MINUTES OF THE
NEW MEXICO STATE BOARD OF FINANCE

REGULAR MEETING
Santa Fe, New Mexico

January 16, 2013

A Regular Meeting of the New Mexico State Board of Finance was called to order by Lieutenant Governor Sanchez on this date at 9:00 a.m. in the Governor's Cabinet Room, Fourth Floor, State Capitol Building, Santa Fe, New Mexico.

1. ROLL CALL: QUORUM PRESENT

   Members Present:
   The Hon. Susana Martinez, President [arriving at 10:34 a.m.]
   The Hon. John Sanchez, Lt. Governor [leaving at 9:58 a.m.]
   The Hon. James B. Lewis, State Treasurer
   Mr. Robert J. Aragon, Public Member
   Mr. Michael Brasher, Public Member
   Mr. Sam Spencer, Public Member

   Members Excused:

   Legal Counsel Present:
   Mr. Zack Shandler, Attorney General's Office

   Staff Present:
   Dr. Thomas Clifford, Secretary of Finance & Administration
   Ms. Stephanie Schardin Clarke, Director, State Board of Finance
   Mr. Jeff Primm, Deputy Director, State Board of Finance

   Others Present:
   [See sign-in sheets.]

2. APPROVAL OF AGENDA
   Next Regular Meeting: February 19, 2013

   Ms. Clarke recommended several changes to the agenda. Mr. Chuck Gara of the
Property Control Division had a conflict later in the morning and asked to have item #11 moved up on the agenda.

Regarding item #6, Rio Rancho Public School District easements, Mr. Primm said he was still working through last minute document submissions. He explained this was an item that up until very recently had remaining legal sufficiency issues. Within the last few days the applicant had made substantial progress toward legal sufficiency and he believed the review would be finished very soon. However, the recently-submitted appraisal was not reviewed by the New Mexico Taxation and Revenue Department and staff needed to review documents that were received in the last couple of days. Staff could propose workable contingencies to approval, but the necessary contingencies would result in more extensive delegation of authority to staff than normal.

Mr. Primm questioned whether this agenda item might not beat a level of presedence to take action on and suggested that the board could inquire of the applicant what effect it would have to defer this item to the February meeting when perhaps no contingencies would be needed.

Ms. Clarke believed Governor Martinez would join the proceedings shortly and knew she wanted to be present for item #5. She asked the Board to skip over that agenda item until the Governor arrived.

Mr. Brasher’s inclination was to defer item #6 but agreed the Board should ask the applicants what impact that would have.

In response to Mr. Brasher, Ms. Charlotte Hetherington, counsel for the Rio Rancho Board of Education, said Mr. Al Sena, Executive Director for Facilities, would respond.

Mr. Sena said they were trying to get the project approved so they could move forward with it. They had a time table with PNM on their requirements, but their goal was to have it ready to operate with fine tuning prior to the start of school in August. Construction needed to happen early in the summer.

Mr. Brasher understood and felt a delay of 28 days would have no real impact on the project. Mr. Sena agreed.

Mr. Spencer suggested the Board could hear from them since there were present and get the information from them and then the Board could defer action, if needed.

Mr. Brasher moved to approve the agenda as amended with #11 moved up. Mr. Spencer seconded the motion, and it passed 5-0 by voice vote.
3. **APPROVAL OF MINUTES: December 18, 2012 (Regular Meeting)**

Dr. Clifford asked for a correction to the minutes on page 33, second paragraph, where a reference to Medicare should be to Medicaid.

Mr. Brasher moved approval of the December 18, 2012 minutes with that correction. Mr. Aragon seconded the motion, and it passed 5-0 by voice vote.

**EMERGENCY FUND BALANCES**

*Presenter: Stephanie Schardin Clarke, Director*

4. **EMERGENCY BALANCES – January 2013**

<table>
<thead>
<tr>
<th>Fund</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Reserve Fund</td>
<td>$618,987.87</td>
</tr>
<tr>
<td>Emergency Water Fund</td>
<td>$ 0.00</td>
</tr>
</tbody>
</table>

Ms. Clarke presented the balance of the Operating Reserve Fund and indicated that the Emergency Water Fund was depleted.

Mr. Spencer asked if the Board had received any water loan repayments in FY13.

Ms. Clarke said they received a payment from Blue Water, which came when they received their insurance claim.

Lt. Governor Sanchez recalled the Board’s discussion about requesting additional emergency money from the Legislature and asked if there was any progress.

Dr. Clifford said the Executive recommendation was for $3 million, and the LFC recommendation was for $2 million. DFA also requested an appropriation to fund repayment of DFA’s emergency loan for the finance system update.

**GENERAL SERVICES DEPARTMENT**

*Presenter: Charles Gara, Director, Property Control Division*

11. **Capitol Buildings Repair Fund Financial Status Report for Month-Ended November 30, 2012**

The report for the Capitol Buildings Repair Fund was in the electronic agenda and showed a balance of $1,210,347 of uncommitted cash at the end of November 2012. The balance of the monies was either committed or encumbered.

