MINUTES OF THE
NEW MEXICO STATE BOARD OF FINANCE
REGULAR MEETING
Santa Fe, New Mexico
December 18, 2012

A Regular Meeting of the New Mexico State Board of Finance ("Board") was called to order by Governor Susana Martinez 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
The Hon. John Sanchez, Lt. Governor
The Hon. James B. Lewis, State Treasurer
Mr. Robert J. Aragon, Public Member
Mr. Michael Brasher, Secretary
Mr. Sam Spencer, Public Member

Members Excused:

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

Staff Present:
Dr. Thomas E. 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

Ms. Clarke recommended one change to the agenda. Item #25, banking fees, is informational but there were no new invoices to report at this time so it should be shown as deferred.
Treasurer Lewis moved to approve the agenda as amended. Mr. Spencer seconded the motion, and it passed unanimously on a 6-0 voice vote.

3. **APPROVAL OF MINUTES**: November 26, 2012 (Regular Meeting)

Treasurer Lewis moved to approve the minutes of November 26, 2012 as presented. Lt. Governor Sanchez seconded the motion, and it passed unanimously on a 6-0 voice vote.

4. **APPROVAL OF MINUTES**: December 5, 2012 (Special Meeting)

Treasurer Lewis moved to approve the minutes of December 5, 2012 as presented. Mr. Spencer seconded the motion, and it passed unanimously on a 6-0 voice vote.

**EMERGENCY FUND BALANCES**

**Presenter:** Stephanie Schardin Clarke, Director

5. **EMERGENCY BALANCES – December 2012**

- Operating Reserve Fund: $805,579.57
- Emergency Water Fund: $0.00

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

**EMERGENCY FUNDING REQUESTS**

**Presenters:** Paula Garcia, Chair, Mora County Commission; Thomas Sanchez, County Manager; Betty Casado, Emergency Services Director

6. **Mora County – Requests Emergency Funding for Ambulance Services**

($54,667.67)

Ms. Garcia said this was an emergency request for ambulance services. Mora County is operating with very limited resources. In the last several months, Mora Valley Health Services has had financial difficulties and asked the County to increase revenues. Voters approved an increase in tax revenue, but the nonprofit still notified the county they would no longer provide ambulance services. In order to have the County provide the service, it would take six months to get approval to bill Medicaid and Medicare and the County would be able to get it going but they had a funding gap. The County would also go to the legislature for a special appropriation. The funding gap request was for the Board to help for the first four months of operation, starting January 1. The amount is four months of
operating costs or 4/12 of the total annual budget of $164,000 which was based on the average cost for the last five years.

Dr. Clifford asked if the $164,000 was net after reimbursements from other sources and Ms. Garcia answered in the affirmative.

Responding to Mr. Brasher, Ms. Garcia said the county’s request for licensing was being considered by the Public Regulation Commission and the county been assured the license would be approved by January 1st.

In response to Treasurer Lewis’s question about whether the county has qualified personnel to operate the ambulance, Mr. Sanchez agreed and said that the PRC required licensed personnel and a license to operate. It was made simpler because they planned to transfer the license from Mora Valley Health Services to Mora County and using the personnel already licensed.

Mr. Spencer asked if any money from Mora County was available.

Mr. Sanchez said the County had looked for money but right now had only about $40,000 available at mid-year with expectations that solid waste, the sheriff and corrections could run in the red by year end. Their costs were unpredictable so they needed to save as much as possible for the end of the year.

Lt. Governor Sanchez asked if the county’s request was for a loan or a grant.

Ms. Clarke said the county had requested support as a loan. She had analyzed the county’s financial condition with the assistance of the Local Government Division. Local Government Division analyst Susan Rodriguez’s analysis was shown on page 65 of the electronic agenda. Local Government Division requires a three-twelfth reserve ($417,400). The County now has $466,000, which exceeds the required reserve by $48,500. Prior Board loans have required spending down to the reserve amount which here would then amount to a loan of $6,068. However, the County’s reserves are tied up in CDs, so she recommends approving the full request but requiring it be paid back by March 6 soon after some of the CDs will mature.

Mr. Shandler said staff also recommended that approval of the request be contingent on Director’s receipt of Mora County’s receipt of licensure to operate an ambulance from the PRC.

Mr. Spencer asked if the PRC’s approval would be completed in time.

Ms. Garcia said the Commission assured them it would.

Governor Martinez understood the PRC committed to an expedited hearing in a timely manner to meet the Open Meeting Act requirements.
Lt. Governor Sanchez asked if the County could meet that contingency.

Mr. Sanchez thought it was possible and there was no reason to suspect otherwise. The Mora County Treasurer and Finance Director were a little leery about cashing the CDs out now.

Mr. Aragon asked if the PRC license was a Certificate of Public Convenience and Necessity (CCN). Mr. Sanchez agreed.

Mr. Aragon pointed out that the statute on CCN mandated a specific process and asked if the application had met its first due diligence review by PRC staff in order to publish notice for a CCN.

Mr. Sanchez said he wasn’t sure. He explained that this was not a new license but just a transfer of license. The PRC staff he spoke with did not mention anything like that to him.

Mr. Aragon explained that the CCN required a publication in a newspaper or other publication with general circulation so other ambulance carriers could respond. That required a 30-day notice and if it has not been publicized, it would probably be mid February before they could have a hearing in which anyone could object to the transfer. He asked if the Board was going to approve a loan without assurance that a license would be achieved. The questions needed to be answered to avoid unnecessary encumbering of state funds that the county might not be able to use.

Governor Martinez restated that Board approval would be contingent upon approval of the CCN and license and subject to repayment in March.

Dr. Clifford suggested perhaps Ms. Rodriguez could help explain her analysis. On page 65, it showed that Mora County began the year with about $527,000. After adding projected revenues of $1,670,000 and subtracting projected expenses they were left with an estimated balance of $466,000 which exceeded the $417,000 required by about $48,000. But in looking at the first quarter their actual revenues were only $200,000 with expenses of $531,000. It was a severe imbalance and he asked if they were expecting a significant increase in revenue later in the year.

Ms. Susan Rodriguez explained that imbalance was due to the timing of property tax revenues.

Dr. Clifford asked if she was comfortable with those projections and she agreed.

Dr. Clifford noted at the bottom what the impact would be if they had to repay the loan of $54,668 out of their available cash when CDs mature. That impact would be a $6,000 negative impact on their fund balance.
Ms. Clarke agreed and clarified her earlier statement. She said if the county repaid the loan entirely in March they would be under the reserve margin by $6,000 so she recommended Mora County repay $48,600 by March 15, 2013 after CDs matured and $6,067 by January 31, 2014.

Treasurer Lewis asked for clarification on how money requested from legislature as an emergency appropriation would impact this loan arrangement.

Dr. Clifford said if the Board approved this loan Mora County would not need to make that emergency appropriation request from the Legislature.

Ms. Clarke said this loan would take the county only through April and the county might need to ask for appropriations from the Legislature for May through July. Ms. Garcia agreed.

Mr. Shandler read the contingency language, "If the Board votes to approve this item, staff recommends this disbursement be made contingent upon Mora receiving the Certificate of Public Convenience and Necessity and the Director's receipt of the Certificate of Public Convenience and Necessity for Mora County to operate the ambulance service."

Mr. Aragon requested to delete "contingent" and insert "upon."

Ms. Garcia agreed with that language.

Ms. Clarke read the resolution into the record: "RESOLVED, the State Board of Finance determines, pursuant to Section 6-1-2 NMSA 1978 as amended, that a critical emergency exists that cannot be addressed by disaster declaration or other emergency or contingency funds, and THEREFORE approves a loan to Mora County in the amount of fifty-four thousand sixty seven dollars ($54,067.00), to provide ambulance services from the Board's FY13 General Fund Operating Reserve, upon transfer to the Emergency Fund by the Secretary of the Department of Finance and Administration to meet this emergency. This loan shall bear no interest. Forty-eight thousand six hundred dollars ($48,600.00) shall be repaid by March 15, 2013 and the remaining six thousand sixty-seven dollars ($6,067.00) shall be repaid by January 31, 2014. Mora County agrees to provide quarterly reports on a form prescribed by the Board each April 15, June 15, October 15 and January 15 until the loan is repaid in full."

Mr. Aragon moved to approve the resolution with the language indicated by staff. Treasurer Lewis seconded the motion.

Mr. Brasher noted that Mora Valley lost the business because of problems with finances and now the County was going to the legislature for help.
Ms. Garcia agreed. The legislature couldn’t provide the appropriation since 2009 but looking at the GRT Mora County will now be getting about $450,000 in additional revenue so they can cover the operation costs after relying on the appropriation for the first two years.

Mr. Brasher thought that was a good plan.

The motion passed unanimously on a 6-0 voice vote.

Presenters: Gorden E. Eden, Jr., Cabinet Secretary; John F. Krebsbach, City of Albuquerque

7. Department of Public Safety – Requests Emergency Funding for Costs of DNA Testing ($131,924.70)

Mr. Gorden Eden said the Department of Public Safety (DPS) became aware of this need last week. The legislature has a DNA Fund per state statute for collection of DNA samples related to Katie’s Law. For the past three years the lab has been self-supporting and the last appropriation was to upgrade equipment. Since the enhancement of Katie’s Law was passed, the number of DNA samples collected has increased and the DPS made sure they had facilities in all jails for collection of DNA. But DPS didn’t have enough money to send samples to be processed. So Albuquerque is holding the DNA samples until money is obtained for that purpose. He added that he was here because the statute requires funds to flow through DPS for DNA testing.

Mr. Krebsbach gave a brief overview of the program. In 1997, after years of trying for a statewide database on identified human remains, a database was signed into law by Governor Johnson. The first Katie’s Law came in 2007 and allowed DNA collection for people convicted but also for those who were arrested or likely to be arrested for felony crimes. The enhanced Katie’s Law was signed in 2011 by Governor Martinez.

