MINUTES OF THE
NEW MEXICO STATE BOARD OF FINANCE
REGULAR MEETING
Santa Fe, New Mexico
June 18, 2013

A Regular Meeting of the New Mexico State Board of Finance was called to order on this date at 9:10 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.]

Presenter: David Paul, Financial Advisor, Fiscal Strategies Group

2. **EXAMINATION OF BIDS, SEVERANCE TAX BOND SERIES 2013A**

Lt. Governor Sanchez read the following notice: “Now is the time and place for receiving bids and publicly examining the same for the purchase of the State of New Mexico Severance
Mr. Paul reported that seven bids have been received for the proposed bond issue, as follows:

<table>
<thead>
<tr>
<th>Bidder</th>
<th>True Interest Cost</th>
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<tbody>
<tr>
<td>Wells Fargo Bank, N.A.</td>
<td>2.33 percent</td>
</tr>
<tr>
<td>Citigroup Global Markets, Inc.</td>
<td>2.37 percent</td>
</tr>
<tr>
<td>JP Morgan Securities, LLC</td>
<td>2.382 percent</td>
</tr>
<tr>
<td>Morgan Stanley &amp; Co., LLC</td>
<td>2.4 percent</td>
</tr>
<tr>
<td>Bank of America Merrill Lynch</td>
<td>2.43 percent</td>
</tr>
<tr>
<td>Barclays Capital, Inc.</td>
<td>2.456 percent</td>
</tr>
<tr>
<td>Goldman, Sachs &amp; Co.</td>
<td>2.51 percent</td>
</tr>
</tbody>
</table>

Mr. Paul said the bids have been verified. Once a final determination is made on the project list, he would recommend an award.

Mr. Paul commented that this has been an interesting month in the markets. Over the past month, interest rates have been far more volatile than usual and have backed up in the municipal market, increasing in the 40-50 basis point range since the last meeting. He said mortgage rates have backed up slightly more than that. He said this change is due to an increasing belief in the market that the Fed has ended its support of long-term interest rates through its quantitative easing program.

Responding to Mr. Kormanik, Mr. Paul said the total authorized amount authorized by the Legislature was $220 million, which was resized to $200 million, reflecting the anticipated projects amount. After it was determined which projects were actually eligible, the project list was reduced to $173 million. He said this includes the final size of the issue, which is $157.56 million.

Bond/disclosure counsel David Buchholtz added that there are also two other transactions occurring at this time that fund additional projects. The Series 2013S-A Note funds include a series of set-asides as well as $9 million in projects that were found to have significant federal tax issues but meet state criteria for funding. He said capital outlay for the schools would be funded under the Series 2013S-B Note.

2. APPROVAL OF AGENDA
   NEXT REGULAR MEETING: TUESDAY, JULY 16, 2013

Mr. Brasher moved approval of the agenda, as published. Mr. Archuleta seconded the motion, which passed 6-0 by voice vote.
[Agenda was reprioritized.]

SEVERANCE TAX BONDS AND NOTES

Presenters: David Buchholtz and Jill Sweeney, Brownstein Hyatt Farber Schreck, Bond Counsel and Disclosure Counsel; David Paul, Financial Advisor, Fiscal Strategies Group

11. Acceptance of Bids and Adoption of Bond Resolution, Including Form of Official Statement, Severance Tax Bond Series 2013A

Lt. Governor Sanchez, Secretary Clifford and Board members thanked Board legal counsel Zack Shandler, who would be leaving the Attorney General’s Office, for his excellent service to the Board.

Ms. Sweeney asked the Board to approve the Bid Resolution, accepting the best bid for the purchase of the Severance Tax bonds. The resolution confirms the modified size and adjusted principal amount of the bond issue of $157,560,000, and also lays out the maturity schedule and determines and accepts the bid of Wells Fargo Bank, N.A.

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

Mr. Archuleta moved approval of the Bond Resolution. Mr. Aragon seconded the motion.

Ms. Sweeney said the Bond Resolution authorizes the issuance and sale of the bonds in the amount of $157,560,000. The resolution includes a list of projects. She said some last-minute changes include a request to remove Project #13-1507, which is $50,000 appropriated to DFA for La Prada Water & Sanitation District. There has also been discussion about removing Project #13-1347, but that may have been previously removed.

Mr. Buchholtz said the winning bid was not affected in any way by the sizing of these projects. He said all of the projects would be certified for compliance with state law.

Ms. Clarke reported that a review yesterday determined that three projects not on the project list are in fact eligible for funding through this bond issue: 1) #13-1856 for $100,000; 2) #13-1581, for $12,000; and #13-1578, for $20,000.

Mr. Archuleta asked why these last-minute changes were taking place.