Dr. Clifford asked if the Property Control Division was planning to request utilization of some of those funds in the upcoming session.
Mr. Gara said no and explained that Dr. Clifford was probably referring to the Public Building Repair Fund. The fund being presented today provides for oversight of state building needs in Santa Fe.

PROPERTY DISPOSITIONS

Presenters: Alfred Sena, Facilities Director; Jam Attari, Vice President, AMSolar LLC; Charlotte Hetherington, Legal Counsel

6. Rio Rancho Public School District – Requests Approval of Grant of Two Easements of Real Property to AMSOLAR, LLC ($100 Annual Rent Plus Services)

Ms. Hetherington related that over a year ago Rio Rancho Public Schools (RRPS) issued an RFP for a solar voltaic facility. They received five responses and selected AMSolar LLC as the firm with whom to negotiate for solar facilities at both high schools. The facility would be constructed on school property and be integrated with the school electric service. The arrangement would save money relative to if each high school remained on the PNM grid and will also provide an educational component to each high school program. Since January 2012, RRPS and AMSolar have been negotiating two agreements: a Power Purchase Agreement (PPA) and the easement for locating the equipment on school property.

The PPA process was completed and approved in September. The school board approved the easement in November and filed their request for approval with the State Board of Finance in late November. December approval was not possible. So, it was deferred to this meeting. She thanked staff and Mr. Shandler for courtesies extended to them in fairly lengthy discussions about the PPA and why the easement was required. The Board’s staff had been diligent in getting their concerns communicated and RRPS has been diligent in responding.

The agreement requires use of 6-7 acres at each high school site. The locations were identified through fairly long discussions about facility needs assuring the locations wouldn’t interfere with future development at each site. AMSolar and RRPS agreed on the locations, which are the subject of the proposed 20-year easements consistent with the PPA. The schools will not need those sites for any other purpose during those 20 years.

Mr. Brasher asked staff what items they needed for sufficiency.

Mr. Primm said that if the Board wishes to approve this item, staff recommends that it be made contingent upon: (a) Director’s receipt, with counsel review inclusive of staff’s requested changes, of the final signed Easement; (b) Director’s receipt of and (d) Director’s review of verified legal descriptions contained in the Easements.

Mr. Primm said staff also recommended that the Board note that staff’s review for legal sufficiency was with the Easement. It is staff’s practice that if documentation of fair market consideration is found in supporting documents, we must review those
supporting documents as well, such as power purchase agreements and valuations of services being offered as consideration toward market value in lieu of monetary consideration. Staff’s review of the supporting power purchase agreement was limited to valuation issues, adequate consideration issues and issues associated with the term of the agreements. We provided voluntary changes regarding the substantive matters within the supporting documents, but the parties have the option to accept or reject these changes, and if the latter, assume the full benefits and risks in retaining their language.

Ms. Clarke asked if the parties had an appraisal or a market rental analysis.

Ms. Hetherington said what they received was characterized as an appraisal by John Howden, who was an MIA appraiser in Albuquerque, and she thought it was based upon a market value. She received it yesterday afternoon and had not done a detailed analysis.

Ms. Clarke said she had wanted to clarify this because the Property Tax Division will only review appraisals, not market rental analyses.

Mr. Primm clarified that it was a unique appraisal where the appraiser looked at cap rates in Santa Fe and Albuquerque for similar types of properties. The value created within the PPA in terms of savings between what the schools would be charged by PNM and rates under the PPA (PNM rates were projections) was assumed to be the revenue flowing off the property which, when divided by the same cap rate as was established by similar fee-simple properties, establishes fee-simple property value comparable to similar fee-simple properties. The approach seemed to be reasonable and was somewhere between a rental analysis and an appraisal. He felt the Property Tax Division should review it, but their comfort with reviewing this type of hybrid appraisal as well as their findings remains to be seen.

Mr. Brasher asked if this could all be done before the next Board meeting.

Ms. Clarke said she believed so but would defer to the parties. Part of the issue was that staff had not received and reviewed the final versions of several documents, but staff was assured the parties agreed to make the needed changes in it.

Mr. Spencer was curious why it was structured as an easement instead of a simple lease of the property.

Ms. Hetherington explained it was not an either-or choice. The easement seemed an easier way to deal with the location on school property where the facility would be established. An easement is simply an agreed use of property. Because of the RFP process there was an understanding that it would not be considered an area leased to generate income for the district so the easement concept seemed to be appropriate. A lease would also tend to assume a monetary return, and that is not the case here. The return is only the savings on expenses the school would otherwise pay to PNM. AMSolar is constructing the facility to offset the rates that RRPS would otherwise be paying.
Mr. Sena agreed it would be consistent with the easements RRPS provided to PNM when RRPS established a new facility. The utility would be similar in that process whether natural gas, water or electricity.

Mr. Aragon favored not taking action at this meeting given the fact that there was so much information needed by staff and considering the Board’s fiduciary responsibility.

Mr. Aragon moved to postpone action on agenda item #6 to the next Board meeting. Mr. Brasher seconded the motion, which passed 5-0 by voice vote.

