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

A Regular Meeting of the New Mexico State Board of Finance was called to order on this date at 9:00 a.m. in the Governor’s Cabinet Room, Fourth Floor, State Capitol Building, Santa Fe, New Mexico.

1. ROLL CALL: QUORUM PRESENT

Members Present:
The Hon. James B. Lewis, State Treasurer
The Hon. John A. Sanchez, Lt. Governor (Chairman)
Mr. Robert J. Aragon, Public Member
Mr. Michael Brasher, Public Member
Mr. Sam Spencer, Public Member

Members Excused:
The Hon. Susana Martinez, President

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

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

Others Present:
[See sign-in sheets.]

2. APPROVAL OF AGENDA
NEXT REGULAR MEETING: OCTOBER 16, 2012

Ms. Clarke recommended moving item #30 after #5 so both emergency water funding requests could be handled together.
Mr. Spencer moved to approve the agenda as amended with item #30 heard after item #5. Treasurer Lewis seconded the motion, which passed by 5-0 on voice vote.

3. **APPROVAL OF MINUTES**: July 17, 2012 (Regular Meeting)

Mr. Aragon moved to approve the July 17, 2012 minutes as presented. Mr. Spencer seconded the motion, which passed by 5-0 by voice vote.

**EMERGENCY FUND BALANCES**

Presenter: Stephanie Schardin Clarke, Director

4. **Emergency Balances – September 2012**

Ms. Clarke read the emergency and reserve fund balances into the record.

Operating Reserve Fund  $1,291,667.00  
Emergency Water Fund  $ 118,400.00  

Ms. Clarke noted that the requests of #5 and #30 totaled more than the the $118,400 emergency water fund balance but the Board could use money from the operating reserve fund for water emergencies if needed.

**EMERGENCY FUNDING REQUESTS**

Presenter: Lynette Garden, Bookkeeper

5. **Bluewater Water and Sanitation District – Requests Approval of Emergency Water Funding for Well Repairs ($90,000)**

Ms. Garden presented this request on behalf of Bluewater Water and Sanitation District ("Bluewater"). She said that in mid-August Bluewater’s well went down three times and left them without sufficient funds for pump repairs (which were already incurred). If the District didn’t pay for the repairs by September 30, 2012 the repair company would pull the pump.

Mr. Spencer said that he understood Bluewater needed water. As a general question, he said the Board continues to receive these requests from small water districts in the state. Living out away from public utilities requires a cooperative well and the districts, even in larger communities, don’t seem to have the ability to pay for the repairs. He surmised that breakdowns happened because regular maintenance was not done and anticipated the Board would see more and more of these requests. He said that this request was for a 20-year loan but the pump will wear out before then. Users need to provide for maintenance to avoid breakdowns. He didn’t want to deny anyone water, but
a longer term strategy was needed.

In response to Mr. Aragon, Ms. Clarke said there were two emergency water funding requests on this agenda.

Mr. Aragon noted this was just the third month in the fiscal year. It was a recurring theme that water districts either didn’t have the money or insufficient members to handle the maintenance needs. He had not been to a Board meeting without hearing such a request and was not sure how the Board should handle the problem. He agreed with Mr. Spencer there should be a policy through the State Engineer or the Legislature requiring a user rate to be sufficient to include an adequate set aside for unanticipated maintenance.

Lt. Governor Sanchez asked if the Board should use a first come / first served approach.

Ms. Clarke clarified that water emergencies by definition also qualified for use of the $1.2 million Operating Reserve Fund.

Lt. Governor Sanchez understood and, noting that it too was severely underfunded, the legislature needed to consider a larger appropriation in light of drought and wildfires. He asked if Secretary Clifford could give any suggestions.

Secretary Clifford indicated DFA planned to request an additional appropriation to this fund and a letter from this Board would be helpful.

Mr. Brasher asked Ms. Garden if there had been a formal request to some state agency for help when the district was started.

Ms. Garden said she had only worked there since 2010 and couldn’t answer his question but Bluewater had needed direction to be in compliance with state requirements. Bluewater’s audit was not in compliance so she had been working on that first to get in compliance in order to get state funding.

Ms. Clarke was unaware of any requirement for them to go to a state agency for approval of mutual domestic water systems.

Mr. Brasher reasoned if there is a process that information on a checklist ought to be included to indicate that emergency funds would be available in anticipation of such problems with the system. The water association should have some emergency funds.

Ms. Clarke explained that the well requires approval by the State Engineer and the Local Government Division approves their annual budget. The Environment Department is probably involved with the establishment of the entity also.

Mr. Primm pointed out that many of these entities were started by developers and
handed over to a group created to run the system in perpetuity and it is up to that group to maintain adequate reserves and in their rate making to take into account the depreciation and needs for using those reserve funds whether it is capital improvement or maintenance.

Ms. Clarke added that for Bluewater to qualify for a planning grant from NMFA they have to have an approved audit. There are other possible sources but they have to meet the requirements.

Secretary Clifford estimated there are over a thousand public water systems and 33 different water-related programs in the State.

Treasurer Lewis said another problem is that local governments don’t have the money either so this needs comprehensive review of these water systems whether it is Local Government, the State Engineer or the Environment Department. Someone needs to do it and just putting in more money doesn’t solve the problem.

Ms. Clarke shared a staff recommendation. She commended Ms. Garden for her work putting together the request. On August 23 Bluewater had $2,700 on hand after paying some of the bills for the emergency and they had $60,000 of outstanding unpaid bills. The request is for $90,000 to allow them to build cash reserves back up to $25,000 (11.5 percent of their annual operating budget). With a 20-year payback, that would be an annual payment of $4,500 starting December 2012. Staff recommends reducing the amount of the loan by at least $4,500 and delaying the first repayment to December 2013 so the $4,500 could stay in the Board’s emergency fund to help with another possible emergency. She also questioned if loaning Bluewater an 11.6 percent reserve was good use of the Board’s funds. She suggested a loan of $78,300 with first repayment next December which would provide an 8.3 percent reserve instead and would be more in line with Local Government Division’s 1/12th reserve guidelines.

