MINUTES OF THE

NEW MEXICO STATE BOARD OF FINANCE

SPECIAL MEETING

Santa Fe, New Mexico

July 17, 2013

A Special 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. Susana Martinez, President
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. John Sanchez, Lt. Governor

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

Legal Counsel Present:
Mr. Mark Reynolds, Attorney General’s Office

Others Present:
[See sign-in sheets.]
2. **APPROVAL OF AGENDA**
**ANNOUNCEMENT: NEXT REGULAR MEETING TUESDAY, SEPTEMBER 17, 2013**

Ms. Clarke stated that Item 7 (City of Albuquerque emergency funding request) and Item 35 (Otero County request for approval of lease) were withdrawn after publication of the agenda.

Treasurer Lewis moved approval of the agenda, as amended. Mr. Kormanik seconded the motion, which passed 4-0 by voice vote. [Not present for the vote: Mr. Brasher and Mr. Aragon.]

3. **APPROVAL OF MINUTES: June 18, 2013 (Regular Meeting)**

Mr. Archuleta moved approval of the June 18, 2013, minutes, as submitted. Mr. Kormanik seconded the motion, which passed 4-0 by voice vote. [Not present for the vote: Mr. Brasher and Mr. Aragon.]

4. **APPROVAL OF MINUTES: June 28, 2013 (Special Meeting)**

[Deferred pending arrival of members Brasher and Aragon.]

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

5. **Emergency Balances – May 2013**

<table>
<thead>
<tr>
<th>Fund</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Reserve Fund</td>
<td>$2,000,000.00</td>
</tr>
<tr>
<td>Emergency Water Fund</td>
<td>$118,400.00</td>
</tr>
</tbody>
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**EMERGENCY FUNDING REQUESTS**
Presenters: Duane H. Yazzie, Shiprock Chapter President; Casey Begay, Navajo Capital Improvement Office

6. **Navajo Nation, Shiprock Chapter – Requests Emergency Funding for Costs to Purchase Tractor ($92,300)**

[Mr. Brasher and Mr. Aragon joined the proceedings.]

Ms. Clarke stated that, at the June 28 special meeting of the Board of Finance, it was determined that there was a legal issue at the time that was insurmountable. In summary, the Navajo Nation has both certified and uncertified chapters. Uncertified
chapters (which include the Shiprock Chapter) do not have the authority to enter into grant agreements or loan agreements on their own directly with the state.

Ms. Clarke said the Board also discussed the fact that, if it were the Navajo Nation and not just the Shiprock Chapter that were to enter into this loan or grant agreement, the Board would have to look to the Navajo Nation’s financial situation to determine that there was no other source of funding and that this request therefore qualified as an emergency. At the time of the meeting, the Board had no information on whether the Navajo Nation had funding to replace the tractor and implements.

Ms. Clarke said she has since been in contact with some members of the Chapter and had received letters of support from President Ben Shelly and others, but has received no financial information to demonstrate the Nation’s ability to meet the emergency. Without that, she is unable to tell the Board that the situation yet qualifies as an emergency per the statute.

Mr. Aragon asked Mr. Reynolds if it would be a violation of the Board’s standing policy that an emergency does exist, given that there has been no demonstration that all possible means have been exhausted. Mr. Reynolds responded that it would be a violation of the Board’s standing policy on provision of emergency funds, as well as statute.

Mr. Yazzie explained that, initially, the Chapter did submit proposals to the Navajo Nation for the equipment purchase but were told it would not be possible pending the beginning of the new fiscal year. Additionally, Arbin Mitchell, President Shelly’s Chief of Staff, advised Board of Finance staff in an email that the Navajo Nation did not have emergency funds immediately available, and any emergency expenditure of that nature would have to be legislated through Title XII, and that was not available.

Ms. Clarke responded that the email in question was from Mr. Yazzie or Mr. Begay and indicated that it was forwarding a statement from the Navajo Nation that it did not have the funds, but in fact it was an email saying that the Board needed that statement. She said she wrote back saying she did not see the statement and still needed it.

Mr. Archuleta wondered if it would be sufficient to say that the emergency exists because no legislative appropriation is available, or would the determination rest on the status of the Navajo Nation’s financial situation.

Mr. Aragon suggested that, if the grant were made under the auspices of an emergency, then it would require the Navajo Nation Council to call a meeting and vote once monies are provided. He said the question is when that would happen, and if it were affirmed, then it would require President Shelly’s signature. He stated that the Board has no control over the Navajo Nation Council convening, no control over their action, and no assurance that President Shelly would sign it. In addition to that, there is the question of timing in terms of how long it would take for the funds to be
disseminated. He added that harvest season is rapidly approaching. He commented that, if this is an emergency, then it should be treated as such, and now the Board is asking for two separate governing bodies to work in concert with one another with no assurances that this would happen.

Mr. Yazzie responded that the Shiprock Chapter is in a very difficult position. He said the tractor is used all year round, and is 30 years old. Two weeks ago, the radiator had to be replaced, and more recently a critical part of the plow broke and had to be fabricated because the part is no longer available.

Mr. Begay, department director of the Navajo Nation Capital Improvement Office, stated that all capital proposals go through his office, where they are reviewed and prioritized and forwarded to the Navajo Nation Council. He said the Council is in session this week, and their next appropriation would not be until the next session in October. He stated that the Navajo Nation has exhausted their emergency funds due to drought and feral horse circumstances.

Mr. Begay stated that the Navajo Nation has amended its procurement policies, reducing the process from 21 steps to seven steps, which takes 14 days. Should the Board approve their request, they would be following the new process and the funds would be expended within 30 days.

Mr. Begay said the Navajo Nation has not made any major heavy equipment purchases for irrigation, particularly for the Hogback and Shiprock chapters, so this request is very significant.

Secretary Clifford asked if the Navajo Nation would be in a position to repay a loan, and Mr. Begay responded that the Navajo Nation would not be making any type of loan request.

Mr. Brasher said he wished the Board could make this grant happen, but didn’t see how it could do that without the information requested by Ms. Clarke.

Mr. Yazzie noted that a Board member suggested during the special meeting that the Board could approve the grant subject to receipt of appropriate documentation from Window Rock.

Responding to Secretary Clifford, Ms. Clarke said the Board could approve a loan or grant contingent upon Director receipt of evidence that the Navajo Nation does not have funding available within a reasonable amount of time to meet the emergency. In terms of whether the request meets all of the statutory emergency criteria, she said the Board could consider approving a resolution and delegating a subcommittee to evaluate that, since the Board will not meet again until September.
Given that the Navajo Nation is autonomous by treaty, Mr. Aragon said he would like the Navajo Nation Council to affirm, by vote, that 1) there are no funds available to address this emergency within their budget; and 2) approves utilization of these funds for this specific purpose, states a definite timeline, and formally asks the Board of Finance for the amount requested.

Mr. Yazzie responded that the process of the Navajo Nation Council is comparable to that of the New Mexico State Legislature. He said the quickest turnaround for them would be to get a clear statement from their financial department, perhaps certified by President Shelly.

Ms. Clarke asked Mr. Yazzie if she was correct in assuming that the amount requested is derived from the following: a 2013 Kubota MI26GX tractor for $67,750; and a Kuhn 4 bottom hydraulic roll-over plow at an approximate cost of $23,000 to $26,000, for an average of $24,500, for a total cost of $92,250. Mr. Yazzie said that was correct.

Ms. Clarke asked if the plow could be used with either the Kubota or the John Deere tractor, quoted at $57,500, and Mr. Yazzie responded that he believed so, but explained that the more expensive tractor covers more ground more quickly. He said the John Deere tractor is for a 3-bottom plow, while the Kubota is for a 4-bottom plow.

Ms. Clarke read the following resolution for consideration:

"Whereas, the Navajo Nation has requested emergency funding to purchase a new tractor and associated implements for its Shiprock Chapter;

"Resolved, the State Board of Finance determines, pursuant to Section 6-1-2 NMSA 1978 as amended that a critical emergency exists that cannot be addressed by disaster declaration or other emergency or contingent funds, and therefore approves a grant to the Navajo Nation in the amount of $92,250 to be used to purchase a new tractor and associated implements for the Shiprock Chapter from the Board’s FY14 General Fund Operating Reserve upon transfer to the Emergency Fund by the Secretary of Finance and Administration to meet this emergency. Disbursement of this grant shall be contingent upon Director receipt and Board Subcommittee review of evidence of: a) an affirmative vote of the Navajo Nation Council that no funds are available to address this financial emergency no later than August 31, 2013; b) financial documentation supporting lack of resources of the Navajo Nation to meet the emergency; and c) an affirmative vote of the Navajo Nation Council requesting and approving utilization of these grant funds for the Shiprock Chapter tractor and associated implements no later than August 31, 2013."

Mr. Aragon stated that, when he was a legislator, he was able to secure funds for what was formerly called Canoncito To’Hajíiléé, a chapter of the Navajo Nation, and the funds went directly to the Navajo Nation for disbursement to To’Hajíiléé. He said the
chapter never received them, however, and this happened three times in the course of eight years. Because of that, he wants to be certain that a statement is provided specifying that the funds from the Board will be used for the purpose specified by Shiprock Chapter.

Governor Martinez agreed. She said the state has seen many projects where money has either not been used for the intended purpose or is taken from the grantor because it has not been used during a specified timeline.