Presenters: Michael A. Romero, County Manager; Glenn Gonzales, County Commissioner, Dusty Scobel, De Baca Family Health CEO

7. Guadalupe County – Requests Approval of a Lease of Real Property to De Baca Family Practice ($45,500 Annually in Cash and Services)

Mr. Romero said they were present to request approval of a lease between Guadalupe County and De Baca Family Practice (DBFP). The county is building a new 3,500 square foot dental clinic next to a two-year old hospital using a $500,000 Community Development Block Grant and sought a provider to run the dental clinic. Guadalupe County is rural and poor with 29 percent of population living below the poverty line who are largely underserved. The RFP specifically sought a federally-qualified provider that would have a sliding fee scale and a mandate to treat everyone regardless of ability to pay. Most private providers didn’t offer such service. DBFP already serves about 380 patients from Guadalupe County in their health clinic on a sliding fee scale.

The lease will allow DBFP to serve Guadalupe residents with a five-year lease with five additional five-year renewal periods. The market rental value is $45,500 per year initially. The lease requires a minimum cash payment of $1,800 per month for the first three years and then would be indexed based on actual numbers coming in. The lease also provides offsets to the cash payments with non-cash services where costs exceed what they are reimbursed. The lease is exempt from the state procurement code because DBFH has demonstrated consistent service to sick and indigent county residents.

Dr. Clifford asked if the Board had copies of the cost analysis of the lease compared with reimbursements.

Ms. Clarke referred to page 509 in the electronic agenda which showed Medicaid reimbursement rates for services to be provided under the lease.

Dr. Clifford asked how the cost analysis was done that compared the cost of providing those services compared with the cost reimbursement rates.

Mr. Romero said the Medicaid reimbursement rates varied from time to time. DBFH
did not always recover their costs with that reimbursement rate. The amount of cost not recovered by the reimbursement rates would be allowable as rent credit.

Dr. Clifford wondered how that would be audited and tracked.

Mr. Romero replied that the provider submits monthly statements with those visits itemized, and the County would review the monthly statements internally.

Dr. Clifford suggested they should be careful about the audit in those cost allocations.

Mr. Aragon asked how the lease arrangement would change if the reimbursement rates changed.

Ms. Scobel said the reimbursement rates would change over time. Reimbursement rates normally only changed on an annual basis.

Mr. Aragon asked if that would affect the lease. He had not found where those changes were anticipated and addressed in the lease.

Mr. Spencer asked if when the reimbursements didn’t meet the minimum requirements of the lease it would require further cash payment.

Ms. Clarke said staff had asked for change in the lease because the initial version didn’t ensure fair market value through the term of the lease. The $45,500 annual rent would be adjusted for change every five years based on the Producers’ Price Index for real estate.

Mr. Aragon said the cost of medical/dental attention was one area that was very unpredictable. So he asked if it really contemplated what would happen. They might find in five years the rate of increase would be astronomical because it is inconsistent with other inflation. The cost of services could go up to an amount that would be unmanageable. He just didn’t want the county to have to come back to ask for money to keep the doors open.

Dr. Clifford asked for clarification if there was a minimum cash payment and the rest was capped at a maximum under the lease.

Mr. Romero clarified they were working off of the fair market rental value which was independent of the reimbursement of those costs over time. The lease provided that if DBFP provided services in excess of the cap they could be carried over to the following year.

The county understood that Medicaid reimbursement rates would change and credit towards rent for services provided would also change based on future provider reimbursement rates. The county would use the indigent fund for people who qualified
for that program. However, for Medicaid, they would use the current reimbursement rate so the provider was covered and the fair market value so the county was covered.

Dr. Clifford asked if staff had seen such an arrangement in the past.

Ms. Clarke responded in the affirmative, and said that these types of arrangements are mostly for county-based medical service agreements.

Mr. Aragon asked if DBFP had enough personnel to staff this facility.

Ms. Scobel answered in the affirmative. That was a major concern but also this new facility would help attract dentists to practice there.

Mr. Aragon noted that some dental schools required in-state practice for students in underserved rural areas as part of their graduation requirements.

Ms. Scobel said that DBFP would have a residency area in the facility to work with UNM or other schools.

Mr. Aragon said the benefit was that it helped keep costs down and gave dental students needed experience.

Dr. Clifford asked if the county had any outstanding debt to finance this facility.

Mr. Romero said in addition to the $500,000 Community Development Block Grant, the county took a $700,000 US Department of Agriculture loan and pledged capital outlay gross receipts tax toward repayment. With the cash flow from DBFP, the county could easily make the loan payments. The county has two outstanding USDA loans, and they had just enough money to pay off the older $250,000 one. The debt service for that was a payment of $2,600, and the payment on the new one would be roughly $2,800. So the cash flow would remain just about unchanged.

Responding to Dr. Clifford’s question, Mr. Romero said the loan term was 40 years, but they might pay it off sooner since there was no pre-payment penalty.

Dr. Clifford’s concern was if for any reason the lease payment was not available that the county would have ability to pay it.

Mr. Romero said they did with the pledge of capital outlay gross receipts tax was the source of the $2,600 payment.

