

# Legislative Council Service

## Information Memorandum

DATE: April 1, 2019

TO: Raúl E. Burciaga

FROM: Amy Chavez-Romero

SUBJECT: EXECUTIVE OFFICE BUILDING

You have requested information on the background and laws pertaining to the construction of the Executive Office Building (EOB), which is a component of the Capitol Buildings Master Plan. The following memorandum is submitted in compliance with that request. Any opinions expressed are those of the author and do not necessarily reflect the opinions of the New Mexico Legislative Council or any other member of its staff.

### **EOB BACKGROUND**

In 2000, the Capitol Buildings Planning Commission (CBPC) adopted a master plan that included all state-owned facilities in the Santa Fe area. The plan compiled facility data for facilities owned and leased by the state in Santa Fe and assessed the conditions of the state-owned facilities. The master plan included alternatives, strategies and conceptual site development plans for the various state buildings in Santa Fe, including those located on the main capitol campus. The master plan provided recommendations for short-term priorities, which were implemented beginning in 2001. Since the plan was adopted, updates to the Santa Fe area plan resulted in:

- construction of the Capitol Parking Facility;
- approval and funding for the EOB and phase 1 of a health and human services complex;

- adoption of a five-year plan for the main capitol campus;
- a long-range development plan for the south capitol campus; and
- additional land acquisitions at the west capitol campus.

In a report by the CBPC in 2011, successful completion of the EOB was identified as an issue of particular concern for the CBPC and the master plan. The report stated that the EOB would provide an opportunity to achieve significant savings to the state by relocating constitutional officers (the state treasurer and state auditor) from leased space to the main capitol campus, thus reducing lease costs and redirecting federally funded and state lease payments for the funding of capital costs. Several goals were identified as part of the CBPC's five-year implementation strategy adopted in 2008 for the main capitol campus. They include:

- relieving overcrowding in the Bataan Building, the north capitol campus and the main capitol campus;
- completing existing building renovations and facility renewal projects;
- housing new occupants in the Bataan Building, including employees from the offices of the state treasurer, secretary of state (currently in Capitol North) and state auditor, plus employees from the Cultural Affairs Department and the Veterans' Services Department; and
- relocating agencies from leased space into owned space.

The CBPC identified construction of the EOB as the first component of the five-year plan.

### **FUNDING FOR THE EOB**

In 2009, the legislature passed a law intended to fund the design and development of the EOB. Pursuant to Laws 2009, Chapter 114, the legislature authorized the New Mexico Finance Authority (NMFA) to issue state office building tax revenue bonds upon certification by the director of the Property Control Division (PCD) of the General Services Department (GSD) of the necessity for bonds to enter into contracts for a design and build project delivery system for the EOB. The proceeds of the bonds were appropriated to the PCD for expenditure in fiscal year (FY) 2010 and subsequent fiscal years for the purpose of entering into contracts for a design and build delivery system "for the planning, designing, constructing, equipping and furnishing of a

new executive office building in the main capitol campus in Santa Fe". The limit on the total amount of state office building tax revenue bonds outstanding at any one time was increased from \$100 million to \$115 million.

The 2009 law also provided for an increase in a monthly distribution from net receipts attributable to the gross receipts tax to the State Building Bonding Fund, which is pledged to pay principal and interest on all building bonds issued pursuant to the State Building Bonding Act. However, that increased distribution would only become effective upon the date that is the *later of* July 1, 2011 or the first day of the month after the chief executive officer of the NMFA certifies to the secretary of taxation and revenue, the secretary of finance and administration, the Legislative Council Service and the New Mexico Compilation Commission that the distribution is needed to make debt service payments on the bonds issued pursuant to the 2009 law. The increased distribution has not gone into effect because that certification has not been made.

Reauthorized appropriations initially made in 2007 appear to have constituted another funding component for the EOB. Pursuant to Laws 2008, Chapter 83, Section 381, the legislature expanded the purpose of the unexpended balances of 2007 appropriations from the Capitol Buildings Repair Fund and from legislative cash balances to include initial planning and design for additional executive agency space. The time for expenditure for those appropriations was extended through FY 2012. Through a series of subsequent reauthorizations, funding was eventually extended through FY 2016. However, \$3.3 million, which appears to constitute most, if not all, of the appropriated amount, eventually reverted to the Capitol Buildings Repair Fund.