She offered to present other scenarios if requested.

Mr. Spencer said he could support staff’s recommendation. Delaying the first payment and reducing the term to 10 years would give Bluewater time to consider and set appropriate rates.

Secretary Clifford suggested staff could work with the district for alternative funds such as the Water Trust Board over a 10-year period.

Mr. Spencer said the district needs to know what it costs to run the system.

Mr. Spencer moved to approve the request as amended by staff recommendation with a 10-year payback term.

Ms. Clarke the resolution as follows:
WHEREAS, the Bluewater Water and Sanitation District requested emergency funding from the Emergency Water Supply Fund to be able to provide an adequate and safe drinking water supply to its residents in light of the failure of its well;

RESOLVED, that the State Board of Finance determines, pursuant to Section 3-27-9, that an emergency exists requiring this expenditure in order to provide an adequate and safe drinking water supply for members served by the Bluewater Water and Sanitation District, which is less than 5,000 in population and which uses this water supply system in common. THEREFORE, the Board approves a loan in the amount of seventy eight thousand eight hundred dollars ($78,300) out of the FY 2013 Emergency Water Fund to Bluewater Water and Sanitation District to be used to pay for the costs of well repair to meet this emergency. This loan shall bear no interest and shall be repaid in equal annual payments of seven thousand three hundred dollars ($7,830), with payments due December 1, 2013 and each December 1 thereafter until repaid in full. Any amounts received as a result of insurance claims shall be used to repay this loan. Bluewater Water and Sanitation District shall provide quarterly reports on a form prescribed by the Board each April 15, June 15, October 15, and January 15 until the loan is repaid in full.

Mr. Spencer moved to accept the resolution. Mr. Aragon seconded the motion, which passed by 5-0 on voice vote.

Presenter: Tod L. Phinney, Water Resources Director, W H Pacifica

30. Twin Forks Mutual Domestic Water Consumers’ Association – Requests
Approval of Emergency Water Funding for Storage Tank Repair or
Replacement ($75,000)

Mr. Tod Phinney, Water Resources Director for W H Pacifica, a consulting engineering firm, and Mr. Jared Mitchell, General Manager and Lead Operator at Twin Forks Mutual Domestic Water Consumers’ Association (“Twin Forks”) presented this request. Packets were handed out by staff.

Mr. Phinney said Twin Forks had eight fiberglass water tanks and he was under contract to do leak detection and was surprised to see a fiberglass installation that was probably chosen for capital savings. The number three tank was the highest and was used to supply the system and provided water to 225 homes. Last Thursday, September 13 at approximately 5:00 p.m. the tank was discovered to have failed. He provided pictures to show what they found.

The association immediately notified those 225 homes of a boil water requirement.

The handout included a contractor’s cost estimate to remedy the emergency. The proposal was to put in a steel tank to replace tank three which had been the second
priority in his recommended capital improvements from his inspection and now became the first priority. The steel tank, if properly maintained, could last 100 years and they would install the proper lining.

Mr. Phinney was impressed with Mr. Mitchell and his staff who were replacing lines on a regular basis and setting aside 2.5 percent of revenue for estimated replacement costs but they were unable to cover costs for this emergency. Twin Forks was proposing to repay this loan over 10 years and could get it installed and running before winter.

Mr. Mitchell said they have a temporary tank to keep everyone supplied with water and still have the boil water advisory to protect health. They were trying to anticipate problems but this tank failure was not anticipated.

Mr. Spencer asked for details on the specific request.

Ms. Clarke explained that since the emergency occurred on Friday afternoon information was not available until this morning so she didn’t have a completed staff recommendation yet.

Mr. Phinney apologized and clarified that the request was for a 10-year, $75,000 loan with first payment of $7,500 due August 2013. The estimated cost is $130,000. Twin Forks just received NMED support today and a statement of support was emailed to him this morning.

He said that Twin Forks had $240,000 for leak detection and there would be some funds remaining from that. The proposed plan included the $75,000 emergency loan and $55,000 would come “from existing State Corporation funding.”

Ms. Clarke explained that to make a staff recommendation to the Board she would typically look at Twin Forks’ current cash balance, the costs that need to be paid to resolve the emergency, any other available funding and figure out a reasonable reserve level. She asked what the emergency cost would be.

Mr. Phinney said the estimated cost was $127,810 including $105,000 in capital costs as shown on the handout, third page from the end. He included some for contingency on the construction.

Ms. Clarke said regarding the association’s current cash on hand that the statement from First National Bank in the packet showed an account with $16,300 balance and another with $43,300.

Mr. Phinney related that the bank president, Ms. Evelyn Schultz, told him to be careful because Twin Forks usually wrote checks at the end of the month so it might not reflect the actual balance.
Mr. Mitchell said the checking account balance would be about $500 instead of $16,300 for outstanding checks. Their savings account balance was approximately $84,000. He added that they did have insurance on the tank for $29,500 in replacement cost.

Ms. Clarke said deducting the $29,500 insurance coverage would leave a total cost of the emergency of $96,300. She was confused about the actual cash on hand. She suggested the Board could consider approval of a maximum amount and allow her to reduce it at disbursement if the members were comfortable doing so.

Mr. Aragon asked if they had $84,000 in the bank savings account.

Mr. Mitchell agreed and clarified that was for their operating expenses. About $10,000 was not spoken for.

VLt. Governor Sanchez commented that clearly it is an emergency; it came late and staff didn't have time to make a solid recommendation. The Board needed to have the full facts but didn't know if there was time to postpone it to next month's regular meeting. He would like to see staff get hard numbers and right now they were guessing.

Ms. Clarke suggested either postponing the request until the October 16 meeting, having a special meeting at an earlier date to address the request, or approving a maximum amount subject to reduction by staff based on further review of the emergency.