Mr. Shandler recommended that any approval be contingent upon Director’s receipt of evidence showing county’s approval of the final version of the lease and the Director’s receipt of the final signed lease. He thought the county’s commission was meeting next Thursday to consider it. Mr. Romero agreed.
Mr. Spencer moved to approve the lease subject to staff’s recommendation. Mr. Aragon seconded the motion, and it passed by 5-0 voice vote.

PRIVATE ACTIVITY BONDS

Presenters: Marcos A. Gonzales, Economic Development Manager; Skip Grodahl, DBG Properties

8. Bernalillo County – Requests Private Activity Bond Capacity Allocation for Silver Moon Lodge Affordable Housing Project ($8,000,000)

Mr. Gonzales presented the request for approval of the Silver Moon Lodge Private Activity Bond project in the amount of $8 million. The project was being developed by DBG Properties. Their investment would be approximately $8 million. Silver Moon Lodge would be a 150 unit worker housing project located at 10th and Park Avenue in Albuquerque. It would have 86 studio apartments, 64 one-bedroom apartments and one apartment for the on-site manager. This project would be for occupancy by those at or below 60 percent of the area median income. After construction, property management firm GSL Properties LLC would manage the property with four permanent jobs. GSL manages 12 other properties in Bernalillo County and three others within the state.

[Lt. Governor Sanchez left the proceedings at 9:58 a.m. and Mr. Brasher chaired the remainder of the meeting.]

Mr. Spencer said he understood there would be a retail component in this project.

Mr. Grodahl said there would be 4,200 square feet of retail space. They would like to have a restaurant there, but it could also be office space or something else. DBG Properties would make it available for retail space.

Mr. Spencer asked staff if that would impact the project.

Ms. Clarke said Mr. Primm had worked with the Board’s bond counsel and the county’s bond counsel on this question. Having the retail mixed with residential was not prohibited, and it was determined to be a de minimus amount.

Dr. Clifford referred the Board to the federal income thresholds mentioned on page 528 and quoted from it that 20 percent of the units would be set aside for those whose incomes were no more than 50 percent of median area income and 40 percent for those earning not more than 60 percent of median area income. He asked if those were requirements of the private activity bonds. Mr. Grodahl agreed.

Dr. Clifford asked if they were also applying for federal low income housing credits or other federal housing assistance.

Mr. Grodahl said they were through the New Mexico Mortgage Finance Authority.
and, in that respect, said they were going for 100 percent affordable units instead of just 60 percent affordable.

Dr. Clifford asked if he felt they would be eligible for the federal low income tax credit.

Mr. Grodahl responded in the affirmative. Project sources included about $3.6 million of equity on the sale of tax credits and $8 million from the tax-exempt bonds. The total sources were $12.6 million, including $1 million from the developer.

Dr. Clifford asked if mixed use was also compliant.

Mr. Grodahl said they were allowed up to 5 percent, and they met that spread. Mixed use was common and desirable in most urban projects. It would give more service for the residents. They viewed it as very desirable, and it met the requirements for tax-exempt bonds.

Mr. Gonzales said there had been no local city financing or exemptions locally to support the project.

Mr. Brasher asked what the underlying zoning limitations were for the commercial space.

Mr. Grodahl said it complied with commercial zoning requirements and believed it was in the 2010 Downtown Development Plan, which encouraged higher density development and favored the mixed use component. The project had been approved by the City of Albuquerque.

Mr. Brasher asked if liquor could be sold in the planned restaurant.

Mr. Grodahl thought that would be prohibited by the distance from the middle school and most likely would be a problem.

Mr. Brasher asked if there were any other restrictions on what type of facility could be in the commercial part.

Mr. Grodahl said he didn’t know the answer.

Mr. Brasher perceived the high density housing and living above retail space might not be helpful in the downtown where there were a number of other problems. So, he just wondered what uses they could make of that space.

Mr. Spencer said he wondered what they were paying for the tax credits.

Mr. Grodahl said they were paying 87 cents. US Bank was on the bond purchase and
Berkshire-Hathaway was on the equity so they had significant financial partners in the project.

Mr. Aragon moved to approve the request for the allocation. Treasurer Lewis seconded the motion, and it passed by 5-0 on a voice vote.

9. WITHDRAWN

STATE TREASURER'S OFFICE

Presenters: James B. Lewis, State Treasurer; Linda T. Roseborough, Chief Investment Officer


Treasurer Lewis introduced Ms. Marilyn Hill as the new Deputy Treasurer. She has had a long-time history working with Taxation and Revenue Department, Regulation & Licensing Department and Workforce Solutions Department.

Ms. Roseborough presented the portfolio investment reports for the month of November.

The portfolio yields for the month of November were 0.29 percent for General Fund Liquidity; 0.85 percent for General Fund CORE; 0.72 percent for Tax Exempt Bond Proceeds; 0.79 percent for Taxable Bond Proceeds; 0.22 percent for Local Government Investment Pool; and 0.28 percent for the Severance Tax Bonding Fund.

Investment earnings for the month of November for General Fund were $1.4 million and year to date earnings were $6.2 million.

