MINUTES OF THE
NEW MEXICO STATE BOARD OF FINANCE

REGULAR MEETING
Santa Fe, New Mexico

May 22, 2013

A Regular Meeting of the New Mexico State Board of Finance was called to order 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. John Sanchez, Lt. Governor
The Hon. James B. Lewis, State Treasurer
Mr. Robert J. Aragon, Public Member
Mr. Del Archuleta, Public Member
Mr. Michael Brasher, Public Member, Secretary
Mr. John Kormanik, Public Member

Members Excused:
The Hon. Susana Martinez, President

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

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

Others Present:
[See sign-in sheets.]

2. APPROVAL OF AGENDA
NEXT REGULAR MEETING: TUESDAY, JUNE 18, 2013

Mr. Archuleta moved approval of the agenda, as published. Treasurer Lewis seconded the motion, which passed 6-0 by voice vote.
3. **APPROVAL OF MINUTES: April 16, 2013 (Regular Meeting)**

Mr. Aragon moved approval of the April 16, 2013 Minutes, as submitted. Treasurer Lewis seconded the motion, which passed 6-0 by voice vote.

**EMERGENCY FUND BALANCES**
Presenter: Stephanie Schardin Clarke, Director

4. **Emergency Balances – May 2013**

<table>
<thead>
<tr>
<th>Fund</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Reserve Fund</td>
<td>$1,018,987.87</td>
</tr>
<tr>
<td>Emergency Water Fund</td>
<td>$0.00</td>
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</tbody>
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Ms. Clarke stated that the Operating Reserve Fund balance will carry the Board through any emergencies that arise in May and June. After June 30, this funding would revert and the Board would receive a new appropriation for FY 2014 in the amount of $2 million. She noted that the current fiscal year’s Operating Reserve Fund appropriation was $1.75 million, and in the prior fiscal year it was $1.5 million. So, in each of the last two fiscal years there has been a $250,000 increase to the emergency funding available to the Board.

**EMERGENCY FUNDING REQUEST**
Presenters: Lorenzo Emilio, District Manager; Jennifer Sena, Chief Financial Officer

5. **Tenth Judicial District Attorney’s Office – Requests Emergency Funding for Costs of Expert Witness Testimony in Murder Trial ($6,000)**

[Representatives were not present. Item was moved to later in the agenda, pending their possible arrival.]

**SEVERANCE TAX BONDS**
Presenters: David Buchholtz and Jill Sweeney, Brownstein Hyatt Farber Schreck, Bond Counsel and Disclosure Counsel

6. **Approval of Severance Tax Note Resolution, Series 2013S-A**

7. **Approval of Supplemental Severance Tax Note Resolution, Series 2013S-B**

Mr. Buchholtz provided background on the history of the Severance Tax Bonding Fund, which is used to pay debt service, with any leftover monies going to pay for various capital needs of the state (Water Trust Board, Indian affairs, colonias and school capital outlay). He said these short-term notes are sold to the State Treasurer on an overnight basis. The bonds are issued on June 27 and paid back on June 28.
Mr. Buchholtz asked the Board to authorize the Severance Tax Note Resolution and Supplemental Severance Tax Note Resolution at today’s meeting. At the next meeting, he would present a finalized list of projects, and the notes would be sold to the State Treasurer at an overnight rate of 30-day LIBOR plus 5 basis points.

Mr. Buchholtz reported that the SEC has taken action again, this time with the City of Harrisburg, which failed to comply with requirements to provide financial information and audits for a period of two years. As a result of Harrisburg’s non-compliance for two years, the marketplace had to use Harrisburg’s other public statements, which were misleading, in order to obtain current information about the city’s finances. He said counsel would provide further information in writing to staff.

Responding to Mr. Kormanik, Mr. Buchholtz said the Legislature has certain percentages set aside for the four categories, so bond counsel first calculates those, and the Legislature then authorizes projects but doesn’t say they have to be put into any particular bond. Mr. Buchholtz said counsel then looks at the cash flow into the Severance Tax Bonding Fund over a six-month period. When one looks at the projects, the set-aside and the cash flow, there is about $7 million more than the set-aside legislation, and that is the available capacity for legislative projects.

Secretary Clifford asked why the Board tries to fund all of the earmarks with the notes since presumably some of those projects would meet IRS criteria. Mr. Buchholtz responded that, in regard to the set-asides, there is the possibility of taking some of those pieces and putting them into the tax-free Severance Tax issue. As recently as 2009, that was done. NMFA, whose staff is in charge of the set-asides, has asked that they not be put in the tax-free note because it creates more administrative work for NMFA to study those projects and get the necessary opinions. Secondly, it causes some more administrative work at the Board’s end to make sure that all of the tax analyses of all of the projects are done. For colonias (which are non-political subdivisions and unincorporated entities of counties) and Indian Affairs matters, these questions could also come up; so historically, staff and bond counsel have said “just take these amounts, put them in the taxable note, that’s the easiest way to do that.” Mr. Buchholtz commented that, if push comes to shove, they may have to do some more adjustments, but their first goal is to not do that.

