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FISCAL IMPACT REPORT

	02/18/13		
	ORIGINAL DATE	03/11/13	
SPONSOR <u>SFC</u>	LAST UPDATED	03/13/13	HB _____
			CS/12/aSFI#1/aHJC/
SHORT TITLE <u>NMFA Changes</u>			SB <u>aHF1#1</u>
			ANALYST <u>Daly/Chabot</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General’s Office (AGO)
 New Mexico Finance Authority (NMFA)
 Office of the State Auditor (OSA)
 Department of Finance and Administration (DFA)
 New Mexico Environment Department (NMED)
 New Mexico Association of Counties (NMAC)

SUMMARY

Synopsis of HF1 Amendment #1

House Floor Amendment #1 to Senate Finance Committee substitute for Senate Bill 12 adds economic development and environmental sciences to the qualifying experiences to be a member of the New Mexico Finance Authority.

Synopsis of HJC Amendment

The House Judiciary Committee amendment to the Senate Finance Committee substitute for Senate Bill 12 as amended strikes Senate Floor #1 amendment requiring all members of the New Mexico Finance Authority to have no less than ten years experience in certain specified fields-- and restores the original language of the substitute, which requires the publicly appointed members (but not the secretary of the Department of Finance and Administration or the executive directors of the New Mexico Municipal League and the New Mexico Association of Counties) to meet that experience requirement.

Synopsis of SFI #1 Amendment

The Senate Floor #1 amendment to the Senate Finance Committee substitute for Senate Bill 12 requires all members of the New Mexico Finance Authority (NMFA)--including the Secretary of the Department of Finance and Administration (DFA) and the executive directors of the New Mexico Municipal League (NMML) and the New Mexico Association of Counties (NMAC)—have no less than ten years experience in the field of institutional investment, accounting, law, public finance, banking or public project planning or engineering.

As the NMFA notes, this change may have the unintended consequence of automatically disqualifying a Secretary of the DFA or an Executive Director of the NMAC or the NMML if at any point in the future the person holding one of those positions does not possess at least ten years' experience in one of the designated fields. In turn, that disqualification would lead to a vacancy on the Authority's governing body with no mechanism in place for a qualified replacement.

Synopsis of Original Bill

The Senate Finance Committee substitute for Senate Bill 12 (SB 12) amends several provisions of the New Mexico Finance Authority Act. It changes the composition of the NMFA governing body and proposes other changes to the internal operations of and methods by which the NMFA conducts its fiduciary and management responsibilities. The effective date of the bill is July 1, 2013.

FISCAL IMPLICATIONS

SB 12 does not impose a fiscal impact on the state general fund, nor does the bill impact the general operating budget of the NMFA.

SIGNIFICANT ISSUES

SB 12 makes these changes to the New Mexico Finance Authority Act:

- The governing body is composed of eleven members, including the Executive Directors of the NMML and the NMAC and the Secretary of the DFA, as currently provided by statute. In addition, four members are appointed by the governor, with no more than two from the same political party and one of whom must be a certified public accountant; two public members are appointed by the President Pro Tempore of the Senate, one from each political party; two public members are appointed by the speaker of the House of Representatives, one from each political party. All eight of these appointments require the advice and consent of the Senate. Each of these eight members shall have no less than ten years' experience in institutional investment, accounting, law, public finance, banking or public project planning or engineering, and shall not hold office or employment in a political party;
- Members are appointed to four-year terms, and vacancies are filled by the appointing entity. Members cannot be represented by designees;
- The chair is to be elected by the governing body from its membership (rather than appointed by the governor as under existing law);
- The governing body must meet at least quarterly, with a quorum of six members, and must provide an opportunity for public comment at each meeting. The minutes of all meetings of

the governing body must be approved in open session and maintained by its secretary;

- The governing body must name an audit committee from among its membership. Committee minutes must be recorded for all meetings and maintained pursuant to the provisions of the Audit Act and the rules of the state auditor. Audit committee members must be provided annual training related to their duties. At a minimum, the committee shall attend the entrance and exit conferences for annual and special audits, and shall meet with the certified public accounting firm performing the external financial audit at least monthly after audit field work until the conclusion of the audit;
- Members of the governing body and the officers, and employees of the NMFA are subject to the provisions of the Governmental Conduct Act, but an officer of a financial institution is not prohibited from participating as a member of the governing body in setting general policies of the NMFA or is the NMFA prohibited from depositing funds under the jurisdiction of the NMFA in any financial institution.
- Any member of the governing body that has been appointed by the governor, the president pro tempore of the Senate or the Speaker of the House is deemed to have resigned if that member misses three meetings in any 12-month period. They may be removed for cause in the same manner as members of the board of regents as provided by Article 12, Section 13 of the Constitution of New Mexico (allowing for removal for incompetence, neglect of duty, or malfeasance in office following a notice of hearing and the opportunity to be heard). Any resulting vacancy is filled by the appointing entity for the unexpired term only.
- The Authority shall provide no less than eight hours of orientation and training for new member regarding the mission, goals, strategic plans, operations, programs, and funds of the NMFA, and public entity finance and ethics.
- The governing body must develop an annual work plan and a staffing review analysis of authority staffing levels, training and adequacy. Both the annual work plan and the staffing review analysis must be provided annually to the New Mexico Finance Authority Oversight Committee; and
- After the state auditor releases an audit report and becomes a public record, that report shall be approved in an open meeting of the authority, and copies of it shall be presented in person by a representative of the firm who conducted the audit.