Secretary Clifford responded that the Executive Order directs the Governor’s executive agencies to certify compliance with the Audit Act. If the audit is not current, the entity is not eligible, and if the audit is current but there are significant deficiencies or material weaknesses in the audit, then there is a set of conditional criteria. He said each of the agencies has been asked to do an assessment on whether there is a plan in place to address significant deficiencies or
material weaknesses, or does the agency have controls to ensure that the money is properly spent. He said a third alternative is to find a fiscal agent who can play the role of managing the money. He stated that some of the agencies are just now reporting back to DFA with the required information, as is the State Auditor, who was also asked to do a review.

Secretary Clifford said other entities not eligible now will be able to come forward for a second bond sale in December, and DFA and the State Auditor will be working with them in the interim.

Mr. Archuleta asked if the list is certified and therefore accurate; and if not, at what point should one be concerned if there is a project on the list that isn’t actually eligible.

Secretary Clifford responded that DFA has tried to err on the side of ensuring that the entities on the list meet the tax exempt funding criteria but also the Executive Order’s criteria. He commented that these criteria are new to people and will take some getting used to, but the hope is that the process will run more smoothly going forward as DFA continues to work with the various entities.

Mr. Buchholtz said the three projects listed by Ms. Clarke are in fact included on the hard copy list distributed to the Board today.

Mr. Buchholtz stated that there are more than 700 projects on the list, and he could not say that there might not be a technical change somewhere or that staff would not come forward with “a fix or two” later. He said that, “To the best of our ability and staff’s, we think we presented to you this morning an accurate list that was vetted both through the tax process and the Executive Order process.”

The motion passed 6-0 by voice vote.

9. **Approval of Amendment to Severance Tax Note Resolution, Series 2013S-A**

Ms. Sweeney said this amending resolution authorizes the issuance of up to $73,837,800 in taxable Severance Tax notes and includes set-asides approved by the Legislature for the Tribal Infrastructure Board, Colonias Infrastructure Board and Water Trust Board. Also included are about $9 million worth of projects that have been deemed taxable.

Mr. Buchholtz stressed that the items on this list were carefully vetted. He stated that consideration of these projects included whether they were a true capital cost under federal law. He said that was the issue with fire remediation, which is mostly sending people into the forest and cutting down trees, and they were able to satisfy themselves it was appropriate under state law. He said there were also issues regarding monies being used by 501(c)(3) entities (some museums, for instance) and whether they were deemed eligible.

Secretary Clifford noted that, although the Tribal Infrastructure Board, Colonias Infrastructure Board and Water Trust Board have provided DFA with a list of projects, they have
not yet been vetted in terms of the Executive Order. He added that DFA has to work with the tribal leaders under the State Tribal Collaboration Act on their audit process and how it differs from the Audit Act. If there are projects on the Tribal Infrastructure Board list that do not meet the criteria of the Executive Order, they will be permitted to substitute other projects for them.

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

10. Approval of Resolution Reauthorizing Certain Severance Tax Bond Projects

Ms. Sweeney said this resolution amends Severance Tax bond appropriations to reflect reappropriations by the Legislature.

Mr. Buchholtz said these projects are funded with bonds other than those under discussion today, and have been re-vetted.

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

12. Disclosure Counsel Presentation on Recent Securities and Exchange Commission Actions

Mr. Buchholtz reported that the City of Harrisburg was sanctioned by the SEC for not doing their audits, and the situation was compounded by the making of speeches and delivery of other public information that was not a fair and accurate description of Harrisburg’s financial situation.

Mr. Buchholz also reported that the City of South Miami Beach participated in a grant program with a Florida entity that was similar to the New Mexico Finance Authority. He said they went through a vetting process and filled out applications stating that they qualified and did not have tax problems, when in fact they did have tax problems. Instead of just building a garage that they ran themselves, the City decided to enter into a transaction with a private party to manage the garage, with spaces for retail and other privately owned businesses. He said the issue went unnoticed for 6 to 7 years until the town discovered the problem itself, went to the IRS and entered into a closing agreement with the IRS to do what was necessary to avoid having the bonds declared taxable by the IRS. Nevertheless, the SEC entered an order against the City and said it was a matter of negligence in regard to how the documentation was prepared.

Secretary Clifford disclosed that the state’s CAFR is late again this year and should be completed within a few weeks. It might not be completed by June 30. He stated that the hope is to have an audited CAFR for the first time, and that has slowed the process.

Mr. Archuleta commented that, given all of the new changes being instituted, he sees an opportunity for the Board to establish process controls and to be able to define what a proper process looks like, so that by the time it arrives at the Board of Finance it is essentially
“certified” as having gone through the required process. He said this process would be required regardless of who the players are.

Secretary Clifford responded that he appreciated the comment. He said DFA could work with Bond Counsel and the Controller, which would cover the legal and financial requirements, to review processes and identify deficiencies.

Responding to Treasurer Lewis, Mr. Buchholtz stated that, given the state of political affairs in Washington and other issues, there will be continued attempts at limiting the tax free bond market and the testing of other alternative devices such as reimbursements from Treasury or credit bonds as an alternative to tax free financing.