Secretary Clifford recommended to Mr. Buchholtz that the Board clearly articulate this policy and the reasons behind it, since it came up in the discussion about the legislation proposed with regard to the use of those funds and accountability behind that. He suggested meeting with NMFA staff, as well, to learn why they are advocating their particular position.

Responding to Mr. Kormanik, Mr. Buchholtz stated that investigations in London about the validity of LIBOR have little effect on the Board of Finance, which in this instance is doing a friendly overnight transaction with the State Treasurer. He said the Board does not use LIBOR in its regular bond transactions and the LIBOR scandal has no direct effect on the Board’s financings.
Mr. Kormanik asked Mr. Buchholtz if he was comfortable that when the Board cites LIBOR, the rate will be one that has been developed in a professional way and with integrity. Mr. Buchholtz responded that, for the Board’s purposes in this case, he was comfortable that it was.

Ms. Clarke stated that, between about 2004 and 2008, the Board of Finance was asked to approve a lot of interest rate exchange agreements, or “swaps,” taking a variable rate bond that was issued and mimicking a fixed rate by using LIBOR or another index. She commented that the Board has not seen any request like that for several years, but if one were on the table now, staff would certainly look into whether the LIBOR issue had been properly addressed and remediated.

Mr. Buchholtz said he would strongly agree. He added that the Board has oversight responsibility on all other governments, so when they enter into those kind of swap or derivative transactions as covered by statute, they have to come to the Board for approval. He said there is no question in his mind that governments doing swaps and derivatives—of which there are relatively few in New Mexico—have to be very careful in dealing with those financial terms and dealings with their swap providers.

Secretary Clifford asked that counsel research any recommendations or guidance from federal regulatory authorities about the use of LIBOR in the use of these transactions.

Secretary Clifford asked Mr. Buchholtz to summarize Executive Order 2013-06, requiring that agencies which oversee the granting of Severance Tax Bond proceeds and capital proceeds from the state will ensure that the sub-grantees are compliant with the State Audit Act.

Mr. Buchholtz stated that the Legislature passes perhaps a thousand different capital outlay projects, but does not examine the quality of the financial picture behind every one of those projects. To address this, the Governor issued an executive order stating that entities not current with their statutory audit responsibilities may not receive capital outlay funding. He said he is working with staff and DFA to integrate the terms of the executive order with all of the other project analyses so they can return to the Board in June and safely say the projects have had their tax scrutiny, anti-donation scrutiny, and executive order scrutiny under the order’s transitional rules.

Secretary Clifford commented that, with respect to the transition, there might be some projects that are not funded right now but which are still eligible for funding in subsequent bond sales. He said the criteria say that the entity needs to be compliant with its audit requirements, which includes having a plan to address deficiencies that have been identified in their audits, or else it needs to find a fiscal agent. For instance, a mutual domestic association isn’t required to do an audit, but if they cannot certify that they are in a position to manage their funds well, they need to find a fiscal agent. Based on a preliminary count, there were a few dozen projects of entities that had not filed their audits. He said DFA will be training the agencies on how to implement this, and will continue to work with the entities and agencies going forward.
Mr. Kormanik moved for approval of Item #6. Mr. Aragon seconded the motion, which passed 6-0 by voice vote.

Mr. Aragon moved for approval of Item #7. Mr. Archuleta seconded the motion, which passed 6-0 by voice vote.

Mr. Buchholtz commended Ms. Clarke, Mr. Primm and Board staff for their hard work on these items.

EMERGENCY FUNDING REQUEST
Presenters: Lorenzo Emilio, District Manager; Jennifer Sena, Chief Financial Officer

5. Tenth Judicial District Attorney’s Office – Requests Emergency Funding for Costs of Expert Witness Testimony in Murder Trial ($6,000)

Mr. Emilio stated that the Tenth Judicial District Attorney’s Office (TJDAO) is in need of emergency funding in the amount of $6,000 to pay for expert witness testimony.

Mr. Emilio said the TJDAO prosecuted a case against a Quay County resident in Tucumcari for first degree murder (State vs. Robert Winashe), and the trial resulted in a conviction and life sentence. Dr. Allen Mock, former forensic pathologist for the State Office of the Medical Investigator, performed the autopsy on the victim, but in the three years following the trial, the state encountered numerous defense-related issues that delayed the jury trial. During this period, Dr. Mock moved to West Virginia and had to be brought back to New Mexico to offer critical testimony at trial. Mr. Emilio said Dr. Mock’s initial estimate for testimony costs was $20,000, and after extensive negotiating, Dr. Mock agreed to reduce the fee to $6,000. He said the Administrative Office of the Courts will pay for Dr. Mock’s travel, lodging and meals, but will not pay for Dr. Mock’s actual time out of the office, which represents three eight-hour days at $250 per hour.

Mr. Emilio said Ms. Sena has brought documentation to this meeting to confirm that the TJDAO budget will be at the breakeven point this fiscal year. He said the breaking even was the result of moving an estimated $10,000 left in salaries & benefits to their operating budget, thanks to a longstanding vacancy on their support staff.

