MINUTES OF THE
NEW MEXICO STATE BOARD OF FINANCE
REGULAR MEETING
Santa Fe, New Mexico
May 21, 2012

This regular meeting of the New Mexico State Board of Finance was called to order at 9:00 a.m. in the Governor’s Cabinet Room, Fourth Floor, State Capitol Building, Santa Fe, New Mexico.

1. **ROLL CALL: QUORUM WAS PRESENT**

**Members Present:**
The Hon. Susana Martinez, President [arriving 10:05 a.m.]
Mr. Michael Brasher, Public Member
Mr. John Gasparich, Public Member, Secretary
Mr. Sam Spencer, Public Member
The Hon. James B. Lewis, State Treasurer
Mr. Robert J. Aragon, Public Member

**Members Excused:**
The Hon. John Sanchez, Lt. Governor

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

**Staff Present:**
Dr. Thomas E. Clifford, Secretary, Department of Finance & Administration
Ms. Stephanie Schardin Clarke, Director, State Board of Finance

**Others Present:**
[See sign-in sheets.]

2. **EXAMINATION OF BIDS – Severance Tax Bond Series 2012A**
Presenter: David Paul, Financial Advisor, Fiscal Strategies Group

Acting Chair Gasparich declared that this is the time and place for publicly examining bids for the purchase of the State of New Mexico Severance Tax Bonds, Series 2012A, in accordance with a Notice of Bond Sale that has been published in the *Albuquerque Journal*, a newspaper of general circulation in the State of New Mexico, and also in the *Bond Buyer*, a recognized
financial journal outside the State of New Mexico, one time at least five business days prior to the date of this meeting.

Following the recital of the bids, Robbie Heyman, Bond Counsel, Sutin, Thayer & Browne requested that the Board adjust the agenda and move to item 8 for bid acceptance and adoption of the resolution so they could notify the successful bidder and they can move forward. Mr. Paul said the state received 12 “extraordinary” bids. He read each of the bidders name and the corresponding TIC (true interest cost). Winning the bid by 2/10 of a basis point is Morgan Stanley & Co., Inc. with 1.469537 percent.

Mr. Paul recommended the award noting it has been resized and reduced to $57.99 million. That will provide the State with the par amount of the bond and the original issue bid premium of $70.292 million needed to fund the projects. He indicated that this bid is lower by more than 50 basis points, lower than any other bid the state has received for a 10-year financing.

Mr. Paul recommended that before the sale, that the traditional call structure had been adjusted to a non-callable structure because investors are willing to pay for the call protection.

Mr. Paul verified that the bonds will have a 5 percent coupon. Dr. Clifford asked whether the premium would have to be returned if the State were able to reduce the 5 percent coupon. Mr. Paul said the vendor would not have bid the 5 percent coupon if the bonds were callable.

Dr. Clifford observed that the top two bidders were close and asked whether there were other criteria besides the interest. Mr. Paul said the legal criterion is the low true interest cost. He said there is no downstream risk and investors have no recourse to the State.

3. APPROVAL OF AGENDA
   Next Regular Meeting June 19, 2012

Acting Chair Gasparich requested a motion to approve the agenda with staff recommendation to address item 8 directly following agenda action.

Mr. Aragon moved for approval of the agenda, as amended. Treasurer Lewis seconded the motion, which passed by unanimous [5-0] voice vote.

SEVERANCE TAX BONDS AND NOTES

Presenters: Robbie Heyman and Rachel King, Bond Counsel, Sutin, Thayer & Browne; David Paul, Financial Advisor, Fiscal Strategies Group; David Buchholtz and Jill Sweeney, Disclosure Counsel, Brownstein Hyatt Farber Schreck, LLP

8. Acceptance of Bids and Approval of Form of Official Statement,
   Severance Tax Bond, Series 2012A
Mr. Heyman indicated that the resolution accepts the winning bid, approves the sale of the bonds and approves the final version of the official statement.

Mr. Buchholtz said the disclosures were completed based upon the information obtained at the previous meeting, information provided by the Department of Taxation and Revenue, and an official statement was printed 10 days ago. The final official statement will be published seven business from today or less.

Ms. Sweeney stated that they completed the preliminary official statement and worked closely with Dr. Clifford and his staff to develop the disclosure regarding oil. The remaining changes include the pricing information and a cleanup on Table 1.

Mr. Heyman said the resolution also approves the list of projects to be funded by these bonds. He noted 24 pages of projects equaling about $70 million. The projects have been vetted, there are no anti-donation issues and are ready to go.

Mr. Heyman reviewed the resolution and offered the following inclusions: the issue was downsized to $57,990,000; the original purchaser is Morgan Stanley & Co., Inc. with a bid of $57,990,000 plus premium of $12,305,929.30. The principal amounts and coupon rates were provided. The bonds will not be subject to optional redemption prior to maturity. The expenses for the severance tax bond program are paid from the severance tax bonding fund.

Dr. Clifford asked about the project certifications particularly non-government entities and the asset life. He understood the responsibility for vetting the projects falls to this Board.

Ms. King said two projects were identified that could not be funded because of anti-donation and conditions were placed on other projects to ensure structure compliance. In terms of the useful life, even though some of the projects may have short useful lives, overall there are construction projects with longer useful lives – the issue as a whole does not raise any useful life issues.

Dr. Clifford requested bond counsel provide a memo to the Board explaining the criteria used to make those decisions. He said that would help the legislature in the future.

Ms. King said every project responds to a questionnaire that is reviewed with consultation and follow-up.

Board legal counsel Zack Shandler provided an example of a project that was not funded due to the Anti-Donation Clause: $50,000 to a non-profit to conduct interior work on a private building. The non-profit serves people with developmental disabilities, however, there is no governmental relationship.