Regarding fiscal agent bank balance credits, there was an informal agreement between the State Board of Finance and the State Treasurer’s Office that beginning in December STO would keep higher compensating balances with the fiscal agent. The target was raised to $125 million. The balance eligible for credit in November averaged $94 million. The higher balance would allow the state to take advantage of more attractive returns than available elsewhere and would offset fiscal agent fee expenditures for the Board.

Regarding investment compliance for November, there were no reported incidents of transaction variances or any violations of policy.
STAFF ITEMS
Presenter: Stephanie Schardin Clarke, Director

12. Adoption of Open Meetings Resolution 13-01

Ms. Clarke explained that the Open Meetings Resolution was adopted each year. There were no substantive changes this year. The notice requirements remained the same.

In response to a question from Mr. Brasher she clarified that the number of newspapers used for notification would remain at six.

Mr. Aragon moved to approve the Open Meetings Resolution 13-01. Treasurer Lewis seconded the motion, and it passed by 4-0 voice vote.

13. Adoption of Interest Rate Policy 13-02

Ms. Clarke said the Board approves this policy every January. There were no substantive changes from what was approved in the past. By statute, the Board is required to approve a policy each year regarding interest rates on investment of State funds. She attached a letter from the Attorney General to make the Board aware of conflicts of interest considerations.

Mr. Spencer said he would abstain from voting on this matter since his financial institution has public funds on deposit.

Mr. Aragon moved to adopt the Interest Rate Policy 13-02. Treasurer Lewis seconded the motion, and it passed by 3-0 on a voice vote with Mr. Spencer abstaining.

14. Election of Secretary of the State Board of Finance

Mr. Aragon moved to elect Mr. Brasher as Secretary of the State Board of Finance. Treasurer Lewis and Mr. Spencer seconded the motion, which passed by 4-0 on voice vote.

15. Fiscal Agent / Custodial Bank Fees

Ms. Clarke presented the fiscal agent billings through November. Custody bank invoices have not been received and are expected soon. She pointed out that the average balance with the fiscal agent has begun to increase. It was targeted at $70 million earlier in the fiscal year. She had worked together with staff of the Legislative Finance Committee and the State Treasurer’s Office to be able to take advantage of the 50 basis point credit offered under the fiscal agent agreement. That balance increased to $108
million in November and would continue to go up in December.

16. Board of Finance Dashboard Report

Ms. Clarke provided the dashboard report and highlighted several charts and tables including reserve levels, private activity bond issuances, and the age and balances of bond proceeds.

She announced that the FY12 DFA General Fund audit is at the State Auditor now and that it is expected to be released in the next couple of weeks.

Dr. Clifford said, regarding release of the General Fund audit, that the issue was cash remediation. In working with the independent auditor, the DFA has come up with a methodology for providing an approximation of potential liability in the General Fund. The independent auditor agreed with DFA that the methodology was appropriate for that purpose, and there were negotiations going on between the independent auditor and the state auditor.

Mr. Spencer asked if the project was still moving forward to resolve that issue.

Dr. Clifford responded in the affirmative. They discussed it extensively yesterday with the House Appropriations and Finance Committee, with the Treasurer, and the State Auditor. DFA was continuing with the remediation project and is already conducting training sessions with most state agencies on what they needed to do for their business practices to be compliant going forward. It was a huge challenge. The State Treasurer needed a new system, and to implement that they needed an upgraded system within SHARE. They would request appropriations for both during the session.

The State took on a major system in SHARE, but never staffed it properly for support. So now the State was trying to migrate the software to new servers and recently SHARE was down for a week due to corruption of data. Financial records have never been archived. That was a straightforward step to move to a new server. It took 36 hours just to figure out what part of the data was corrupted. There was a great deal of risk with the SHARE system right now. They needed cabinet support and legislative support to get it through because it was critical.

Treasurer Lewis added that these were not new issues and gave a brief overview of the history of SHARE, which was installed in 2006. It had a treasury module, but that was never activated. Former State Controller Anthony Armijo had an IT Committee that talked about all of those unreconciled items and used to report how it was working. They were trying to get back into those things now. Implementation of the treasury module would hopefully allow the State Treasurer’s Office to integrate back into the SHARE system.
Dr. Clifford reported that Representative Lucky Varela had expressed two major concerns at the previous day’s House Appropriations and Finance Committee meeting. One was why there was such a large potential liability—at $70 million recommended in the DFA General Fund audit—and secondly how they were out of compliance with the appropriate statutes and regulations. Remediation had included careful review of the statutes and policies and had been very enlightening. The statute itself needed to be updated as well. They needed a comprehensive understanding of the software before they could update the statute. Those processes needed to be driven by accounting principles. But they simply did not have the information to get that so they have this large contingent liability.

Dr. Clifford asked if the Board thought it would be useful to direct communication to the Legislature on the software and SHARE upgrade, which was also central.

Mr. Spencer said he thought so. The legislators needed to know how important it was to balance the books. He asked if the State could balance the books going forward.

Dr. Clifford said it was not possible now, but he hoped to be able to by the end of the fiscal year.

Ms. Clarke agreed it was appropriate to communicate with the legislature or legislative leadership how important that requested funding was.

Dr. Clifford noted Ms. Christine Boerner was here from the Legislative Finance Committee and he was not sure whether the LFC recommendation included an appropriation for the Treasurer’s software upgrades.