Ms. Clarke read the following resolution:

WHEREAS, the Tenth Judicial District Attorney’s Office has requested emergency funding of $6,000 to pay the costs of expert witness testimony;

RESOLVED, the State Board of Finance (the “Board”) 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 Tenth Judicial District Attorney’s Office from the Board’s FY13 Emergency Fund in the amount of $6,000 for costs of expert witness testimony.
Mr. Aragon moved for approval of the resolution. Mr. Archuleta seconded the motion, which passed 6-0 by voice vote.

PROPERTY DISPOSITIONS

Presenter: Jerry Maestas, Facility Manager; Darice Balizon, Associate Superintendent; Gene Parson, Superintendent

8. West Las Vegas Schools – Requests Approval of Sale of Trementina School Property to Trementina Cemetery Association ($31,000)

Mr. Parson requested approval to sell the vacant Trementina school property, located at the intersection of State Road 104 and Junction 419, approximately 47 miles south of Las Vegas, to the Trementina Cemetery Association. He said the West Las Vegas School District has leased the subject property to the Association for many years, at a rate of $1 per year, and the Association would like to take ownership of this 3.013-acre parcel. He said there is an old stone building on the property, but it is not on the historic register, and the Association would like to make some repairs to it and continue using it as a community center. He said the Association has “tons of people” visit and camp out on the property over Memorial Day weekend, when they clean up the cemetery and the grounds.

Mr. Maestas clarified for Mr. Kormanik that the Trementina Cemetery Association is the sole user of the property.

Ms. Balizon stated that she met with two people who grew up in the Trementina area, who described to her how they planned to use the property. She distributed photos of the old stone structure.

Ms. Clarke clarified that the final purchase price is $31,000.00.

Mr. Archuleta moved for approval. Mr. Kormanik seconded the motion, which passed 6-0 by voice vote.

Presenter: Charlotte Andrade, Community Development Coordinator

9. Chaves County – Requests Approval to Donate the Fisk Building in Roswell to the City of Roswell (In Exchange for Improvements at County Juvenile Detention Center and Free Rent for Two Years for County DWI Office in Fisk Building)

Representatives were not present for this item. No action was taken.

Presenter: Kelly Kuenstler, County Manager

10. Luna County – Requests Approval of Sale of Real Property at Columbus
International Industrial Park to CattleMex, LLC ($200,000 cash at closing and $150,000 paid on April 30, 2014)

Ms. Kuenstler said her office had submitted all of the required documentation but had been late in submitting the quitclaim deed.

Ms. Clarke stated that the quitclaim deed was received this morning by email.

Mr. Shandler stated that, if the Board votes to approve this request, staff would recommend it be contingent upon the Director’s receipt of the final signed purchase agreement, note and mortgage, correcting the property legal description pursuant to a May 21, 2013, email from the Mimbres Valley Abstract & Title Company, stating that the correct description is “Lot 31, Columbus Industrial Park.”

Ms. Kuenstler stated that the appraisal came in at about $275,000, and the County is proposing that the property be sold for $350,000. At last month’s Board meeting, a member of the County Commission asked for a lease on this property, but they have discovered that CattleMex will have to put about $150,000 worth of improvements into the property, so the lease turned out not to be a viable option. She said the County therefore renegotiated and decided that a purchase would be more appropriate.

Mr. Kormanik asked what recourse there is if the buyer does not pay the final $150,000 by April 30, 2014. Ms. Kuenstler responded that the County would take the property back and treat everything up to that point as rent. She said they would have to determine what an acceptable amount of rent was that year, and then CattleMex would get the remainder back.

Ms. Kuenstler said there has been some question as to why the County would have the real estate contract and finance the second $150,000. She said that if they use a mortgage instead of a real estate contract, it immediately puts it on the county tax rolls, and the County would get an additional $6,000 because they are charging 4 percent interest on the second $150,000.

Ms. Clarke stated that an email she received from the Luna County Attorney contradicts some of Ms. Kuenstler’s remarks. The email indicated that the County is selling the property for $350,000, paid for by delivering $200,000 cash and note at closing and a note for $150,000: “At closing, the County deeds the property and does not have the right to take back the property; they just have the right to enforce the promissory note for $150,000. If CattleMex defaults on their payments, the County can foreclose on the mortgage to get the balance of the note paid…. If, for example, CattleMex never pays another dollar after closing, the County would foreclose on the mortgage in about a year after giving the required notices. Foreclosure is a judicial process. As part of that process, the district would appoint a special master to sell the property on the courthouse steps. The County would have a representative there to make sure the bid was at least $150,000 plus interest and allowed costs by bidding that amount. If someone wanted the property more than that, they would make a higher bid. If the County is the highest bidder, then they get to keep the property….”
Mr. Aragon questioned the appropriateness of a constitutional entity such as Luna County engaging in what would otherwise be a commercial business transaction, selling property and operating as a bank. He said he was not sure if this was in violation of the New Mexico Constitution.

Ms. Kuenstler responded that she spoke with the owner of CattleMex on the way to this meeting, and he said, “I have no problem just paying the whole balance of $350,000 in cash if it’s a concern for the Board.”