Without DNA, some crimes are reduced to misdemeanors or dismissed entirely. So, by July 2011, DPS was ready and jails had the equipment they needed. They didn’t need to collect from people already in the database. Starting off, things went great and they had an 88 percent collection rate. On July 2, 2012 they met with Governor Martinez and he was asked to report what happened in the first year of enhanced operations and it was amazing. It was operational and effective on that date but since then they had not received any state appropriations in three years. Federal reimbursements weren’t paid unless defendants were convicted so the fee money was not close to what was needed.

Mr. Krebsbach continued that DPS had been receiving $400,000 in federal grants but the federal government had changed to a formula-based grant, so last year they received $60,000 and this year $50,000. Now they are unable to sustain 100 percent analysis of samples from those who are arrested. They have taken steps to raise DNA fees and that requires changes at the legislature to collect the same fees for interstate as for residents.
They were also training new parole officers and giving remedial training for experienced parole officers. They knew they were starting to run out of money and needed to make it to the end of the year so they started in October prioritizing the samples that were most likely to produce results. Samples were being held until funding becomes available for analysis. New Mexico has one of the best databases in the country. This request was needed to get them through at least April to give the Legislature a chance to appropriate the needed funds.

Dr. Clifford asked Secretary Eden if DPS had requested the funding for this in the DPS budget.

Secretary Eden said they had not and explained that they had to go back and look at the budget request. The Legislature had appropriated money for equipment but not for operations. DPS is only a pass-through so there is no line item in the DPS budget for operation of the DNA Lab.

Dr. Clifford asked if DFA had received a request for that funding. Secretary Eden said no.

Mr. Krebsbach clarified that in the past the bulk of operating funds were through federal grants. They were getting about $50,000 per year now but the grants had been as much as $400,000 in the past.

Dr. Clifford offered to work with DPS on what would be needed for the coming year.

Mr. Brasher asked Mr. Krebsbach to explain the reduction from $400,000 to $50,000.

Mr. Krebsbach said it was a catch-22 situation. After passage of the original Katie’s Law they couldn’t prepare the jails and the Legislature provided some funding. That made them ineligible for federal funding so they could not even apply for several years. Now that the federal grants went away they had been burning up the residual fees they had collected over time. Then when they went back for federal grants, they had been restructured as formula grants.

Governor Martinez explained that Mr. Pepin of the Administrative Office of the Courts had the $100 fees structured now as an administrative fee rather than a fee to pay for the DNA test. But a couple of judges in Albuquerque refused to charge the fee because defendants who are charged a second time didn’t get swabbed again but still have to pay the fee. The statistics clearly show that many criminals don’t commit just one type of crime. Old cold cases have been solved, and many have been exonerated as well. This database is an outrageously valuable tool because it also prevents future crimes. It can help capture those who are guilty and exonerate those who are innocent, while saving hundreds of thousands of dollars in investigations. Katie was raped and murdered by a complete stranger. It cost over $250,000 for the investigation and three years later her
murderer was caught after being charged with another crime. Governor Martinez said she was extremely in favor of this and she stressed that this funding would save a lot of money for incarceration, investigation, and other costs. Solving one case could save that $400,000 in federal funds lost.

Mr. Brasher said from a public policy standpoint, the public has a real stake in supporting that work and he didn’t know that federal money would ever cover the cost.

Lt. Governor Sanchez moved to approve the request. Mr. Spencer seconded the motion.

Ms. Clarke asked if the Board wished to approve the funding as a loan or a grant. She clarified that DPS had requested a grant.

Dr. Clifford said the Board had discussed in the past that it is pointless for the legislature to repay itself by appropriating funds to repay Board loans, so he thought a grant would be appropriate.

Ms. Clarke read the resolution, “RESOLVED, the State Board of Finance determines, pursuant to Section 6-1-2 NMSA 1978 as amended, that a critical emergency exists that cannot be addressed by disaster declaration or other emergency or contingency funds, and THEREFORE approves a grant to the Department of Public Safety from the FY13 General Fund Operating Reserve in the amount of one hundred thirty-one thousand nine hundred twenty-four dollars and seventy cents ($131,924.70) for DNA testing, upon transfer to the Emergency Fund by the Secretary of the Department of Finance and Administration to meet this emergency.”

The motion passed on a unanimous 6-0 voice vote.

Mr. Krebsbach reported to Governor Martinez that a case in Maryland dependent on DNA was being challenged and the US Association of Attorneys General was filing an amicus brief that DNA collection with a simple swab was not invasive.

PROPERTY DISPOSITIONS AND ACQUISITION

Presenter: Dierdre Tarr, District Manager, Claunch-Pinto Soil and Water Conservation District; Felipe Lovato, Board Member, Claunch-Pinto Soil and Water Conservation District; Dan Williams, Board Member, Claunch-Pinto Soil and Water Conservation District

8. Claunch-Pinto Soil and Water Conservation District – Requests Approval of Lease of Real Property to USDA-Natural Resources Conservation Service ($42,696 annually)

Ms. Dierdre Tarr explained that Soil and Water Conservation Districts were created at a federal level during dust bowl days. They worked hand-in-hand with what was now
known as the Natural Resources Conservation Service (NRCS). This district was created in 1941 and had been co-located with NRCS since 1941. She was a part-time district employee who started there 16 years ago. When she was hired she was given a mandate to create a Natural Resource Conservation Center. Over the last seven years she had worked on it with federal partners, the National Park Service and US Forest Service in Mountainair to create a one-stop shop for consumers, visitors, local ranchers and farmers. The district couldn’t get the funding for a larger building to lease space to the other agencies so they scaled back their plan from a 14,000 square foot building to 4,000 square feet and responded to a solicitation of lease. The district did receive the lease and would get $42,696 per year in rent. The lease will help with the income for the District. The district gets $8,000 to $12,000 annually from the legislature through NMSU, and the State Department of Agriculture. The district has a small mill levy of $50,000 per year. It is a very small budget for working with landowners on conservation of soil and water.

On Friday, NMFA approved a 15-year loan for the district to finish the building. Once the loan is satisfied the district could put the lease money back on the ground for conservation.

Ms. Clarke said an addendum to the lease has been drafted to make the lease comply with state law. The addendum provides a sufficient appropriations clause and that future amendments to the lease require Board approval. She didn’t know if the lease addendum had been signed yet any Board approval needed to contain that contingency.

Ms. Tarr said the parties would meet this afternoon and she had copies of the addendum with her. They were using a General Services Administration lease format and were amenable to the addendum.

Mr. Brasher asked if there was any discussion about unifying these types of governmental subdivisions with counties.

Ms. Tarr had never heard that discussion. There were three districts in Torrance County and the Claunch-Pinto SWCD incorporated parts of four counties including Torrance County. Many other states used county lines but New Mexico soil and water conservation districts didn’t track with county boundaries.

Mr. Brasher asked if counties could do this kind of work.

Ms. Tarr said State statute mandated this work to soil and water conservation districts. Boards were elected and were on the same level as county commissioners. They were the state arm that allowed the federal government to put federal money on private land.

In response to Mr. Brasher, Ms. Tarr said the mill levy came from three of the four counties. They only had a sliver of Valencia County.
Mr. Aragon said these were very antiquated statutes and a change in the statute could streamline and eliminate the redundancy of administration. These fiefdoms were created and nobody wanted to give up their territory. It would behoove some legislator to investigate that redundancy and consider streamlining one plan to serve the entire state. This would require legislative change.

Mr. Shandler provided the staff contingency statement that if the Board approved the request it should be contingent on Director’s receipt of the signed lease addendum.

Mr. Spencer moved to approve the request subject to the contingency. Mr. Aragon seconded the motion. The motion passed on a 5-1 voice vote with Mr. Brasher voting against.

9. WITHDRAWN

Presenters:  Vince Murphy, Deputy County Manager for Community Services; Beverly Nomberg, CEO, La Familia, Inc.; Michelle Aigner, Right of Way Agent III; Allen Cave, Right of Way Agent I; Rosellen Esparza, Community Services; Terese Broom, Finance Director for Community Services;

10. Bernalillo County – Requests Approval of a Lease of Real Property to La Familia, Inc. ($220,800 Annually in Cash and Services)

Ms. Rosellen Esparza for Community Services introduced the presenters. Ms. Nomberg brought three board members, Mr. Patrick Terrell, Ms. Sara Brown and Ms. Patsy Romero and also Ms. Terese Broom, Finance Director.

Ms. Esparza said this was a request to approve a ten-year lease for La Familia of an 18,000 square foot portion of a 55,000 square foot building currently being renovated for a lease rate of $220,800 per year ($12 per sq. ft.). La Familia would repay the lease by provision of its services and pay their pro rata share of utilities and janitorial services.

About 75 percent of their clientele were Bernalillo County residents.

Ms. Nomberg spoke about the history of La Familia which started as an infant adoption agency 25 years ago and later expanded to foster care for infants and older children through contracts with CYFD. They now provide post adoption services and treatment foster care in Bernalillo County as well as medical services to an indigent population and social work with charter schools.

The building has been renovated over the past year and they hoped to move into it in January with the re-located Stanford Health Clinic.

Ms. Nomberg explained to Mr. Brasher that La Familia was a 501(c) 3 organization. They had a conglomeration of funding sources that did not include a contract with
Bernalillo County. However, they did report quarterly to Bernalillo County on all services provided to the County. That is part of the lease agreement.

Mr. Shandler said Exhibit C on page 219 of the electronic agenda contained the services credit reimbursement rates. **Staff recommended that any approval be contingent upon Director’s receipt of signed minutes or resolution of the governing body and Director’s receipt, with review of counsel, of a signed lease containing board counsel’s required modifications.**

Mr. Brasher moved to approve the lease per staff’s recommended conditions. Lt. Governor Sanchez seconded the motion.