Mr. Yazzie requested that the Board accept a statement from the Resources and Development Committee, which has direct oversight over Mr. Begay’s office. He commented that this was more workable than having the Navajo Nation Council act on this.

Secretary Clifford responded that Ms. Clarke has informed him that it is the Board’s standard procedure on emergency grants to receive a formal resolution from the governing body of the entity receiving the funds.

Ms. Clarke re-read the resolution. Mr. Yazzie asked that the resolution include language referring to the Navajo Nation Council’s designee, which in this case would be the Resources and Development Committee, which has the delegation of authority to accomplish this task.

Mr. Reynolds responded that he would not be comfortable with that without seeing indication that such delegation was in fact the case and that the Navajo Nation Council could not override the decision of that entity. He asked Mr. Yazzie if that would be possible.

Mr. Yazzie responded, “By the time we would get some response from the Navajo Nation Council, there’d be no more emergency and our crops would be ruined... But if you need to do that, please do so, and we’ll do what we need to do to make it happen.”

Governor Martinez told Mr. Yazzie that Board staff and the subcommittee would work diligently with him and that the Board understands the importance of not losing the crops.

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

Governor Martinez appointed Mr. Brasher and Mr. Aragon to the Board Subcommittee.

7. WITHDRAWN.

8. WITHDRAWN
Presenter: Patrick Simpson, Deputy Director

9. The Administrative Office of the Courts – Requests Approval of Emergency Funding for Costs of Judge Pro Tempore ($50,000)

Mr. Simpson stated that the Administrative Office of the Courts (AOC) is requesting approval of $25,000 in emergency funding to pay for the appointment of a Judge Pro Tempore in State v. Advantage Asphalt. He said this is an 89-count fraud indictment against 5 individuals, and the emergency arises because all eight judges in the First Judicial District have been recused or have excused themselves off the case. He said Judge James Hall has estimated that the trial will take two to three weeks, along with substantial pre- and post-trial motion practice, including extended evidentiary hearings on motions.

Mr. Simpson said the line item in House Bill 2 for pro tempore judges is $30,900 for the current fiscal year, of which $8,500 is encumbered for other pro tempore uses, leaving only $22,400. Pending before the Chief Justice are 27 other pro tempore judgeship requests. While not all of them will be granted, AOC expects that by the September trial date the $22,400 will be committed elsewhere with other pro tempore commitments.

Mr. Primm noted that, in order to enter into the judge pro tempore contract, the AOC has to demonstrate that it has the estimated amount available in its budget. They have stated that they reasonably believe that the cost of the assignment will be $25,000, which is $2,600 short of what AOC’s currently available budget. So, the absolute need AOC has right now is for $2,600.

Mr. Primm commented that, if the Board chooses to approve $2,600 in emergency funding, the reality is AOC would be back before the Board in the coming months with additional requests, since the $2,600 is only enough to cover the AOC’s known assignments. Based on the responses of the AOC to questions raised by Board staff, it is conservatively estimated that 12 of the pending pro tempore judgeship requests would actually move forward, at an average of $750 each, or approximately $9,000 in total.

Mr. Primm said there is an apparent need for budget to enter into a contract, and there is a potential need for cash in the future to actually pay for the contract, although it is not known for certain whether the AOC will need that cash. With that in mind, staff had drafted a resolution to grant an amount of money determined by the Board, available to the AOC through March 31, 2014, with disbursement of the funds subject to the Director's review of the actual invoices. In addition, the AOC would have to submit financial documentation demonstrating that they have depleted all funds appropriated or otherwise available to meet the expenses.

Mr. Simpson commented that, if the Board approves a $2,600 grant, it would put the AOC in the position of not having budget for anything that comes up between now and
the next time the AOC appears before the Board requesting emergency funding for another pro tempore judge. He said it would therefore be helpful if the Board were to grant something more than $2,600.

Mr. Primm read the following resolution as proposed by staff:

WHEREAS, the Administrative Office of the Courts ("AOC") has requested emergency funding of up to $50,000 to cover a budget shortfall caused by the unanticipated costs associated with assignment of a Judge Pro Tempore to handle the State v. Advantage Asphalt case;

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 AOC from the Board's FY 14 General Fund Operating Reserve upon transfer to the Emergency Fund by the Secretary of the Department of Finance and Administration in the amount of up to $25,000 for salary, travel and other expenses incurred on or before March 31, 2014 related to assignment of Judge Pro Tempore(s) assigned to the State v. Advantage Asphalt and other cases. Disbursement of funds shall follow Director’s review of a) invoices submitted evidencing the actual expenses incurred for Judge Pro Tempore(s) and b) financial documentation demonstrating that AOC has depleted all funds appropriated or otherwise available to meet the expenses.

Mr. Kormanik moved for approval of the resolution. Mr. Archuleta seconded the motion.

Mr. Brasher expressed concern that other judicial districts around the state might come forward with similar requests, to which Mr. Simpson responded that this is a very big case, and an 89-count fraud indictment is anomalous. He said the annual average for this line item expense is $30,000 to $35,000.

Governor Martinez noted that, in past years, the AOC has come in for a loan and then asked that it be turned into a grant. She said there are a handful of district court trials every year in some jurisdictions, while in others there are more than 125 jury trials every year involving felony cases. She said this fund is for emergencies, and not for unspecified needs down the road. She stated that the Legislature should be providing the appropriate amount of funding every year for this emergency line item because the Board is being put in the position of taking on the role of the Legislature.

Governor Martinez suggested that the AOC make its case to the Legislature by pointing out how many times they have to appear before the Board of Finance and how much money they have needed each time.
Mr. Aragon commented that this is possibly the sixth emergency funding request he has heard from the AOC since being appointed to the Board, which leads him to believe that the AOC is not properly making budgetary requests before the LFC. In addition, the AOC is projecting a need for services that have not been rendered. While he understands this conceptually, it runs contrary to the policy of the Board, which is that it only can allocate emergency funds when there is a true emergency and no other funds are available. In this case, the AOC has the funds available to pay Judge Hall, who hasn’t rendered any services at this point.

Governor Martinez suggested that the AOC could have money available in another area of their budget, in which case they could make a budget adjustment request.

Mr. Primm said that, based on the commitment control report, which reflects $8,500 encumbered and only $22,400 remaining, it appears to him that there is a demonstrated need for budget to enter into a $25,000 contract. While he agrees that there isn’t a need for cash until there is an invoice, the AOC administrative group would state that they don’t have the budget authority to enter into the contract regardless of when the bill arrives.

Mr. Primm commented that staff believes the AOC has demonstrated a need for a minimum of $2,600 in order to enter into the contract. While the amount could be changed from $2,600, the remaining constraints on disbursement of the funds, whether $2,600 or $25,000, is that they are subject only to the actual invoices submitted prior to March 31, prior to any legislative appropriation. Further, the resolution states that the AOC will have to submit documentation showing that they have depleted all funds appropriated or otherwise available to meet these expenses. He suggested this would allow some latitude to see if a budget adjustment request is possible to cover additional expenses.

Mr. Aragon said the contract would be better phrased were it to state that services were billable at $100 per hour. He said no one knows what might happen during the pretrial pleading practice. He said a dispositive motion could be filed that would resolve the case after perhaps only five hours of time, yet the Board would have encumbered $25,000.

Secretary Clifford responded that it is standard practice under the Procurement Act that budget be in place before a contract is signed. He said the $25,000 is a placeholder.

Mr. Kormanik said Mr. Aragon was suggesting an open-ended contract, which was not possible.

Mr. Simpson stated that, every year, the Legislature has not provided enough money for the AOC’s jury fund, and they have had to ask for additional money from the Board.
Mr. Simpson also stated that the standard professional services contract, which the AOC will get through DFA, is for a maximum amount and an hourly fee. For Judge Hall, that would be for $25,000 at $100 per hour. If the Board does not adopt the resolution, the AOC would enter into a contract for $22,400, which is what is left in the budget. If a case comes up tomorrow and a temporary restraining order is needed through a pro tem judge, the AOC would not have money to cover it because the entire $22,400 would be encumbered.

Mr. Primm suggested that the resolution be amended to reflect that the expenses are only for Advantage Asphalt.

Mr. Brasher moved an amendment to the motion that the resolution be amended to reflect an amount up to $2,600. Mr. Aragon seconded the amendment, which passed 5-1 by voice vote, with Mr. Kormanik voting against.

Mr. Archuleta moved an amendment to the motion limiting the language of the resolution to apply only to Advantage Asphalt. Mr. Aragon seconded the amendment, which passed 6-0 by voice vote.

The motion to approve the following resolution, as amended, passed 6-0 by voice vote:

WHEREAS, the Administrative Office of the Courts ("AOC") has requested emergency funding of up to $50,000 to cover a budget shortfall caused by the unanticipated costs associated with assignment of a Judge Pro Tempore to handle the State v. Advantage Asphalt case;

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 AOC from the Board's FY 14 General Fund Operating Reserve upon transfer to the Emergency Fund by the Secretary of the Department of Finance and Administration in the amount of up to $2,600 for salary, travel and other expenses incurred on or before March 31, 2014 related to assignment of Judge Pro Tempore(s) to the State v. Advantage Asphalt case. Disbursement of funds shall follow Director's review of a) invoices submitted evidencing the actual expenses incurred for Judge Pro Tempore(s) for State v. Advantage Asphalt, and b) financial documentation demonstrating that AOC has depleted all funds appropriated or otherwise available to meet the expenses.