Mr. Aragon asked if the Board could properly approve a cash sale today, which he would support, provided the appropriate documents for a cash sale were provided to staff and reviewed by counsel to satisfy all legal concerns.

Responding to questions from Lt. Governor Sanchez, Ms. Clarke said staff and counsel would be comfortable with the Board delegating to them a review of the revised documents reflecting a simple cash sale.

Mr. Shandler reviewed the wording in the agenda title and said one could make an argument that the Open Meetings Act has been satisfied if the Board wanted to approve the transaction as a cash sale. However, the Board may want to hold itself to a higher standard and postpone it to the next meeting in the interest of seeing the proper documentation.

Mr. Aragon said he thought the notice was sufficient regarding the sale of real property, but was concerned about delegating too much authority to staff.

Mr. Aragon asked Ms. Kuenstler if delaying approval might cause the buyer to lose interest and retract his offer. Ms. Kuenstler responded that she did not think the buyer would lose interest. She said her concern is for the taxpayer, who continues to foot the bill for the stockyards. She said the County at this point is $108,000 in the red in the stockyards in this fiscal year "and we just continue to let this thing bleed."

Lt. Governor Sanchez said he would prefer that this item be postponed to the next meeting so that the request could be properly noticed. Ms. Kuenstler said she had no objection.

Mr. Aragon moved to table Item 10 to the next Board meeting. Mr. Brasher seconded the motion, which passed 6-0 by voice vote.

**HIGHER EDUCATION DEPARTMENT**

Presenters: Henry Mignardot, Capital Projects Coordinator, Higher Education Dept., Dr. Daniel H. Lopez, President; Miguel Hidalgo, Director of Special Projects

11. New Mexico Institute of Mining and Technology – Requests Approval of President’s Student Residence Hall Renovation ($1,502,096)
Dr. Lopez requested approval of the renovation of President’s Hall at New Mexico Institute of Mining and Technology (New Mexico Tech). He said President’s Hall was built in 1939 and has had only minor upgrades over the years. The electrical systems, sewer lines and other infrastructure have only been maintained and not replaced. He said there were a number of incidents last year that created serious problems that now need to be addressed.

Dr. Lopez said these renovations have been part of New Mexico Tech’s master plan all along. Further, the facility is in an historic district, and these old buildings are very structurally sound, but the renovation would make them more usable and safer. He said the main costs would go toward replacement of the sewer system, fire protection system and HVAC systems.

Dr. Lopez said the building is 13,216 square feet, and replacement value is in excess of $200 per square foot. He stated that the renovation would cost $92 per square foot. He said it would cost $25,000 per room as opposed to $27,775.

Dr. Lopez commented that students residing on campus graduate at a faster rate than off-campus students. In addition, data show they have higher GPAs.

Dr. Lopez stated that New Mexico Tech would use its own contingency funds to pay for this project.

Mr. Aragon asked if there is a union membership agreement related to this project, and Dr. Lopez and Mr. Hidalgo responded that they were unaware of any such agreement.

Responding to a question from Mr. Kormanik about the Auxiliaries Construction Reserve Fund as the source of funding for this project, Dr. Lopez said the fund’s source is a percentage of student housing fees that are used to cover the cost of renovations in New Mexico Tech’s older buildings.

Responding to Secretary Clifford, Mr. Hidalgo said the project would go out to bid within the next few weeks. He said contractors on other projects are bidding much lower than what HED has been estimating, but if bids exceed estimates by 10 percent, it would require a re-approval from the Board.

Mr. Archuleta asked if there is a healthy contingency for this project, given the age of the facility involved, and Mr. Hidalgo said renovation projects have a 10 percent contingency.

Lt. Governor Sanchez commented to Dr. Lopez that New Mexico Tech “is really a jewel of New Mexico… because of your leadership and vision and the people you surround yourself with.”

Mr. Aragon moved for approval. Mr. Archuleta seconded the motion, which passed 6-0 by voice vote.

Presenter: Lt. Governor John Sanchez, Subcommittee Chair
12. Report of State Board of Finance Subcommittee – New Mexico Highlands University Student Union Building Construction and Legal Issues

Lt. Governor Sanchez reported the following: “On July 12, 2012, New Mexico Highlands University (NMHU) presented to the Board a request for approval of a budget increase on the construction of its Student Union Building. The Board approved the request contingent upon NMHU providing quarterly reports to the Board tracking construction and legal actions. The Governor appointed me, along with Members Aragon and Brasher, as a subcommittee to meet with NMHU representatives and counsel to discuss potential recourse against Makwa Builders, the general contractor and possible process improvements going forward. The subcommittee’s draft report was discussed by the Board at our September 2012 meeting, and on April 26, 2013, the subcommittee, along with members of this staff, toured the completed student union building. I will just say that they turned a lemon into lemonade. I’m very proud to report to this Board and to the Governor that we were very, very pleased with the final product that was presented.”