Dr. Clifford requested that staff provide a memo for the record that details which
projects fell out and why.

Ms. Clarke recognized Board of Finance staff member Sharon Romero for her work with bond counsel on the review of all the projects and processing requests for reimbursement from bond proceeds.

Ms. Clarke noted that the Attorney General’s Office provides a conditions memo for bond sales and she offered to provide that memo to the Board.

Regarding the UNM football field, Mr. Shandler noted that the way the legislature phrased the condition requiring an MOU with the non-profit requires staff, bond counsel and Board counsel to review the final contractual documents with the non-profit to make sure the non-profit is paying fair market value as opposed to being rent free.

Dr. Clifford said he was pleased to see the loophole was being closed.

Mr. Aragon said the project list includes a $50,000 phone system that will be financed over 10 years and seems not to have the appropriate longevity. He also questioned whether providing funding for a project in the Navajo Nation fits the definition. Mr. Aragon asked, if a project that contravenes the policy adopted by the Board or sound public policy, what authority does the Board have to subtract, omit or not approve specific items on the bond sale?

Ms. King said that if the projects are legal and can be funded this way the statute requires the Board to issue bonds for that purpose. The projects are vetted to insure that the ones funded under the tax-exempt status are eligible for tax-exempt funding, including those for the Navajo Nation or other Indian tribes. In terms of drawing down the funds, it is for the most part a reimbursable program and the entity is required to demonstrate that the funds were spent for the purposes appropriated. It is the Board’s legal duty to issue bonds for the purpose if the legislature passes the law and the Governor signs it and it is otherwise legal.

Mr. Shandler said the issues regarding longevity are policy-related issues.

Mr. Heyman said the Board’s previous action was approval of a letter indicating what they deemed appropriate guidelines for projects forwarded to the legislature. At this point the short-term asset versus long-term bond criteria has not been instituted. He assured the Board that they make sure that the average life of the project as a whole exceeds the average life of the bond issue.

Mr. Aragon asked if counsel was suggesting that based on counsel’s interpretation of the statute, he had no choice but to vote in the affirmative of the bond issue. Mr. Shandler advised the Board that the projects as presented within the resolution are consistent with the constitution and the statute. He said an affirmative vote would be consistent with the statute; however, a Board member is always free to disagree with
legal counsel. If the majority of the Board members voted in the negative it is possible the Board would be subject to mandamus action – that there was a non-discretionary duty to vote yes in accordance with the statute.

Mr. Heyman remarked that four positive votes were necessary to pass the resolution and at this point after bids have come in it is awkward to not approve the bond issue creating other issues in the market place. He said it is clearly appropriate to determine which projects to fund prior to issuance of the bond. He spoke to the appropriateness of informing the legislature that the Board will not support funding short-term assets with long-term bonds.

Mr. Aragon said he understood that it was the Board’s position not to approve projects whose longevity will not live beyond the 10-year debt repayment.

Mentioning there was a substantial severance tax note issue Dr. Clifford asked whether the short-lived assets could be funded from those notes rather than the bonds.

Ms. Clarke indicated that the life of the asset is not a factor that staff and counsel use in determining what is funded through the long-term versus the short-term note. The taxable projects through the note have private use or are earmarked – Water Trust Board, tribal infrastructure and colonias infrastructure projects. From a record keeping standpoint it has behooved the state to fund those out of taxable notes. She noted the average life of the bond is 6.4 years and the duration of the issue is 5.7 years.

Ms. King outlined the process employed for project reimbursement which includes certification for reimbursement, and depending on the project the reimbursement request may go to a middle agency, i.e., the Local Government Division. Prior to disbursement, conditions of the bond are reviewed.

Mr. Brasher asked whether the assets/equipment is checked and Ms. King said there is not an audit program in place. Dr. Clifford noted that a conduit agency provides oversight in regard to the issuances. Procedural improvements could be put in place to help with that and it is beyond the Board’s responsibility.

Ms. King said Indian Affairs would conduct oversight to the Navajo Nation project.

Mr. Brasher expressed concern that the state may be paying for equipment that is stolen or damaged and asked how that is handled. Ms. King said each conduit agency signs a grant agreement with the ultimate user of the funds. She said she would review the grant agreement to ascertain the user’s responsibilities in that regard. She said they could educate the ultimate users to their responsibilities.

Mr. Paul remarked that tensions between legislators and the executive agencies that do financing is nationwide. The overall structure of the severance tax bonding
program at this point is heavily weighted to cash financing versus bond financing.

Mr. Spencer moved acceptance of the bids and approval of the form of the official statement, Severance Tax Bonds, Series 2012A. Treasurer Lewis seconded and the motion passed by majority [4-1] voice vote with Mr. Aragon opposed.

4. **APPROVAL OF MINUTES**: April 30, 2012 (Special Meeting)

Mr. Spencer moved to approve the April 30, 2012 meeting minutes. Mr. Aragon seconded.

Mr. Aragon complimented staff on the quality of the minutes. Ms. Clarke said credit belonged to Ms. Judy Beatty and she has informed staff that she will not be bidding on the contract in the future.

The motion passed by unanimous [5-0] voice vote.

**EMERGENCY FUND BALANCES**

Presenter: Stephanie Schardin Clarke, Director

5. **Emergency Balances – May 2012**

Ms. Clarke reported these balances:

- Operating Reserve Fund: $1,191,814.39
- Emergency Water Fund: $68,400.00

**EMERGENCY FUNDING REQUESTS**

Presenter: Dianna J. Duran, Secretary of State

6. Secretary of State’s Office – Requests Approval of Conversion of Emergency Loans to Grants ($1,016,350.52)

Secretary of State Duran introduced her Chief of Staff Ken Ortiz, CFO Ellie Ortiz and the Director of the Bureau of Elections Bobbi Shearer.