10. WITHDRAWN
4. **APPROVAL OF MINUTES: June 28, 2013 (Special Meeting)**

Mr. Brasher moved approval of the June 28, 2013, minutes, as submitted. Mr. Aragon seconded the motion, which passed by voice vote, with Governor Martinez, Mr. Archuleta and Treasurer Lewis in abstention.

**SEVERANCE TAX BONDS AND NOTES**
Presenters: David Buchholtz, Brownstein Hyatt Farber Schreck, Bond Counsel and Disclosure Counsel; David Paul, Financial Advisor, Fiscal Strategies Group

11. **Approval of Amendment to Severance Tax Bond Resolution, Series 2013A**

Mr. Buchholtz stated that, at the Board’s June 18, 2013, meeting, the Board approved a resolution for Severance Tax Bonds, Series 2013A. Following the meeting, it was determined that projects totaling $278,887.59 had been included on the project list twice. He stated that, although his firm did a very good job of vetting the more than one thousand projects on the list, they obviously did not do a perfect job. At the time, the Board asked him if the list was correct, and he said it was correct to the best of his knowledge. He said his statement was somewhat premature in that there were about 10 projects that did not make the final list.

Mr. Buchholtz said they have discussed this issue with staff, the administration and the Treasurer’s Office, and came up with what they feel is a useful solution, which is a short-term note or bond anticipation note with the Treasurer’s Office. He said the Treasurer agreed to do that in what is now the amount of $4,965,000, more or less, with a .35 percent interest rate. He said the anticipation is that the note would be paid off at the December sponge sale, no later than the public sale made last year. He thanked the Treasurer and his staff in cooperating with the administration and with him in coming to this solution.

Mr. Buchholtz stated that there is about $290,000 in available proceeds in regard to the bonds that will be closed next week, that are available for allocation to some small projects. He said this resolution would add additional projects to maximize the use of the proceeds of the Series 2013A bonds.

Mr. Archuleta moved approval of the resolution. Mr. Brasher seconded the motion, which passed 6-0 by voice vote.

12. **Approval of Severance Tax Note Resolution Series 2013S-C**

Mr. Buchholtz stated that this resolution approves a list of projects that were not included in the Series 2013A issuance. He said they were vetted properly, meet the audit standards of the executive order, meet the tax questions and meet the readiness
questions.

Mr. Kormanik asked what the estimated administrative costs would be in connection with this note. Mr. Buchholtz responded that his fee would be $15,000 if he were to charge under his contract. He said he has not discussed this with staff, but is willing to discuss with staff, whether this fee is appropriate or not. He added, “Most importantly, I need to keep staff and the Board happy with my services, which matters to me much more than a $15,000 fee.”

Responding to Mr. Archuleta, Mr. Buchholtz stated that these projects were ready on the Thursday before the Tuesday of the Board meeting, but staff’s list and his review and preparation of a list did not dovetail. He stressed that these were not projects that became ready after the date of the Board meeting.

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

[Agenda was reprioritized.]

PROPERTY DISPOSITIONS

Presenter: Charlotte H. Hetherington, Scheuer, Yost & Patterson, Attorney, Española Public School District; Superintendent Danny Trujillo; Board Member Ralph Medina; Daya Singh Khalsa, President, AKAL Security

19. Española Public School District – Requests Approval for the Sale of Real Property to AKAL Security, Inc. ($850,000)

[Governor Martinez recused herself from the discussion and vote on this item, stating that her husband is an employee of AKAL. Secretary Brasher chaired this portion of the meeting.]

Ms. Hetherington stated that the Española School Board owns a tract of land that is a little over 63 acres, and proposes to subdivide the tract into two parts. Tract Y2 would be conveyed to AKAL Security, and Tract Y1 is where the new Sombrillo Elementary School, built in 2005 or 2006, is located. She said the old Sombrillo Elementary School, which has been closed since at least 2000 due to soil contamination from a faulty septic system, would be on Tract Y2.

Ms. Hetherington said that, because of the closing of the old school, the school has excess property that it cannot use and no one can use without either about 20 years expiring (the calculated lifespan for natural remediation of the contamination), or the school could spend a significant amount of money attempting to remediate the problem.

Ms. Hetherington stated that the school board has been discussing a disposition of
the property since at least 2008, and this spring renewed negotiations with AKAL Security, which presented a purchase offer to the school board for $850,000. She said the property has been appraised at $735,000, which the Taxation & Revenue Department concurs is the fair market value.

Ms. Hetherington stated that the purchase agreement provides for AKAL Security to pay all of the costs associated with the closing, including the cost of the survey, and that the property would be conveyed by quitclaim deed. She said AKAL agrees to assume responsibility for any continued monitoring of the site, as required under an existing discharge permit from the EID, which has several conditions requiring monitoring to determine that the levels of nitrate contamination in the soil are being gradually remediated and that no additional discharges are occurring on the site.

Responding to Mr. Archuleta as to whether there is a hold harmless provision in the agreement, Ms. Hetherington said there is no indemnification in the purchase agreement and no obligation for the school board in the future.

Mr. Archuleta asked Mr. Khalsa what AKAL proposes to do with the land, and Mr. Khalsa responded that their long-term plans are to use it as an educational facility. He said AKAL is a for-profit company and its sole shareholder is a subsidiary of a nonprofit organization, which is a religious and educational organization engaged in many educational activities in the community and around the world. He said the use would be compatible with the elementary school next door, adding that the 17-acre property across the street is owned by the nonprofit organization.

Ms. Hetherington clarified that the land does not abut any Santa Clara Pueblo land, and originally came from a BLM patent.

Mr. Aragon said he sees no save harmless provision in the event that some property owner might make a claim against the school board because of the condition of the property.

Ms. Hetherington responded that this concern is addressed in the last sentence of paragraph 6 of the purchase agreement, stating that the buyer acknowledges that it is purchasing the property "as is," where is" and "with all faults."

Mr. Aragon said the language in paragraph 6 speaks to the current buyer and seller. His concern is around the condition of the property in its contaminated state, in that other landowners might make a claim that their land is contaminated or harmed somehow, and the school board might be subject to future liability claims.

Ms. Hetherington responded that there is no such language in the purchase agreement, but believed Mr. Aragon’s concerns were addressed by the EID discharge permit requirements, to which the school district and any successor is subject. Currently, the contamination is contained within the property boundaries, so there could
be no claim presently by an adjacent property owner. She said the monitoring requirements include making sure that the plume continues to stay within the property boundaries. She said reports are submitted to EID quarterly, and the most recent report (in June) showed no migration beyond what is already known.

Mr. Archuleta suggested a layer of additional protection in the purchase agreement, in effect stating that it is understood by the buyer that the school district has done everything within its control, and has followed the EID requirements, and that the buyer recognizes that; and there is no guarantee by the school district that the existing mitigating plan that is in place will continue to work in the future.

Mr. Khalsa commented that this kind of language sounded like it would be very acceptable.

Ms. Hetherington agreed that language could be worked out.

Mr. Aragon said he would like the save harmless provision to be within the contract.

Mr. Reynolds noted that the purchase agreement discusses the disclosures of the known contamination, but there are a few other representations made by the seller in paragraph 13 that, in his opinion, could lead to potential future liability. With that in mind, he suggested including the standard language that future obligations or liabilities are subject to sufficient appropriation by the Legislature.

Mr. Primm said staff would recommend that any approval of this item be contingent upon: (a) Director’s receipt, with counsel review, of verified legal descriptions contained in the Purchase Agreement and proposed Quitclaim Deed; (b) Director’s receipt, with counsel review, of the final signed Purchase Agreement, including staff’s revisions; and (c) Director’s receipt of evidence that the building does not meet Public School Capital Outlay Council occupancy standards or that all charter schools located in the district have declined within a reasonable period of time set by the school district, use of the property pursuant to Section 22-8B-4(F) NMSA 1978.

Mr. Primm said an additional contingency is recommended:

(d) amendment of the purchase agreement to clarify that any future obligations or contingent liabilities of the seller created by this agreement, if any, are subject to sufficient appropriation by the Legislature.

Mr. Primm offered 3 versions of a fifth contingency:

1. Clarification in the purchase agreement that buyer is assuming the seller’s responsibility for all future remediation activities and the costs associated;
2. Amendment to the purchase agreement to clarify that buyer assumes, or holds harmless, seller's responsibility for any third party claims resulting from seller's contamination of the property; or

3. Amendment to the purchase agreement to clarify that buyer recognizes that the seller has performed as required to maintain compliance with New Mexico Environment Department requirements but cannot guarantee that other requirements may be placed on the property.

Board members discussed including a version of #2.

Mr. Khalsa expressed concern that #2 could open AKAL Security to claims associated with property conditions they know nothing about.

Mr. Aragon noted that the discussion is around the disclosures delineated in paragraph 6, which are the known contaminants. He said his intention is that the hold harmless obligations extend only to those disclosures.

Ms. Hetherington suggested language for contingency (e) with the stipulation that the Board give some flexibility to her, Mr. Khalsa’s attorney and Board staff to work out the final language. Ms. Clarke agreed it was possible for the Board to delegate such flexibility.

Mr. Archuleta said he would like it clear that the spirit of the language would be that “the Española School District, in selling this property to AKAL, that AKAL accepts the responsibility for the permit and the known contamination as it exists and does so in a transparent way and agrees to not only continue the compliance with that permit, but also acknowledges fully the contamination and all environmental and legal responsibility that comes from that known contamination.”