Mr. Brasher said the issue that caused a lot of problems was they apparently were late in spending the available money to construct the facility. After a series of delays, there was then a rush to expend the funds rather than lose them. He said the Board should monitor situations like this, because rushed projects can have issues of their own. He added, though, that NMHU ended up with a very nice, functional facility that the students seemed to enjoy.

Mr. Aragon stated that a systemic issue seems to have caused the problem. Information was not properly disseminated to the Board of Regents in a timely way, and the Board was caught off guard. Based on what three members of the Board of Regents told him, “When they learned of the severity of the problem, the boat had left the dock…. and there was a rather cavalier attitude about, oops, we made a mistake and now we’re fixing it.” He said it is unfortunate that the Board of Finance cannot address this, because future students at NMHU will ultimately have to cover the cost of these repairs through tuition fees. At some juncture, he said it would be appropriate for the Board of Finance to direct some kind of communication to the Board of Regents to have self-examination as to what happened between the Board of Regents and its administration that caused this problem.

Mr. Archuleta suggested that the Board of Finance consider imposing a requirement that the Board of Finance be notified when a project slips by a certain percentage in schedule or budget.

Lt. Governor Sanchez responded that the subcommittee has made some best practices recommendations regarding procurement, contract performance reviews, third party inspections, project management, etc., to prevent these problems from happening again. He commented that the “cavalier attitude” mentioned by Mr. Aragon seemed to be, “Well, that’s the way things get done in New Mexico.” He said, “That is not acceptable. And it’s not that we’re here as watchdogs, but at the end of the day we have to be stewards of taxpayer money.”

Secretary Clifford said he thought the subcommittee report was excellent. He suggested that HED become “the point of the spear” on some of the recommendations. He added that the Public
School Facilities Authority members are also working on these issues, and express a lot of frustration on these subjects to DFA on a regular basis.

Secretary Clifford suggested that the Attorney General's Office be brought into this process to see what the state can do constructively, at least as far as contractor performance review issues. He said there has been difficulty in achieving accountability in procurement issues because people are concerned they could be sued for saying something bad about a contractor.

Mr. Brasher commented that, in the NMHU project, the contractors made various modifications to the building to "make it work." He said this raises a concern for projects in general in terms of whether they can get adequate insurance to cover what could be consequences later.

Mr. Aragon said an error of this magnitude, which will result in recurring costs for students over several years, with no one having been reprimanded, "is shocking to the conscience."

Mr. Archuleta stated that the onus should also be placed on the institution involved, i.e., asking them what controls they have put in place to prevent this kind of thing from happening on their next project.

Secretary Clifford noted that several procurement reform measures were passed in the last legislative session, and suggested that the State Procurement Office appear before the Board to comment on that as well as the subcommittee's recommendations on contract performance reviews and how they might be incorporated into the code.

Ms. Clarke noted that the subcommittee has suggested that the Board request a report from the Chairman of the Procurement Reform Task Force in June 2013, as the Task Force reports to the Governor each May and November.

Secretary Clifford asked Ms. Clarke to make this request for June or July, as the Director is currently on leave.

Ms. Clarke also noted discussion about how waivers are handled at the Board level and if there is a client conflict of interest with the Board's legal counsel and someone else who is appearing before the Board. She said the longstanding legal practice has been that counsel approaches staff with the waiver request, and staff reviews whether there is any material concern about advising the Board and advising another client. Typically the Director has signed a waiver. If the Board is not comfortable with this arrangement, she said it could be elevated to the level of the Executive Officer of the Board, who is the DFA Secretary, or there could be a formal notification process to the Board after a waiver is signed. She commented that it may be a good idea to allow the waiver to be signed at the staff level so something can proceed onto the next Board agenda, because timeliness is important.

Mr. Brasher, Mr. Kormanik and Mr. Aragon recommended that the Board have final approval on waivers as a matter of policy.
Mr. Mignardot commented that there were myriad problems with this project, beginning with an incorrect state appropriation. He said he looks forward to implementing the subcommittee’s recommendations into HED’s procedural requirements.

Responding to Mr. Brasher, Mr. Mignardot said HED typically sees projects a month or two after the funding for them becomes available.

Secretary Clifford asked that this report be provided to the State Purchasing Director and ask that the Procurement Reform Task Force address these recommendations in their future meetings.

Mr. Archuleta moved to accept the report. Mr. Aragon seconded the motion, which passed 6-0 by voice vote.

**GENERAL SERVICES DEPARTMENT**
Presenter: Pamela Nicosin, Acting Director, Property Control Division

Lt. Governor Sanchez asked the Board to take a few moments to remember Property Control Division Director Chuck Gara, who passed away on May 3. He said, “I believe I speak for all members of the Board in offering our condolences to Chuck’s wife, Margie, and to Chuck’s entire family. Chuck had a long and distinguished career in both real estate and public service, and his contributions to this state will be appreciated for years to come. In addition to great personal success in business, Chuck set an example for his community through community involvement and giving back to the causes near and dear to his heart.”

Board members offered their condolences to the Gara family and spoke to Mr. Gara’s distinguished history, business ethics, and trustworthiness.