Mr. Aragon disclosed that in his early years he did adoptions with Ms. Nomberg and still had a very positive view of her work dating back to his days in law school. He said he could not be impartial because of that relationship so he asked to be recused from the vote.

**The motion to approve passed on a voice vote of 5-0 with Mr. Aragon abstaining.**

**Presenters:** Tommy Mutz, State Parks Division Director; Rebecca de Neri Zagal, Executive Director, NM Office of Natural Resources Trustee; John Bemis, Secretary, Department of Energy, Minerals and Natural Resources; Cheryl Abeyta, Deputy General Counsel, Department of Energy, Minerals and Natural Resources; Tom Shelley, Freeport McMoRan Copper & Gold, Inc.

11. **Energy, Minerals, and Natural Resources Department, State Parks Division – Requests Approval of Acceptance of Donation of Real Property from Freeport McMoRan Copper & Gold, Inc.**

Mr. Mutz introduced Secretary Bemis, Deputy General Counsel Cheryl Abeyta, Ms. de Neri Zagal and representatives from Freeport McMoRan Copper and Gold, Inc.

Mr. Mutz said they were requesting Board approval to accept a donation of 715 acres of land adjacent to City of Rocks State Park. The donation was the result of a natural resource damage settlement that the Natural Resource Trustee and the United Stated Department of the Interior negotiated with Freeport McMoRan. State Parks Division felt this land would provide a benefit to the citizens of New Mexico.

This donation provides a buffer from potential encroachment to the park. There would be no budgetary impact related to the transaction. The State Parks Division was not involved in the lawsuit that transpired. The City of Rocks State Park is located between Silver City and Deming. The buffer is to prevent any development or intrusion on that natural resource.

Governor Martinez asked who would be responsible for maintenance.

Mr. Mutz said the State Parks Division would maintain the property and provide trails
and educational programming there; developing trails with Youth Conservation Corps help. They were very low maintenance trails.

In response to Governor Martínez, Mr. Mutz explained that the existing park was fenced in and the donation arrangement included livestock type fencing that was 48" to 50" high.

Governor Martinez was concerned with maintenance of the fencing and the risk of fire on that additional 715 acres that the State would be responsible for.

Secretary Bemis clarified that this parcel was part of a jigsaw puzzle. State Parks already owned half of Table Mountain and part of this land was the other half of it. All they were adding was a 715 acre piece that eliminated the checkerboard ownership. It would be only a de minimus burden on this State Park. State Parks Division was not part of the lawsuit settlement but the donation was part of that settlement. This would not add any real maintenance burden or fire hazard risk. It was just a contiguous piece of land and a perfect fit. The State Parks Division would cover the costs if they expanded the trails there and the cost was small for maintenance of the fencing which they already did out there.

Ms. de Neri Zagal talked about the settlement which was a culmination of work over ten years with Mr. Shelley from Freeport McMoRan.

Ms. de Neri Zagal explained that as Natural Resource Trustee, all they did was natural resource damage reclamation in the state and they worked cooperatively with responsible parties to resolve damage issues. This settlement was started in 2004 with an agreement to work with the owners and Fish and Wildlife Service to do an analysis together. In 2011, the parties negotiated the settlement for injuries and the State was awarded over $2 million for ground water restoration. This was related to the wildlife habitat injuries, which were settled in February 2012 for $5.5 million for restoration of wildlife and habitat and they were now identifying those projects. This parcel of land has naturally occurring ground water that oozes up for use by wildlife and other terrestrial resources in the area.

Lt. Governor Sanchez asked about the liability or risk if someone was hurt on state parks land.

Secretary Bemis said they had a lawsuit right now from a faulty railing at El Vado. It could happen but was a rare occurrence. There is a liability for State Parks when there is provable negligence.

Mr. Brasher believed State Parks Division would have some fencing and operational expenses and could not just leave the property there without maintenance. There would be more operational expenses associated with more acreage, more than just fencing and trail management.
Mr. Spencer asked the presenters to confirm that this property was not used for mining so there would be no environmental issues with the property.

Secretary Bemis agreed and acknowledged that there were operational expenses. The City of Rocks State Park is fairly compact but this would allow the park to have more hiking and other activities. They did envision increasing the trails and would allow campers to hike to the top of the mountain someday.

In response to Governor Martinez, Ms. de Neri Zagal said they had over one hundred people participating in selection of projects for restoration of ground water and protection of wildlife habitat and everyone was excited to protect this land. There were several wildlife species including migratory birds, great horned owls and javelina. The only endangered species was a grass species called parish’s alkali grass. This location had a wetlands, or cienega, which was a fly way for migratory birds and they wanted to protect that.

Ms. Clarke referred to the area map on page 695 which showed the Table Mountain tract to the upper left and the Faywood Cienega tract on the south edge of the park.

Mr. Shelley said he was Reclamation Manager for Freeport McMoRan. He grew up in Silver City and utilized that park at least annually. It was a great resource and even though this donation was resulting from a lawsuit settlement, he was glad this land would be part of the State Park. The land has been used for grazing but there are no environmental issues. The fence, which met state specifications, had already been constructed in anticipation of this transaction.

Secretary Bemis said Freeport McMoRan was doing some fantastic reclamation there. They were reclaiming tailings on a massive scale - probably thousands of acres of land where mining had occurred.

Mr. Shelley clarified it was 4,500 acres they were reclaiming. At Chino Mine, they were restoring about 2,000 acres. That will be completed at the end of December and they were working on some other areas.

[Mr. Brasher left the proceedings at 10:53 a.m.]

Secretary Bemis noted that the company spent about $7 million on reclamation.

Mr. Shelley said actually it was close to $200 million spent so far in New Mexico.

Ms. de Neri Zagal added that Freeport paid all the assessment costs for the State in addition to costs for restoration work.

Mr. Shandler said if the Board approved this donation, staff recommended the approval be contingent on deletion of exceptions 1-5 and 16 from the title binder.
prior to closing. He summarized for the record exceptions 10 to 14 in the title binder. He said that some of these were not applicable to this transaction, and those related to easements for utilities did not adversely affect the property.

Lt. Governor Sanchez moved to approve this donation with staff recommendations. Mr. Spencer seconded the motion and it passed by 5-0 voice vote.

**STATE TREASURER’S OFFICE**

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


Ms. Roseborough said in the Treasurer’s General Fund portfolio for the month of October, the unrealized gain was $11.2 million. Investment earnings for the General Fund year to date were $1,761,167, year to date were $4,827,714.

During October, STO maintained average daily collected balances of approximately $77 million at the fiscal agent bank, which earned a “soft-dollar” credit. In conversation with Ms. Clarke, STO had increased to the target balance to $128 million to help with reversion efforts in the state for next year.

[Mr. Brasher rejoined the proceedings at 10:58 a.m.]

In the Investment Compliance Review there were no price discrepancies.

Mr. Spencer read in the State Treasurer’s Investment Council minutes that some security was sold but it didn’t meet compliance requirements.

Ms. Roseborough agreed but said they were not out of compliance right now because the legal opinion was that they could be considered asset backed securities. With ambiguity in the statute it wasn’t clear and they were now proposing legislation to clear up the ambiguity in the language so that the general fund could invest in all municipal securities and there would be no questions.

Treasurer Lewis clarified that, for instance, statute did not clearly state whether the Treasurer could invest in bonds issued by NMFA. The other problem was that if a local government could buy certain bonds then the Treasurer should also be able to do so.

**GENERAL SERVICES DEPARTMENT**

Presenter: Charles Garcia, Director, Property Control Division

13. Capitol Buildings Repair Fund Financial Status Report for Month-Ended

New Mexico State Board of Finance December 18, 2012
October 31, 2012

Mr. Gara said the Board had the report for October in the electronic agenda (page 857). They had encumbered a substantial portion of previously approved funds.

There were no questions on this report.


Governor Martinez asked where the money came from to complete these projects.

Ms. Clarke explained that the money in the Capitol Buildings Repair Fund comes from the Land Grant Permanent Fund and could only be used for the Santa Fe area buildings, with few exceptions. There were already millions of dollars of projects in the works.

Every six months, the Property Control Division seeks Board approval for projects they wish to complete in the next six months. The report showing the list of projects was on page 876 in the electronic agenda.

Mr. Gara agreed and added that that the list of scheduled repairs would be funded as monies came into the fund. The Property Control Division usually receives over $400,000 each month for that purpose.

Mr. Spencer asked if this was a pretty typical amount for a six month period.

Mr. Gara agreed. They tried to base it on the money that was coming in and put that money to work.

Ms. Clarke clarified that there was a constitutional requirement to distribute a certain portion of the balance in the Land Grant Permanent Fund to its beneficiaries and part of that distribution went to this fund. Statute requires approval by the Board of each project or repair paid for using the Capitol Buildings Repair Fund.

Mr. Gara said there were 19 entities that get distributions from the Land Grant Permanent Fund.

Ms. Clarke added there was a long standing policy of the Board to approve these smaller repair projects in groups every six months rather than to approve each individual project.

Mr. Spencer moved to approve the project list. Mr. Brasher seconded the motion, and it passed on a unanimous 6-0 voice vote.
15. WITHDRAWN

16. Property Control Division – Requests Approval of Contract with A.A.C. Construction for Wastewater System Improvements at the Roswell Correctional Center ($1,349,827.38)

Mr. Gara said that, as with many state facilities, this facility had aging infrastructure and the wastewater treatment equipment at the Roswell prison needs to be replaced to avoid violating NMED standards. The project was put out to bid, and AAC of Santa Fe won the bid.

Mr. Spencer asked where the facility was located.