Mr. Khalsa said he thought the language to be fair.

After conferring with Mr. Reynolds, Mr. Primm proposed the following language:

(e) amendment of the Purchase Agreement to clarify that Buyer is assuming all financial, compliance and legal responsibilities contained in the NMED discharge permit and that Buyer will hold Seller harmless for any contamination which occurs on the property after Buyer’s possession of the property.

Mr. Archuleta moved approval of the sale, with conditions a, b, c, d, and e. Mr. Aragon seconded the motion, which passed 5-0 by voice vote. [Recused: Governor Martinez.]
FINANCING APPROVALS

Presenters: Christine Anderson, Director; Dr. Rick Holdridge and Irv Diamond, NMSA Board members; Wade Jackson, General Counsel, Economic Development Dept.; Justin Horowitz, Rodey Law Firm; Dupuy Bateman, CPA; Aaron Prescott, Project Manager

13. New Mexico Spaceport Authority – Requests Approval of a Loan for Construction of Visitor Experience Facilities ($20,800,000)

Ms. Anderson presented a loan application briefing.

Ms. Anderson stated that the long-term success of the Spaceport relies on both the vertical and horizontal space launch, and tourism. The goal is to make Spaceport America self-sustaining, and they are working hard on the Visitor Experience, to be comprised of the 6,000 square foot transportation and story hub in Truth or Consequences, New Mexico; Shuttle Transportation; Spaceport Central, a 25,000 square foot on-site visitor facility and 3D theater, exhibit hall, interactives and payload processing; and Flightline tour/Gateway to Space.

Ms. Anderson said the demand forecast for the visitor experience, based on a 400-person survey, is approximately 200,000 visitors annually, accompanied by very robust marketing. She said the plan is to hire a hospitality management company, which would pay a $1.25 million flat annual fee plus $3 per ticket to the New Mexico Spaceport Authority (NMSA). The vendor would maintain the facility, conduct the tours, pay the utility bill, etc.

Ms. Anderson said construction-level drawings have been completed for the off-site visitor center and on-site Spaceport Central, and NMSA will require a $20.8 million loan to do the construction. If these two facilities are not built, she said NMSA will be dependent on state subsidies.

Ms. Anderson stated that three investment banks, Sun Trust, KeyBanc and Empire, have approached NMSA and offered to make the loan and at least two have committed to a 3.8 percent interest rate. The security would be the two buildings. She also stated that two of the banks would be lender.

Ms. Anderson commented that there are 8 FAA-certified commercial spaceports in the United States. One, like NMSA, wants to be self-supporting while the other 6 are taking federal or state money. She said she wants NMSA to be self-supporting, and this loan is critical toward achieving that.

Mr. Archuleta disclosed that his company, Molzen Corbin & Associates, has been a consultant to the Spaceport Authority since its inception. His firm was the designer of all of the infrastructure, utilities and the runway; however, they are not involved in this particular project. He asked if it would be appropriate for him to recuse himself.
Mr. Reynolds asked Mr. Archuleta if he personally would derive any financial benefit or repercussions from his vote on this loan today, and Mr. Archuleta responded no. Mr. Reynolds said he believes Mr. Archuleta would therefore not be disqualified from voting.

Responding to Mr. Kormanik, Ms. Anderson stated that the revenues from this project will be used to pay the loan. Mr. Horowitz added that the parameters resolution adopted by the Spaceport Authority Board contemplates the pledge of those revenues and could allow the pledge of other lawfully available revenues, specifically, excess Spaceport gross receipts tax revenues, if available, as well as revenues determined to be available.

Mr. Kormanik asked if NMSA anticipates receiving any general fund appropriations, and Ms. Anderson responded that they will probably receive them for two more years.

Mr. Kormanik said his concern is that the funds will become fungible. In the event that the business model doesn’t work out, and they are in a situation where they are not receiving the anticipated revenues from the spaceflights and vendor operations, some of which would be going to the operation of the spaceport, they would have to ask the Legislature and Executive for additional general fund money for operations.

Ms. Anderson responded that it is the revenue from the tourist operations that will be used to pay the loan as well as any excess gross receipts tax funds. She said they are not using funds from the lease to pay down the loan. She noted that their parameters resolution also calls for setting aside a reserve fund to pay the mortgage on the loan, and this would be paid first.

Mr. Kormanik asked if lower-than-expected revenues would detract from their ability to operate, and Ms. Anderson responded only on the loan side of the tourism, and not on the commercial spaceflight operations, which are funded through the launch, lease and special events.

Mr. Archuleta asked Ms. Anderson if they would be willing to include a stipulation that there would be no dependence on future state appropriations or state funds of any kind to the lender.

Ms. Anderson responded absolutely, noting that they are precluded from doing this by the Spaceport Development Act.

Mr. Kormanik said he was somewhat uncomfortable that the proforma spreadsheet uses general fund revenues in FY 2015 and 2016 as part of the debt service calculation. Ms. Anderson responded that there will be strict stipulations about the loan agreement and what is and is not securing it.

Mr. Archuleta moved for approval, contingent upon complete transparency, as discussed, including in the disclosures that the business plan stands on its own
without any anticipated state funding whatsoever.

Ms. Clarke stated that, as part of its approval, the Board would be approving the parameters resolution as reflected on pages 142-143 of the electronic agenda. She summarized that the loan would be in an aggregate principal amount not to exceed $20,800,000 with a final maturity not to exceed 21 years from the date or origination; at a maximum annual interest rate not to exceed 3.8 percent; at a maximum true interest cost not to exceed 4.16 percent; at a maximum all-inclusive interest cost not to exceed 4.21 percent; and with loan origination occurring no later than January 31, 2014.”

Mr. Brasher seconded the motion, which passed 6-0 by voice vote.

Secretary Clifford asked Ms. Anderson if they were comfortable with these parameters, and Ms. Anderson responded that she believed so.

PROPERTY DISPOSITIONS

14. WITHDRAWN.

Presenter: Arturo Jaramillo, Cuddy & McCarthy, LLP, Attorney, Las Cruces Public School District #2

15. Las Cruces Public School District #2 – Requests Approval of Donation of Real Property to the City of Las Cruces

Mr. Jaramillo requested approval of an amended roadway construction and donation agreement concerning Bruins Lane, entered into between the District and the City of Las Cruces. He said it involves the transfer of three vacant parcels of property owned by the District, consisting of a 2,500-foot-long stretch of Bruins Lane, as well as two undeveloped tracts referred to as the “Spruce Properties.” Bruins Lane provides access to Mayfield High School, and the District desires to have it paved and significantly improved to a width of 54 feet, with three driving lanes, two four-foot bicycle lanes, four-foot sidewalks, street lighting on the south side, and curb and gutter on both sides of the roadway.

Mr. Jaramillo said the improvements are expected to cost the City about $860,000 and are scheduled for completion by April 2014. To partially offset the City’s cost of improving Bruins Lane, the donation agreement also contemplates donation of the Spruce Properties to the City for affordable housing.

Mr. Jaramillo said the City will undertake the design and construction of the roadway if the District will dedicate the roadway for Bruins Lane and transfer the remnant that is Tract "A" of the Spruce Property plus a 4-acre parcel that is also part of the Spruce Property, and which has a value of about $195,000. The right of way for Bruins Lane
probably has a value of about $62,000. He commented that this transaction is a major benefit for both parties.

Mr. Aragon moved for approval. Mr. Kormanik seconded the motion, which passed 5-0 by voice vote. [Not present during the vote: Mr. Brasher.]

Presenter: Erin K. McSherry, General Counsel, Department of Cultural Affairs; Richard Sims, Director of Historic Sites; Nita Taylor, County Manager; Mike Delello, Deputy Cabinet Secretary

16. Department of Cultural Affairs – Requests Approval of the Lease of Real Property at 207 Black Jack Pershing Road at Fort Stanton to Lincoln County (Services in Lieu of Cash Rent)

Mr. Delello said the Department of Cultural Affairs (DCA) is requesting approval to enter into a 99-year lease for a parcel of land on one of DCA's historic sites, Fort Stanton, to allow for the construction of a much-needed firehouse on the land to house the county's volunteer fire department.

Mr. Delello said Lincoln County has an antiquated firehouse at Fort Stanton, and the intent of the lease is so that Lincoln County may construct, maintain, improve and operate the Fort Stanton Volunteer Fire Department for the welfare of the citizens of Lincoln County and protection of the historic properties of the DCA. Lincoln County received $397,000 in appropriations to plan, design, purchase, install, equip, furnish and construct the facility.

Ms. Clarke requested that any approval be contingent upon Director receipt of: (1) evidence of approval by the Board of Regents of the Museum of New Mexico; (2) evidence of approval by the Lincoln County Commission; and (3) final version of the lease signed by the parties.

Ms. Clarke noted that staff received a version of the lease signed by the county and their agenda, but what is needed is a signed resolution or approved minutes.

Ms. Taylor stated that they had not realized a resolution was required, which would require 72 hours' notice on the Lincoln County Commission agenda. Since the meeting is scheduled for tomorrow, they would have to wait another month for the next meeting and would prefer not to wait that long.