Mr. Spencer said it is an emergency just like the last one and there were 600 folks who needed water.

Ms. Clarke explained that the reason Bluewater was able to wait was because they went ahead and hired the contractor and incurred the necessary expenditures. She didn't recommend that Twin Forks do that and take that chance.

Mr. Brasher wondered if Twin Forks had a short term fix until the next meeting.

Mr. Mitchell said Twin Forks did not have a SCADA system like bigger water systems had that would automatically restore supply when needed and prevent overfilling but with their temporary tank they would have to make manual hourly checks to make sure the supply was adequate.

Secretary Clifford asked if Twin Forks had a completed audit. Mr. Mitchell said no, but that an RFP has been submitted for audits of 2010, 2011 and 2012 to be approved by the State Auditor. Then the audits would be underway. The association had set aside $15,000 to pay for the audit.

Mr. Mitchell clarified that NMED required the leak detection by WH Pacific and the audits to be completed under the stipulated order.
Lt. Governor Sanchez asked if Ms. Clarke had a recommendation now.

Ms. Clarke calculated with $10,000 on hand and cost of repairs at $96,300 after the insurance claim and $40,000 from NMED and to achieve the 8.3 percent reserve would mean the loan would be $72,040.

Mr. Aragon asked how long it would take for the staff to confirm these amounts given that it is an emergency.

Ms. Clarke said the main question is cash on hand. The most the Board could approve today is $75,000, given what was published on the agenda. Given the lower assumption, $72,000 seemed to be a reasonable course of action.

Mr. Aragon asked if it would be feasible for Ms. Clarke to get a solid grasp of the figures and have a special meeting to help Twin Forks. He suggested they might have the special meeting by phone as soon as staff had firm numbers and maybe within 48 hours.

Ms. Clarke reminded the Board that the Board’s Open Meetings resolution required publishing notice 72 hours in advance of a special meeting, so they could have a special meeting on Friday afternoon at the earliest. She could look at patterns of cash flows through the month and figure out the low point to use as cash on hand. She clarified that the agenda has to be posted 24 hours in advance.

Mr. Aragon moved to defer action, subject to call of a special meeting to review staff recommendations. Mr. Brasher seconded the motion, which passed by 5-0 on voice vote.

Presenters: Ricky Bejarano, State Controller; Emily Oster, CPA, Department of Finance and Administration

6. Department of Finance and Administration, Financial Control Division Requests Approval of Emergency Loan to Fund the Cash Management Remediation Project ($400,000)

Mr. Bejarano introduced himself and Ms. Emily Oster.

Secretary Clifford recalled the Board had reviewed this matter last spring in relation to the State Treasurer’s FY11 audit and lots of work had taken place since then. DFA brought in a highly qualified contractor with knowledge of the State’s SHARE software. There had been mounting problems with it for six years. Both DFA and the Treasurer’s Office had confusion about the program operation.

Mr. Bejarano reported that since they last met with the Board, the legislature had approved a special appropriation of $200,000 to begin work on cash reconciliation remediation. The diagnostic report included in the Board’s materials was part of that
work and DFA needed $400,000 to complete the work using the same contractor. If the worked stopped to wait for further appropriation from the next legislative session, DFA could not ensure the work would be done by the same contractor. This is a critical need. He explained that DFA must reconcile for the auditor, Clifton and Gunderson. Reconciliation of cash to the books had not been accomplished since the SHARE system was implemented in 2006. It is required for the statewide consolidated report and the DFA audit. If they were not working on remediation of it, the auditors would have no option except to modify their opinion on the General Fund.

Secretary Clifford said not getting it done could affect the bond market so there are a lot of ramifications here.

Responding to questions from Lt. Governor Sanchez, Mr. Bejarano said Deloitte Consulting is a worldwide accounting firm. DFA was able to get a $60,000 contract very graciously because another contract fell through. They were working with Matt Bauer who had worked with very large treasury systems before. He had PeopleSoft experience with special expertise in the treasury module. That was not available when SHARE was implemented. So when SHARE occurred, the state had no treasury expert on staff or with a contractor. If there was an interruption in that contract, the state would lose that specific expert who currently had been scaled back to 60 percent time on this project and the other 40 percent between two other projects.

Lt. Governor Sanchez asked about performance guarantees, noting the state had a problem in maintaining software and has un-reconciled balances over $1 billion.

Mr. Bejarano agreed. The guarantee is when it gets turned on and is operational going forward. There was no guarantee on past errors. They would have to pick that point in time and with the Treasurer make sure of the reconciliation going forward.

Mr. Bejarano stated that the state bought a very sophisticated PeopleSoft system – one of the best in the world. But the implementation of SHARE was at best disastrous. The contractor had never worked on a system that large, the Treasurer was brought in very late, and not all of the system had been turned on. The treasury module could be reconciling on a daily basis but the state instead spent $2.1 million doing patches. This system was inherited and now DFA is in a remediation phase and turning the buttons on to get the system operational.

Treasurer Lewis said he supported the request. He was not the Treasurer in 2006 and there was no transition. Over at the legislature he discovered the treasury module was not included. He needed to get people paid and it was frustrating. At his first PERA Board meeting he was asked whether his office could certify cash and he found out they couldn’t. He refused to accept the non-certification and knew the answer was in the treasury module.

Treasurer Lewis said that an act in 2003 indicated DFA would do all the
reconciliation until everything was completed and then give it back to the Treasurer. The books should be reconciled to the bank instead of other way around. His staff spent hours figuring it out and was glad to have the administration sit down with the tech group to reconcile. This will be a long term process to get it resolved. After many meetings his staff was now excited.

Mr. Aragon stated that the former Governor had acted unilaterally with respect to the constitutionally-elected Treasurer’s office. He said he didn’t know if the general public appreciated how dangerous it is that the state doesn’t know how much money it has. Money had been spent unnecessarily because the previous administration was not willing to look at how the software wouldn’t work. Many of those same people remain in government and now there is no recourse other than to spend the seven figures needed to fix it.