Mr. Gara said it was the one south of Roswell.

Governor Martinez asked where this money would come from.

Mr. Gara said it would be funded using two existing appropriations from the Severance Tax Fund.

Governor Martinez read the statute that specified that for anything costing more than $500,000 approval by the Board was required. Others must be reported to the Board after the contract was executed.

Lt. Governor Sanchez moved to approve the contract. Mr. Brasher seconded the motion, and it passed on a unanimous 6-0 voice vote.

PRIVATE ACTIVITY BONDS

Presenter: Jeff Primm, Deputy Director

17. Return of Cap Announcement – Bernalillo County on Sales and Issuance for Friedman Recycling of Albuquerque, LLC

Mr. Primm said the staff was notified on November 20th that Bernalillo County successfully coordinated the sale and issuance bonds for Friedman Recycling, but that the amount was less than the Board’s active allocation for that project. The active allocation was $13 million, and they issued bonds for $12.2 million. So, the remaining $800,000 in unused cap was available to be reallocated by the Board.

This was the preamble for recommendations from the PAB Subcommittee regarding remaining cap from 2012 and recommended allocations for 2013 cap.
18. New Mexico Mortgage Finance Authority – Request Approval of Extension of Private Activity Bond Allocation for Gallup 3 Apartments Multi-family Housing for Piñon Hills, Hidden Valley, and Terrace Apartments ($7,500,000)

Mr. Jay Czar on behalf of the New Mexico Mortgage Finance Authority (NMMFA) requested an extension to the deadline for closing on the $7.5 million Private Activity Bond (PAB) allocation for the Gallup development. The current closing deadline was December 18th, and NMMFA was requesting an extension thru next Wednesday, December 26th. He had no reason to believe this deal would not be closed on December 19th at the Modrall Firm in Albuquerque and that the bonds would sell on Friday. The need for the short extension was due to the very complicated approval process at USDA development division. This project involved the rehabilitation and preservation of 218 rental units in three Gallup locations. All of the units will be for families under 60 percent of area median income.

He indicated that, in the unlikely event they were not sold, that NMMFA had a requested a contingent carry forward allocation of $7.5 million and that he had worked closely with Board staff and Mr. Aragon to make sure it was done properly.

Mr. Aragon agreed they had worked closely to make sure the Gallup project happens. He was in full support of Mr. Czar’s work.

Mr. Aragon moved approval of the extension. Mr. Brasher seconded the motion, which passed on a unanimous 6-0 voice vote.

19. Private Activity Bond Subcommittee Recommendation for Allocation of 2012 Carryforward

Mr. Aragon deferred to Mr. Primm.

Mr. Primm referred to a three-page packet handed out to the Board on PAB. He explained that the Board needs to decide how to allocate the remaining 2012 PAB cap and to make the required allocations for 2013. The third page of the packet dealt with deposit refunds. Originally, $284,560,000 had been authorized for Private Activity Bond cap in 2012. Throughout the year, entities had utilized $19.7 million of that cap. There were three projects: Friedman Recycling for $12.2 million, the Gallup projects for $7.5 million, and also a Luna County project which had been authorized for $6 million but had not issued or utilized any cap.

The purpose of the carryforward recommendation was to decide how to utilize the
unused portions of the 2012 bond cap into the future. The amount of cap to be carried forward was $264,860,000. The PAB Subcommittee recommendation to the Board was to fulfill NMMFA’s request they presented recently to have as much 2012 carry-forward as possible for single family use. The carry-forward allows NMMFA to avoid carrying costs and carryforward cap is good for three years instead of just for the calendar year. So, the recommendation is to carry forward as much as possible for NMMFA for single family.

The $264,860,000 amount could go up slightly if the ultimate issuance amount for Gallup 3 project ends up being below $7.5 million. If so the Subcommittee recommended adding that amount to the recommended single family allocation to NMMFA.

If NMMFA didn’t sell their bonds by December 26th the recommendation, as explained at the bottom of the table, was to allocate the same amount as carryforward to assure the project would be able to close regardless of whether the closing was before or after December 26.

Mr. Aragon complimented Mr. Primm because he worked into the night to make this complete and also Ms. Clarke and Mr. Primm for working with him on it. He had confidence in NMMFA in expending these funds.

Mr. Aragon moved approval of the Private Activity Bond Subcommittee’s recommendation regarding carryforward. Mr. Brasher seconded the motion, which passed on a 6-0 unanimous voice vote.

20. Private Activity Bond Subcommittee Recommendations for Allocation of 2013 Private Activity Bond Cap

Mr. Primm said page two of the packet had the recommended allocation for 2013. The amount of cap available to each state was adjusted annually by the federal government. For 2013 it had grown to $291,875,000. That amount was available to New Mexico to allocate.

The NMMFA’s request had been to use carryforward for the purpose of single family housing. So, for 2013 the recommendation was zero for single family housing and $60 million for multi-family projects, which was $20 million above the NMMFA request. Since the Board hadn’t received other requests, the remainder was recommended to be placed in the “Other” category as a placeholder for projects that might come up for economic development.

Mr. Aragon complimented staff for their diligence. He supported not only the concepts but also noted the Board should encourage utilization of private activity bonds for more use in New Mexico. Secretary Barela should be allowed to utilize these as a
tool to entice folks to come into New Mexico. He thought Secretary Barela was open to the idea. He proposed to discuss with staff how to utilize it in the future in areas other than housing.

Ms. Clarke said she had talked with Secretary Barela some time ago and noted that only a statutorily authorized issuer of private activity bonds could issue them. So it might require a statutory change to allow the Economic Development Department to issue private activity bonds for things like manufacturing, etc.

Mr. Aragon thought it would streamline things.

Mr. David Buchholtz echoed Mr. Aragon’s comments. It was also critical to bring the financial leaders (banking and investment banking) to the table to find appropriate projects in private-public partnerships. When interest rates go up those people need to be here for requests to use this for capital development in New Mexico.

**Mr. Aragon moved to approve the Private Activity Bond Subcommittee’s allocation recommendation. Mr. Spencer seconded the motion, which passed on a unanimous 6-0 voice vote.**

**Presenter: Jeff Primm, Deputy Director**

**21. Approval of Private Activity Bond Allocation Deposit Refunds**

Mr. Primm said the third page of the packet had a list of the PAB deposits received. There were three projects that used private bond cap in the table.

Luna County was allocated $6 million and did not issue prior to expiration, but it did pay an allocation deposit of $1,500. That allocation deposit, by statute, reverts to the state’s General Fund.

However, the Board has discretion over whether to return the other two deposits to the applicants or let those deposits also revert to the General Fund.

The Friedman Recycling project requested $16 million in PAB cap, which was revised down to $13 million. They used $12.2 million of the allocation. The project’s deposit of $4,000 was based on the original $16 million allocation. So, the pro rata share of the deposit recommended to be refunded for this project is $3,050.

MFA’s Gallup project is expected to issue bonds prior to Dec 26th and the Subcommittee recommends refund of a pro rata share of the deposit based on the amount of the issuance ultimately made. Staff will calculate those amounts and work to get the deposit back to the appropriate parties.

Mr. Aragon commented that although it seemed like a very small amount to discuss,
the purpose of the refunds is to send a message that encourages allocation recipients to utilize their allocations.

Mr. Primm clarified that for the Gallup project, the Subcommittee recommendation is that the project’s allocation deposit would be refunded only if there is an issuance prior to December 26th. Any issuance after December 26th would not result in a return of the deposit.

Mr. Aragon moved to approve the recommendation of the Private Activity Bond Subcommittee. Mr. Brasher seconded the motion, which passed on a unanimous 6-0 voice vote.

Mr. Aragon, as a point of privilege, complimented staff. The recommendations took a great deal of work with lots of after-hours work to complete.

**HIGHER EDUCATION DEPARTMENT**

Presenters: Robert G. Frank, PhD, President, University of New Mexico; Paul Roth, Chancellor; Michael Richards, MD, MPH, Executive Physician-In-chief, UNM Health system; Dale Dekker, Architect, Dekker Perich Sabatini; William Sabatini, Architect, Dekker Perich Sabatini

22. **University of New Mexico Hospital – Discussion of Proposed Hospital Addition – Phase 1 Lands West ($146,000,000)**

President Frank made introductory comments. He said University of New Mexico Hospital (UNM) is the hospital ready for emergency 24 hours a day in New Mexico. This project was important for all people in New Mexico. This hospital was not allowed to cater only to lucrative patients, but as a Level One Trauma Center is there to provide high-level quality medical care to all residents of the state. Some units were built 60 years ago but UNMH needs to be able to respond with a 21st century medical facility. UNMH was excited to replace 96 beds in phase one and 237 beds in phase two. UNM proposed building the 96 beds facility not to compete with private hospitals but to fulfill their obligations to meet the needs of the people of New Mexico. This project was approved in open session by the University Hospital Board of Trustees, the Health Sciences Board, and the University of New Mexico Board of Regents, who are appointed by the Governor. In July, the Department of Higher Education approved it and over several months UNMH had garnered support from businesses and tribal governments, some of whom were present today to state their support, as well as other hospital systems, and Bernalillo County.

He pointed out that last year over 700 families were forced to seek help at other hospitals because the University Hospital had no available beds and some required specialized care unavailable at other New Mexico hospitals. He thanked the Board for giving another chance to ask for support and pledged UNM’s commitment to transparency.
Dr. Roth announced that Mr. Steve McKernan, hospital CEO was also present.

Governor Martinez suggested the presenters should go their responses to the questions that were provided by the Board to President Frank from the Board and the Department of Health.

Mr. Brasher asked that Bernalillo County Commissioner Wayne Johnson be invited to speak at a later time. Governor Martinez agreed.