3. **APPROVAL OF MINUTES**: May 22, 2013 (Regular Meeting)

Mr. Archuleta moved approval of the May 22, 2013 Minutes, as submitted. Mr. Aragon seconded the motion, which passed 6-0 by voice vote.

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

5. **Emergency Balances – June 2013**

<table>
<thead>
<tr>
<th>Fund</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Reserve Fund</td>
<td>$1,012,987.87</td>
</tr>
<tr>
<td>Emergency Water Fund</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

Ms. Clarke reported these balances.

**EMERGENCY FUNDING REQUEST**

Presenters: Bobbye Rose, Community Development Director; Debi Lee, Village Manager; Michael Salas, Mayor Pro Tem

6. **Village of Ruidoso – Requests Approval of Conversion of Emergency Loan to Grant ($433,990)**

Ms. Lee reported that, in June 2012, after the Little Bear fire, the Board approved a loan to the Village of Ruidoso in the amount of $215,990 for hardening of Alto Dam and up to $218,000 for radio communication upgrades. She reported that all of the funds for the dam and radio communication upgrades were expended.

Ms. Lee said two towers were purchased and they will be completely equipped by the end of this week, adding that the total cost of the radio communication upgrade project was $241,527.35, or $23,527.35 in additional expense. She stated that they were not able to buy the
50 radios that they had originally proposed, but with the approval of the State Fire Marshal were able to use some of their own funds to complete this project.

Mr. Salas thanked the Board for its help with these projects.

Mr. Brasher asked if the public safety communications facilities would be used for commercial purposes, and Ms. Lee responded that there is no discussion of any private use. She said this is simply for their emergency communication. She said the county is partnering with them, and other entities using the system would include the police department.

Mr. Aragon asked Ms. Lee if the inability to buy 50 radios would render the system ineffective, and Ms. Lee responded that people can use the radios they have and gradually replace them. She said there is money in this year’s budget to acquire 20 radios.

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

Presenter: Nita Taylor, County Manager; Justin King, Project Manager

7. **Lincoln County – Requests Approval of Conversion of Emergency Loan to Grant ($254,421.52)**

Ms. Taylor said Lincoln County is very appreciative of the Board’s assistance in approving a loan in the amount of $254,421.52 for flood mitigation costs last year in the face of the County’s emergency. After careful consideration, she said the County used the funds as follows: $185,942 to repair Bonito Lake Road; $43,534 for the Sierra Vista catchment; and $24,945 for seeding.

Mr. King discussed the County’s reasons for choosing these three projects. On the Bonito Road project, they put in concrete low water crossings and put in a base course; on the two ponds impacted by the fire, they removed sediment and redirected the channel flow away from County infrastructure; and on in the seeding project, they helped private property owners mitigate runoff issues by planting seed.

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

8. **WITHDRAWN**
PROPERTY DISPOSITIONS

Presenter: Charlotte Andrade, Community Development Coordinator

13. 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)

Ms. Andrade stated that Chaves County purchased the Fisk Building in 1985 for $188,000 to house the District Attorney’s office. When the county courthouse was remodeled in 2004, the District Attorney’s office relocated to that building, leaving the Fisk Building largely vacant. In 2008, the county tried to sell the building at the then-appraised value of $165,000 and received one offer for $40,000. She said the bid was declined.

Ms. Andrade said Chaves County is asking to donate the building to the City of Roswell, which plans to renovate the building to create public restrooms to accommodate festivals and other events in the immediate area. In exchange for the donation, the City of Roswell will make improvements for ADA compliance to the sidewalk at the parking lot entrance to the County’s Juvenile Detention Center. The City will also rent DWI offices on the east side of the Fisk Building free of rent for two years. The current estimated value of the property is $188,000.

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

Presenter: Kelly Kuenstler, County Manager

14. Luna County – Requests Approval of Sale of Real Property at Columbus Industrial Park to CattleMex, LLC ($350,000)

Ms. Kuenstler asked that the Board approve Luna County’s request to sell its 12.43 acre stockyard property to CattleMex, LLC, in the amount of $350,000, to be paid in cash at closing. She said the stockyard property appraised at $275,000.

Mr. Archuleta moved for approval. Treasurer Lewis seconded the motion, which passed 6-0 by voice vote.
Presenter: Agnes Leyba-Cruz, Projects Specialist; Jeff Thomas, CEO, Southwest Care Services

15. Santa Fe County – Requests Approval of Amendments #1 and #2 to Lease with Women’s Health Services, Inc., now Southwest CARE Center, for 901 West Alameda ($148,710 per year services and cash rent plus $6,000 in common area maintenance charges)

Ms. Leyba-Cruz requested approval of two amendments to Santa Fe County’s lease with Women’s Health Services. The first amendment expands the premises from the original 7,751 square feet to include an additional 2,163 square feet, for a total of 9,914 square feet. The amendment also adjusts the current rental rate to $15 per square foot, reflecting a current appraisal, plus $6,000 per year annual payment for common area maintenance. At the beginning of each subsequent five-year option term, the annual rental payment will continue to increase by 5 percent as stipulated in the original lease. Because Women’s Health Services recently merged with Southwest CARE Services, the second amendment changes all references to Women’s Health Services Southwest CARE Services and updates the lessee’s notice address.