Mr. Aragon said he didn’t know what legal recourse the Board could take and didn’t have much confidence in the AG to take action. The AG’s proper recourse would be to make the contractor accountable because they took the taxpayers’ money for a system that didn’t work. He said there was no way to construe the problem except as corruption—a gross abuse of taxpayers’ money. He said that he understood the only result of Treasurer Lewis’ confrontation with the former Executive was a reduction in his staff. That, by definition, is actionable. He congratulated Treasurer Lewis for his ability to endure everything he had to put up with in this regard.

Mr. Brasher agreed this is critical and didn’t want the work to stop. The risk of not doing it is not just the stoppage but also security risks that shouldn’t be understated. He hoped the patches were well documented. On some level everyone needs to be on one system.

Mr. Brasher continued that the need for training is self-evident so that everyone using the system understands the full functionality of the software and is able to use it. The security risk is very serious and he hoped they could find full funding for it.

Secretary Clifford said normally DFA would look to its own budget to cover this cost but they had to retain contract assistance for payroll that was not budgeted and currently had cost over $300,000. He explained that the payroll situation had exhausted the budget that would have been used for covering the costs in this request.

Lt. Governor Sanchez understood this would be a loan to DFA and asked about the terms.

Mr. Bejarano said DFA planned to request a special appropriation from the legislature so that DFA could repay the loan immediately. He discussed it with the LFC members who were receptive and with Treasurer Lewis’ support he was confident DFA could repay the loan immediately upon the Governor’s signature on the next budget.
Lt. Governor Sanchez asked what DFA would do if that didn’t happen.

Mr. Bejarano said they would have to stop the work and wait for the next legislative session.

Ms. Clarke clarified there were two separate issues – one is a source of repayment for this requested loan that is dependent upon a special legislative appropriation. She said that in her experience, that probably is not likely to materialize. But whether the work stops or not, the second issue is whether DFA is successful in obtaining any remaining funds from the legislature to use for completing the project (not for repaying the loan). Requesting funds to finish the project would have a better chance of approval by the legislature. She suggested the possibility of funding a portion of the work until that request could be made at the legislature.

Secretary Clifford said on the time frame DFA’s current funding will run out in mid-November and estimated that $300,000 would allow the work to continue through February.

Mr. Bejarano said $600,000 is the cost of remediation and staff also plans to ask for enhancements for the State Treasurer’s Office. DFA has $200,000 and needs $400,000 more for the remediation. However, if the work stops, they would have to bring in another expert and it would mean starting all over and incurring significantly more costs.

Secretary Clifford estimated a special appropriation would probably not be available before April and if the amount was reduced they would likely see some kind of gap in the process.

Mr. Bejarano clarified to Mr. Brasher that the original contract was for $600,000 but DFA had received a special $200,000 appropriation last year.

Secretary Clifford explained that DFA anticipated a multi-year project and didn’t realize that it could be addressed this quickly so they had not included all contract costs in last year’s request.

Mr. Bejarano added that the work has started using the existing $200,000 so they cannot wait to start the project after the legislative session but if the project has to stop there will be consequences to face. Although the auditor looked the other way for the last six years DFA now has new auditors who would not look the other way any longer.

Mr. Spencer considered it inexcusable that the state can’t reconcile cash. He said that if we don’t get it fixed, it will affect every citizen in the state. We cannot wait for the legislature to act. We should move forward and get it fixed now.

Treasurer Lewis concurred since he has been waiting almost six years.
Mr. Aragon moved to approve the request of $400,000. Mr. Spencer seconded the motion.

Ms. Clarke reviewed the resolution.

WHEREAS, the Department of Finance and Administration has requested emergency funding to pay costs of the Cash Management Remediation project;

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 loan to the Department of Finance and Administration in the amount of four hundred thousand dollars ($400,000.00) for costs of the Cash Management Remediation project from the Board’s FY13 General Fund Operating Reserve, upon transfer to the Emergency Fund by the Secretary of the Department of Finance and Administration to meet this emergency. This loan shall bear no interest and shall be repaid by June 1, 2013. The Department of Finance and Administration agrees to provide quarterly reports on a form prescribed by the Board each April 15, June 15, October 15 and January 15 until the loan is repaid in full.

The motion passed by 5-0 by voice vote.

Presenters: Dianna Duran, Secretary of State; Ken Ortiz, Chief of Staff; Bobbie Shearer, Bureau of Elections Director; Ellie Ortiz, Chief Financial Officer

7. Secretary of State – Requests Approval of Emergency Funding for Expenses Related to 2012 General Election ($1,407,900)

Secretary Duran presented the request. It was necessitated because there were many unknowns with the upcoming election.

Secretary Duran said she felt it would be easier for the Board to understand the need for the loan by following the time line that her staff had distributed to the Board. In September 2011, she said that she was required to submit the budget request for FY 2013 that included funding for this election. The 2011 legislature passed a new manner of voting in New Mexico with voting convenience centers for counties who wanted to use them.

She submitted a budget on September 1, 2011 and in November 2011 the counties passed resolutions on which type of voting system they wanted to use. Fifteen counties chose the new voting convenience centers, although some later changed their minds.

Then the Secretary of State’s Office drafted an RFP for lease or purchase of “on-demand” ballot systems to be used in the voting convenience centers. A long process had
to occur to get to contract execution on April 6, 2012. She did not know how many would submit proposals or how much any vendors would charge. Her office worked hard to keep costs down. State law required the Secretary of State to provide the ballots needed to conduct the election, but in September 2011 they had insufficient information to know what to request in the budget.

The final RFP response came at the last day of the legislative session so they couldn’t go back to ask for more funding to cover the extra cost.