Dr. Roth asked the Board to hear presentations from members of related governments and others at the completion of his presentation.

Dr. Roth said the original hospital building was built in 1954 to serve all people regardless of medical, financial or social circumstances. Ten years later, the medical school was created as the primary teaching facility for medical and later for all health science studies. In 1984, UNM Hospital was designated as the only Level One Trauma Center in the state.

Mr. Aragon explained his understanding of the cost of major capital projects that had been completed related to UNMH since 2001 and asked if all the UNMH capital expenses since 2001 totaled about $500 million. Dr. Roth agreed.

Mr. Aragon asked if the beds of the Richardson Pavilion took away from the need for beds.

Dr. Roth explained there were no beds in that cancer center. There were 309 beds for adults and 207 were in old areas.

Mr. Aragon asked where those patients, prior to 2004 and the opening of new pavilion had been housed.

Dr. Roth said they had only 237 beds for adults then and those beds were filled with patients then.

Mr. Aragon asked if the overcrowding in 2004 was for children only, adults only, or for both.

Dr. Roth believed the overcrowding at that time was principally for the adult inpatients and remains as the critical need to this day.

Mr. Aragon asked if the new Sandoval facility was separate from UNMH, to which Dr. Roth replied it was part of the UNM Health System but was focused on serving the Sandoval community needs. Community input from Sandoval County indicated a strong desire for inpatient psychiatric beds, so UNMH accommodated that desire. There was no capability for children's services at the Sandoval facility.
Responding to Mr. Aragon's question about who governs the Sandoval facility, Dr. Roth stated that the Sandoval facility has a Board of Directors appointed by the UNM Board of Regents.

Mr. Aragon asked if the Board of Regents had authority ultimately over the Sandoval Facility and also authority over UNM Hospital in Bernalillo County. Dr. Roth agreed.

Mr. Aragon asked how many beds were in the Sandoval facility.

Dr. Roth said they were licensed for 72 beds, of which 12 were psychiatric beds. UNMH had developed a phase-in approach for the new hospital and were currently staffed for 27 beds. The targeted mission building into the pro forma was developed with the Federal Housing Administration and per the chart in Dr. Roth's presentation; they were exceeding their admissions target. So they were contemplating more staff for more beds.

Mr. Aragon suggested that combining the beds at UNM Sandoval with the University Hospital brought the occupancy rate close to 65 percent.

Dr. Roth said that didn’t consider the types of beds and types of patients each facility was intended to manage. You couldn’t compare those types of beds at Sandoval with the types of beds and patients managed out of UNMH.

Mr. Aragon thought the administration at UNMH made the decision to designate those beds as described.

Dr. Roth said the decision was made with Sandoval County community input. The purpose to build that facility was not to expand UNMH but to meet the needs of the Sandoval County population. UNMH was 45 minutes away from Rio Rancho and the new facility intended to draw from that community for routine hospital needs.

Mr. Aragon said it was represented, to him at least, by UNM staff that the need for the new hospital beds was related to UNMH's unique position as a Level One Trauma Center. Dr. Roth agreed.

Mr. Aragon said the reason it was so compelling was that UNMH served the entire state, including Sandoval County. Dr. Roth agreed.

Mr. Aragon understood if there was an acute emergency in Sandoval County patients could go to the Sandoval facility.

Dr. Roth agreed, but clarified that level one trauma patients, despite UNM's Sandoval facility and Presbyterian's Rust facility being closer, would continue to go to the UNMH for the highly complex burns, complex children's emergencies and other traumas. But for
routine hospital needs they would go both to Presbyterian’s Rust Medical Center and Sandoval Regional. The community felt it was so compelling a need that Rio Rancho voted a mill levy for supporting both hospitals.

Mr. Aragon said he saw a hospital system governed by a single Board of Regents with authority over both facilities and didn’t look at the UNM facility as separate from the Sandoval facility. The Sandoval facility has additional beds to fill the void. The Board of Regents could adjust the bed designations so they could use Sandoval beds that were not being utilized. Maybe the Regents need to look at reallocating the beds amongst specific uses.

President Frank suggested Mr. Aragon’s math was inaccurate, that beds are not interchangeable, and he was perplexed as to why Mr. Aragon couldn’t understand this. He criticized discussing the number of beds for a half hour.

Mr. Aragon said the UNM President was being disingenuous and that he was trying to make a point.

President Frank asserted that Mr. Aragon had been on that point for a half hour already.

Mr. Aragon said the Board has discussed this issue for many hours, and he appreciated President Frank’s defense of the University, but he was just trying to find out how many beds were there and whether an administrative approach could address the overcrowding in conjunction with the other hospitals in Albuquerque. This process started months ago and this Board was still trying to clearly understand the number of beds. He recognized they had to have different designations of types of beds, but he was trying to get an answer to how many beds were available.

Mr. Aragon continued that Board members served without compensation and they were trying to digest a lot of information. They got various numbers and various reports and the assertion that somehow the information they have from various sources were erroneous is troublesome. He took his position on this Board seriously. If it takes three hours to get answers he would take three hours because the Board has a fiduciary duty to ask the tough questions. He was insulted at the presenter’s insinuation that he needed preauthorization to use the floor.

Mr. Brasher pointed out to Dr. Roth that the 91 percent occupancy figure varied from the original submittal and that should be nailed down.

Dr. Roth clarified that the 91 percent occupancy rate was an average of the 209 adult beds available at UNMH. As an average on any given day there might be more or less occupancy. Occupancy had been as high as 96 percent and as low as 88 percent, but spread out over the course of the period of time it averaged 91 percent.
Mr. Brasher said the original submittal said the occupancy rate was 95 percent.

Dr. Roth thought they might have said up to 95 percent.

Mr. Brasher repeated that it said “95 percent.”

Dr. Roth said a major mission of UNMH was as a teaching facility, which it became when the School of Medicine started in 1964. UNMH has residence programs and nurse training programs. All students are required to go through a clinical setting to complete their education. Today’s modern approach has very little time in classroom and most in clinical setting in the hospital or in people’s homes similar to an apprenticeship. Those programs could only be conducted in facilities for complex patients per accreditation requirements. UNMH’s other function as a teaching facility is as a clinical classroom.

Dr. Roth outlined the rationale for asking for approval for this project. As only Level One Trauma Center, UNMH had to turn away some trauma patients from other hospitals around the state because there were no available beds.

Governor Martinez asked where they went when turned down.

Dr. Roth said many of them went out of state to Texas or Arizona and a few to Denver. Distance is harder for families, creates more risk to patients, and New Mexico Medicaid dollars follow them out-of-state. Many of the patients don’t go anywhere else. Sometimes the patient’s family doesn’t want them to leave the State. In those circumstances, the hospital tries to partner with medical staff at other facilities to manage those patients. There might be increased morbidity results from this movement of patients.

Governor Martinez asked then if a person could show up at the ER with a gunshot wound and the hospital wouldn’t see them.

Dr. Roth confirmed that would not happen. The most serious trauma was category one, patients who would die or lose a limb within a few hours if not properly treated. A gunshot patient in Taos would be stabilized at Holy Cross Hospital and then could be helicoptered to UNMH if there was a bed. If UNMH didn’t have a bed, the Taos hospital would probably call Denver. If the gunshot patient came directly to UNMH, the patient would be stabilized and then someone with less severe trauma, such as a non-emergency cancer surgery case, would be bumped and rescheduled for later.

Dr. Roth explained that emergent admission meant that patient would be at risk of loss of life or limb within 24 hours unless something was done. Non-emergent was everything else. About 80 percent of patients admitted to a bed at UNMH were emergent, so the hospital had very little margin and that contributed to the need for additional beds. The emergent cases were unpredictable and could not be scheduled in advance. So that gunshot patient would be stabilized at any hospital, but he was talking
about what happens after that initial stabilization.

Governor Martinez pointed out that people in car crashes, stabbings or shootings would go to the nearest hospital. So those in the eastern part would go to Texas and those in far north would go to Colorado. Those had to be subtracted from UNMH's representation that patients were leaving the state due to overcrowding at UNMH, as some were just naturally going to a closer place.

Dr. Roth agreed. Las Cruces has a great partnership with El Paso and that was totally appropriate. UNMH built its capacity around what was naturally left in New Mexico. That was the demand they were facing today and what they were lacking.

Mr. Brasher recounted going around midnight to visit the UNMH emergency room one night. He observed the room was packed with people who were suffering with some type of malady they would take to their physician if the office was open. But he understood that some emergency room patients, once they were stabilized, would be transferred to other local hospitals.

Dr. Roth agreed. When he said admissions, he was not talking about emergency room but rather those who were admitted to an inpatient unit. And 80 percent of those who come to emergency room were not emergent. Of those 27,000 patients admitted as inpatients to UNMH in a year, 80 percent fell into the category that something had to be done or that person would die or lose a limb within 24 hours.

In response to a question about a catastrophe, Dr. Roth said UNMH used a code called Code Purple.

Dr. Michael Richards said the diversion policy in Bernalillo County was discontinued in January 2012 as a collective decision amongst hospitals because all the emergency room departments in Bernalillo County were uniformly occupied so that routine diversion would create a domino effect. The only thing left was Code Black, which was when something happened in the physical plant of a hospital that forced it to close for that reason.

Mr. Brasher concluded that in the event of an unexpected surge they had a real problem. It was a public safety problem to have discontinued the diversion policy. That needed to be revisited.

Dr. Richards said they had a computer network that monitored all emergency room and inpatient capacity that went across the entire state to deal with abnormal surges, like a large crash on the highway. So there were special exemptions to include a massive surge.