Secretary of State Duran said she is requesting that loans in the amount of $1,016,350.52 be converted to grants. She the Board of Finance has loaned the agency $1.6 million since 2008. In 2011, the agency repaid $550,000 leaving just over $1.1 million outstanding. An agency audit projects $86,069 available to repay toward that loan leaving an outstanding loan balance of just over $1 million.

Secretary of State Duran said the agency requested that the legislature appropriate funds to repay the loans but that request was not granted.
Ms. Clarke confirmed that the conversion amount was reliant on the $86,069 available for repayment. She reviewed the criteria in the Board’s emergency funding policy and noted this request met the criteria for the type of public entity with priority given to request by general funded state agencies requesting conversion of loans to grants. From a staff level, Ms. Clarke said the Secretary of State Office has been completely compliant with quarterly reporting and timely in letting the Board know of its inability to make payments.

**Mr. Aragon moved approval of conversion of emergency loans to grants in the amount of $1,016,350.52. The motion was seconded by Mr. Brasher and passed by unanimous [5-0] voice vote.**

7. Secretary of State’s Office – Requests Approval of Emergency Funding for FY 2012 Operating Budget Shortfall ($417,100)

Secretary of State Duran said this grant is requested in order to complete what the agency deems necessary to adequately fund the 2012 primary election. New Mexico has a ballot-on-demand system as well as pre-printed ballots for absentee, early and Election Day voting – that is the most significant fiscal impact on the agency. The agency is required by law to provide those ballots to the counties. She referred to “voting convenience centers” and the combination of two or more precincts in one polling location. County commissioners and not the Secretary of State make those decisions at the local level. Seventeen counties have elected to use voting convenience centers and the agency is required to determine whether pre-printed ballots or the ballot on demand system will be used. She said her staff has worked with the appropriate vendors and determined that it is fiscally better to use the ballot-on-demand system.

Secretary of State Duran said there have been discussions about the cost of elections thrown to the state. The statute requires that the state pay for a great deal. She said many counties could absorb some of the cost and she hoped in the future to minimize some of the state’s cost.

Ms. Clarke outlined the resolution to address this emergency grant to the Office of the Secretary of State in the amount of $417,100 for expenses for the June 2012 primary election from the Board’s FY12 General Fund Operating Reserve.

[Governor Martinez joined the proceedings at this point.]

**Mr. Aragon moved to approve the Secretary of State’s request of emergency funding as a grant in the amount of $417,100 as outlined in the resolution. The motion was seconded by Mr. Brasher.**

Mr. Aragon said he hoped in the future the agency, its LFC analyst and DFA would be able to properly advise the legislature as to the cost of running an election.

Dr. Clifford said his staff has concerns that the request may not be adequate to the full need the agency will incur especially in regard to IT support for the project. Secretary of State Duran
said that conversation with Dr. Clifford’s agency has not occurred and she was confident in the agency’s IT personnel.

The motion passed by unanimous [6-0] voice vote.

SEVERANCE TAX BONDS AND NOTES (con’t)

9. Approval of Severance Tax Note Resolution, Series 2012S-A

Ms. King presented a one-day taxable note that is a senior severance tax note that will be purchased by the Treasurer’s Office. The note is in the maximum amount of $60,015,000 and bears an interest rate for one day at 30-day LIBOR + 5 basis points and will fund taxable projects. Along with the Water Trust Board, the note will also fund the tribal infrastructure and colonias infrastructure appropriations.

Secretary Gasparich moved to approve Severance Tax Note Resolution, Series 2012S-A. His motion was seconded by Mr. Brasher and passed by unanimous [6-0] voice vote.

10. Approval of Supplemental Severance Tax Note Resolution, Series 2012S-B

Ms. King said this supplemental severance tax note has a lien on the severance tax revenues that is subordinate to the senior tax notes. This note will be used in its entirety to fund projects from the Public School Capital Outlay Council. There is a maximum principal amount of $50,026,000. This too is a one-day note sold to the Treasurer’s Office and bears the same interest rate of 30-day LIBOR + 5 basis points.

Dr. Clifford recalled a discussion regarding the Public School Capital Outlay Council’s certification and asked whether the note was the maximum amount that could be issued for the purpose under the statutory test. Ms. Clarke confirmed his observation adding that the certification on record is sufficient.

Dr. Clifford commented that the interesting thing about these notes and the cash flow in the bonding fund is that there will be a substantial amount remaining to revert to the permanent fund as of June 30.

Ms. Clarke said based on cash anticipated to be in the bonding fund as of June 30, it is estimated that $95 million to $97 million will be transferred to the permanent fund as a result of revenues being significantly higher in FY12 than in FY11. Responding to a question from Dr. Clifford, she explained a mechanism called the “super sweep” whereby the legislature may appropriate additional revenues that would otherwise go to the permanent fund for additional capital projects.

Although it may be considered unfortunate more capital projects were not authorized, Dr. Clifford said it was beneficial to the permanent fund to realize the reversion.
Secretary Gasparich asked whether the anticipated reversion funds had implications regarding the State’s bonding capacity for 2013. Ms. Clarke said a formal bonding capacity update has not occurred since the session.

Dr. Clifford said oil production is up substantially and has been increasing at a 10 percent annual rate which will benefit the bonding long term.

Mr. Brasher moved approval of the supplemental severance tax note resolution, Series 2012S-B. His motion was seconded by Secretary Gasparich and passed by unanimous [6-0] voice vote.