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

HIGHER EDUCATION DEPARTMENT

Presenters: Henry Mignardot, Capital Projects Coordinator, HED; Glen Haubold, Assistant Vice Present for Facilities, NMSU; Greg Walke, Architect, NMSU; Andy Burke, Vice President for Business and Finance, DACC

16. New Mexico State University, Doña Ana Community College – Requests Approval of Sunland Park Phase 3 ($4,000,000)

Mr. Mignardot stated that this project has been reviewed and approved by the HED Capital Projects Committee and also complies with the Governor’s Executive Order for green building standards. He stated that this project would be paid for entirely through local general obligation bonds issued in 2011.

Mr. Mignardot said NMSU is requesting approval to renovate and expand Doña Ana Community College (DACC) Sunland Park Center. The $0.3 million expansion will add 14,000 square feet in three separate additions to include a lecture hall, classrooms, computer lab, welding composites lab, student commons area, and offices. He said the existing building would be renovated at a cost of $3.7 million to upgrade labs, offices and technical spaces.

Mr. Mignardot stated that the 2005-2009 Doña Ana Community College Facilities Master Plan prioritizes this as a separate project for the 2009 local general obligation bond election based on projected enrollment growth and growth of programs taught at this center. He said enrollments have met or exceeded projected growth every year, and current enrollment is such
that the space is acutely needed. He said the project would replace the four temporary classroom buildings on this site.

Mr. Mignardot noted that Doña Ana Community College Sunland Park has one of the smallest square feet per FTE figures among two-year colleges in the state, at 114 square feet per FTE, while the state average is approximately 250 square feet per FTE.

Mr. Mignardot said construction is expected to be completed by August 2014.

Responding to Mr. Kormanik, Mr. Burke said DACC Sunland Park has averaged 500 credit students over the past several years, and there are an additional 300 in the adult basic education program. He said population in Sunland Park is about 20,000, which affords DACC the opportunity to raise the educational level of area residents and qualify them for jobs.

Responding to Secretary Clifford, Mr. Burke said this is the last construction project that DACC Sunland Park expects to do “for quite some time.”

Noting that this project was initiated in 2009, Mr. Archuleta asked if NMSU feels comfortable with the cost estimates.

Mr. Walke responded that NMSU has been doing cost estimates at each design stage, and the cost estimates have been confirmed. He said they still remain within the $4 million budget.

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

Presenters: Dr. Steven Gamble, President; Scott Smart, Vice President for Business Affairs

17. Eastern New Mexico University – Requests Approval of Jack Williamson Liberal Arts Renovation ($13,000,000)

Dr. Gamble stated that the Jack Williamson Liberal Arts (JWLA) building is the largest building on the ENMU campus, at 43,000 square feet. It was constructed in 1961 and has needed renovation for a long time.

Dr. Gamble stated that, since 1990, ENMU has constructed only one new I&G facility on campus. He also noted that, of the state’s four-year institutions, ENMU has the most efficient space utilization record, receives the lowest amount of utility funding, and has received the smallest amount of state financial support. Further, since 2001, ENMU has spent $124 million in construction projects, and has the fourth-lowest tuition fees of all public Southwestern four-year institutions.

Mr. Aragon asked if ENMU contemplated using a geothermal system such as that used by New Mexico Highlands University, since it is an efficient use of existing natural resources.
Mr. Smart responded that ENMU did not look at geothermal for this project, but has been working on a campus solar project for roughly two and a half years. That project would have provided 50 percent of ENMU’s electrical needs on an annual basis, but the cost benefit analysis done through the New Mexico Minerals and Natural Resources narrowly missed the required cost benefit threshold. He added that New Mexico Tech considered a geothermal project but also failed to meet the required threshold.

Mr. Archuleta asked if any “surprises” are expected that might exceed the contingency budget, such as subsurface utility needs, and Mr. Smart responded that he did not believe so. He said ENMU’s electrical system, hot water system, and chilled water system are all brand-new. He added that this is the fourth project in sequence with the same kind of renovations, and there were no surprises in any of them. He said there is no asbestos issue.

Responding to Secretary Clifford, Mr. Smart said ENMU has “an extremely clean” audit and there have been no issues for at least the past 10 years.

Secretary Clifford noted ENMU’s 22 percent condition index and wondered if ENMU wasn’t doing “too good of a job.” He said perhaps ENMU might consider stepping back a bit in terms of its capital program.

Dr. Gamble responded by explaining that there is a difference between the condition of a building and what is inside the building in terms of technology and appropriate workspaces for students in the 21st century. He said this is their main problem, and ENMU’s next general obligation request will be to begin updating their library.

Mr. Brasher asked if ENMU has acquired any property through condemnation, and Mr. Smart responded that he could not imagine that ENMU, with so much land, would ever have done that.