Mr. Brasher said one of the things that came out in the public meetings was that the community expressed a need for more outpatient facility rather than inpatient facilities.
Dr. Richards said those were excellent points. Both were needed. This capacity dealt with the shortage of inpatient beds. They were hoping that policy reform would make people healthier and would curb the need for more beds, but there was still an immediate need for beds to continue to serve the public. UNMH also needed more outpatient services in the continuum. Services provided after a hospital stay, such as home health care and rehabilitation, also reduced a need for hospital stays. But with all of that said, UNMH still needs more beds.

Lt. Governor Sanchez noted that from the last census the greater Albuquerque metropolitan statistical area was over one million now. Compared to other urban areas, he asked where our beds to population ratio matched up.

Dr. Roth said that data had been presented to the Board. But there was something about master planning and they had principals from the architectural firm Dekker Perich Sabatini to talk about the need for the facility.

Dr. Richards said according to American Hospital Association data, there were 220 communities with three or more hospitals in the community. Most of them had more beds that Albuquerque has so this is an extreme case. A ratio of 2.6 beds per 100,000 population was the average in the country. New Mexico often used the most frugal states for comparison but even with that, the need was for about 200 more beds.

Lt. Governor Sanchez asked if that factored in the responsibility for the Native American population and population growth. Dr. Richards agreed.

Lt. Governor Sanchez was concerned that before a project was completed it was already obsolete. The state would continue to grow and needed to consider the needs for schools and infrastructure, and think about using 2012 dollars for the future.

Dr. Richards agreed those were excellent points. He expects 18 percent population growth and much higher growth for the older age group. That would project a much higher need for hospital beds and those in the industry believed even with advances in technology the number of beds at UNMH is already far behind what is needed.

Mr. Dale Dekker said there were specific challenges in expanding at this location with aged facilities. The Bureau of Business and Economic Research’s estimate over 25 years was an increase of 600,000 people. New Mexico has a relatively young population so birth rates are higher and public school challenges are great. That was why his company was commissioned by UNM to look not only at master planning for the central campus but also the health science center and the south campus. The Master Plan was approved by the UNM Board of Regents after three years of community involvement. They came to the realization that most of the University growth north of Lomas would go to meet the emergent needs of the community.
Governor Martinez noted that 2.6 beds per 100,000 population were mentioned as the average but the trend was lower in western states, at 1.4 to 1.7 beds per 100,000. Dr. Richards agreed.

Mr. Bill Sabatini handed out a summary of the master plan. The discussion about number of beds was relevant but depended on how beds were defined. This issue centered not around expansion but about replacement and becoming more state of the art.

Mr. Sabatini explained that they reviewed different options for locating this expansion. They believed 600-800 beds were needed over the next 20 years. The main hospital on Lomas was a highly congested area and hard to access. Parking was difficult, travel distances were difficult and there was a higher level of confusion when people come in. They looked at putting this hospital expansion just west of the existing center for physics and astronomy, which would have to be relocated and exacerbated the points he made related to congestion. On the north at the roundabout on Yale they found that the expansion still wouldn’t fit. So their first recommendation was to use land to the west of the University Boulevard. Starting with the 100 beds was just a replacement of obsolete beds they have now. You could say the census was low but the beds there were not up to standards and patients in these beds were at risk.

Lt. Governor Sanchez asked about Mr. Sabatini’s mention of compromising the health of those in those old beds.

Dr. Roth explained this current project of 96 beds was expansion to allow the hospital to add more capacity. He addressed Mr. Brasher’s comment earlier that one third of the emergency room was filled with admitted patients. So the first phase was to add 96 beds to the total and the second phase would be to convert the old facility for medical staff use.

Lt. Governor Sanchez said he visited that old hospital wing and didn’t know how much life was left in that old part. He asked about how many more years it had.

Dr. Roth acknowledged they had reached the life span at parts of the hospital but could not close any of it down.

Mr. Sabatini added that a potential failure could occur in the near future. The evaluation of what was a good hospital room today was different. Those older rooms were not good rooms for patients to be in. Evidence showed that the length of care could be reduced when a room had more light. Rehabilitation would help that happen.

Lt. Governor Sanchez said it was not just potential breakdowns, but breakdowns were actually happening there. A couple of months ago, a waste line in the hospital that failed.

Mr. Aragon asked if UNMH was going to remodel that old part of the hospital to single patient rooms and if so, he wondered how many rooms they could get out of it.
Mr. Sabatini couldn’t say how many beds, but UNMH didn’t plan to spend a lot on that area now since it would mostly be for non-clinical use. Without much modification the space could be used to see outpatients.

Dr. Roth described what happens to patients transferred out or not admitted due to lack of beds. Some stayed in the emergency room. About one third who were in pain and suffering could not get into a bed. That wasn’t the type of medicine he wanted to practice.

Dr. Roth reviewed a map depicting where over a 12-month period requested transfers had to be denied and either not transferred anywhere or had to go out of state.

Dr. Roth described UNMH’s efforts in partnering with other hospitals, which they had been doing for decades and had transfer agreements with. There were about 200 patients transferred in the last year.

He pointed out the added complication that Lovelace would not accept Presbyterian and Presbyterian wouldn’t accept Blue Cross. The uninsured would be highly unlikely to be admitted at private hospitals. They analyzed all inpatients over the past year to determine which could have been transferred. Out of over 26,000 patients, only 355 could have been transferred and that would not change the need for more beds.

Regarding the Board’s concerns that this may be a boutique hospital, Dr. Roth stated that to UNM, elective meant non-emergent. Elective admissions were patients that could be scheduled in the future, such as a cancer patient that at some point needed a tumor removed. With the 96 more beds, those patients would not be shunted off. The new hospital wouldn’t have an emergency room so the types of patients would be more scheduled patients.

Mr. Aragon asked if the addition could reduce the wait time in the emergency room.

Dr. Roth agreed it would have a substantial effect on lowering the wait times at the emergency room. About a third of beds in the emergency room were filled with patients waiting to be admitted. So there would be fewer people waiting for beds and a shorter emergency room wait time even for non-emergent patients. Secondly, it would expand UNMH capacity for emergent admissions from outlying areas of the state that could be accepted with a transfer into the main facility.

Mr. Aragon wondered as part of the master plan if it was time as a public policy for UNM to have a non-emergency room facility open 24 hours at minimal expense for patients to be seen like. That might reduce the more extraordinary costs of emergency room care.

Dr. Richards responded that they did open a new urgent care facility in close proximity to the hospital and were now ramping up that facility. This year they would see about 17,000 patients in that clinic including after regular business hours.
Mr. Brasher said that one hospital doesn’t accept insurance from another. In 2004, the University, through FHA, was able to get bond funds and then the Pavilion was built. Then in 2008, UNMH came to Bernalillo County and asked for funds for indigent care, and the Commission increased the mill levy from 4.3 mills to 6.4 mills. During that period of time, UNMH amassed some $140 million so you don’t need to go to issue bonds to finance the new hospital. He asked if this new addition was made possible in part by the increase in mill levy from 4.3 to 6.4.

Dr. Roth said the simple answer was yes. It was with a clear understanding the millage increase was for two purposes. The first was that uncompensated care was increasing alarmingly. Secondly, the language was in the lease with Bernalillo County that UNMH would not be going back to Bernalillo County for future projects.

Mr. Brasher reasoned that the 2008 Memorandum of Understanding was important to consider then.

Dr. Roth said that the idea was that in the future, capital needs of UNMH would have to be developed internally without going back to the public, particularly Bernalillo County, for the costs associated with future capital projects. UNMH had a similar conversation with the state, that future capital needs would not be addressed by legislative appropriations. So, that left UNMH with only one option, and that was to be completely responsible for their own growth in addressing future capital needs. UNMH elected at the time to rely on the increase in millage, and also on increases in revenue that they were able to appreciate through better contracting with third-party payers and other capabilities to maximize revenues. He said they knew that the timeframe in which UNMH would be able to appreciate that increased revenue would be limited, given the economy and what they understood to be future reimbursements. Rather than increasing expenses to meet revenues, understanding that revenues were going to be short lived, they made the conscious decision to save enough money over this period of time to manage their own capital projects. This first capital project, the 96 bed hospital, which is phase 1—and not have to go back to the public for any more increases in mill levy funds, no more increase in taxes, no state funding.”

Mr. Brasher said that millage from the county doesn’t allow for money received to be used for capital projects. That is the responsibility of UNMH.

Dr. Roth said he would have to pull that language out. He said there is nothing in the lease that prevents UNMH from asking for additional funding from the County.”

Mr. Brasher said he thought the contract was more specific, and it says that UNMH will have some responsibility for capital projects. He said he thought the increase in mill levy from 4.3 to 6.4 was for mental and behavioral health facilities to be expanded.

Governor Martinez said that was covered in the previously submitted questions and
asked the Board to review those responses for the sake of saving time. She stressed that the Board expects more specific responses to their questions.

Mr. Brasher said there were additional requirements identified and requested that Bernalillo County Commissioner Wayne Johnson be allowed to speak.

Commissioner Johnson said that there are a number of issues associated with the lease. Everybody has gone over these issues at one point or the other. The timelines are a little confused, but back in 1999 when the initial lease was signed, the commission felt that the county was not the best operator of the hospital. In 2004, UNM approached Bernalillo County and said they would like to build the Barbara and Bill Richardson Pavilion with support through the count. It required a 50 year lease with the county and guaranteed funding in order to obtain financing of that lease. He reminded the Board that he was not there as an attorney, and that this was simply his understanding of the lease. At that point the mill levy was 4.3 and had been for some time.