Secretary Duran continued that, today, the absentee voting system uses the on-demand system in 27 counties. For early voting, 23 counties use the on-demand ballot system and the 15 counties are using the system for their voting convenience centers. That is where the higher costs were incurred.

Secretary Duran explained that the agency’s budget request presented for 2012 was not fully funded by the legislature. So the Secretary of State found they were $1.4 million short for this general election and had to ask for emergency funding.

Mr. Brasher asked if the counties paid the operational costs and the Secretary of State provided the machines and ballots.

Secretary Duran said she had discussions about that with David Abbey at LFC. The cost is mostly upon the Secretary of State and the counties are not mandated to pay for much of the cost. The Bernalillo County Clerk offered to pay $250,000 of their costs but by statute the majority must be covered by the Secretary of State.

She explained the $1.4 million was the total of estimated costs over and above the appropriation in the approved budget.

Mr. Spencer said the Board of Finance didn’t have money to take care of that now.

Secretary Duran realized that and if she knew somewhere else she could go to ask for it, she would be there and not here. But the State Board of Finance is the only source she has. The only other alternative was to go to the legislature and wait to pay the vendors after that legislative session.

Mr. Spencer asked, since some of this was created by the new ballot on-demand systems, if she had an option to not do that for this election.

Secretary Duran explained that when Senate Bill 337 authorizing the voting centers was introduced, it was promoted as a cost savings for conducting elections in New Mexico. The last federal election (in 2008) cost the state over $9.5 million. But even with the shortfall of this $1.4 million the cost of this election is still 20 percent less than costs in 2008. She asked for $7.6 million total versus the $9.5 million in 2008.
Secretary Duran continued that the answer was that it was not an option to not provide the on-demand ballots. The county commissioners of each county determined the polling places. Most counties were told the new system would be a cost savings. The Secretary of State is obligated by state statute to provide the counties what they need for the election services.

Secretary Clifford asked if the Q&A he received was provided to all SBOF members. He read through some questions. He said that AES is the highest cost vendor and an in-state vendor who had developed the system specifically for use in New Mexico. One hundred forty of its systems had been used in the 2010 primary and general election at a cost of $7,500 each. He thought that information on that vendor would have been useful information for the Board.

Ms. Shearer explained that the 140 AES units used in 2010 were only for absentee and early voting but not used on Election Day. So the staff had no way to estimate how to budget for the costs of the voting convenience centers.

Secretary Clifford asked if the statute required providing a certain minimum number of these voting convenience centers.

Ms. Shearer said the statute said up to 10 precincts could be consolidated into a vote center but a county commission could elect to consolidate fewer precincts.

Secretary Clifford asked how many voting centers were now expected.

Ms. Shearer said they expected 180 centers statewide under county resolutions adopted. If Bernalillo County had consolidated 10 precincts to one vote center, their total would be 50 but by statute they are allowed to have the 69 centers they approved.

In response to Secretary Clifford, Ms. Shearer said there were 1,544 precincts statewide.

Secretary Clifford thought that should be the target because 154 centers could handle 1,544 precincts. But if the experience before was $7,500 per unit, he wondered how that got underestimated. Perhaps that math should be provided.

Secretary Clifford asked if the units were essentially computers and Ms. Shearer agreed, including a laptop and printer with network connection and software.

Secretary Clifford said there is funding from the Department of Information Technology for computer purchases and asked if Secretary Duran had talked with them.

Mr. Ortiz said they had not and were leasing them instead of purchasing

Secretary Clifford suggested talking with DOIT about it.
Secretary Duran said she would feel the same way if it was just a laptop they needed but it was more than that. For the $4,000 AES includes quite a bit more.

Mr. Ortiz clarified it was a laptop, printer, hardware, software, signature pad, licensing, cabling, routers and paper with on-site tech support and shipping as well as data management on results and pack up afterwards. The cost was $4,000 for every system over 500 units but for fewer than 500 units it was $5,000. They anticipated using 526 units.

Ms. Ortiz said that part of the budget was $1.7 million.

Treasurer Lewis asked if it was possible to seek loans through the counties.

Secretary Duran said other than their agreement with Bernalillo County most of the counties had no money in their budgets to help.

Treasurer Lewis asked if there was a way to purchase them so they could be used every year.

Secretary Duran said they discussed that with county clerks but were hesitant going into this legislative session to be talking about capital outlay for this purpose. She thought it was important to have two vendors for this election. She hoped the competition would help lower their prices.

Treasurer Lewis said as a former city administrator he understood how consolidation helped. He asked if the jury was out on what the voters liked.

Secretary Duran said the feedback from primaries indicated that people really liked it. Even with the centers it is a cost savings from 2008 as she is spending less money this year. For the 2014 budget they would base their request on the real expenses. She added that even with the reduced costs, they had fewer errors in the election counting.

Mr. Aragon asked what Secretary Duran would do if the Board didn’t have the money to loan.

Secretary Duran said the election has to go on. We are working with vendors and counties to cut every cost possible. Whatever we can’t get, we will request supplemental appropriations and pay those bills after the session. Hopefully they could do that.

Mr. Aragon asked if her office could conduct the election without that money.

Secretary Duran said they had to. They had no choice.

Mr. Aragon asked if the voters could rely on accurate results. Secretary Duran
responded in the affirmative.

Mr. Aragon asked if they had talked with the vendor about delayed payments.

Mr. Ortiz said they had not had that exact discussion yet. They had hoped to receive some direction from this Board and then have that conversation.

Secretary Duran said that AES has provided ballot services for 25-30 years in New Mexico and the state had been in this position before. They also understand the process we are under.

Mr. Aragon didn’t think the Board could zero out the fund now until June 30, 2013. He felt it was imperative to have that conversation with the vendor post haste because he was at a loss for what to do. He wasn’t sure the full faith and credit of the State would be sufficient for the vendors but was assured that the Secretary of State could provide a viable election.