PROPERTY DISPOSITIONS

Presenter: Michele Hunt, Director
11. Anansi Charter School - Requests Approval of Sublease with Anansi Day School for Classroom Space at 57 State Road 230, Arroyo Seco ($2,168 monthly)

Michele Hunt, Director of Anansi Charter School, provided the history of the sublease and lease in place. The Charter School Foundation purchased the property with a USVA World Development Loan. A stipulation of the loan was placement of the pre-school and charter school on the site. The school now holds equity title to the property which is deemed to be a public facility under statute. It is now appropriate for the pre-school to lease from the charter school with terms essentially the same as they were under the foundation lease. An appraisal was ordered and the rent is on the high side of the market value. Because of the synergy between the two schools, the pre-school wants to remain on the property.

Secretary Gasparich moved approval of the sublease as requested. His motion was seconded by Mr. Brasher and passed by unanimous [6-0] voice vote.

Presenter: Tommie Herrell, Commissioner
12. Otero County – Requests Approval of Lease of Real Property to Air Cadmos Energy I Corp. to Install and Operate a Solar Panel Electrical Generation Facility ($12,500 annually first 12 years, $37,500 annually for remainder of lease)

Otero County Commissioner Tommie Herrell reminded the Board that this request was tabled at a previous meeting and he was hopeful the new information provided was helpful to the Board’s decision making.

Dr. Clifford asked about the potential value of the asset at the end of the lease and cancellation of the agreement.

Otero County Counsel Dan Bryant said the lease has been modified so if there is a breakdown in the agreement between Management and Training Corporation (MTC) and the developer for purchase of the solar power, the facilities will be removed from the lease premises.
by the developer. If there is a default by the developer and the financier takes over, the lease has
been amended to reflect that the financing entities will have the opportunity to either enter into
an agreement with the County to maintain and operate the facilities or have the facilities
removed. At the term of the agreement, lease provisions provide for the developers to operate
and maintain the facility at a minimum of 75 percent capacity.

Mr. Bryant said the County owns the facilities that are going to be served by the produced
electricity. He said they were 10 years in on the first phase of the prison. The bonds were
issued in 2002 and the prison was occupied in 2003. The County is seven years into debt service
in Phase II of the prison and Phases I and II are the US Marshal’s portion of the facility. Phase
III, the final facility phase, is the US ICE facility. He went on to state that their population
numbers are rebounding.

Mr. Bryant said the net effect of the Air Cadmos Energy program is to reduce the utility cost
by a “significant degree over a long-term period of time.” The reduction in operational costs will
increase the facility’s flexibility to react to and manage fluctuations in housing numbers.

Manuel Rein of AirCadmos said the system is fairly complex and will produce hot water and
energy. The system will provide savings for the prison in terms of present value of around
$100,000 annually. The final value of the system after 25 years will depend on the value of
electricity.

Dr. Clifford mentioned that Otero County was working with NMFA on refunding the bonds
used to build the prison. He asked whether the population at the prison was sustainable. Mr.
Herrell said he met with NMFA and they are working together to redo the bonds for Otero
County. The prison numbers have been up and Phases I and II average 1,100 prisoners. He
added the MTC is amenable to working with the State and the County. The County is paying 8
percent on their bonds and there is $46 million out on the two phases.

In response to Dr. Clifford, Mr. Bryant said the per diem rate that is paid by the using agency
pays the debt service in full, approximately $4.6 million annually. Those revenue streams are
paid to a trustee who polls those, gets the number count in a monthly billing cycle from MTC
and pays the debt service and then pays MTC their operational fee. The per diem rate that the
County gets is paid by MTC, separate and apart from payment of the debt service.

Mr. Herrell indicated that Otero County has over $100 million invested in the prison, which
employs 750 people and unfortunately many of those employees come from El Paso. However,
it is an economic boom for the County. He said the County owns the grounds and the facilities
and MTC is a privately held company.

Mr. Rein said there are tax advantages when developing solar in New Mexico. There is an
investment tax credit up to 30 percent of the total investment and another provision that allows
for depreciation during the first five years. At this point Cadmos is using the tax incentives to
finance the project.
Mr. Shandler asked that any Board approval of this item be contingent upon the Director’s receipt of the final signed version of the lease and receipt of the County Commission’s resolution approving the final signed version of the lease.

Mr. Spencer so moved. His motion was seconded by Mr. Brasher and passed by unanimous [5-0] voice vote. [The Governor was not present for this action.]

13. WITHDRAWN

Presenter: Robert Rosebrough, Gallup McKinley Schools Attorney

14. Gallup McKinley County School District – Requests Approval of Trade of Real Property with City of Gallup

Mr. Rosebrough said the City of Gallup and the McKinley County School District have entered into an exchange agreement by which they propose to exchange parcels of land. The school proposes to transfer to the city a 15.32-acre parcel. The city proposes to exchange to the schools a 16.30-acre parcel. Both parcels represent land that is excess to the respective entities. The school has an appraisal of $180,000 for the properties it will be receiving exceeding the $25,000 limit and requires the Board’s approval. Mr. Rosebrough said the property being received by the city has not been appraised.

Ms. Clarke clarified that an appraisal is not required for legal sufficiency in this case. They are both public bodies and staff has no contingencies or concerns.

Dr. Clifford said the Public Schools Facility Authority concurs with the district that the received property provides a good site for a new school.

Treasurer Lewis moved approval of the trade of real property as requested. The motion was seconded by Mr. Aragon and passed by unanimous [5-0] voice vote. [Governor Martinez was not present for this action and arrived shortly thereafter.]