In addition, 12 contains a temporary provision in Section 3 that terminates the membership status of the Secretary of the Economic Development Department (EDD) , the Secretary of the Energy, Minerals and Natural Resources Department (EMNRD), the Secretary of the New Mexico Environment Department (NMED) and the Chief Financial Officer of a state higher educational institution on its effective date. The four public members appointed by the governor prior to that date shall remain members for the balance of their terms. The Speaker of the House and the President Pro Tempore of the Senate are directed to make their appointments subject to the criteria set forth in the substitute, and those new members shall determine, by lot, their initial terms of office, which are to be staggered from one to four years.

PERFORMANCE IMPLICATIONS

In an earlier analysis, the NMFA notes the prohibition against designees, which will allow the staff of the NMFA to provide the requisite training to members of the governing body only; it will eliminate the need to educate and train multiple members, which has caused confusion in the past. Due to the complexity of the various programs, the NMFA anticipates that, based on past efforts of the staff, the training it provides will exceed the minimum requirement. Additionally,

prohibiting designees will also allow for greater continuity in meetings of the governing body from month to month.

Further, the bill does not specify who is to conduct the required training for audit committee members. The Office of the State Auditor (OSA) has indicated that it holds annual trainings throughout New Mexico regarding the audit rules. The OSA has previously suggested the bill could require that the members of the audit committee, other members of the governing body, and top members of the NMFA staff attend one of those trainings.

TECHNICAL ISSUES

In an earlier analysis, the OSA suggested the bill require that after the NMFA's audit report has been officially released by the state auditor and becomes a public record, the independent public accountant who conducted the audit present the report to the governing body. In light of this recommendation, Section D of SB 12 might be changed as follows:

On page 9, the phrase that begins on line 24 with “presented” and ends on line 25 with “and” be stricken from that location and inserted at the end of line 22 following, so that the sentence reads: “After the audit report has been released by the state auditor and becomes a matter of public record, the audit report shall be presented in person by a representative of the certified public accounting firm and approved in an open meeting of the authority, and copies of the audit report shall be submitted...”.

OTHER SUBSTANTIVE ISSUES

The Attorney General's Office (AGO) notes in an earlier analysis that as a governmental instrumentality, the NMFA is already subject to the provisions of the New Mexico Open Meetings Act and NMSA 1978, Sections 10-15-1 through 10-15-4, which address the maintenance and approval of minutes. Thus, maintenance and approval of the minutes of meetings is already required by law.

An earlier analysis submitted by the DFA provides this background information regarding membership on the governing body:

At the time the NMFA was established, and due to the fact that the Governor is elected by all of the voters in New Mexico, it was intended that the board would be comprised of ex-officio members and other executive appointed members in addition to the NMML member and NMAC member. The ex-officio members have a clear channel of accountability back to the Governor and to the people of New Mexico for their actions and participation on the board.

Another reason the ex-officio members are represented on the board is due to the overlapping responsibilities that the cabinet secretaries share with the NMFA on many of the programs. For example, the EDD plays a crucial role in the administration of programs such as New Markets Tax Credits, Smart Money, and Collateral Support. The NMED works side-by-side with the NMFA on the Drinking Water Revolving Loan Fund and the Water Trust Board programs. These ex-officio cabinet secretaries have direct relevant knowledge and expertise and their representation on the board is essential in order to make sure these

programs operate efficiently and to promote a good working relationship between the state agencies and the staff of the NMFA.

The ex-officio members have significant responsibility both inside and outside of their respective agencies, and each participates on numerous types of boards, councils, and commissions. Although their representation on the board is important, it is vital that board members be allowed to send a designee to the meeting to participate on their behalf, either occasionally or as a matter of practice. This ensures that the requisite due diligence will be performed in assessing the issues facing the board and allows for the designee to brief the ex-officio on the actions of the board after the meeting.

The experience requirements imposed on board members by this legislation will restrict the pool of individuals who could be considered for open board positions. While experience is and always should be a key factor in selecting board members, experience in itself does not ensure that an individual will be a good board member. It is likely that there are a number of individuals whose background does not satisfy the requirements proposed by this bill who would serve very well on this board. This proposal would have the effect of removing qualified applicants from a talent pool which is already limited by the size of our population and its geographic dispersion.”

The NMED in an earlier analysis echoed the DFA’s comments concerning the benefits provided by having its Cabinet Secretary on the NMFA’s governing body.

The NMED also pointed to another provision of existing law governing the NMFA that exempts it from application of any other laws of the state unless the NMFA is specifically referred to in that law (see Section 2(Q) of SB 12), and questioned whether that language exempts the NMFA from New Mexico’s criminal statutes governing public corruption, since those criminal statutes appear to not expressly reference the NMFA in their definitions or other provisions.

Lastly, inasmuch as the proposed bill does not impact the current membership of the NMAC or the NMML, the Association offers no position on the bill.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The widely national and local publicized financial problems at the NMFA resulting from submission of a fraudulent audit are less likely to be prevented in the future if changes such as those contained in SB 12 are not addressed.

MD/blm:svb