Ms. Boerner confirmed it was included. For the $8.8 million to DOIT, she said the LFC didn’t have that request.

Dr. Clifford thought it would be a useful communication for the Board’s consideration.

Mr. Brasher asked what the cost was when SHARE was purchased. Dr. Clifford thought it was about $20 million.

Mr. Brasher asked if the modification needed to interface with the other systems was being documented.

Treasurer Lewis said in his staff, IT was one person who was part of this team. It had been about a year now since it was recommended. Appropriate training was needed on how things were supposed to work. So they had these things that didn’t work.

[Governor Martinez joined the proceedings at 10:34 a.m. Mr. Brasher continued to chair the meeting at the request of Governor Martinez.]
Mr. Spencer moved to request staff to draft a letter communicating the Board’s concern and support for the appropriate resources being allocated to DFA and the State Treasurer’s Office for information technology upgrades for SHARE. Treasurer Lewis seconded and it passed by 5-0 voice vote.

Dr. Clifford suggested that it would be helpful in the dashboard’s section on unspent bond proceeds to see the time series by bond type in to determine how well they were moving those monies.

Ms. Clarke agreed to provide that information for the next meeting.

GENERAL OBLIGATION BONDS

Presenters: David Buchholtz Brownstein Hyatt Farber Schreck, Bond and Disclosure Counsel; Pamela Laucks, Financial Advisor; Fiscal Strategies Group.

5. Approval of Notice of Sale Resolution and Form of Preliminary Official Statement, General Obligation Bonds Series 2013

Mr. Buchholtz introduced himself as the Board’s Disclosure Counsel and also acting Bond Counsel.

He said the first step in moving toward the issuance of General Obligation Bonds was that the voters approved projects totaling about $140 million at the November election. He was present today to discuss calling for bids and to brief the Board on the preliminary official statement.

The resolution called for bids for the GO Bonds because they were subject to a public bids procedure. The document set forth the announcements, the amounts, and how and when bids would be received. He clarified that call for bid looks like $126 million instead of $140 million. The practice of the marketplace lately was to have the coupon interest rate around 5 percent and that was obviously higher than the going interest rate on the obligation. So, when bids were made on a 5 percent rate they were accompanied by a significant upfront premium on the principal amount. The Board’s financial advisor had estimated the premium at around $12 to $14 million. Because the projects were authorized at certain amounts, if the government were to receive premium in excess of the amounts authorized, that premium could not be used for projects. The financial advisor therefore advised that the bid itself come out of a number that was lower than the $140 million with an expectation that the total proceeds from the sale would be about $140 million.

He said had been working with staff on vetting of the projects and understood that, although there were a few open items, they were ready to go forward with the bond to cover all the projects authorized by the legislature.

There was a contingency that Dr. Clifford alluded to, which was release of the
General Fund audit by the State Auditor. The Preliminary Offering Statement wouldn’t be published until the audit could be attached. It is hoped that the audit will be released around January 31 with a contingency of a few days. If the audit was delayed into February, he would come back to the next meeting to report on it.

Mr. Buchholtz proceeded to discuss the form of preliminary official statement (POS). He summarized his company’s responsibility in the POS, the responsibilities of Board, the activities of staff, and the nature of the process. The latest draft of the POS was distributed yesterday. Brownstein was the primary drafter of the POS with the information provided by a large working group. There were more than 20 people on the team drafting the POS. The group met at least twice before sending the document to the public.

Mr. Buchholtz continued that the POS makes disclosures about the bonds. The full faith and credit of the state stands behind these bonds. As a financial matter, the state was obligated to collect property tax solely to pay its GO Bonds. The levy is determined by the amount of the bonds outstanding. And if the Board approves the resolution the Board would be approving the form for the POS subject to review of the Board, staff and his firm and receipt of the audit. He expected all of that to occur at the next meeting on February 19 where they would have the final document related to the sale itself and he would advise the Board of any late coming events.

In recent years, the SEC took action against some government entities because the Board must participate on the disclosures. The Board is responsible to ask questions about the POS or say something if they knew something in it was wrong. The Board must work with its disclosure counsel on addressing any concerns they have about the POS. He listed some of the actions that should be considered in the disclosure process including staff training, focusing on the big picture, etc. He recognized every bond issuer was facing unusual financial conditions and they worked with the Board and made their due diligence. Staff provided controls for disclosure. Various conversations were had with state employees to craft disclosure items in the POS.

He asked the Board to carefully review this document, particularly the part related to property tax payments and rates.

He described a temporary delinquency recently on payment of one series of severance tax bonds. It was a series of bonds that had been refunded and therefore had a different payment source than the regular severance tax payments (from an escrow account at a bank). There was an oversight on repayments to the agency that receives the payments and as soon as it was discovered it was paid so there were no present delinquencies. But the SEC rules required that in such an event of delinquency that disclosure be made. Disclosure was promptly made and to his knowledge there was no reaction from the marketplace on that disclosure. He assured the Board his firm would monitor the materiality of that disclosure in the future.
Mr. Aragon noted that two issues arose as he reviewed the POS and said he had called Dr. Clifford about 10 days ago about how the POS might be impacted by the current work of the Legislature regarding the Educational Retirement Board (ERB). Last May, the Board had discussed the fact that it is an unfunded liability of the State. He asked if there had been any fiscal impact statement done on the proposed changes to ERB and how that might impact disclosures necessary in the POS.