13. **Capitol Buildings Repair Fund Financial Status Report for Month-Ended March 31, 2013**

Ms. Nicosin reviewed the CBRF Financial Status Report, which reflected an uncommitted cash balance as of March 1, 2013 of $17,742,742. There was one emergency declaration in March, in the amount of $5,297, to cover the cost of radon testing in the Bardacke building.

14. **Property Control Division – Requests Approval of Contract with ESA Construction, Inc., to Remodel the Dorm at the Law Enforcement Academy in Santa Fe ($2,374,508.75)**

Ms. Nicosin requested approval to enter into a contract with ESA construction of Albuquerque for the remodel of the dorm at the Law Enforcement Academy building at the Department of Public Safety Campus in Santa Fe. She said the dorm houses Police Academy
cadets and has not been significantly renovated since it was built in the early 1970s. The contract includes renovation of about 24,500 square feet to include new mechanical, plumbing, and electrical systems, new wall, floor and ceiling finishes, insulation, and other improvements.

Ms. Nicosin said there were two bids received on this project, and ESA was the low bidder.

Mr. Kormanik moved for approval. Mr. Aragon seconded the motion, which passed 6-0 by voice vote.

15. Property Control Division – Requests Approval of Contract with Albuquerque Asphalt, Inc. for Paving at the Law Enforcement Academy in Santa Fe ($1,252,202.47)

Ms. Nicosin requested approval to enter into a contract with Albuquerque Asphalt, Inc. of Albuquerque for paving at the Department of Public Safety in Santa Fe. Existing paving has major cracks and potholes and is not draining correctly. The project includes removal and over excavation of 23,730 square yards of pavement, installation of storm drains and new sidewalks. These activities were approved by the Board in June 2011, June 2012 and December 2012.

Ms. Nicosin said two bids were received and Albuquerque Asphalt was the low bidder.

Responding to Secretary Clifford, Ms. Nicosin said Property Control has been receiving a decreasing number of bids on projects for unknown reasons.

Mr. Aragon moved for approval. Mr. Archuleta seconded the motion, which passed 6-0 by voice vote.

STATE TREASURER'S OFFICE
Presenter: Linda Montoya Roseborough, Chief Investment Officer


Ms. Roseborough presented the report.

Ms. Roseborough stated that there were no compliance issues during this period.

17. Quarterly Investment Report of Davidson Advisors

Ms. Roseborough presented highlights from this report.

Mr. Kormanik asked Ms. Roseborough what the threat would be to bonds in the State Treasurer’s Office (STO) portfolio in the event of an interest rate hike, which would devalue the bonds. Ms. Roseborough responded that STO only invests up to three years in the lifecycle of a
bond, and ladders the investments. She said the portfolio is fairly small, so any loss would be fairly de minimis.

Treasurer Lewis said the goal of the Treasurer’s Office is to protect principal, use a buy-and-hold strategy in order to have access to liquidity, and not chase yield.

Secretary Clifford noted that there was an appropriation approved for STO’s cash remediation systems, and he understands moving forward with that procurement will be contingent upon the upgrade of SHARE. He commented that this is a significant risk, because the SHARE upgrade itself is behind schedule and is running into significant challenges at even the most fundamental steps in the process. He said he has just asked staff to arrange for an update for the Board on the cash remediation efforts of the state in general, and at that time it would be helpful to revisit STO’s progress and timeframe.

Ms. Clarke said she has served on the State Treasurer’s Investment Committee (STIC) for several years, and there has been a constantly-evolving checking and rechecking strategy with regard to rates rising, which revolves around a continued assurance from the Fed that it will keep rates lower for a certain period of time. She commented that STO’s portfolio managers and investment advisers really do have their finger on the pulse in terms of what the Fed is communicating, and accordingly ladder out investments to meet the Fed’s continually evolving timeline.

STAFF ITEMS

Presenter: Jeff Primm, Deputy Director and Procurement Manager

18. Final Award of Contract to Perform Bond Counsel Services

Mr. Primm said staff recommends approval, subject to execution by the Contracts Review Bureau of the Department of Finance and Administration, of a contract with Brownstein Hyatt Farber Schreck for bond counsel services. Based on the results of an RFP issued on February 7, 2013, the Board tentatively awarded the contract to Brownstein Hyatt Farber Schreck on April 16, 2013. At that time, the Board authorized staff to negotiate a contract with Brownstein Hyatt Farber Schreck, and that contract is before the Board for approval today.

Responding to Secretary Clifford, Mr. Primm said the Brownstein firm is operating as substitute bond counsel under their disclosure contract with the Board, and the compensation is very similar to what the Board is being charged for substitute bond counsel services negotiated under the disclosure contract.

Brownstein Hyatt Farber Schreck attorneys David Buchholtz and Jill Sweeney were present.

Mr. Buchholtz clarified for Secretary Clifford that he believed there is about a year and a half left on the disclosure contract, and it then has possibilities of either extension or rebid.
Mr. Buchholtz said this contract would be priced in the same way as the interim contract with a very small exception, in that the pricing is now based on principal plus premium of the bonds rather than just the principal. Depending on the premium, it could amount to a difference of 5-6 percent.