Commissioner Johnson continued that again in 2008, the University came back and told Bernalillo County that the 4.3 mill rate was insufficient to cover the costs of indigent care. And at that point, the University requested another 2.1 mills, which the county put on the ballot and it passed by vote. These are all voter approved mill increases. But we added that to the levy and increased it by about 50 percent, roughly $30 million of the $90 million that was available. The county also added some provisions at that time. The University must ensure that at least 12 percent and up to 15 percent of the mill levy revenue will be allocated to operation and maintenance of a mental health center and associated behavioral health and substance abuse treatment services that are offered at the hospital’s mental health center. And the University would use its best efforts to be accredited. The University agreed to develop a program to improve access to services for the underserved of the County in cooperation with community resources. He said he didn’t know if that has taken place. The University agreed to report to the Bernalillo County Commission on a quarterly basis. Mr. McKernan has been very good and very diligent about that.

Commissioner Johnson said that his concern was not over the argument about whether to build a 96 bed hospital. His concern was more about the process. He said the county gets reports but wasn’t included in the plans for this 96 bed hospital. – But the county really should be responsible – having a fiduciary responsibility for this 6.4 mills and $90 million going to the University. The county should be part of these capital plans from the very beginning and not find out, as he did, from the Albuquerque Journal, that this was UNMH’s intent, whether good or bad. Some of these questions would have been answered long ago and available for review by this Board had the county commission been involved locally to help set some of those goals.

Mr. Brasher said one of his concerns with the process it was that it wasn’t before the County Commission. But the greater issue is that the contract is between the hospital and the people. And one of the mechanisms to involve the people is to take the issue to
public meetings in Bernalillo County so the public can be involved not only just in the capital projects but also in needs assessment, developing goals and objectives. Clearly UNM has to run the hospital; the county can’t. But it is the county’s involvement in setting the goals and objectives for the hospital and some involvement in the budget process. I think that’s reasonable.

Mr. Aragon handed out Article 8, Section 9 of the State Constitution. He said he was concerned that levying a tax would be the public mandate in the Constitution and the county commission could not transfer that power to a non-elected board. There was no question that UNM should be running the hospital. But on the flip side, about the contract might be in violation of Article 8, Section 9 of the Constitution because there are no elected members on the UNMH board of trustees.

Commissioner Johnson said that constitutional question is one of his concerns. He said he is not sure that the county can enter into a lease agreement as a commission and bind future commissions and, in essence, hand to the board of Regents the county’s taxation authority without some sort of form for approval of how that money is being used. That concerns him. And that is part of the lease, unfortunately, and when you read those leases it seems to be pretty clear what the county gives up in exchange for operation of the hospital and taking that burden away from Bernalillo County. These are the specific issues that he would like to address. Yes, the county does have two members of the hospital Board of Trustees out of at least seven. The hospital board is heavily weighted toward the UNM regents. And in that board, the regents do not give up their authority to approve capital projects or approve budgets, unlike the Board of County Commissioners who gave up any representation or approval over that $90 million. Not only that, but Commissioners cannot serve on the Board of Trustees as a matter of the agreement between the two parties. Those are some of the issues she would like to address. Some of the things that the county is having to deal with today were previously dealt with at the Board of County Commissioners.

Mr. Aragon wasn’t sure where that took them. He was not sure how to address it or how to fix it. They might need an opinion on it.

Governor Martinez asked if the Board of Regents might be unconstitutionally authorized.

Mr. Aragon said it was what the county commission did in abdicating their authority to the UNM Board that may be unconstitutional.

Governor Martinez asked if Commissioner Johnson had raised this question with the county attorney.

Commissioner Johnson said they had conversations but had not received a definite opinion. He thought it was the wrong course to remove elected officials from their mandated taxing authority. Ninety million dollars would be over 30 percent of the
county’s operating budget.

Dr. Frank said UNM did have the support of the county commission for this project.

Commissioner Johnson clarified that the vote was 3-2 and he voted against it, not because of objections to the University Hospital, but because of this process.

Governor Martinez concluded it was a constitutional matter and Commissioner Johnson agreed. The Board cannot ignore the Constitution.

Mr. Brasher acknowledged that over the years it was not so much what the law said but in treating this like any other budget item. With any such budget item there would be some public meeting where they talked about their goals and the needs were presented and the budget would be presented like any other. And that didn’t happen here because the county commissioners could not participate on the Board of Regents. They did appoint a couple of representatives who were good people. But the county commission put the mill levy on the ballot so people would have a voice. And he agreed the county shouldn’t manage the hospital, but they should have a voice.

President Frank said the voters approved the mill levy. UNM brought the project to the county commission four times in the year and the county commission most of the time didn’t even interact with Mr. McKernan. Yet Commissioner Johnson brought the issue here and wants to interact at the state level. President Frank didn’t think this was the appropriate forum for this conversation, and it should be sent back to the county. Just because Commissioner Johnson couldn’t get the votes from the county commission, he shouldn’t be allowed to bring it into the business here today. President Frank urged Commissioner Johnson to go back and work with his county to get a majority vote there.

Governor Martinez countered that there was a process for the Board of Finance. It was the appropriate place for all the information to be presented. None of the Board of Finance members were at the county commission meeting. This Board doesn’t know what the discussion was at a county commission meeting, and it is helpful to know that information.

Mr. Aragon heard this constitutional issue discussed at one of the public forums UNM had. So out of curiosity he looked at the Constitution and came across this provision.

Mr. Brasher said that in fairness to Commissioner Johnson, he had also had this conversation with UNM staff on how he felt budget matters should be handled.

Commissioner Johnson said this “county business” was about $90 million taxpayer dollars and regardless of the county commission vote, the issue needed to be considered. He said he didn’t pretend to speak for the whole county commission, but they didn’t even know about the proposed 96 bed addition. And regardless of whether the county
commission would have approved the hospital’s proposal or not, this Board is the last forum left to bring it to and the only place short of a lawsuit.

Dr. Clifford was concerned that this project was being financed with cash out of operating surplus and it was highly uncommon with such a large capital expenditure. It raised questions whether UNMH was charging patients too much. He referred to an article from the journal Health Affairs and complimented Board staff for finding this research related to hospital administrative efficiency. As a budget person he was very concerned that health care costs were totally out of control. They were on a trajectory for health care spending that needs to be addressed. We need to contain costs.

Dr. Clifford said that the 90 percent utilization should be a goal of management and should be the target for UNMH staff. He didn’t believe the federal government could meet their promise on funding for expanded Medicare. So he asked UNM to work with the Board on balancing these concerns.

Mr. Spencer said he didn’t see a constitutional issue here. The county commission needed to have more communication in the process, but to him the case had been made for a health care facility. UNM had demonstrated the need and the cash to finance it and they should be approved to go ahead.

Treasurer Lewis said regarding the debate of county responsibility versus UNM responsibility, that it could have implications across the board. Somebody has to address the overcrowding of the emergency room. Healthcare drives the budget. He didn’t want to be part of the problem but part of the solution.

Dr. Roth said over the course of the years UNMH had been able to meet the needs of Native Americans as agreed, but in the event there was a need to serve 100 Native American patients at one time, the hospital couldn’t accommodate that at this time.

Governor Martinez said they could not ignore the agreement providing for 100 Native American beds. She knew UNMH was the only level one trauma hospital and had to attract every expertise and every talent. She asked to hear from the Acting Secretary of the Department of Health.

Acting Secretary McGrath stated that UNM had received very good advice regarding transparency and agreed with Mr. Aragon and Mr. Brasher that there were many opportunities to communicate with the taxpayers. He hoped the Board of Regents would be receptive to that advice.

He also agreed with Lt. Governor Sanchez that Albuquerque was growing rapidly and they needed to look forward to future needs. The 1966 portion of UNMH was an antique now. The level one beds are needed for trauma, but we should be trying to keep people out of the emergency room. This project was very important because of growth. He knew Presbyterian and Lovelace were thinking the same thing. This needed to be focused on
meeting the needs for level one trauma patients and it needed a specific plan on how the money will be used.

Treasurer Lewis asked Mr. McGrath what his recommendation to the Board was.

Mr. McGrath said he felt the merits of the project exceeded the concerns and he recommended that it was worthwhile to proceed.

Lt. Governor Sanchez commented that in attracting industries to a city, the first thing companies looked for are its health services. The best cities have world-class health service delivery and that needs to be considered. The ability to have a facility within New Mexico that didn’t need to send people out of state was a major consideration.

Mr. Brasher thought every board member had nice things to say about the quality of the hospital’s care and the importance of it. He wanted to get the information on financing and appreciates the time spent here. It was clear that the staff was incredibly committed to what they did.

Treasurer Lewis was glad Mr. Brasher and Mr. Aragon opened their eyes to things the Board had not considered before and thanked both of them.

Governor Martinez noted that the UNM President was new and had learned that not all of the information needed by the Board was transparently provided. The Board tried to get questions to UNM ahead of time but had not seen the responses until this morning. The Board wanted to have a good discussion and that was helpful. She knew her Chief of Staff had pulled together some numbers so the Board could have the information to make a decision this big.

Governor’s Chief of Staff Keith Gardner said he had some questions on the number of medical-surgical beds and about the insurance implications on some of this. The Department of Health data saw the trauma one facility, excluding the west side at the Sandoval facility, as the only facility downtown with 527 licensed beds. And UNM showed 528 beds. The data shows 130 beds available for medical surgical. He asked if part of the discrepancy was because of the 100 beds reserved for Native Americans.

Mr. McKernan said the hospital had 309 adult beds of which 72 were ICU beds and 237 were other beds for adults. He said he had walked the hospital and they had 528 total beds. That was on the license.

Mr. Gardner said the data excluded psychiatric, pediatrics, obstetrics, everything but medical-surgical beds. But the license did give 237 adult beds. That was where the question was.

Mr. McKernan said 20 of those were pediatric beds.
Mr. Gardner said the Department of Health would make the numbers available to the Board. He had tried to reconcile those numbers and couldn’t.

Dr. Frank offered to answer any questions that were put in writing. UNM answered the questions that were sent. They were glad to be transparent but these were new questions that he had never seen before.