Ms. Clarke commented that, because the Board's jurisdiction is to approve this lease for the DCA's side of it, perhaps the Board can instead require (1) evidence of approval by the Board of Regents of the Museum of New Mexico; and (2) final version of the lease signed by the parties.
Ms. McSherry stated that the Attorney General representative of the Museum Board of Regents indicated to her that the Museum Board of Regents never does resolutions and that leases are traditionally signed by the chair. While they will approve a resolution in this case, they will not be approving resolutions in the future.

Mr. Aragon suggested “introducing the concept of resolutions” to the Board of Regents, and Mr. Reynolds agreed to contact them.

Mr. Archuleta moved for approval, with the two contingencies, and contingent upon both entities providing resolutions from both governing bodies at their next scheduled meetings to Board staff. Mr. Aragon seconded the motion, which passed 6-0 by voice vote.

17. WITHDRAWN

Presenter: Joanne Hethcox, Budget Procurement Director, Luna County

18. Luna County – Requests Approval of Lease of Real Property to Western New Mexico University ($5,666.67 per month)

Ms. Hethcox requested approval to lease property located at 2300 East Pine in Deming, the Mimbres Valley Learning Center, to Western New Mexico University (WNMU). The property consists of 29,106 square feet of office and classroom space and the lease will be for a 5-year term at a monthly rental rate of $5,666.67.

Ms. Hethcox stated that WNMU has been using the subject space for this purpose since the early 2000s, but Luna County wants to enter into the lease agreement in order to defer some of their utility costs for WNMU. Luna County has housed and paid for everything for that building, with minor exceptions, since 2001.

Ms. Hethcox said WNMU would charge its students a low facility fee in exchange for their use of the facility.

Responding to Mr. Kormanik, Ms. Hethcox said the utility costs being borne by Luna County for this facility are $65,000 to $75,000 annually.

Mr. Primm requested that any approval of this request be contingent upon Director’s receipt of final, signed lease agreement, including staff’s revisions.

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

[Governor Martinez stepped away from the proceedings.]
HIGHER EDUCATION DEPARTMENT

Presenters: Henry Mignardot, Staff Manager and Capital Projects Coordinator, HED; Greer Price, Geologist, New Mexico Institute of Mining & Technology; Miguel Hidalgo, Director of Special Projects, New Mexico Institute of Mining & Technology; Lonnie Marquez, Vice President of Finance, New Mexico Institute of Mining & Technology

20. New Mexico Institute of Mining and Technology – Requests Approval of Construction Bureau of Geology Facility ($24,000,000)

Mr. Mignardot stated that the New Mexico Higher Education Department (HED) has certified that this project has been reviewed and approved by the HED Capital Projects Committee, and supports the Governor’s Executive Orders.

Mr. Hidalgo stated that New Mexico Institute of Mining & Technology (NM Tech) is requesting approval to construct the 85,313 square foot Bureau of Geology facility located on the central campus, at the northeast corner of the main campus. He said this project has been planned for several years and has been NM Tech’s top priority for about six years. He said this project would allow consolidation of the Bureau of Geology, currently housed in four separate buildings around campus, into one location. He said the new building would include offices, laboratories, publications, a mineral museum and storage space.

Mr. Hidalgo said the building will be designed in the same classic Mission style of NM Tech’s buildings. He added that this project is a statewide project, as a lot of the subsurface investigation done by the Bureau of Geology is instrumental in providing the necessary extraction of natural resources in New Mexico, which in turn creates severance taxes to fund statewide capital projects.

Mr. Hidalgo stated that $18 million in funding for this project comes from 2012 state general obligation bonds. He stated that the Executive recommended additional funding from Severance Tax Bonds of $6 million, taking the total project budget to $24 million.

Mr. Hidalgo commented that general contractors around the state have been making inquiries into this project, which will give the state’s construction industry a “shot in the arm” by providing at least 500 construction jobs.

Responding to Mr. Aragon, Mr. Price said the Bureau of Geology was created by the Legislature in 1927 and has always been located at NM Tech. They work cooperatively with other state agencies, and are non-regulatory. He commented that their geochronology lab is considered one of the finest in the country. The new building will include a great deal of public space, including a geologic information center.
Responding to Mr. Kormanik on what will happen to the existing facility, Mr. Hidalgo said the ISD building, which is located on the construction site and is antiquated, will be demolished. He said the ISD personnel and staff will be moved into the Gold Building.

Responding to Mr. Brasher, Mr. Mignardot and Mr. Hidalgo indicated that there would be no changes in faculty or additions to existing staff. Mr. Hidalgo said the existing Bureau of Geology building is about 44,000 square feet, half of which is office space.

Secretary Clifford said the Board heard a presentation recently that provided a ratio of square footage to the student population in each of the state’s higher educational institutions. He recalled that NM Tech was fairly far in the lead in that category. He said he realizes that the Bureau of Geology does more research and laboratory work, but this raises the question of what is going into the square footage rather than the total number. He commented that this looks like a significant expansion in terms of size, and asked Mr. Mignardot if HED considers this issue when it evaluates new projects.

Mr. Mignardot responded that HED does look at square footage, and NM Tech happens to have the highest square footage per FTE, or about 550 square feet. He stated that NM Tech is one of the state’s three research institutions, which require a lot more laboratory space. He added that HED is under the impression that square footage will actually be reduced in this case as a result of the demolition, so there should not be a very large net increase in their square footage, and it should be fairly consistent with the 550 square foot FTE.

Responding to Secretary Clifford, Mr. Hidalgo stated that it would cost about $120,000 for the LEED Silver certification process on this project. He said the LEED certification process for the recently completed student residence hall cost $40,000. He stated that, while it costs a certain amount of money for the paperwork and certification, the result is a better building with better materials and systems.

Mr. Aragon said people know what technology is required to meet LEED certification requirements, so he assumes the state would build it that way anyway, or close to it. He commented that LEED certification of state buildings has become a cottage industry and a moneymaker for people, adding that he seldom sees LEED-certified private buildings. He said he has not seen a definitive study by someone not vested in the industry that would show where the taxpayers are getting their money’s worth “for having that stamp stuck on a building.” He said he would assume that a building owner “would insist that their architects construct a building that would otherwise meet those requirements without going through the formal process of getting certification.”

Mr. Hidalgo responded that, by applying the LEED fundamentals such as better insulation and better windows, the result is a building with a better design. He said someone building a strip mall would not use a mechanical system or install windows that would generate LEED points.
Mr. Brasher asked Mr. Mignardot if it would be fair to say that HED would need less money for construction projects because LEED-certified buildings would be more energy efficient.

Mr. Mignardot responded that it will be incumbent upon the state to amend the building codes to address issues like sustainable sites, water efficiency, energy and atmosphere efficiencies, materials and resources, and other standards in order to reduce expenses. He said there may be a reduction in energy costs because with LEED certification buildings will have energy costs reduced by 50 percent, but that is reaped over time, and sustainability is built into 20-year cycles.

Mr. Brasher said there is no documentation to support that.

Mr. Mignardot responded that HED is seeing energy costs being reduced and they are starting to gather documentation.

Mr. Archuleta commented that he is an engineer, not an architect, although he employs architects. He said he is not an expert in LEED certification, either, but has designed a lot of facilities. To Mr. Aragon’s point that an architect would automatically meet LEED standards anyway, Mr. Archuleta said it is not up to the architect or engineer to decide what an owner is going to put into a building, and not all of them are the same. He commented that they are not in control of the budget either: “Some may take jobs where they say I’m going to put in 1/8 inch steel in there that barely gets by, or the very minimal windows, or the very minimal insulation or whatever it might be, and I’m not going to be around in 10 years when they’re going to fix this building anyway. You have to have a willing owner and a willing architect or engineer that aim at doing something that is consistent.”

Mr. Archuleta said he can look back over his 38-year career and say that every facility that his firm has designed has had the intended life of 20 years or more, but he does a lot of projects for people who are refurbishing their facilities after only 5 years because they didn’t get the product they thought they would get. Although the professionals they hired met standards, it was nowhere near what the owners thought they were going to get when they hired them. He said the idea of LEED standards is to have everyone on the same page.

Mr. Archuleta said LEED has a lot of problems. The checklist may apply one way to one project and in another way to a different project, and some professionals may do “silly things” to get points they might not get otherwise. He said the development of LEED standards is still underway, however, and recommended against “throwing the baby out with the bathwater.”

Mr. Aragon noted that the LEED checklist is not copyrighted, so it would make sense that the state could incorporate those standards without paying for the LEED
certification process. The state, as owner, can direct the architect to meet certain standards.

Mr. Archuleta said the problem is that the architect may be directed to follow various recommendations, and may do so, but if the architect goes over budget, the owner may direct them to cut out all the fluff. If the owner is the state, then the Legislature would be asked to come up with the difference, or the result can be uneven floors, less-than-ideal insulation, etc.

[Governor Martinez returned to the proceedings.]

Mr. Aragon said the central question is whether these goals can be met without the expense of LEED certification and without a definitive study reflecting that the cost of certification has resulted in meaningful savings.

Mr. Kormanik asked Mr. Hidalgo if he feels the LEED policy pays for itself over a long period of time, and Mr. Hidalgo responded that this is a difficult question. He said LEED is “good and smart design that we were taught as architects and engineers, and you know what quality is and you know what quality isn’t.” He said the LEED situation is fairly new. He agreed that there is no definitive report that says “because you are now LEED Silver and you paid for that certification, that it’s a much more quality building than it would have been if you had had a decent budget to work with and been able to produce a good set of construction documents with good materials.”