Presenter: Yasmeen Najmi, Planner, American Institute of Certified Planners

15. Middle Rio Grande Conservancy District – Requests Approval of Sale of Real Property to Dennis and Barbara Williams ($30,116.25)

Middle Rio Grande Conservancy District (MRGCD) planner and landfill administrator Yasmeen Najmi said they were requesting the Board’s approval for a sale of land that involves an encroachment on the Griego’s lateral, one of the district’s water facilities within the Village of Los Ranchos. The request was forwarded to the district in late 2010 through NM Bank & Trust acting as agent for an owner of three tracts within an illegally platted 1970 subdivision. The property is within the conservancy district and when the plats were forwarded for signature an encroachment of a parcel, not involved in the sale, was identified. As a condition of the plat, the district required that the encroachment be resolved.
MRGCD staff supported the sale of the encroached property as it was at the right-of-way and it was contingent on the Trust securing a survey to identify the exact parcel for sale. The Board approved the sale and an appraisal was conducted. Sometime later the Trust informed the MRGCD that the survey revealed that the encroachment on the right-of-way was much larger than originally estimated; however, the appraisal could not be changed. The appraiser indicated that the value per square foot would not change. The increase in the square footage increased the value of the sale above the $25,000 threshold, thus required Board of Finance approval. The sale was completed, the District was audited and the Board’s approval of the sale is required to clear the audit finding.

Ms. Najmi verified that the District was appealing for the Board’s approval after the sale.

Ms. Clarke said while Board of Finance staff is not law enforcement she emphasized that the entity had exposed themselves to liabilities by not obtaining Board approval prior to the sale. If the transfer of real property is not done in compliance with State law a counterparty could argue that it is not legally binding. The District’s written policy regarding real property transfer approval needs to be revised to include the State Board of Finance. She said the Board’s action cannot be retroactive.

Ms. Najmi said the District was agreeable to changing their policy.

Governor Martinez directed the District to forward the amended policy to the Board of Finance within 30 days.

Subhas Shah, MRGCD Chief Engineer, said they could forward an amended policy within the month.

Mr. Aragon expressed concern about the chain of title. Ms. Clarke said typically staff receives a quitclaim deed that has not been executed nor recorded. She said perhaps a new quitclaim deed could be executed and filed following the Board’s action.

Mr. Shah said the property owner has been encroaching for 40 years. He said the District would file a new quitclaim deed.

Mr. Shandler said staff recommends any approval be contingent upon: 1) Director’s receipt of a signed MRGCD resolution confirming the actual buyer and actual size of the parcel sold, 2) Board’s waiver of the requirement that an appraisal be conducted within one year of submission to the Board, and 3) Director’s receipt of evidence that a new quitclaim deed title has been filed.

Mr. Aragon moved to approve with the contingencies delineated by staff. His motion was seconded by Treasurer Lewis and passed by unanimous [6-0] voice vote.

Presenter: Gary P. Romero, Interim Director
16. **Department of Cultural Affairs, National Hispanic Cultural Center - Requests**

**Approval of Restaurant Lease with A Kaytahring Company** ($1,000 monthly plus 5% gross receipts for first three months and $3,600 per month for remainder of the lease plus in-kind services)

Mr. Romero said the Center’s Foundation was running the restaurant and it was recently turned back over to the Cultural Center. The Cultural Center opened in 2000 and has had several different restaurant owners and management throughout that period. An RFP was issued and A Kaytahring Company was the only respondent. The Center is eager to reopen the restaurant and requests the Board’s approval.

Mr. Romero said A Kaytahring Company currently operates out of the South Valley Economic Development Council’s incubator kitchen in Albuquerque.

**Mr. Shandler asked that any Board approval of this item be contingent upon 1) Director receipt of the final signed version of the lease, and 2) Director receipt of confirmation from the Department of Cultural Affairs that all contingencies contained in the resolution of the National Hispanic Cultural Center Board have also been satisfied.**

Mr. Spencer moved to approve subject to contingencies. Mr. Brasher seconded and the motion passed by unanimous [5-0] voice vote. [Mr. Aragon was not present for this action.]

**HIGHER EDUCATION DEPARTMENT**

Presenters: Dr. Brigette Russell, Director of Operations; Henry Mignardot, Capital Project Coordinator; Vahid Staples, UNM Budget Officer, Office of Planning, Budget & Analysis; Bob Doran, University Architect; Paul Krebs, Vice President for Athletics

17. **University of New Mexico - Requests Approval of Athletic Fields Replacement**

($1,379,000)

Dr. Russell introduced Henry Mignardot, the Department’s recently hired capital projects coordinator.

Mr. Mignardot said this project will provide artificial and natural turf replacement to playing and practice fields within the athletic complex and replacement of the drainage system. The synthetic grass will allow the football field to be used more frequently and potentially host some APS games. The synthetic fields will reduce the maintenance and water costs. There is a joint agreement between UNM and New Mexico Activities Association (NMAA) and Albuquerque Public Schools (APS).

Mr. Staples said this project represents a unique opportunity to replace worn fields, greatly reduce the water and maintenance costs associated with the fields and increase the usage of the fields through the joint agreements.
Mr. Spencer asked whether the New Mexico Activities Association’s involvement posed anti-donation issues.

Mr. Shandler said bond counsel and Board counsel have placed conditions on the proceeds of the bond sale and the legislative language requires that UNM enter into a JPA. The proposed joint agreement with NMAA appears to contravene the anti-donation clause so the condition as proposed is that UNM be allowed to be reimbursed for the planning and design but not for the construction money until the joint agreement with NMAA is rewritten to the satisfaction of bond and Board counsel that it complies with the Anti-Donation Clause.

Mr. Krebs said UNM has several existing contracts with NMAA to use facilities and pay rent. As a state entity, the goal is to make the facility as accessible to high school and youth as possible.

