Severance Tax Bond Proceeds; Providing for the Immediate Transfer of Severance Tax Bond Proceeds from the State Board of Finance to the Water Project Fund; Providing That Unexpended Proceeds of Bonds Issued for Water Projects Shall Not Revert". The motion to table the bill passed. Representative Lundstrom and Senator Papen requested that Mr. May and Mr. Jaramillo present the discussion draft, along with analyses from the DFA and the Legislative Finance Committee, to the House Appropriations and Finance Committee and the Senate Finance Committee during the 2012 regular session.

Adjournment

There being no further business before the committee, the fifth meeting of the NMFA Oversight Committee for the 2011 interim adjourned at 12:17 p.m.