Mr. Mignardot agreed that there is no definitive study as discussed, and feels it is incumbent upon HED to take some of its institutions and look at that information. He said this certification is pursuant to an executive order, and LEED certification is one way to accomplish that. He said building codes should be amended to include some LEED certification requirements, since along with that comes LEED consultants who can provide materials and construction processes that incorporate best practices.

Governor Martinez said the state will not see returns on its investment in wind power and solar for at least 40 years, and while it is still a good idea, the state is “putting the cart before the horse” when it isn’t sure when it will see the return on its money. Further, the product may need to be upgraded or remodeled in that time.

Mr. Hidalgo stated that LEED guidelines assure good quality materials and quality construction. He said the New Mexico Junior College campus was built in the late 1960s and early 1970s with high-end materials. He said a new addition was built about 10 years ago, and “you can walk from the addition into the old facility and you can’t tell the difference.” He said some HED institutions built 10 or 15 years ago are falling apart.

Mr. Primm requested that any approval of this request be made contingent upon closing of Series 2013A Severance Tax Bonds.
Mr. Aragon moved for approval, with the contingency. Treasurer Lewis seconded the motion.

Mr. Brasher referred to the agenda request letter from HED relating to the building at 1650 University, regarding the University of New Mexico, and noted that the item was pulled off the agenda. He said he assumes they will not spend any additional money until they receive approval from the Board. Mr. Mignardot said that was correct, adding that there was a scheduling conflict when the Board changed the meeting date. Mr. Brasher noted that some of the smaller schools will send their president to represent them at Board of Finance meetings. While he realizes there was a scheduling conflict, “they should be showing up at meetings and not send us a note saying so-and-so couldn’t make it.”

The motion passed 6-0 by voice vote.

21. WITHDRAWN

22. WITHDRAWN

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
Presenters: Tommy Mutz, Director; Grady Barrens, Business Enterprise Coordinator; Alan Hawkinson, Owner, Navajo Dam Enterprises.

23. Energy, Minerals and Natural Resources Department, State Parks Division – Requests Approval of Amendment to Concessions Contract with Navajo Dam Enterprises, Inc.

Mr. Mutz requested approval to amend its concessions contract with Navajo Dam Enterprises, Inc. He said the owner, Alan Hawkinson, wishes to sell the marina to Margaret Vandervalk of Dallas, Texas.

Mr. Mutz stated that the Energy, Minerals and Natural Resources Department (EMNRD) is required to obtain Bureau of Reclamation (BOR) approval of this transaction. He said BOR requested an amendment of EMNRD that the BOR would not stand in EMNRD’s stead for this transaction. He said a second amendment offers a termination clause for the concessionaire, which is a protection for the concessionaire in the event something catastrophic happens.

Mr. Brasher moved for approval. Mr. Kormanik seconded the motion, which passed 5-0 by voice vote. [Mr. Aragon was not present during the vote.]
GENERAL SERVICES DEPARTMENT
Presenter: Pamela Nicosin, Acting Deputy Director

24. Facilities Management Division – Requests Approval of Contract with Donner Plumbing and Heating, Inc. for Heating Ventilating and Air Conditioning Upgrades of Units 3, 4 and 5 at the Central New Mexico Correctional Facility Located in Los Lunas, NM ($6,174,960.70)

Ms. Nicosin requested approval of this construction contract with Donner Plumbing and Heating, Inc. She said this is part of an ongoing multi-phased effort to replace HVAC units and some infrastructure at the state’s correctional facilities, particularly at Southern New Mexico Correctional Facility and Central New Mexico Correctional Facility. This would be the final phase of this project.

Ms. Nicosin said three bids were received, with Donner submitting the lowest bid.

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

25. WITHDRAWN.


Ms. Nicosin reviewed the CBRF Financial Status Report, which reflected an uncommitted cash balance as of May 1, 2013 of $17,086,784. There were no emergency declarations in the month of May.

STATE TREASURER’S OFFICE
Ms. Linda T. Montoya Roseborough, Chief Investment Officer; Treasurer James B. Lewis

27. State Treasurer’s Office – Requests Approval of Changes to Investment Policy

Ms. Roseborough presented a modified copy of the current State Treasurer’s Investment Policy, which was signed on November 15, 2011. The redline changes were reviewed and approved by the State Treasurer’s Investment Committee (STIC) on July 10, 2013.

Ms. Roseborough summarized Treasurer Lewis’s memorandum of July 15, 2013, to the Board. This year, the State Treasurer’s Office (STO) is proposing several immediate changes to the investment policy to clarify procedures with regard to repurchase agreements and to keep the policy consistent with changes from SB24 to Section 6-10-10 NMSA 1978, as adopted by the State Legislature and signed into law by the
Governor. These immediate changes are considered "tweaks," as a total revamp of the State Treasurer's Investment Policy is forthcoming in the fall, and will be in line with the Government Finance Officers Association and best practice standards.

Secretary Clifford stated that one of the proposed changes talks about collateralization for assets with a maturity greater than 10 years, and asked why STO would collateralize short-term assets with 10 year assets.

Ms. Roseborrough responded that STO would still manage the LGIP portfolio to S&P requirements, and the collateral goes away when the security goes away. She said the pool of available collateral is larger with these longer maturities, which means they have better opportunities for better pricing. She said anything longer than the 10-year maturity date would require collateralization of up to 103 percent.

Ms. Clarke clarified that collateral is marked to market daily, so the market value of collateral will be 102 or 103 percent of the value of the associated security.

Ms. Clarke stated that the investment policy before the Board today incorporates all of staff's comments and concerns.

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

Ms. Linda T. Montoya Roseborough, Chief Investment Officer; Treasurer
James B. Lewis; Ron Crespin, CFO and Procurement Manager

28. State Treasurer's Office – Requests Approval of Investment Advisor Contract with Davidson Fixed Income Management

Ms. Roseborrough requested approval of a one-year renewal of the investment advisor contract with Davidson Fixed Income Management. The contract has been reviewed for legal sufficiency, has been through the state procurement process, and has been signed by DFA. She said there were no changes to the contract.

Secretary Clifford asked if this contract went through the RFP process, and Mr. Crespin responded that the contract was awarded in April 2011 through the RFP process, and this is third year of that contract.

Treasurer Lewis stated that he was elected State Treasurer in 2006. Soon before his election Governor Richardson signed Executive Order 2006-06, establishing safeguards, policies and procedures overseeing investments and conduct of the State Treasurer's Office. Treasurer Lewis said he was not sure that everything in the executive order and investment policy was legal, and yesterday submitted a letter to the Attorney General's Office requesting a legal opinion. He said he believes the requirements of the executive order and investment policy conflict with the State Treasurer's statutory and constitutional duties and responsibilities.
Treasurer Lewis said that, shortly after taking office, when Doug Brown was serving as interim State Treasurer, he learned that Governor Richardson had ordered an audit of the State Treasurer’s Office. LFC Director David Abbey had commented at the time that he was not sure why Treasurer Lewis’s “feet were being held to the fire,” and the State Auditor also said the Governor was overstepping his bounds and had no legal authority to do the audit. Treasurer Lewis said he could understand the pressure the Governor was under at the time, because of the criminal prosecution of then-State Treasurer Robert Vigil as well as his predecessor, Michael Montoya, but he did not feel he should be persecuted like this. He said he will be leaving office in a few months and feels he should speak on behalf of his successors.

Treasurer Lewis questioned why, as an elected official who reports to the citizens of the state, he has no authority and has to go through STIC and the Board of Finance for approval of a $55,000 contract.

Mr. Aragon noted that he is a longtime friend of Treasurer Lewis and "I have the utmost respect for the integrity he brings to state government and basically everything he touches."

Responding to Mr. Aragon on what changes have been made since he took office to address this conflict between two constitutional executive officers, Treasurer Lewis said STO now has platform trading, a client compliance officer and a Chief Investment Officer who deals specifically with investments. In addition, all of the policies and procedures have been rewritten. He said STO strives for full disclosure and full transparency. He said he cannot run the office by committee, however. He said it is difficult and confusing for his staff.

Responding to Mr. Aragon on what specific remedies he proposes, Treasurer Lewis said the first step would be to review the executive order, which runs in perpetuity and can only be rescinded by the Governor. In addition, the second step would be to review the investment policy, which he said is not his policy.

Treasurer Lewis said he has also asked the Attorney General for an opinion on what is meant by the “advice and consent” language in statute.

Mr. Aragon commented that there is a built-in natural tension between the State Constitution and the various offices of government, which is intended and is a way of maintaining checks and balances. He would be interested in how Treasurer Lewis perceives this natural tension in terms of the autonomy of the Office of State Treasurer.

Mr. Kormanik asked Treasurer Lewis how he feels the Board can meet its responsibilities of adhering to these provisions while Treasurer Lewis retains his autonomy as Treasurer. Treasurer Lewis responded that STO appears before the Board every month and gives the monthly investment report, and that is what STO should be doing.
Secretary Clifford said the Board's oversight of the Treasurer's Office is in statute, not only in an executive order. He said the executive order was an attempt to operationalize that oversight, and the oversight has been part of the function of the Board for at least the last 20 years.