Dr. Clifford said he understood the legislative intent to provide UNM’s facilities below market.

Mr. Shandler said there are limited exceptions to the anti-donation clause which counsel does not believe are applicable to this request.

Ms. King commented that if the underlying lessees are APS schools and the NMAA there may be a way to restructure the agreement such that it is going to public entity rather than the private NMAA.

Mr. Krebs said no construction will move forward without this Board’s approval. The agreement is focused on the football field and to offer the facility to APS and NMAA to improve accessibility. It is a part of UNM’s mission to make the facilities accessible to the community.

Mr. Staples said the legislation refers to “athletic fields” but the intent and the majority of money within the appropriation will be used on the football field.

Mr. Krebs said UNM tries to keep the cost down and make the facility accessible. The first contract with NMAA parking was free, however, the past two years parking was charged to help cover expenses. He said UNM will work with NMAA on each event they bring in to determine whether there is a sufficient audience to merit charging parking. UNM maintains the concession income although an APS event may sell t-shirts, etc. and retain that revenue.

Mr. Shandler asked that any Board approval of this item be contingent upon 1) availability of severance tax bond proceeds becoming available to the project, and 2) the project being eligible to receive funding from the sale of these bonds.

Mr. Krebs said the irrigation system would be tapped and taken out of commission with the installation of the synthetic grass field. A major savings is anticipated in labor, maintenance as well as water cost.
Mr. Aragon prefaced his statement stating he has been a booster and purchased season tickets in the past, but his concern is the message the university is conveying to its students. Student tuition, insurance and fees have all gone up and the athletic department is operating at a deficit. The synthetic field seems to be an extravagance in the face of a 33 percent hike in health insurance, 5.5 percent increase in tuition, etc. He mentioned that UNM is struggling to maintain tenured professors as well as struggling to pay for distinguished professors who will benefit the students paying tuition.

Mr. Aragon said he would support the request but underscored it was poorly timed and not the right message for the university to convey.

Mr. Brasher asked for clarification regarding $10,000 set aside for special systems voice and data within the request. Mr. Staples said that is related to modifications to the irrigation and drainage system.

Mr. Spencer moved to approve with the staff conditions. Mr. Brasher seconded and the motion passed by unanimous [6-0] voice vote.

18. University of New Mexico - Requests Approval of Student Residence Center Apartments Interior Renovations ($1,545,000)

Mr. Mignardot said this project will address 75,850 square feet of interior space. The intent of the project is to complete the last seven of twelve buildings and serve to improve the livability of the current student resident center apartments. It will modernize student living spaces to a level of quality and functionality appropriate for students' social and academic activities. The completion date of the project is August 2012.

Mr. Staples said staff was confident the project could be completed August 2012.

Mr. Aragon moved to approve the request. His motion was seconded by Mr. Spencer and passed by unanimous [6-0] voice vote.

19. University of New Mexico Hospital - Requests Approval of Core and Shell Renovation at the Health Sciences Center ($4,950,000)

Mr. Mignardot said the renovation and build-out addresses an approximately 104,897 gross square foot space on University Blvd. NE, the Health Sciences Center. This is predominantly the building perimeter renovation, interior architectural renovations and mechanical and plumbing upgrades to include a fire protection system and electrical upgrades for compliance. The project is scheduled for completion January 2013.

Mr. Staples said the building will be primarily used by the Health Science Center as opposed to the hospital. Health Science Administration will be relocated from the main campus to this site. Tenant improvements will come before the Board at a later date. The project will take nine months and an additional $2 to $4 million is estimated on the tenant improvements.
Responding to a series of questions posed by Dr. Clifford, Mr. Staples offered that including the purchase price at completion the total cost will be $12.5 million – approximately $110 per square foot. The tenants will not have direct client contact or student contact. The tenants moving into the space are all in existing programs and there is an anticipated lease savings. He offered to provide the lease savings when the tenants are identified and the university returns for funding for those improvements.

Mr. Brasher asked about LEED certification and the use of environmentally sensitive materials. Mr. Staples said this renovated building will not be LEED certified.

Mr. Staples verified that the funds were from 2007 UNM bonds. These funds have been reallocated from other projects. The terms of the bonds is 30 years.

Secretary Gasparich moved to approve the request of core and shell renovation at the Health Sciences Center. Mr. Spencer seconded and the motion passed by unanimous [6-0] voice vote.

Presenters: Glenn Walters, Deputy Secretary; Dr. Linda Weems, Dean of Graduate Studies; Dr. Jamie Laurenz, Vice President for Academic Affairs

20. Eastern New Mexico University - Requests Approval of Master of Science in Nursing with an Emphasis in Nursing Education

Mr. Walters said this program has been approved by the Board of Regents, the Graduate Deans Councils, the Academic Council of New Mexico and includes reviews from DFA, LFC and Workforce Solutions.

Dr. Weems said the request is for a master of science in nursing with an emphasis in nursing education. She said there is an acute shortage of nurses in the state and this program will serve to address that need. Nursing programs are limited in the number of students that can be admitted because there is a shortage in nursing faculty. The program for the Board’s consideration would educate nurses to become nursing educators.

Dr. Weems said this program exemplifies the state’s universities working together in developing curriculum and is an effective use of resources. She said ENMU is particularly well suited for this program.

In response to Mr. Aragon’s question regarding anticipated students, Dr. Leslie Paternoster, Director of the Nursing Program, said the first year there would be 15 students, increasing to 20 the second year with a projected total of 40 students once the program is established. Additional facilities are not necessary; however, faculty may be needed. The program is online and the students can remain in their hometown serving in the workforce as nurses while they participate in this program on a part-time basis.
While the focus is on the east side of the state, Dr. Weems said the students will be from all over the state. She said ENMU continues to have a wonderful relationship with UNM, and that UNM fully supports this request.