#### **STATUS OF THE EOB**

After passage of the 2009 legislation to provide funding for the EOB, the PCD certified to the NMFA that a need existed for the issuance of state office building tax revenue bonds to be issued in 2009. It further certified that the PCD was prepared to enter into contracts for a design and build project delivery system to plan, design, construct, equip and furnish the EOB. On July 23, 2009, the NMFA adopted a resolution to issue \$1,015,000 in state office building tax revenue bonds as part of its 2009B series.

By August 2009, through a competitive process, the PCD selected Wilson & Co. as the design consultant for planning and design criteria for a design-build delivery method for the

EOB. However, by December 2009, the state experienced a financial downturn, and Governor Bill Richardson issued an executive order requiring that several projects be "frozen". At its December 2009 meeting, the PCD informed the CBPC that the EOB was not identified by the governor as a project that required such action, and it had not otherwise been identified as a voidable project or as a project that had not been progressing.

In August 2010, the PCD reported that site selection and programming for the EOB had been completed. In September 2010, the PCD indicated that it received the programming report. At the November 2010 meeting of the CBPC, the PCD stated that challenges might arise in fitting the anticipated 52,000-square-foot building on the proposed site on Don Gaspar Avenue if the existing, adjacent casitas were to remain intact. At that time, the project was estimated to cost \$22 million.

The PCD reported to the CBPC in August 2011 that the EOB project was under way, with the beginning process of removal of buildings to clear the project site as the first step. However, in May 2012, the PCD explained that it was in the process of complying with the requirements of Section 3-22-6 NMSA 1978 regarding construction of state buildings within historic districts. In July 2012, the PCD reported that it was working with the City of Santa Fe to develop design parameters for the building. Over two years later, in August 2014, the GSD reported that the casitas, which would need to be demolished in order for the project to progress, had been upgraded to a "significant" historical designation by the City of Santa Fe.

In March 2015, a Legislative Finance Committee (LFC) staff report indicated that the EOB project had been delayed over several years and commented that the delays "may have provided the [CBPC] and the [governor's] administration time to re-evaluate these projects in light of the decrease in the state workforce and weak real estate market". The report further stated, "New information provided by the GSD Space Use study quantifies excess capacity within Santa Fe that may diminish the need for new buildings or reduce their size". At the August 2017 meeting of the LFC, its staff recommended voiding authorization for construction of the EOB until justification for use of the funds was submitted.

## POSSIBLE NEXT STEPS

Continued progress toward completion of the EOB will depend upon a variety of factors. First, based on the available records, it appears that negotiations with the City of Santa Fe with regard to the historic status and preservation or demolition of the casitas will require some resolution. One possible step toward resolution would include a report from the Facilities Management Division (FMD) of the GSD<sup>1</sup> to the CBPC on the latest discussions it has had with the City of Santa Fe with respect to this issue and on any other obstacles that might have stalled work toward the design and construction of the EOB. It might be helpful to obtain a report from the FMD as to whether pursuit of the EOB would still resolve space needs as previously identified in the master plan. It may also be advisable to obtain a report from the FMD with respect to any revisions that have been made to the cost estimate for the EOB over the past several years.

Securing funding for the EOB will also be a necessary component of the design and construction of the project. While legislation passed in 2009 to provide proceeds of state office building tax revenue bonds to finance the EOB project, the NMFA has only issued \$1,015,000 to date for the project. It would therefore be beneficial to obtain a report from the NMFA as to its current bonding capacity. The amount of the necessary bond issuance could also be affected by any changes to the estimated cost of the design and construction to the EOB, including any changes stemming from any design adjustments required to preserve the adjacent casitas, if such preservation is required. If the \$115 million statutory limit for outstanding state office building tax revenue bonds no longer covers the current estimated cost of the EOB project, that limit might require further revision by the legislature.

After these issues are addressed, pursuant to the law that passed in 2009 and that is still in effect, it would be possible for the director of the FMD to certify to the NMFA the need for the issuance of additional bonds for continued work on the EOB. At that point, the NMFA may issue the bonds and, if necessary, make the certifications necessary to increase distributions to the State Building Bonding Fund, as provided by the legislature in 2009. If the cost estimate for the

---

<sup>1</sup>The name of the PCD changed to "Facilities Management Division" in 2013.

EOB project has increased or the limit for outstanding state office building tax revenue bonds requires revision, then the statutory distribution to the State Building Bonding Fund might additionally require revision or additional financing options might become necessary.

- 6 -