Secretary Clifford stated that he strongly objected to the July 9, 2013 letter from Treasurer Lewis to Ms. Clarke, in which he states that Ms. Clarke was "under mistaken beliefs for continuing to take a position of distrust of this office" and "her email was written as though she has authority to speak on behalf of the Board of Finance." He said this was an attempt to undercut her role as Director, when in fact the Board asks her "constantly to act on our behalf" to collect information and to ask questions.

Secretary Clifford said the email from Ms. Clarke asks if the Treasurer can show the Board how the contract complies with certain aspects of the Procurement Policy that were not obvious. He said this is the kind of question that Ms. Clarke routinely asks of every applicant who appears before the Board. He stated that Treasurer Lewis has been in his office for six and a half years and could have, during that time, requested that the investment policy be revised. So, he did not understand why Treasurer Lewis was pointing back to this Board when the policy was the Treasurer's policy.

Treasurer Lewis responded that he would speak up for his office. Regarding the role of Board staff routinely asking these types of questions to all types of entities, he responded that he feels he should not have to bring a contract of this magnitude to the Board for approval, and he has been on the Board for many years and "I'm not sure that I've seen that" role of staff.

Responding to Governor Martinez, Ms. Clarke said the reason individual Board members don't see that is because it happens at the staff level. She stated that the issues that come to light at Board meetings are those that haven't been resolved by the time of the meeting. She added that the bulk of her work and that of the Deputy Director is reviewing documentation from applicants and compiling lists of questions to ask them, resolving those questions before the Board meetings to the extent possible, and that the questions posed to Treasurer Lewis were not out of the ordinary at all.

Responding to Governor Martinez and Treasurer Lewis' comment that this is not his policy, Ms. Clarke said the Board has approved the State Treasurer's Investment Policy at the request of the State Treasurer about once a year. This was the case under the term of Doug Brown and now Treasurer Lewis. She said she wasn't aware of any time during that period that the Treasurer has proposed something different that the Board rejected. She said the Board has asked questions, and, as in this case, provided comments on the policy. She said she wasn't aware, for instance, of any attempts in the past to delete the language in the policy that gives the Board the authority to approve STO contracts. She added that she could say with certainty that the most recent version of the State Treasurer's Investment Policy brought forward for approval keeps that language intact.
Secretary Clifford, responding to Governor Martinez, said the executive order is an attempt to articulate the “advice and consent” language that appears in statute.

Mr. Aragon commented that, in reading the statute, it appears to him that it is the Legislature and not the Board that can remedy the “advice and consent” issue, and that this is not an issue for the Attorney General. Without clarification from the Legislature, there is nothing this Board, and Treasurer Lewis as a member of this Board, can do to address Treasurer Lewis’ issues without being in violation of 6-10-10 NMSA. He said the executive order signed by Governor Richardson took that “to new heights” that were exceedingly onerous on the part of the Treasurer’s Office.

Mr. Brasher stated that the Board has a great deal of respect for its staff as well as for Treasurer Lewis.

Mr. Archuleta stated that everyone here is trying to act in their own best interest and suggested that everyone rise to a very high road and see the opportunity to find a cure that will be appreciated for a long time.

Governor Martinez stated that she has been in office for two and a half years, which has been “plenty of time” to seek redress. She said that three legislative sessions have gone by where a fix could have been implemented.

Treasurer Lewis responded that he did in fact address this issue before when he met with then-Board Director Olivia Padilla-Jackson to discuss whether it would be his budget or the Board of Finance budget that would cover the cost of the quarterly audits that were being required.

**Mr. Brasher moved for approval the contract with Davidson Fixed Income Management. Mr. Archuleta seconded the motion.**

Ms. Clarke stated that page 726 of the electronic agenda includes comments by staff that have not been incorporated into the contract, which she summarized for the Board.

Mr. Crespin stated that this is a boilerplate contract that cannot be changed as suggested, according to DFA’s Contracts Bureau.

Ms. Clarke responded that a boilerplate contract is a starting point. She added that, regardless of the ultimate outcome of the discussion by the Board in terms of possible changes to the Investment Policy in the future and whether or not it is unconstitutional, the comments staff is suggesting address compliance with the investment policy as it is today. She said these comments are meant to ensure that the contract complies with the investment policy today and encourages compliance with it.

**Treasurer Lewis agreed to the suggested changes.**
The changes identified by staff were incorporated into the motion as a friendly amendment.

Governor Martinez noted that the Board of Finance did not approve the first contract that was being renewed at this time.

The motion, as amended, passed 6-0 by voice vote.


Ms. Roseborough presented the Monthly Investment Reports for the month ending May 31, 2013. She said there were no compliance issues to report.

**STAFF ITEMS**

Presenter: Stephanie Schardin Clarke, Director

30. Approval of Proposed Changes to Rule: Policy on Capital Expenditures by State Educational Institutions

Governor Martinez declared the hearing record open.

Governor Martinez stated, "Staff, in consultation with a subcommittee of members of the Board, 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 of the testimony, I will close the hearing record.

"Then, the Board may start deliberating the merits of the rule. I will entertain a motion to accept, modify, or reject the proposed rule. We may modify the rule as long as it is the logical outgrowth of the rule as published in our packet.

"Rules become effective upon publication in the New Mexico Register. The legal standard is that we need to 'inform the public' of our reasoning when we choose to amend our rules. The comments of one member on the record, if they explain our reasoning, satisfy this legal standard."

Governor Martinez asked Ms. Clarke to make her presentation and submit any exhibits into the record.

Ms. Clarke made her presentation, as follows:
"At the Board's May 22, 2013, meeting the Board approved publishing of proposed changes to the Board's rule entitled Policy on Capital Expenditures by State Educational Institutions. Item #30 on your laptops includes the version of the rule that was published for public comment. Notice of the proposed rule change was published on the Board's website and in the New Mexico Register. The public comment period was from June 14, 2013 through July 14, 2013. During that public comment period, the Board received several sets of public comments. These are included in your materials as Exhibits A through HH. The Board has had an opportunity to review these comments, and may decide to incorporate changes to the published rule change based on the input of the public.

"While the following summary is not intended to represent the views expressed through public comment entirely, I will now briefly summarize some of the broad themes expressed through public comment. Public comments were received from a wide range of institutions and individuals and represented a diverse variety of thoughts and opinions.

"Several state educational institutions subject to the rule expressed concerns related to timelines for capital projects being delayed as a result of the proposed two-step capital approval process.

"State educational institutions voiced concerns that they will not be able to comply with the submission requirements required for purchase of real property and the first step approval for capital projects without expending certain initial project costs prior to Board approval. For example, appraisals, legal descriptions, title binders, environmental assessments, and architectural information must be paid for prior to Board approval to acquire real property.

"State educational institutions expressed concern that requiring the Board to re-approve projects where square footage increases or decreases by more than 10 percent may be problematic because bid alternates may be desirable and contractors may not be willing to hold bids until a project is reapproved at a greater square footage.

"A few state educational institutions also expressed support for increasing dollar thresholds for project approval subject to the rule, stating that the thresholds have not been adjusted to keep pace with inflation. The version of the rule that was published for public comment did not contemplate increases to these thresholds.

"One state educational institution suggests that in lieu of requiring two approvals from the Board that the first contemplated step be assigned to Board staff rather. Another state educational institution suggests that the first approval phase could be delegated to a Subcommittee of the Board to allow greater flexibility and reduced delays. A financial advisor to various state educational institutions suggests that the first approval step be delegated in the Higher Education Department since that agency will be familiar with each institution's facility master plans."
“One state educational institution stated that requiring a description of the specific use for real property to be acquired prior to its purchase may be problematic because sometimes strategic parcels become available but is not yet know how they will be used.

“Several members of the public expressed comments solely in support of or opposition to removal of language in the rule specific to LEED certification requirements.

“Views in opposition to removal of LEED language in the rule included assertions that LEED buildings are more energy efficient, that LEED buildings have better indoor environments and conserve water, that LEED provides measurable third-party benchmarks for building performance, that the proposed alternate language in the rule may be too subjective, that absence of LEED standards may increase long-term or “life-cycle” costs of public buildings to taxpayers, that removal of LEED standards would increase “brain drain” in New Mexico, that higher life cycle costs of buildings requires higher tuition, that green building creates jobs, and that sustainable construction makes New Mexico more competitive with other states.

“Views in support of removal of LEED language in the rule included assertions that LEED standards increase costs of buildings that do not justify operational and maintenance savings, that LEED standards should be optional where taxpayer funds are involved, that LEED has become a revenue generator for green building advocates who charge fees for LEED certification, that review of LEED buildings may suggest LEED buildings do not perform significantly better than their counterparts, and that Green Building Council certifiers may not apply criteria consistently.”

Governor Martinez asked for public comments from the audience. She asked speakers to limit their comments to two minutes and, when possible, select one member of their group to make comments.