Mr. Shandler recommended that any approval of this request be made contingent upon the closing of the Series 2013-A Severance Tax Bonds.

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

[Agenda was reprioritized.]
STATE TREASURER’S OFFICE

Presenters: Ricky Bejarano, Deputy Cabinet Secretary/State Controller, DFA; Victor Vigil, STO

27. Update on Cash Reconciliation Remediation Project and Discussion of Joint Reconciliation Policies and Procedures between Agencies

Mr. Bejarano presented a “Book to Bank Reconciliation Update” slide presentation after which Mr. Vigil discussed future initiatives, which were dependent on the upgrade of SHARE’s software to version 9.2 as scheduled in the April-June 2014 timeline.

Secretary Clifford asked that SHARE Director David Holmes appear before the Board at an upcoming meeting to provide an update.

Treasurer Lewis thanked Mr. Bejarano and Secretary Clifford. He said the State Treasurer’s Office has come a long way since he came on board as State Treasurer. He added, however, that the Treasury Management System is unique to the New Mexico State Treasurer’s Office, because he knows of no other state treasurer using this system.

Responding to Mr. Kormanik, Mr. Bejarano said Cash Management staff has been gradually reduced through attrition over the last year, creating better efficiencies, and they have reallocated positions where they should have been. He said now they have a bureau of four highly-skilled people who will be running the cash management process.

Mr. Kormanik asked if they would have to contract out for the necessary talent. Mr. Bejarano responded that, although they have the necessary staff on the accounting side, they are unable to hire and retain people on the technical side at DOIT because of competition from the private sector, and because the education and skill level around the state for those skill sets is relatively low. He said they have had to rely heavily on outsourcing through contract, and he does not expect that situation to change.

Mr. Kormanik recalled discussion about setting aside $70 million in operating reserve money to address un-reconciled cash balances, and asked if that situation remains the same.

Mr. Bejarano responded that they are truing up the $70 million through the CAFR process, and the actually number is expected to be quite close. He said there were 800 million rows of transactions going back seven years. In developing the initial $70 million estimate they did the best they could and then took the lower number in accordance with GAAP requirements.

Mr. Kormanik stated that, while there is a good working relationship between STO and the Controller’s Office, in a couple of years that could change. He expressed concern that, if things are not officially formalized, particularly given the regular updating that will be required, new people coming in might not feel bound to follow the format that has been established in the suggested MOU.
Lt. Governor Sanchez agreed that something more than an MOU has to be created that would bind future legislatures and administrations.

Rep. Luciano "Lucky" Varela recommended that Mr. Kormanik drive this issue, since he has worked at DFA previously and understands the financial controls and systems that were in place before. He said he was not satisfied that the current system complies with statute.

Mr. Aragon said there would be another election in 18 months, and suggested putting together a legal team to start working with the accountants and STO to make sure this is implemented heading into the next election cycle. He commented that it is disconcerting to think that all of this effort could otherwise be for naught, and hoped that the necessary statutory changes could be brought to the Legislature in January.

Mr. Archuleta suggested that a blue ribbon task force be convened with three members to discuss what a guiding document looks like going forward with the idea of looking at the "low hanging fruit" statutes as the first priority.

[ Lt. Governor Sanchez excused himself from the proceedings. Mr. Brasher chaired the remainder of the meeting.]

**HIGHER EDUCATION DEPARTMENT (Cont’d)**

Presenters: Glen Haubold, Assistant Vice President for Facilities; Greg Walke, University Architect; Henry Mignardot, HED

18. **New Mexico State University – Requests Approval of Jett Hall Fire Damage Repair ($1,200,000)**

Mr. Mignardot reported that, on March 30, 2013, a fire occurred in the west wing of Jett Hall on the Las Cruces campus of NMSU. The cause of the fire is still under investigation. This wing housed both offices and laboratories, and the damage to the rooms ranged from slight to a total loss. He said repairs include, but are not limited to, asbestos abatement, HVAC replacement, electrical, networking and plumbing systems, and the cleaning and/or replacement of finishes and equipment.

Mr. Mignardot said total project cost will be approximately $1.2 million, but the actual cost to the University will be the $1,000 deductible. Other costs of restoration will be reimbursed by insurance through the state's Risk Management Division and the insurance carrier.

Mr. Mignardot said it is imperative that the work begin immediately so that the building can be functional by the time students return to classes for the fall semester.

Mr. Haubold thanked the Board for hearing this emergency request.

Mr. Brasher asked if there is any possibility that the insurance carrier and/or Risk Management would not cover this cost to which Mr. Walke responded that he didn’t think so—but NMSU would be able to cover any such amounts from plant funds.
Mr. Archuleta moved for approval. Mr. Aragon seconded the motion, which passed 5-0 by voice vote.

GENERAL SERVICES DEPARTMENT

Presenter: Mike Unthank, Deputy Secretary, GSD; Larry Maxwell, State Purchasing Agent

19. Presentation on Recent Procurement Reforms and Update on Work of the Procurement Reform Task Force

Mr. Maxwell made a presentation on “Procurement Legislation Enacted in the 2013 Legislative Session.”