He was also surprised that the private companies that pride themselves in private enterprise are predicated on tax laws and the government. Maybe DOIT ought to do this in the future so they avoid those problems.

Ms. Clarke noted the statute does require that an emergency be something that could not wait for funding at the next regular legislative session. The material submitted in the printed response indicated that critical services would not be provided without this money. The agency’s written response differed from their testimony today and she didn’t know how to get around that. As staff reviewed this request prior to today’s meeting, she said that staff had looked into whether accelerated allotments could be used to offset this cost wherein DFA would allot the annual amount early to them to cover the election costs. Accelerated allotments could offset about $400,000 of the shortfall. She also thought it likely that DFA could waive the 50 percent rule for the first six months of this fiscal year.

Secretary Clifford agreed. DFA could relax the 50 percent rule. He said page 181 of the Board’s electronic materials had details of the budget titled “printing and graphics” which seemed to be where the big contracts for the election were budgeted. He read some of them aloud and it appeared the total of them was more than was indicated during the meeting. The one that stood out to him was under advertising for $350,000 to publish the constitutional amendments in every newspaper. He asked if there were any constitutional amendments on this ballot.

Secretary Duran said there were five and the publishing in every newspaper was a constitutional requirement they must meet.

Secretary Clifford suggested it would be helpful to look at the detail those costs were based on. The total appeared to be over $3.5 million.
Ms. Shearer said the 200 tally sheets were required for ballots that would not run through the tabulator. The agency had asked counties to print those or go to PDFs. Bernalillo County went to cell based tally sheets. They cut that estimate from $400,000 costs in 2010 to $200,000 for the primary by taking those measures. $350,000 was the cost of preprinted ballots because they still had traditional precincts that use preprinted ballots instead of ballot printers. She went through the other supplies they needed.

She said the units could process a ballot every two minutes if there were no paper jams, so she believed it was obvious why they needed the 526 units.

Lt. Governor Sanchez asked where the Board was on the balance right now.

Ms. Clarke reported after the $400,000 loan to DFA the balance is $891,667.

Mr. Spencer moved to table this request. Mr. Brasher seconded the motion.

Mr. Brasher said the Board was very sympathetic and acknowledged it was a problem because of more sites. But the Board didn’t have the money and it is difficult but the decision is there.

Secretary Duran appreciated the Board’s comments. She wanted the Board to understand the situation the Secretary of State was in. She considered it amazing how people could go to the polls each year and everything was magically handled. But unless you live it as well and understand the costs of all this preparation, it is amazing how people do not understand how time consuming it is. There is so much that goes into it to assure integrity in the process, fairness, and that 33 county clerks have the resources needed. She said the Secretary of State is responsible to provide what the counties need with polling places adequate to handle every single voter that comes. Her hope was that she might get a little something to make it a little easier to go to Senate Finance and say the State Board of Finance provided a little but this is what is still needed from the legislature to fund it completely.

She said she wished she had that magic ball last September to know what was needed because she would have gone then to the legislature to get adequate funds for the election.

Mr. Aragon noted there are few constitutional requirements the state has and one was agreed upon when New Mexico became a state – to conduct elections. The politicians we elect to control purse strings often forget the necessities in the constitution and the body politic unfortunately too often supersedes that of the constitution. About 90 percent of the state budget is not required by the constitution. But this one is. It is a shame those folks we elect inadequately fund what is required.

The motion to table passed 5-0 by voice vote.
8. Secretary of State – Requests Approval of Emergency Funding for Automatic Recounts from the 2012 Primary Election ($9,347.73)

Secretary Duran explained that this request was brought to the Board as required by statute. An automatic recount is required when by canvas the difference in the number of votes for two candidates for an office was less than one half of one percent. After the primary election there were two senate districts where the automatic recount was required and by statute the Secretary of State had to reimburse the counties for the cost of the recount and that the Secretary of State “shall request from the Board of Finance” when the budget would not cover the reimbursement. Since they had no money to pay for the reimbursement she was present to ask the Board to consider and approve providing $9,347.73 to reimburse seven counties for the cost of recounting votes.

Lt. Governor Sanchez asked for a staff recommendation.

Ms. Clarke corrected for the record that Section 1-14-24 is the automatic recount section and in that section it says the Secretary of State “may request a grant from the Board of Finance.” However, the Board must review the request in light of the emergency criteria found in Section 6-1-2 which, among other requirements, says the emergency must be one that cannot await funding at the next legislative session.

Ms. Clarke stated that in her opinion, the request of $9,300 among seven counties was immaterial to the county budgets so she recommended that the Secretary of State could wait and make the request at the next legislative session. If the Secretary of State is successful in her appropriation request at the legislature, those counties can be reimbursed within the same fiscal year.

Secretary Duran noted that after the 2008 primary election, this Board provided $41,000 for recounts, so this was not the first time this Board had heard such a request.

Mr. Brasher reiterated that the Board didn’t have the money.

Mr. Brasher moved to table this request. Mr. Spencer seconded the motion, which was approved by 5-0 voice vote.

A brief break was taken from 11:35 to 11:45 a.m.

PRIVATE ACTIVITY BONDS

Presenters: Jay Czar, Executive Director; Linda Bridge, Housing Development Director

Mr. Jay Czar introduced himself, Ms. Linda Bridge the Director of Development and Ms. Aletha Reidel who worked on the underwriting for this project, all of whom were staff members of the New Mexico Mortgage Finance Authority.

Mr. Czar said it had been three years since they came to ask for a bond cap for multi-family development. The economy has made financing very difficult. There were 5,362 housing units built or preserved using bond cap between 2000 and 2010 and they hoped to get back to that volume in the next few years. It will create construction jobs and help with permanent jobs. The need for affordable housing is growing in New Mexico, recently estimated to be 30,000 in New Mexico for low income and extremely low income families. “Extremely low income” for a family of four refers to those with incomes less than $14,300 annually. It is critically important for those with fixed incomes, elderly, frail and disabled people.