Secretary Clifford expressed concern about a possible lack of independence or conflict of interest in having one firm provide both services.

Mr. Buchholtz said that question was addressed in the response to the RFP. In summary, there is no conflict of interest issue because their loyalty runs to the Board in each case, and there are efficiencies. He said Ms. Sweeney is a senior lawyer with many years of experience with state government and before the Board, and, in terms of capacity, they have the ability to share their workload.

Mr. Buchholtz agreed there are issues around not having another set of eyes on documents, but as the Brownstein firm reported in their response to the RFP a number of other governments, including the City of Santa Fe, City of Las Cruces and the City of Roswell, are going to a system of using the same firm for bond counsel and disclosure counsel.

Mr. Buchholtz also noted that, six months ago, the presentation to the public was different in that there was a specific statement in the RFPs that there could be one or the other. In this RFP, that statement was removed.

Mr. Buchholtz said that both services were provided under one contract with the Board prior to 2003 or 2004. Around that time, there was a trend in the industry to split them into two contracts, but a subsequent change in the economic climate resulted in governmental entities going back to one contract.

Secretary Clifford suggested that the Board consider combining these contracts and bidding them that way in the future, since there could be cost savings.

Ms. Clarke noted that compensation section of the contract does contemplate that the two contracts are combined and there is an economies of scale for the contractor, at least in public sales where there is bond counsel and disclosure counsel. In private sales of the Board’s sponge notes there is no disclosure document. In the event that the contracts stay with the same firm there is a 25 percent discount built in. If at some point in the future the disclosure work is done by someone else, the fee for the public sales goes up 25 percent. She said the Board is, therefore, capturing the discount by combining the contracts.

Ms. Clarke clarified that the contract term for disclosure counsel started in early 2012 and would go for a maximum of four years from there.

To address conflicts of interest, Ms. Clarke said the RFP imposed a mandatory requirement that the law firm propose a subcontractor as a “safety valve.” She said the Brownstein firm has complied with this requirement.
Mr. Archuleta commented that, while there is no question that the Brownstein firm has an outstanding reputation, it might be wise to have Mr. Buchholtz report back to the Board at some point on the efficiencies of a combined contract.

Mr. Kormanik said he was very aware of the limited resources of Board staff, and asked if Mr. Buchholtz feels comfortable that the services the Board needs and that the Board staff will be requesting from time to time can be delivered in a timely fashion.

Mr. Buchholtz responded yes, although it would be fair to say that there would be some initial catching up to do in order to provide the quality of services provided by previous bond counsel. He said he felt this could be accomplished by mid-July, adding that he hoped to spend time with staff in the July-November timeframe to examine the process that is in place and perhaps make some suggestions on efficiencies moving forward. He added, “My very strong expectation, and what I demand of myself and you should demand of me, is let us work very, very hard to get through this next sale and get you closed in those deals by July, and that at that time it ought to be expected that we will be completely up to speed. And let’s use the period of time after that to examine where we have been, and to examine more efficiencies and go forward. And if we can’t make that test, then I think it would be time to say, let’s see where we are and see whether more help is necessary.”

Mr. Aragon said that, as a member of the Evaluation Committee, he was very comfortable with the language incorporated in paragraphs 4 and 5, addressing subcontracting and termination, and he was very comfortable with the subcontractor identified in paragraph 4 and the quality of their work.

Secretary Clifford suggested to Mr. Buchholtz that he help staff flesh out what constitutes “nonperformance” and what the appropriate remedies would be for the Board. Mr. Buchholtz responded that he would be happy to do so.

Responding to comments by Mr. Archuleta, Ms. Clarke suggested adding a paragraph #25 to the contract stating, in effect, that contractor will discuss performance quarterly with the Director throughout the term of the contract.

Mr. Archuleta said he wanted to see communication between the contractor and staff as well as periodic reports by staff to the Board on how the contractor is doing, etc.

Secretary Clifford suggested that a subcommittee be appointed to periodically review the contract.

Lt. Governor Sanchez said he would allow Governor Martinez to appoint any subcommittee members.

Mr. Primm stated that any motion to accept the contract would also be subject to execution by the Contracts Review Bureau of DFA.
Mr. Archuleta moved for approval of the contract, as presented, with an additional paragraph that encourages review meetings with staff at least quarterly regarding performance on the contract, and that this be reported back to the Board monthly either formally or informally. Mr. Kormanik seconded the motion, which passed 6-0 by voice vote.

Presenter: Stephanie Schardin Clarke, Director

19. **Adoption of Open Meetings Resolution 13-03**

Ms. Clarke reported that the Open Meetings Act was amended during the 2013 legislative session and that, starting June 14 (the effective date), agendas must be posted 72 hours in advance. She reviewed a redline version of the new Open Meetings Resolution and asked for approval.

Mr. Aragon moved for approval. Mr. Archuleta seconded the motion, which passed 6-0 by voice vote.

20. **Approval of Proposed Changes to Rule on Bond Project Disbursement**

Lt. Governor Sanchez declared the hearing record open.

Lt. Governor Sanchez stated, "Staff has proposed these changes and we will start with staff providing testimony on why these rules should or should not adopted. The Board is free to ask any questions.