Presenter: Pamela Nicosin, Acting Property Control Division Director


Ms. Nicosin reviewed the CBRF Financial Status Report, which reflected an uncommitted cash balance as of April 1, 2013 of $17,390,215. There were no emergency declarations in the month of April.

21. Property Control Division – Requests Approval to Adopt July – December 2013 Schedule of Repairs

Ms. Nicosin reviewed the list of proposed repairs, which were limited to Santa Fe buildings as required for use of the Capital Buildings Repair Fund. Proposed repairs include replacement of worn and damaged building elements, life cycle repairs, correction of code violations, compliance with ADA, and structural repairs. She said the total amount requested is $3,332,313.

With respect to the transformer repair and replacement work, Mr. Brasher asked if that is regularly tracked. He recalled that the Department of Transportation had to close one of its buildings a couple of years ago because of a transformer problem and PCB exposure.

Ms. Nicosin responded that she was not aware of any tracking, but would have Property Control look into this.

Mr. Archuleta asked if the agency feels it is able to keep up with maintenance and repair work in general, and Ms. Nicosin responded that they feel as though they “never have enough money to take care of all our buildings.”

Mr. Aragon moved for approval. Mr. Kormanik seconded the motion, which passed 5-0 by voice vote.
DISBURSEMENT OF FUNDS

Presenters: Hanna Skandera, Cabinet Secretary-designate; Paul Aguilar, Deputy Secretary

22. a) Requests Approval of Transfer and Distribution of Funds from Other State Funds and the Appropriation Contingency Fund (up to $20,000,000)

b) Requests Approval of Transfer and Distribution of Funds from the State Equalization Guarantee (up to $20,000,000)

c) Presents Certification to State Board of Finance Pursuant to Laws 2013, Chapter 191 (up to $20,000,000)

Secretary-designate Skandera stated that, as background, New Mexico PED has requested a waiver of its Special Education Maintenance of Effort (MOE) requirements for FY 2010 and FY 2011, and they will be requesting the same for FY 2012, as well. She said that, while the waiver for FY 2010 has been received, they were denied the waiver for FY 2011. She said PED will pursue a hearing in regard to that decision and anticipate the hearing will be held sometime this fall.

Secretary-designate Skandera said one of the things in dispute with the US Department of Education in this process has been how PED has been calculating MOE issues. She said PED has over the years calculated it in a given fashion, and at this point in time the US Department of Education is proposing a different calculation method. She said PED will be taking that issue to the hearing and saying that PED’s method is appropriate.

Secretary-designate Skandera said the hearing will ultimately decide how the MOE is calculated for FY 2011 and going forward. She said PED feels its calculations are right, sound, and fiscally prudent for New Mexico.

Secretary-designate Skandera stated that their first request is to distribute for FY 2013 the state’s calculation of MOE, which is $16.9 million from Section 5 of HB 2, and leaves a remaining balance of $3.1 million from the $20 million total. She said PED is requesting that this amount be booked as a contingent liability on the off-chance that they do not prevail at the hearing.

Secretary-designate Skandera said their second request is that, also in HB 2, Section 6, they are requesting approval that a $20 million transfer occurs that meets the state’s MOE if the US Department of Education rules against the state.

Secretary-designate Skandera stated that their third request is that the Board agree to a contingent liability in case PED does not receive the waiver and does not win in the hearing. At this point in time they would like to distribute the funds that would meet PED’s calculations for FY 2013. If they do not receive the waiver and have granted the corresponding requests to the US Department of Education, she said they would be back before the Board requesting approval to distribute the necessary funds meeting the MOE requirements.
Secretary Clifford stated that DFA feels strongly that the State will get credit for the $16.9 million in the event the Department of Education finds the PED is short for FY 2013.

Secretary Clifford said it is hard to predict how the rest will play out in the waiver hearings, but the Legislature has put language into the Budget Act to try to address this issue and put the state in the best possible place with regard to the federal determination.

Secretary Clifford commented that DFA certainly endorses PED’s request as a prudent approach to this problem.

Responding to Mr. Brasher, Secretary-designate Skandera said seven states are in a similar position. She said some have received partial waiver requests, and South Carolina is in the process of pursuing a hearing right now. Originally, South Carolina had sent forward the money that the US Department of Education had requested, and had a ruling from a judge saying that the dollars needed to go back to the state until the hearing had taken place. On that basis, she said PED feels confident about the approach it is taking.

Mr. Aragon commented that this is a “classic example of the inherent conflict between an imperialist federal government and states’ rights issues.” He said there is not a single word in Article 1, Section 7 of the United States Constitution talking about education or schools; and in the Executive Branch, which is tied to the US Department of Education at the federal level, there is not a single word mentioning education. He also noted that the Tenth Amendment reserves political powers for the states and not the federal government. He said the state in this case is being “compelled by some nameless bureaucrat, accountable to no one in New Mexico, not aware of the circumstances in New Mexico, and dictating to New Mexico what must be spent even though we don’t have the funds to do it.”