Mr. Aragon agreed and said new questions were posed today because they emerged as the Board learned more. He learned a lot from Dr. Roth and was assured in the evolution of his thought process. The discussion was very helpful today.

Mr. Gardner asserted they had three separate meetings with UNM previously and they did ask these questions. They were not new today.

Dr. Frank said they provided responses in writing on the same data - all the information he was asking for. That was why he was confused by what he was now asking.

Dr. Roth said part of the confusion was that Mr. Gardner was drawing out of a Department of Health report and those numbers differed enough to be confusing. As Mr. Gardner mentioned, they met actually four times in responding to those and other questions he raised.

So they were left with one official report from what they actually do. That in itself was a problem because the Board relied on data for an informed decision. The information in Dr. Roth’s presentation detailed how they were using all the cubic inches at UNMH and admittedly that differed from Department of Health numbers. As to why, he thought Mr. McKernan had a good explanation for that. Those numbers should be reconciled, but the demands and needs were based on what they actually had.

Mr. Gardner said he brought it up because from his perspective, they were underreporting on the number of beds per 100,000 and he wanted to make sure they were accurate.

Dr. Roth said he wanted to end his presentation by saying that in spite of any numbers that didn’t cooperate, and legitimate questions on communications, they were still left with thousands of New Mexicans suffering unnecessarily because they didn’t have enough resources. For every day of delay, New Mexico adults and are exposed to greater mortality and morbidity.

He hoped the Board would grant approval as soon as possible. They could put a shovel in the ground in a week but it would still take 20 months to finish the new hospital. When he had to explain to parents why their child was still sitting on a gurney or to a physician in Gallup why he could not accept his patient, it exposes UNM to liability and the citizens to higher risk.
Governor Martinez said his arguments were very valid. There were several issues that had to be resolved: the reconciliation of information to understand the need for people who go to other hospitals; the constitutionality when you ask for an increase in mill levy; how UNM got $146 million and where it came from when they receive $90 million from Bernalillo County for indigent care; and the number of beds that didn’t match the Department of Health data. All of those things needed to be answered but there was definitely the need to provide health care.

Waiting times were very important, but the Board couldn’t ignore any piece of this, especially the constitutionality of it.

Governor Martinez continued that admittedly President Frank came in at the tail end of the process but she thought there were many questions that could be answered quickly and the Board didn’t want to delay unnecessarily. Regarding the constitutionality, she wondered if they needed to place an elected county official on the board of trustees.

Governor Martinez thought the project could move forward. She didn’t want the public to think they did not meet their needs. That makes it frustrating but it has to come together.

Mr. Aragon commented that since this is an informational item the Board could not vote today. He suggested giving the Governor leave for staff to determine a date to give final consideration.

Governor Martinez agreed. Something could be done as quickly as next month so they wouldn’t incur more costs of construction. She asked that the heads of Bernalillo County and UNM and DOH get together and get the issues resolved. When UNM gets $90 million and already has $146 million in savings, that just sounds wrong. UNM must explain what they did with mill levy revenue to demonstrate how they used up the $90 million and still had $146 million left.

Treasurer Lewis asked what they would do if it was not in the agreement.

Governor Martinez said it then was in violation of the constitution. Counsel from the four entities should get together to resolve it.

Mr. Aragon said it wouldn’t be hard to have staff direct those entities to do that. The Executive could direct staff to do that. It needed to move forward with that condition.

Dr. Roth said IHS was another party to the lease.

Governor Martinez asked if anyone from IHS was present. There was none.

Dr. Roth noted there were folks around the room who made a special effort to come
Governor Martinez agreed to hear their comments.

Mr. Ron Aldrich, Past Chair of Christus Hospital representing Alex Valdez, said they had experienced difficulty getting patients transferred to UNMH. Even though Christus is a Level Three facility working toward becoming a Level Two facility, it still requires referrals to UNM. Secondly, the Joint Commission on Accreditation of Hospital Organizations requires the same level of care in all areas and that couldn't be done while keeping patients 30 hours in emergency room. All problems became aggravated simply by lack of access. He said that 23 percent of their population was uninsured and 42 percent more were under-insured. Finally, he reminded the Board what happened in New York City where right now four hospitals still had not reopened for lack of better emergency power supply.

Mr. Greg Ortiz from Acoma Pueblo and former Vice Chair of the All Pueblo Council, speaking for Chairman Sanchez, reaffirmed their effort to support the expansion. The 1952 agreement to provide 100 beds was for the future. They as the indigenous population were not moving anywhere and would grow and thrive here and this hospital was needed. The IHS has always been underfunded. His people used these services so he would go back and report to his people what happened here. They wanted to see this expansion. The stark reality was that there were no beds. Waiting in the emergency room to find a room was real. UNM hospital was the primary source for all Native American people in the state and would continue to be so.

Mr. Ortiz continued that in his conversations with pueblo governors, he understood that UNMH had the money and the Native Americans had a need. If one day they said they wanted 100 beds he could guarantee the Board “would hear from their constituents the next second.” So they asked for the Board’s help to do the right thing and thanked them for what they had done so far.

Ms. Alli Whitman said if there was room at other institutions she wondered if UNM should be expanding. She urged the Board to investigate what is available at other institutions.

Governor Martinez said they would take this off the table for the next agenda and wanted to make sure that data is pulled together.

Mr. Jerry Best said he had been the chairman of the hospital board in the past. Clearly the resource was not adequate enough.

Mr. Best wanted to assure this Board that there was nothing strange about an organization planning to generate enough long range capital funding to continue its services. The funding that was earmarked and set aside was to build a hospital out of surplus funds earned with no change of service to indigents and that was UNMH's
mission. He was shocked that UNMH could afford to do this because of careful management and met opposition.

Mr. Michael Olguin, chairman of the hospital board of trustees and public member, said he hoped for support from the Board next month.

Governor Martinez said her General Counsel would be getting with all the other general counsels. She stressed she would like written responses a week before the future Board meeting. She wanted questions on the lease to be resolved and a detailed accounting for indigent care versus that paid by the hospital.

[The Board took a brief recess from 3:30 until 3:38 p.m.]

Presenters: Dr. Jim Fries, President, New Mexico Highlands University; Max Baca, Director of Technology & Government Relations

23. New Mexico Highlands University Student Union Building Quarterly Project Status Report

Dr. Fries thanked the Board for it’s time. He presented New Mexico Highlands University’s (NMHU) progress report on the construction, which was approximately 94 percent complete with painting, carpet and cleanup underway as well as a little concrete outside. Prior issues were resolved, and they intended to be serving students in the dining hall in the spring.

The only real issue that slowed things down was the HVAC system, but it would be a fine building.

The legal process was also progressing. NMHU filed to remand their lawsuit to state court and had no ruling yet. The mediation process was going forward with Judge Parker, a judge for the US Board of Appeals based in Santa Fe who has extensive experience in construction. The first session would be in January.

Lt. Governor Sanchez asked if the current contractor had incurred or submitted change orders that would exceed their budget.

Dr. Fries reported a short list of change orders all within budget.

Lt. Governor Sanchez asked if the same was true for subcontractors.

Dr. Fries agreed and thought they would be complete with certificate of occupancy in less than sixty days.

Lt. Governor Sanchez asked to be able to take a personal trip up and invite the other two subcommittee members to have a walk through and maybe participate in the grand
opening. The subcommittee also needed to finalize their report.

Dr. Fries agreed. They had not yet scheduled the grand opening, but would advise him about it.

Mr. Aragon was optimistic for a final report in January in light of the legislative session.

Governor Martinez said she knew there were questions on the legal aspect that the Board had been stonewalled on.

Dr. Fries said a couple of meetings ago, and subsequent to that meeting, a number of things happened. NMHU did file a complaint to void the section of their AIA contract that dealt with arbitration so they could pursue Makwa in state court. Then Makwa filed for bankruptcy, which stayed all lawsuits. So, NMHU filed a complaint to remand the case from bankruptcy court to state court. NMHU anticipated a ruling on that in January.

In the meantime, the AIA contract had a mediation process too. So, mediation was selected and the first session was scheduled January 31. He thought the legal aspects were moving forward and on as many fronts as they could identify.

Mr. Aragon advised the Board that when the subcommittee makes its final report some of it would relate to legal issues including the delay, being stonewalled and why that happened. They would make recommendations in the final report. Hopefully they would have answers to all the questions.

Treasurer Lewis commented that if the entire Board went to Highlands they would likely have a quorum. It would be a violation unless noticed.

Dr. Fries said they would be happy to host a board meeting.

Ms. Clarke cautioned that the statute said the Board of Finance “shall meet at the state capitol.”

Mr. Aragon agreed, but they could have informational meeting. He read the OMA for anticipating this very question. So long as the Board didn’t take any formal action, it was permissible.

Ms. Clarke agreed to let the Board decide.

**STAFF ITEMS**

**Presenter:** Stephanie Schardin Clarke, Director

**24. Approval of Board of Finance Meeting Schedule for 2013**

New Mexico State Board of Finance December 18, 2012
Ms. Clarke said staff prepared the 2013 meeting schedule for the Board’s review. These dates didn’t have to be set in stone but this would allow publication of them all at once. The schedule was for the third Tuesday of every month except January because that would be the opening of the legislative session.

Lt. Governor Sanchez moved to approve the meeting schedule for 2013. Mr. Aragon seconded the motion, which passed on a unanimous 6-0 voice vote.

25. WITHDRAWN


Ms. Clarke asked the record to reflect the JPA has been read into the record.

ADJOURNMENT

Mr. Aragon moved to adjourn the meeting. Mr. Spencer seconded the motion, and it passed on a unanimous 6-0 vote at 3:53 p.m.

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Susana Martinez, President

1/16/13

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Michael Brasher, Secretary

1/16/13