Mr. Buchholtz said they had regular meetings with ERB, the Public Employees Retirement Association (PERA) and the Retiree Healthcare Authority. On the PERA side, they were watching SB 26 and SB 27. Every day they were looking for introduction of bills on the ERB side. They would make disclosure about the substance of that legislation. However, the POS was likely to be published before any decisions were made by the Legislature. His firm would monitor the document daily to make sure the disclosures were consistent. They would watch for a fiscal impact study for those bills. None had been posted yet.

Mr. Aragon said he brought that up because of statements made at a previous Board meeting on significant unfunded liabilities at PERA and ERB. He wasn’t sure the legislation proposed by ERB would make any change to ERB’s unfunded liability. It was another example of kicking the can down the road without any remedies. He believed the only real resolution would be to get away from the defined benefit retirement plan and go to a defined contribution plan. He understood the unfunded liability across the country was about $3 trillion to $4 trillion in public retirement plans.

Dr. Clifford said he was not fully informed on the details of unfunded liabilities. That information should be available from the respective associations. The fiscal impact reports might not be out yet on those bills and likely were still being prepared. He was certainly concerned that the ERB bill did not go very far to improve the unfunded ratio. He would like to see what PERA does and hoped it would go further. He assumed the disclosure would follow the guidelines of GASB requirements and those of the rating agencies for disclosure.

Mr. Buchholtz agreed. He explained regarding the payment source of these bonds that they were the general obligation, full faith and credit bonds. But unlike many states that just put out a statement, New Mexico’s constitution requires a levy of property taxes to pay these bonds so they have their own unique source of payment. So while the disclosure of the pension was material to the health of the State, the bond holder has a level of assurance that the bonds would be covered by levy of property tax. There was no such assurance with the PERA and ERB obligations although there might be an untested provision of the constitution related to a requirement to make those payments. So disclosure was required but it wasn’t the same as the assurance to the bond buyer.

Mr. Aragon recalled that an issue raised by the directors of ERB and PERA was that the liability didn’t matter because the constitution mandated that regardless of the funds’
fiscal soundness. He disagreed with that interpretation but it still had to be decided.

Mr. Buchholtz said from a legal perspective his firm had the responsibility to help the Board determine materiality and thought they would get there in describing the facts and the circumstances. They would consider any fiscal impact report in that effort and would disclose the effect to the market.

Ms. Laucks said Mr. Aragon pointed out the magnitude of the pension debt. In fact, it was six times the amount of the state’s tax-supported debt nationwide so this problem was not unique to New Mexico. GASB was beginning to require these unfunded liabilities to appear on state balance sheets. Moody’s also announced their intention to use the discount rate in their analysis, to call for the liabilities to show on state’s balance sheets, and also review the valuing of the assets so that smoothing techniques would not be used.

All of that was in the works and Moody’s announced that they were trying to adjust their debt ratios and matrix to incorporate pension debt. But it was probably not relevant to this financing primarily since this financing is secured and segregated. It doesn’t fall into the General Fund and is very protected and secured. The state’s greatest credit attribute now is the administration’s dedication to those reserves and keeping them at about 10 percent. New Mexico has a lot of credit strength but is not unique in facing this pension debt problem.

Treasurer Lewis noted they had Robert Attmore, President of GASB, testify a month ago to legislators and he wanted to bifurcate the issues. GASB was looking at the accounting, not funding. The rating agencies were talking about what they would use. Moody’s put out their suggested regulation they wanted to use. The National Association of State Auditors, Comptrollers and Treasurers were challenging that and didn’t think that was what they should be doing. He recalled the debacle with rating agencies in 2008 over junk bonds. The other issue being faced today was the accounting for it. A certain amount of ‘unfunded liability was on the state, but also some from local governments. He said he was concerned with trying to comply with different approaches prescribed by Moody’s, GASB and others all at once.

Mr. Spencer asked Treasurer Lewis if with the unexpected retirement and other personnel events that had led to a delinquent interest payment, whether he was making any changes to strengthen internal controls.

Treasurer Lewis said he was looking at internal controls and he agreed this was unacceptable and should not have happened. When he was informed of the delinquency he was very concerned. He had just hired a compliance officer who was looking at the processes. By statute, each state agency has a CFO who was supposed to be looking at processes to make sure they were working as they were supposed to. They just hired a new Deputy Treasurer with a strong auditing background and with the Chief Investment Officer would follow up. The person who left had a lot of institutional knowledge and
was no longer available and they were now doing a comprehensive review of all
positions.

Treasurer Lewis accepted full responsibility in the refunding issue and would be
making a full report in the next few days. He expressed concern that his agency may not
have the luxury of cross-training key staff members due to lack of resources as well as
rigid employee duties.