ENMU anticipates that in the program’s second or third year at least one additional full-time PhD faculty member will be needed to meet the needs of the program, stated Dr. Jamie Laurenz, Vice President for Academic Affairs.

Mr. Shandler requested that if the Board chooses to approve this request, it is staff’s recommendation that it be contingent upon the Director’s receipt of information related to UNM’s program pursuant to 5.5.40.8B NMAC.

Mr. Aragon moved to approve the request with the staff contingency as noted. His motion was seconded by Mr. Brasher and passed by unanimous [6-0] voice vote.

Presenters: Dr. Gilbert D. Rivera, Vice President, Academic Affairs; Dr. Andrellita Chavez, Assistant Professor of Athletic Training

21. New Mexico Highlands University - Requests Approval of Master of Science in Athletic Training

Dr. Rivera said this project started several years ago with the hiring of Professor Chavez to determine whether athletic training could be developed into a full major at the undergraduate level. Her research revealed that the field was moving toward entry-level master programs rather than undergraduate. He said individuals with a masters in this program are able to find employment and he added that the NMAA is recommending that all schools that have sports have an athletic trainer on staff. He discussed the importance of athletic trainers and provided an outline of the internal process that has occurred to approve this item.

Dr. Rivera noted that this program exists at UNM and NMSU at the undergraduate level. Dr. Chavez has been in contact with these institutions and received a letter of support from NMSU. Highlands would be the only institution in the state to offer an entry-level masters program for athletic trainers.

Dr. Linda LaGrange, interim dean of Graduate Studies and Research, said when programs go external to the Council of Graduate Deans the program is posted 30 days prior to the meeting and the program was approved unanimously in 2009, which she said was uncommon.

Dr. Rivera said the Academic Council of Chief Academic Officers unanimously approved the program.

Dr. Clifford said the use of an athletic trainer is an expansion for the State schools and he asked how the school districts would be in a position to afford hiring trainers. Dr. Andrellita Chavez, Assistant Professor of Athletic Training, said she has been working with a family health service that serves the northeastern portion of the state for low-income families. The program director has expressed an interest in having athletic trainers in the area.
Dr. Clifford asked whether a job search was conducted on this item. Dr. Chavez said that had not been done.

Dr. Chavez said the programs are very limited by the number of clinical instructors the institution has on staff.

Secretary Gasparich questioned the commonality of having a masters program at an institution that lacks the undergraduate program. Dr. Rivera said in some fields it is quite common.

Secretary Gasparich asked how commencement of the program would occur without additional resources. Dr. Chavez said she would be teaching courses along with adjunct faculty.

Dr. Kim, Department Chair of Exercise Science and Sports indicated that the department has an undergraduate track of athletic training within the health promotion and wellness program. What the institution lacks is a degree in athletic training; however, athletic training and exercise science share an athletic training room.

Mr. Aragon recalled the Board discussed changing the funding formula from an input generating formula to an output funding formula and without having heard facts about the job market, he questioned whether this masters program complies with the spirit of that formula.

Mr. Walters said this program was vetted in regards to the job market and whether it was a desired program. He said they were assured by Workforce Solutions that the market is under-producing and the jobs would be there. The forecast from the federal standpoint is growing by 26 percent annually. He referred the Board to a submittal in their packet regarding the job market.

With the state struggling to fund reading teachers, Mr. Aragon said this program may be a luxury.

Governor Martinez expressed concern that UNM and NMSU were graduating very small classes in this study field and she couldn’t at this point support a third university. At this point the support information was not solid enough for her to support the program.

Mr. Aragon moved to deny the request for a master of science in athletic training. Mr. Brasher seconded and the motion to deny passed by unanimous [6-0] voice vote.

**PRIVATE ACTIVITY BONDS**

Presenters: Mayling Armijo, Director of Economic Development & Cultural Services,
Bernalillo County; Tommy Hughes, County Bond Counsel; David Friedman, Friedman Recycling

**22. Bernalillo County – Requests 2012 Private Activity Bond Cap for Friedman Recycling of Albuquerque, LLC ($16,000,000)**
Ms. Armijo said Bernalillo County requests approval of an allocation of $16,000,000 of 2012 private activity bond cap for Friedman Recycling of Albuquerque, LLC.

Mr. Brasher asked what the project will mean to Albuquerque in terms of jobs. Ms. Armijo said the project will create approximately 135 construction jobs and upon completion 35 new permanent jobs.

Dr. Clifford asked about the contribution of private equity in this project. Ms. Armijo said the total investment is $19.5 million for land acquisition, construction and equipment. The financing is being provided through the company with Alliance Bank of Arizona. She said the IRB is being used as an abatement tool and it is all private equity.

Ms. Clarke directed the members to their packet where a sources and uses table was provided. The equity from the developer is $4 million, plus the bond, plus the potential new market tax credit bringing the project sources to a total of $24 million.

Ms. Armijo said the company is purchasing their own bonds.

Dr. Clifford asked whether the private activity bond cap being applied for today was pursuant to the IRB. Mr. Hughes responded in the affirmative.

Dr. Clifford said the IRB is nominally issued in the name of the county even though it is purchased by the private entity who is utilizing that funding and the county will serve as conduit for the private activity bond. Mr. Hughes confirmed that was correct. The tax exemption under the IRB is property tax. The private activity bond will allow the interest on the bonds to be tax exempt. Under the statute the interest on the bonds is tax exempt for state purposes but not for federal purposes unless a private activity bond is enacted.