Secretary-designate Skandera stressed that the Governor, legislature and state have made a wholesale commitment to students with disabilities, which is what this money is about, and to ensure that they are served and all their needs are met according to state laws. She said one of the biggest frustrations is that, as PED has helped these students overcome their disabilities and moved them out of special education, thus reducing expenditures in special education, there is no way to acknowledge when a state is getting a better return on its investment, stewarding its dollars and serving its children. She said this is their fundamental disagreement with the US Department of Education. She said the state should not be required to spend those dollars that are no longer being spent on students with disabilities.

**Item a**

Mr. Shandler said staff recommends that any motion to approve the distribution and transfer of an initial $16,881,452.50 pursuant to Laws 2013, Chapter 227, Section 5, Item 73 stipulate that $4,600,000 of the funds be distributed from motor vehicle license fees pursuant to Section 66-5-44, and that the remaining $12,281,452.50 be distributed from the separate account of the appropriation contingency fund dedicated for educational reforms.
Mr. Shandler said staff further recommends that any approval to distribute and transfer funds in excess of $16,881,452.50 be contingent upon the Public Education Department appearing at a future Board meeting to present final documentation confirming the exact amount of the distribution and transfer needed to meet maintenance of effort requirements as specified in Laws 2013, Section 5, Item 73.

Mr. Archuleta moved for approval, with these recommendations. Mr. Kormanik seconded the motion.

Mr. Brasher said he agreed with Mr. Aragon's concerns about "bureaucrats in Washington calling the shots on education in New Mexico."

The motion passed 4-1 by voice vote, with Mr. Aragon voting against the motion.

Mr. Aragon said this was "overreach by an imperialist federal government. This is a state issue."

**Item b**

Mr. Shandler said staff recommends that any approval to distribute and transfer funds be contingent upon the Public Education Department appearing at a future Board meeting to present final documentation confirming the exact amount of the distribution and transfer needed to meet maintenance of effort requirements as specified in Laws 2013, Chapter 227, Section 6, Item 11.

Mr. Archuleta moved for approval, with that recommendation. Treasurer Lewis seconded the motion, which passed 4-1 by voice vote, with Mr. Aragon voting against the motion.

**Item c**

Ms. Clarke stated that the Public Education Department has provided the Board with a preliminary certification required pursuant to Laws 2013, Chapter 191. However, that act requires after final negotiation and settlement with the United States Department of Education that the Public Education Department certify the amount necessary to meet special education maintenance of effort requirements after exhausting other funding available. Specific other funding available includes that provided in Sections 5 and 6 of the 2013 general appropriation act, which were discussed in relation to today's agenda items 22.a and 22.b. Depending on the outcome of final negotiations and settlement with the United States Department of Education, the Public Education Department may be required to provide the Board with a final certification pursuant to Laws 2013, Chapter 191. Staff envisions that the Public Education Department will provide that final certification at the same time the department appears before the Board to meet the contingencies the Board placed on its approval of agenda items 22.a and 22.b.
STATE TREASURER’S OFFICE (Cont’d)

23. WITHDRAWN

Presenter: Linda Montoya Roseborough, Chief Investment Officer; James. B. Lewis, State Treasurer

24. Approval of Broker/Dealer List

Ms. Roseborough stated that the State Treasurer’s Office (STO) undergoes an annual process of receiving applications from firms wishing to appear on the list of broker/dealers approved to do business with STO.

Ms. Roseborough said there were 35 firms and 66 individual broker/dealer candidates in FY 2012-13, and this year there was a substantial increase in both. She said the process went very smoothly, and internally STO has not decided at this point whether it needs that many candidates and how and if it wishes to restrict the process.

Ms. Roseborough said 54 new firms and 186 new broker/dealers are being recommended for FY 2013-14. She said one firm was rejected, and no broker/dealers were rejected. She said no one was being removed from the list.

In explaining the firm that was rejected, Ms. Roseborough said the broker/dealers submitted for NativeOne were also included in the application for InCapital, although the RLD reports noted that these broker/dealers were not employed by NativeOne but were employed by InCapital. She said it was the decision of the STO internal committee to disqualify NativeOne but to approve InCapital.

Responding to Mr. Archuleta, Ms. Roseborough said Merrill Lynch/Bank of America submitted its application over 30 days after the deadline. She said STO’s internal committee approved the application because, during the lag time between the STO deadline and acceptance of the application, the STO portfolio manager and STO trade compliance officer were in constant contact with the firm and after the due date, although at no time did either employee agree to accept the application. Merrill Lynch/Bank of America noted that the delay was due to their inability to get their compliance officer’s signature in a timely manner.

Mr. Archuleta asked Ms. Roseborough if, in her judgment, this was a fair situation and just a procedural issue. Ms. Roseborough said that was correct.