"Then, we will allow anyone from the audience to provide oral or written testimony. We should hold off on any deliberations among ourselves until we receive all the testimony. When we have received all the testimony, I will close the hearing record."

Lt. Governor Sanchez stated that the rules become effective upon publication in the New Mexico Register. The legal standard is that the Board must "inform the public" of its reasoning when it chooses to amend its rules. The comments of one member on the record, if it explains the Board's reasoning, satisfies this legal standard.

Ms. Clarke stated that, at the Board's March 2013 meeting, the Board approved to publish notice of these proposed changes to the bond project disbursement rule. The reason behind the changes is to change the dates that draws are due for reimbursement of Severance Tax and General Obligation Bond money to Board staff. At the current time, draws are due on the 10th and 20th of each month, and it is proposed that the draws be due on the 1st and 15th of the month. The reasoning is that 1) it spreads the work evenly across each month for all the different agencies involved in the draw process, and 2) the second draw of each month will be completed five days earlier, which will ensure that the accounting activity to post to the general ledger will be in the same month it was initiated, which is better for reconciliation purposes.
Ms. Clarke stated that, with Board approval, the rules will be published in the New Mexico Register and become effective June 28, affecting the July 1 draw deadline.

Mr. Kormanik asked if there was any public comment received, and Ms. Clarke responded that there was no public comment received during the 30-day period.

There was no public comment.

The hearing record was closed.

Mr. Aragon moved for adoption. Mr. Brasher seconded the motion, which passed unanimously by voice vote.


Ms. Clarke requested approval to publish notice of these proposed changes, which are the outgrowth of the subcommittee appointed by the Governor last month. The subcommittee was asked to review issues to do with soft cost expenditures prior to Board approval of capital projects, including issues with higher educational institution capital projects.

Ms. Clarke stated that the proposed amendments will better assure that the Board’s policy directives are reflected. She reviewed the major changes, step by step, for the Board.

Mr. Aragon moved approval to publish notice. Mr. Brasher seconded the motion, which passed 6-0 by voice vote.

22. Update on Qualified Energy Conservation Bond Legislation (SB 101)

Ms. Clarke stated that SB 101, passed by the 2013 Legislature, gives the Board of Finance a brand-new statutory authority. A family of bonds called Qualified Energy Conservation Bonds was created in 2009 by the Federal ARRA stimulus bill, and the legal interpretation on these was that states can’t utilize their portion of the federal cap available until the state has a mechanism in place for it. Now, in New Mexico’s case, the Board of Finance has that responsibility.

Ms. Clarke said the bill becomes law on June 14, but she has added it to the agenda today as an informational item. She has prepared a draft version of a rule that the Board may wish to begin promulgating at its June meeting. She said she would anticipate bringing a more complete version of the rule to the Board at the June meeting to start the rulemaking process for notification.

Lt. Governor Sanchez encouraged members of the Private Activity Bond Subcommittee to work closely with Ms. Clarke prior to the June Board meeting.

23. Approval of Publication of Notice of Proposed Rule Amendment –
Procedures for Designating a Fiscal Agent of New Mexico

Ms. Clarke stated that Procedures for Designating a Fiscal Agent of New Mexico contains mandatory requirements that go into every fiscal agent RFP about capital ratios and insurance coverage and the like, but it also states in subparagraph 8b that the designation of the fiscal agent shall be in the form of an agreement with the Board of Finance for a term not to exceed four years as deemed appropriate by the Board. She said the fiscal agent RFP was released last Friday, and shortly before that release, staff asked the State Purchasing Agent to revisit a previous opinion that the fiscal agent agreement is for “hybrid services,” which is a mix of general services and professional services. She said hybrid services contracts are limited to four years. She said the State Purchasing Agent found that, if there are any professional services that they are so de minimis that this can be called general services, that allows for the contract to be for a maximum of eight years.

Ms. Clarke said the RFP that was released contains language that allows the term of the contract to be for either four or eight years, dependent upon what the rule says at the time of the contract award, which will be this fall. She said staff would recommend amending this rule so that, instead of a term of four years, it would be for a term allowed by the Procurement Code. She said staff recommends making that mirroring change to both the fiscal agent designation section as well as the custody bank designation.

Responding to Secretary Clifford, Ms. Clarke said all of the Board’s contracts allow for early termination. She said she envisioned a four-year contract as being two years with two one-year extensions, and an eight-year contract as being two years and three more two-year extensions. This would allow the Board to revisit the contract regularly.

Mr. Kormanik moved to publish notice of the proposed rule amendment. Mr. Brasher seconded the motion, which passed 6-0 by voice vote.

24. Fiscal Agent/Custodial Bank Fees

Ms. Clarke reported that, because of the high bank balances being held with the Treasurer’s Office, the Board is in good shape to revert a sizable amount of its appropriation this fiscal year.

25. Joint Powers Agreement

Ms. Clarke read the Joint Powers Agreement into the record.
ADJOURNMENT

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

Susana Martínez, President

Date

Michael Brasher, Secretary

Date