Dr. Clifford asked whether there was a payment in lieu of property tax associated with the project. Mr. Hughes said there is and it is equal to approximately 30 percent of the estimated property tax liability that is being abated. Those monies will go into the county’s community services fund.

Mr. Spencer asked whether this project will provide a market for recyclables from the southern part of the state. Mr. Friedman said they currently have a facility in El Paso, Texas that serves the City of Las Cruces. The City of Albuquerque contract will consume 40 percent of the initial capacity of the facility and the goal is to fill the capacity wherever they can get it.

Mr. Brasher moved to approve the request for 2012 private activity bond cap for Friedman Recycling. His motion was seconded by Mr. Aragon and passed by unanimous [6-0] voice vote.

STATE TREASURER’S OFFICE
Presenter: James B. Lewis, State Treasurer; Linda T. Roseborough, Chief Investment Officer
23. **Monthly Investment Reports Month-Ended March 31, 2012**

This item was deferred.

24. **Quarterly Investment Reports Quarter-Ended March 31, 2012**

This item was deferred.

25. **WITHDRAWN**

The agenda was reprioritized.

**STAFF ITEMS**

Presenter: Stephanie Schardin Clarke, Director

28. **Final Award and Approval of Contract for Bond Counsel Services**

Ms. Clarke said staff recommends approval subject to execution by the Contracts Review Bureau of the DFA of a contract with Sutin, Thayer & Browne for bond counsel services based on the results of an RFP issued by the Board on February 7, 2012. The Board tentatively awarded the contract to Sutin Thayer & Browne on April 30. At that time the Board authorized staff to negotiate a contract and that contract is before the Board.

**Mr. Brasher moved to approve the final award and approve the contract for bond counsel services. His motion was seconded by Treasurer Lewis and passed by unanimous [6-0] voice vote.**

29. **Final Award and Approval of Contract for Disclosure Counsel Services**

Ms. Clarke said staff recommends approval subject to execution by the Contracts Review Bureau of DFA of a contract with Brownstein Hyatt Farber Schreck for disclosure counsel services based on results of an RFP issued on February 7, 2012. The Board tentatively awarded the contract to Brownstein on April 30. At that time, the Board authorized staff to negotiate a contract and that contract is before the Board.

**Mr. Brasher moved to approve the final award and approve the contract for disclosure counsel services. His motion was seconded by Mr. Aragon and passed by unanimous [6-0] voice vote.**

30. **WITHDRAWN**

**GENERAL SERVICES DEPARTMENT**

Presenters: Ed Burckle, Cabinet Secretary; Jay Hone, Director, Risk Management Division; Cameron Hull, Deputy Director, Risk Management Division; Michelle Aubel, Director, Administrative Services Division
26. Risk Management Division – Requests Approval to Transfer Funds from the Public Liability Fund to the State Government Unemployment Compensation Reserve Fund ($10,500,000)

Mr. Burckle said Risk Management Division is requesting a loan of $10.5 million from the Public Liability Fund (Fund 357) and to transfer those funds to the Unemployment Compensation Fund (Fund 353). Unemployment was particularly high in calendar years 2010 and 2011. While the numbers are beginning to decrease there is a bow-wave effect where state employees are concerned. The monies need to be paid to the Department of Workforce Solutions to ensure solvency in that fund.

Mr. Burckle said they would go to the legislature in January and request repayment of two loans: $10.5 million to the Public Liability Fund and an outstanding loan the Board authorized last year for $5 million.

Mr. Hone said the Risk Management Division is contesting numerous claims at this time because the individual was discharged for cause or left voluntarily. Staff works to distinguish on merit the difference between an appropriate unemployment draw and one who is raiding the till. There are cases where there is no contest and it must be paid.

Mr. Burckle said interfund borrowing is defined by statute and he recalled repayment is required within the next fiscal year.

Mr. Shandler said staff reviewed the statutes and found this request to be legally sufficient.

Governor Martinez expressed concern that an individual could be discharged for good cause and able to obtain unemployment and affect the state’s insurance. Mr. Burckle said it is a policy decision made by the federal government and is similar to the tradeoffs made in Worker’s Compensation – certain issues are waived.

Celina Bussey, Cabinet Secretary of the Department of Workforce Solutions, said currently as a reimbursable employer the State is liable for the initial 26 weeks of benefits. If New Mexico is active on extended benefits, as a reimbursable employer the State incurs 50 percent of the cost and private sector employers benefit from the fact that currently the federal government is picking up 100 percent for contributing employers. She said the state is currently active on extended benefits, meaning there are additional weeks the state is liable for.

Mr. Burckle noted that the amount of cost incurred by the state has quadrupled in 2009 and 2010. He pointed out that FY12 includes interest and penalties that are not a reflection on this administration but prior administrations that did not accurately process the information.

Dr. Clifford mentioned that he attended a presentation about using bonds as a means to meet the shortfall in the larger unemployment compensation fund. At this point a loan as requested is an appropriate way to manage a deficit that should be expected.
Secretary Gasparich moved to approve the request to transfer funds from the Public Liability Fund to the State Government Unemployment Compensation Reserve Fund. The motion was seconded by Mr. Aragon and passed by unanimous [6-0] voice vote.

Presenter: Charles Gara, Director, Property Control Division


Mr. Gara referred to the report provided within the Board packet and stood for questions.

STAFF ITEMS (con’t)

31. Joint Powers Agreement

The Joint Powers Agreement report was read into the record.

ADJOURNMENT

Its business completed, the State Board of Finance adjourned the meeting at 12:45 p.m.

[Signature]
Susana Martinez, President

6-28-12
Date

[Signature]
John Gasparich, Secretary

6/21/12
Date

New Mexico State Board of Finance: May 21, 2012