A project using private activity bond cap can receive low income tax credit of $1.43 for every dollar spent on housing. This project far surpasses historic activity.

Ms. Bridge said the $7.5 million will allow rehabilitation of three existing housing projects in Gallup that are currently funded by USDA rules. USDA estimates 2,000 units in rural areas statewide. This financing is critical for them. This will provide $27,000 per unit and a small budget for temporary nearby relocation of occupants.

All of them are 100 percent affordable housing. The median income in Gallup is $41,000 and the average income in the project sites is $25,000. No family pays more than 30 percent of their income in rent. The rehabilitation will help reduce energy costs as well.

Mr. Aragon complimented Mr. Czar. He has always responded to requests and on this project he provided information. He wholeheartedly supported this project.

Mr. Brasher enjoyed working with Mr. Czar and thanked Mr. Czar for agreeing to meet with him.

Treasurer Lewis moved to approve the request as presented. Mr. Aragon seconded the motion, which passed 5-0 by voice vote.

PROPERTY DISPOSITIONS

Presenters: Jose Terrones, Anthony Sanitation and Water District Project Manager; Frank Coppler, Attorney, Anthony Sanitation and Water District; Patrick Banegas, President, Anthony Charter School Governing Council; Patricia Matthews, Attorney, Anthony Charter School
10. **Anthony Water and Sanitation District – Requests Approval of Lease of Real Property to Anthony Charter School (the lesser of $733 per MEM, subject to adjustment as set in statute, or District improvement costs)**

Mr. Coppler noted this was on a previous agenda and was tabled with suggestions to be considered. Now they were back with an unqualified yes to the Board’s suggestions. The Board had considered the terms he brought forth earlier were not reasonable and should be restructured and that was accomplished.

This three and a half acre parcel is owned by Anthony Water and Sanitation District and subject to rules and controls of the Local Government Division of DFA. Anthony is now incorporated and the library portion of the property will be transferred in October to the City of Anthony from the county. The Anthony Water and Sanitation District will provide a quitclaim deed for the three and a half acres and that will provide a chance for the charter school to share the property with the public library. Both do serve the community.

Secretary Clifford asked if the $733 monthly lease payment was intended to cover just the land.

Ms. Matthews clarified the lease payment was not just for land. The water and sanitation district would be paying for tenant improvements as it goes along. The lease payment will be the lesser of the cost of actual improvements to the property and could be less than $733. If the district spends less on those improvements the water and sanitation district does not get to keep the money.

She added that the charter school purchased the five portable classrooms with other funds and provides maintenance of the facilities out of the school’s operating budget.

**Mr. Shandler noted if the Board votes to approve the lease, staff recommends it be contingent upon the director’s receipt of the final signed lease.**

**Mr. Brasher moved to approve the lease contingent upon the director’s receipt of the final signed lease. Treasurer Lewis seconded the motion, which passed 5-0 by voice vote.**

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**Presenters:** Katrina Holrum, Department of Substance Abuse Program Director; Deanna Miglio, Right of Way Manager, Bernalillo County; Michell Gutierrez; Kim Broussard; Catherine Torres, Department of Health Secretary; Mike Mulligan, Department of Health

11. **Bernalillo County – Requests Approval of Lease of Real Property to New Mexico Department of Health ($261,011.52 annually with three percent annual increases for first five years)**

Ms. Miglio explained the lease space was for the medical detoxification service,
substance abuse and chemical dependency program at 5901 Zuni. The request was for an increase of the leased space for a term of seven years with two options to renew.

Mr. Brasher disclosed that he served on the Public Safety Advisory Board but felt that he could vote on this issue since it was an advisory Board and he had no conflict of interest. Mr. Shandler agreed that disclosure statement was fine.

Mr. Aragon said he feels that chemical dependency is one of the biggest problems in the state and 35 beds were insufficient to meet the needs. Cooperation among programs was important and he hoped this program worked cooperatively with the UNM detox program.

Ms. Miglio agreed. They are evaluating the number of beds right now. This lease would add 20 more beds and the program does work closely with UNM Pain Management and the Milagro program. The agency provides a variety of services and the county also has a detox program.

Mr. Aragon said in his criminal law practice two-thirds of the people with whom he had contact had opiate dependency. High recidivism is because 8:00 to 5:00 programs are not effective and 24/7 programs are needed. So he was somewhat excited with this request.

Ms. Miglio agreed and said they were trying to attack the problem in a comprehensive way. More detox beds were needed as well as rehabilitation.

Mr. Aragon said the physical dependency is usually controlled in about 30 days but neurons are changed in the brain and need probably 90 days. He asked if there is a move to try to change the length of these programs to achieve greater success.

Secretary Torres agreed. She said her department has been charged by the Governor to examine this issue by October 15. It is not all inpatient and before asking to go from 30 to 90 days they have to prove the efficacy of that approach. They are looking at other options too. A huge array of services is needed.

Mr. Aragon described the addiction culture and how hard it is to break it in 30 days and even harder to stay sober when kept in the same community. He said it was well established by the medical profession that 90 days were needed.

Secretary Clifford asked Secretary Torres about their ability to do the comprehensive survey.

Secretary Torres said the Department of Health does the survey and handles that data. The Department of Health is trying to look at the dollars being spent and figure out how to spend them more effectively. UNMH is the only level one trauma center and with the Indian Hospital are usually the only places for these patients because they have often lost
their jobs and have no insurance. There are different types of beds. They separate adolescents from adults; boys from girls; and there are different laws of compliance. We need to make sure all populations in the state have access and that requires special care from the professional staff. There really are no best practices. It is a big long term goal.

Secretary Clifford asked Mr. Steve McKernan of the University of New Mexico Health Sciences Center if that facility had been approved for a license by the Department.

Mr. McKernan said they were in the process of working with the Department of Health and the facility had preliminary approval but not final approval. It was initiated and in process.