Mr. Buchholtz reported that while they were preparing this POS they were also
drafting the required Annual Financial Information Filing that would be filed at the end
of January. It largely mimicked the information in the POS. That document may be filed
with unaudited financial statements if necessary, unlike the POS.

Mr. Brasher asked about consequences for the late interest payment.

Mr. Buchholtz said they had an obligation under continuing disclosure obligations to
disclose the issue. The SEC requires that underwriters receive a continuing disclosure
undertaking from governments to market bonds. The first required disclosure element on
that list was payment delinquency. Since the payment was due on January 2 and not made
until January 8, it was a delinquency even though it was just a technical oversight and
had nothing to do with not having sufficient funds to make the payment.

Mr. Brasher asked then if it was a timely response with disclosure to which Mr.
Buchholtz agreed. The rule allows 10 business days to disclose, which would have been
yesterday. His firm learned of the late payment on January 10th and made the disclosure
on January 14th, so the disclosure notice was made within the time limit.

Mr. Brasher understood that we have now met our disclosure requirements, and asked
if there were any ramifications to New Mexico as a result of that late payment.

Mr. Buchholtz was uncertain about that. To his knowledge there had been no
response from the marketplace. There was a question about additional payments that
would need to be made, which he believed would only be an "interest on interest" amount
and which he estimated to be a couple hundred dollars. No one had asked for that money
and it was possible no one would, but they could.

Dr. Clifford asked if that would be an authorized use of severance bond fund monies.

Mr. Buchholtz said he didn’t know but agreed to research that.

Ms. Laucks said after security of the bonds and likelihood of ability to repay the
bonds, the rating agencies look to the state of affairs of the government and how the
affairs are managed. This is a AAA credit and this was an unusual event for that level of
credit. There have been a couple of events in New Mexico in the past year. She wouldn’t
speculate on any other ramifications to the State, but they would find out at the end of
January when the credit is discussed with the rating agencies. She reminded the Board that rating agencies looked at all aspects including the behavior of the government.

Mr. Brasher asked if the State was in default on the bonds during this period.

Mr. Buchholtz preferred not to use that term, but just to say there was a payment delinquency. And to the extent there was a default, it was cured by the payment.

Dr. Clifford asked how long the State had to disclose this and whether it was only related to those particular bonds or something that would remain.

Mr. Buchholtz explained that if the disclosure had not been made timely there would be need to disclose it for five years. But it just happened and the disclosure was made timely and he didn’t believe they had any five-year requirement. But he believed it did need to be disclosed now because it is material as a current event.

Mr. Brasher said he thought the disclosure was a narrative that described the special circumstances that happened. He understood this to be a clerical anomaly.

Mr. Buchholtz said the disclosure made to date was very simple. They disclosed that an event occurred. Nothing more was necessary from a technical point of view but he thought in the POS they could consider the benefits and burdens of further disclosure in explanation. But the Board with staff would have to decide if that would be beneficial to the State. That discussion was not required.

Mr. Spencer thought it was an anomaly and the Treasurer’s office was taking steps to make sure it didn’t happen again. He asked if it would be useful to this Board to document the steps that were being taken to avoid a reoccurrence and discuss whether this Board needed to continue to disclose that.

Mr. Buchholtz agreed that would be helpful and not harmful. He suggested such a discussion might occur in June if the Legislature authorized another severance tax bond offering.

Governor Martinez suggested since there was a State Treasurer’s Office informational presentation each month that the Board could hear about internal control progress in future meetings and decide if they were satisfied with those steps. Mr. Buchholtz agreed.

Mr. Aragon asked if the Board might be dealing with legal ramifications here if it was deemed to be a breach of contract.

Mr. Buchholtz said that was why he said he wasn’t prepared to say there was a default.

Mr. Aragon asked if it might be a legal issue that the Board would need to discuss it
in executive session.

Mr. Shandler stated that he believed there must be actual or threatened litigation and he hadn't heard of any actual or threatened litigation in this matter, so his opinion was that this would not qualify as a reason to hold an executive session pursuant to Section 10-15-1H(7).

Mr. Aragon asked that they proceed cautiously.

Mr. Brasher clarified there were two actions that could be considered but the primary action was on approving the notice of sale resolution.

Ms. Clarke said the motion would be to approve the resolution and the form of the Preliminary Official Statement.

Mr. Aragon moved approval of the Notice of Sale Resolution and Form of Preliminary Official Statement, General Obligation Bonds Series 2013. Treasurer Lewis seconded the motion and it passed by 5-0 on voice vote.

Governor Martinez moved that the Treasurer’s Office monthly report include a comprehensive review on internal controls and progress from now until June or until the Board is satisfied that those reports are no longer needed. Mr. Spencer seconded the motion and it passed by 5-0 on voice vote.

17. Joint Powers Agreement

Ms. Clarke read the Joint Powers Agreements into the record.

Member Brasher requested that the Board have a discussion about the Board’s minutes at some future meeting. Ms. Clarke said she would add this topic as an informational item at the next meeting.
ADJOURNMENT

The meeting, on motion by Governor Martinez and second by Mr. Aragon was adjourned at 11:27 a.m.

Susana Martinez, President

2-19-13
Date

Michael Brasher, Secretary

Date