Mr. Shandler recommended that any approval of this item be made contingent upon all brokers included on the list being registered in New Mexico prior to participating in trades with the State Treasurer.

Mr. Archuleta moved for approval, with that contingency. Mr. Aragon seconded the motion, which passed 5-0 by voice vote.
25. WITHDRAWN


Ms. Roseborough presented the Monthly Investment Reports for the month ending April 30, 2013. She said there were no compliance issues to report.

STAFF ITEMS

Presenter: Stephanie Schardin Clarke, Director

28. Approval of Notice of Publication of New Board of Finance Rule:
Distribution of Qualified Energy Conservation Bond Allocations

Ms. Clarke stated that staff has put together a rule for the Board’s consideration, and approval today would mean staff would publish notice of the proposed new rule in the New Mexico Register to begin the 30-day public comment period. Once the public comment period runs, the Board can consider adoption at the September Board meeting.

Mr. Aragon said he had serious concerns under 2.61.79(c), which includes a requirement to submit to Davis-Bacon, which is an artificial wage mandate by the federal government, because it has nothing to do with the marketplace. He said he would personally prefer that this move forward without the Davis-Bacon Act provision to see if there is a demand from the public to re-include it.

Ms. Clarke said she went back and forth about whether to include this. She said this refers to the submission requirements for a company requesting this type of allocation to include a letter from the qualified issuer stating that the project and use of the bond proceeds will comply with all federal restrictions, including but not limited to compliance with Davis-Bacon prevailing wage rules, restrictions on qualified energy conservation bonds contained in the American Recovery and Reinvestment Act of 2009, and restrictions imposed by the US Department of Treasury. She said SB 101 gives the Board the responsibility of making sure that these projects comply with all applicable restrictions, and that Davis-Bacon happens to be applicable.

Responding to Secretary Clifford on whether it is the Board’s role to enforce federal requirements, Mr. Buchholtz said he reads the provisions of the federal law and state law to say that “we, as a cap allocator, are in effect a traffic cop on other people’s certifications, but that the Board has no further responsibility in regard to the monitoring or maintenance of that. That will fall on counsel who is organizing the transactions and ultimately the issuer to follow those rules.” He said the penalty for not following the rule would be their inability to get the credit that they thought they would otherwise get. He said the Board’s role is limited to instructions on the federal statute and on SB 101, which is that the Board decides who gets how much, which means it has to ask for certain certification. He said the Board’s responsibility ends right there.
Mr. Buchholtz commented that this is similar to the circumstance under which the Board approves private activity bond cap allocations.

Mr. Kormanik moved for approval. Treasurer Lewis seconded the motion, which passed 4-1 by voice vote, with Mr. Aragon voting against.

29. Notification of Request for Proposals for Custody Bank Services

Ms. Clarke said staff is notifying the Board that it intends to issue an RFP for custody bank services in the near term. The current contract with JP Morgan is coming up on an expiration date and cannot be extended further.

30. Fiscal Agent/Custodial Bank Services

Ms. Clarke reported that cash balances being held at the fiscal agent still remain very high, at about $125 million. So, a good portion of service costs are being offset by soft dollar earnings, which is very good news. She added that custody bank billings are in line with what they have been historically.

31. Joint Powers Agreements

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

Other communications

Mr. Brasher discussed an article that appeared in the Albuquerque Journal regarding condemnation of property by UNM. He said this has raised the question of whether UNM has the right to acquire property in that way and whether that would automatically trigger a review by the Higher Education Department and the Board of Finance. He said there is a legal opinion from SBOF staff indicating that UNM can go ahead and acquire property through condemnation and that Board review is not necessary, an opinion he does not agree with.

Mr. Brasher said the question is why the Board would pay an attorney to develop a legal opinion on behalf of the University. He said there is probably a purchase agreement with the property owner, so he is not sure why UNM would use the strategy of condemning property to acquire it. He commented that if land is to be used for instructional purposes, it probably should go to HED for review, and if it is not to be used for that purpose, then the Board of Finance should seriously look at it to see why condemnation is necessary.

Mr. Brasher said that, if UNM is relying on an informal opinion that it is okay to acquire property through condemnation and not go through HED or the Board of Finance, then he feels the Board should look into it.

Mr. Aragon stated that he agreed with Mr. Brasher. He said the position rendered by attorney Salazar is consistent with what he should be doing as an advocate. However, he is concerned
about staff making a unilateral decision without bringing it to the Board’s attention for the Board’s advice and consent. He stated that he feels Mr. Shandler should be acting on behalf of the Board “before such decisions are made to concur with the legal opinion of the private attorney who is seeking to circumvent approval from the Department of Education or the Board of Finance, which is contrary to the professional relationship that we must maintain.”

Mr. Aragon suggested that UNM be asked to appear before the Board to justify its action.

**ADJOURNMENT**

Its business completed, the State Board of Finance adjourned the meeting at 1:30 p.m.

Susana Martinez, President  
7-17-13  
Date

Michael Brasher, Secretary  
2/17/2013  
Date