Ben Woods, NMSU, stated that he has three broad concerns. First, he has concerns about the ability of institutions to implement the policy as proposed. Second, he believes there are some unintended consequences that should be considered: 1) is there truly an ability to produce reliable and realistic preliminary plans without the engagement of skilled and knowledgeable professionals?; and 2) there will be an impact on timeline and responsibilities. If one looks at 2.70.4.6(c), the key issue is the inclusion of the term, “prior to any expenditures.” In the past, the interpretation was it was the expenditure for the construction or the actual closure of the deed for the property acquisition. He asked if “any expenditure” includes expenditure of one’s own effort. He questioned how one achieves a product without any kind of expenditure, whether internal or external. Mr. Woods said the reference to the acquisition of real property is also unclear. He said he does not know how one can secure approval of an acquisition without the prior expenditures. He added that 40 percent of the space at NMSU Las Cruces receives no state support, i.e., no capital support and no taxpayer dollars. He
said it has to run as a business and that accounts for about 2 million gross square feet of space. If this rule change is enacted, a bond issue for a dormitory project would be brought to the Board for a thorough review about the ability to borrow the money and identifying the projects that would be secured under the bond. After the bond is approved and sold, they would have to come back and propose the Board a second time and propose the scope of those projects for preliminary review before they could ever enter into an agreement with an outside firm. Then they would have to come back a third time for project approval prior to construction.

**Miguel Hidalgo,** NM Tech, said he has been involved in capital projects for about 30 years, as Director of Capital Projects for HED and, prior to that, as Deputy Cabinet Secretary for the Commission on Higher Education. He stated that he has made many requests before this Board over the years. He said he can appreciate the Board's desire to have more information about projects before approving them, and recommended a two-step process where a lot of preliminary information is presented to Board staff prior to Board review. He expressed concern that these changes will create delays for educational institutions statewide and limit the authority of boards of regents, HED and higher educational institutions.

**Henry Mignardot,** HED Capital Projects Manager, outlined the vetting and approval process of all projects before they reach the Board of Finance. He said these rule changes would create project delays for higher educational institutions and impede their ability to conceptually review projects and move them through the planning process. He said it is incumbent upon the board of regents to take on this responsibility. He said HED has a very thorough and diligent vetting process, and there will be bottlenecks and unnecessary delays created. He asked the Board to table this rule change and allow time for some comments to be reviewed by staff and negotiated.

**Karen Cook,** licensed Real Estate broker and developer, LEED accredited. Ms. Cook said she is speaking on behalf of almost 1,400 people who signed the petition to retain the LEED standard for Higher Education in New Mexico, 250 members of the USGBCNM Chapter, some members of the AIA, the Albuquerque Public School system, and the countless other letters requesting reconsideration of this proposed change. She asked the Board to not, on this day, remove the State of New Mexico Higher Education Buildings from State of New Mexico Executive Order 2006-001.

Ms. Cook stated that the Green Building Advisory Committee established by the General Services Administration (GSA) officially recommended to GSA on May 3, 2013, that the LEED green building certification system be used for all GSA buildings as the best measure of building efficiency. The committee evaluated more than 160 tools and systems since it began in 2011.

Ms. Cook said the Pacific Northwest National Laboratory found that GSA LEED certified buildings used 25 percent less energy than the national average and cost 19 percent less to operate. As a result of GSA using LEED, another recent report from
GSA shows the agency has successfully reduced its energy use by almost 20 percent since 2003 and water use by almost 15 percent since 2007.

Ms. Cook said a not-yet-published study at University of Oregon summarizes a state-of-the-art study quantifying resource consumption, transportation and the human impacts of LEED credits achieved in K-12 schools on student health and performance of education environments. She said the study is a multiyear comparative evaluation tracing the performance of 16 pairs of LEED/non-LEED schools, and to date, findings support that LEED schools are outperforming their comparatives in energy savings, showing a reduction in Energy Utilization Intensity between 25 and 60 percent. More importantly for the students, there have been positive impacts on student health in terms of reduced asthma (15 percent), speech problems (9 percent), chronic allergies (5 percent) and behavior problems (3 percent).

Ms. Cook said that Albuquerque Public Schools can validate that APS building performance data demonstrates that mere "good intentions" are not enough and that dollar for dollar, kilowatt for kilowatt, APS projects that obtained actual LEED certification substantially outperform projects that only approximated energy efficiency known as being "LEED-like." She said Alfred Sena, executive director of Rio Rancho Public Schools Facilities Department, has stated that "LEED provides a process that helps assure that our buildings are designed and operated to be as efficient as intended. We find this as one of the most important outcomes of the LEED process."

Ms. Cook said suddenly changing the criteria to be less defined and quantifiable is another major concern in terms of potential cost and liability. She questioned how it would be possible to achieve a definition of a standard "to a litigation certainty that could withstand public discourse and dispute." She expressed concern that this could unwittingly open up a huge financial drain on all HED institutions.

Richard Dineen, past president, AIA, Albuquerque, asked the Board to postpone both the comment period and hearing to give the AIA more time to review the language and solicit feedback from their 300 members, and weigh in on this issue. He said he is also speaking for AIA New Mexico. He stated that they haven’t had a chance to poll the membership.

Mr. Dineen said they have two concerns: a project could be approved with only minimal and ineffective energy efficient measures, since the phrase "to the extent possible" is impossible to enforce. This could create cost overruns from the viewpoint of lifecycle cost analysis. Alternatively, a project could be denied approval even with substantial energy efficient measures in place, and this uncertainty could be a very high risk to those proposing a project and could stifle creativity in energy efficiency design.

Mr. Dineen commented that this system has been in place for a while, and will only result in more information based upon future data. He said the system needs to be given a chance, whether it is LEED or a modified version.
Mike Halcomb, Treasurer, US Green Building Certification Institute, New Mexico, clarified that LEED fees for the 80,000 square foot building reviewed by the Board earlier in this meeting were $4,900, and the plat fee was $500. He said the rest of the dollars people talk about are for soft costs, i.e., the energy model and meetings with the architects to explain what the requirements are, because they are not yet in code. He added that the GSA study on file with the Board is on buildings that are already in operation and have been occupied for over a year, and this is where they are getting reports such as a 22 percent reduction in energy, etc.

Lonnie Marquez, Vice President for Administration & Finance, NM Tech, stated that the requirement for approval prior to any expenditures would be unfair to their Board of Regents.

Governor Martinez noted that there were no additional speakers indicated on the public comment sheet, and asked if there was any additional public comment.

There being none, the hearing record was closed.

Mr. Archuleta said he served on the subcommittee that reviewed these changes, and he would highly recommend postponing this action. He commented that there is no urgency in approving these changes, and it would be taking the high road to allow additional time for review either by the subcommittee or by the Board as a whole. He suggested that Board members and staff write down their frustrations and concerns with the rule as it is currently written and then work with higher education representatives and others and ask for suggestions for a better procedure so people’s hands aren’t tied.

Mr. Archuleta said that, when he was on the subcommittee, he requested the language on the initial submittals, i.e., people consider groundwater, utility locations, and a number of other things and make sure that they spend the money to identify those things, to the best of their ability and with the information available, up front.

Mr. Aragon recommended that the Board meet as a committee of the whole in order to engage in dialogue with individuals and take the additional information.

Mr. Aragon moved to table this item to the next meeting. Mr. Brasher seconded the motion.

Mr. Archuleta stated that he opposes the rule as proposed, because it will cause many problems at universities and do the exact opposite of what he had in mind when the subcommittee first met. He said, “I want well planned, well thought out, correctly budgeted, real responsible projects coming here without a bunch of bureaucracy... slimmed-down, highly efficient processes that get us the best bang for the buck.”

Mr. Brasher asked Board staff to make an additional effort to reach out in order to get as many comments from the general public as possible.
The motion passed 6-0 by voice vote.

Presenter: Jeff Primm, Deputy Director

31. **Recommendation for Selection of Contractor to Begin Negotiations of an Agreement with Staff for Fiscal Agent Banking Services**

Mr. Primm reported the following: “The State Board of Finance issued a Request for Proposals for Fiscal Agent Banking Services on May 17, 2013. Responsive proposals were received on June 21, 2013 from two firms, Wells Fargo Bank and U.S. Bank. The Evaluation Committee carefully reviewed and evaluated these proposals based on the criteria and weights set out in the RFP and assigned the following total scores: U.S. Bank received a total score of 782.5 points, while Wells Fargo received a total score of 859.5 points. The Evaluation Committee recommends, and the Board’s Banking Subcommittee has endorsed, selection of Wells Fargo to begin negotiations with staff of an agreement for fiscal agent banking services.

“This procurement action would be subject to approval by the State Purchasing Office. An approval of the recommendation of the Evaluation Committee and Banking Subcommittee would initiate negotiation of a contract, which would come back to the Board and then go to the State Purchasing Office for final approval.

“Additional information related to these proposals and their evaluation remains confidential at this point. Board members that have signed a confidentiality and standards agreement have been provided the evaluation committee report. If Board members have any additional questions at this point, the Procurement Code requires they be asked only in closed session.”

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

32. **Board of Finance Dashboard Report**

Ms. Clarke reviewed the monthly dashboard report, including updated features.

33. **Fiscal Agent/Custodial Bank Services**

Ms. Clarke reported that she had nothing out of the ordinary to note on either the fiscal agent or custodial bank fees.
34. **Joint Powers Agreements**

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

**ADDITIONAL COMMUNICATION**

Responding to a question from Mr. Brasher related to real property condemnation by higher educational institutions, Ms. Clarke said she has been working with DFA’s general counsel, and will send a letter tomorrow advising UNM that the Board does not necessarily endorse the opinion of its former counsel, and would be advised to seek Board approval before moving forward with condemnation of real property.

**ADJOURNMENT**

Its business completed, the State Board of Finance adjourned the meeting at 4:45 p.m.

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\text{Susana Martinez, President} \\
\text{September 17, 2013}
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\text{Michael Brasher, Secretary} \\
\text{9/17/2013}
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