Secretary Clifford asked Secretary Torres if she could share the background or check list of their findings to date.

Secretary Torres said as soon as they had completed it they would provide that for the Board. In response to Mr. Brasher, she said they were looking at all treatment options and there were different performance measures for each department. The report would be available by October 15.

Mr. Brasher understood a continuum of care is needed and serious addictions needed more than 30 or even 90 days to be effective. He knew their work and thanked Ms. Holtrum for doing a really good job at UNM.

Mr. Shandler noted there had been some revisions through the process. **If the Board approves this request staff recommends it be made contingent on the Director’s receipt with review of counsel of the final signed lease.**

He added that the changes from yesterday were just ministerial matters to work through including being re-dated and re-signed.

**Mr. Brasher moved to approve the request with staff contingency. Mr. Aragon seconded the motion, which passed 5-0 by voice vote.**

Presenters: Veronica Gonzales, Cabinet Secretary; Terry Trujillo, Administrative Services Director; Anne Green-Romig, Legislative Affairs Director; Erin McSherry, General Counsel; Lisa Vornholt, Facilities Manager; Eric Biderman, Project Manager, Los Pueblos Community Council

12. **Department of Cultural Affairs – Requests Approval of Sale of Real Property to Los Pueblos Community Council, Inc. In Ribera (Approximately $39,000)**

Secretary Gonzales requested permission to sell the Ribera Schoolhouse property, which was donated to the Department of Cultural Affairs (DCA) in 2009 to collaborate to develop the Ribera Community Center by renovating the historic school house on the property. The state made an appropriation for improvements but more money and work is
needed to open the community center. DCA now wishes to sell the property for financial and policy reasons. DCA has significant financial challenges, having made acquisitions under Governor Richardson while the budget was continuously decreasing. So DCA felt it best to sell this property now. The current administration deemed state operation of this property was no longer a priority. Los Poblanos remains committed to restoration and operation of the property and has secured over $1 million of federal funds to do so.

Secretary Gonzales, in response to Mr. Aragon, said the property was donated and $600,000 was appropriated for improvements for stabilizing the foundation, asbestos removal and re-roofing.

Mr. Aragon said he was concerned about a question of the anti-donation clause with the improvements that were made. Although it was donated to the DCA, it was being returned back to the Community Council with $600,000 of taxpayers’ improvements. That is unfair to the taxpayers without some consideration. The anti-donation needs to be considered and an arms-length proposition. He asked for response from staff.

Mr. Shandler said they had the same discussions and Ms. McSherry was prepared to address that.

Ms. McSherry said there were concerns about that at the initial receipt of the property. And if there had been a plan to return the property at the time it was donated that would have been an anti-donation problem. But the intent of DCA at the time it was donated was to keep the property and lease it in an ongoing relationship with the current operation. Most of the improvements did not increase the value of the property. The structure still needs significant repairs. There were other repairs made but Los Pueblos has the right of first refusal on this sale according to the agreement signed by DCA.

Mr. Aragon felt the problem, in keeping with the general theme of this meeting, goes back to the prior administration and taxpayers are stuck with something. The State acquired the property and put money into it but those who gave it are now getting it back with $600,000 in improvements literally for nothing. That was a problem for him.

Mr. Shandler said the valuation of the transaction was dependent on the appraisal and NMTRD concurrence. Those documents came back and have declared this to be fair and adequate. So those two technical documents have defined this as adequate consideration and therefore staff believes that it is not an anti-donation violation.

Mr. Aragon felt it was just chalked up to bad policy at the expense of taxpayers.

Secretary Clifford was sympathetic to the comment. It was a bona fide horror story and a perfect example of why the Board wrote a letter to the legislature earlier this year. He appreciated the DCA write up of the entire history of the project and suggested a copy should go to the Attorney General’s Office. This and some other projects dealt with earlier might be a criminal misappropriation of funds and this Board has flagged this as
an important issue. Whenever waste on this scale is made the Board should be concerned about it. Literally $560,000 of taxpayers’ money disappeared and even if not malicious, was a serious misappropriation of funds so the Board does need to follow up on it.

In response to Mr. Brasher, Secretary Gonzales said this property was not reviewed by the Cultural Properties Review Committee.

Mr. Biderman said Los Pueblos Community Council was very grateful for the state and it wasn’t quite appropriate to say it was wasted money. This building will create jobs and economic opportunity in the valley as well as educational opportunity. Maybe it wasn’t handled well, but there was asbestos and lead paint removal that the money paid for. It has no roof now. Los Pueblos got over $1 million from HUD and private sources to finish the building. The Council had done a lot already with architectural drawings and engineering done; all the fire suppression was completed. But if the state keeps it, the state doesn’t have the money to finish the building so it seems that would be more wasteful to have it sit unusable when Los Pueblos can make it a community center.

Secretary Clifford said he appreciated that. But the real point was that promises were made for the intended use of those appropriations and the state didn’t get that. There is a lack of transparency. If the State got the building to where the Council needed it to be it still raises the anti-donation clause issue. If the Council hadn’t been able to come up with the HUD funding, the state funds would have been wasted.

Mr. Shandler said he received the final purchase agreement yesterday. If the Board decides to approve, staff recommends it be contingent upon the Director’s receipt of the final signed purchase agreement.

Mr. Spencer moved to approve the sale subject to staff contingency. Treasurer Lewis seconded the motion, which resulted in a 3-2 voice vote, with Mr. Aragon and Mr. Brasher voted against.

13. WITHDRAWN

Presenters: Joy Ansley, County Manager; Jolene Rivera, Torrance County

14. Torrance County – Requests Approval of Lease of Real Property to T-Mobile West, LLC ($1,400 monthly)

Ms. Ansley said Torrance County wants to lease property to T-Mobile for $1,400 per month for a term of eight years and is seeking Board approval for the lease.

Secretary Clifford asked if an appraisal was done and Ms. Ansley indicated it was currently in process.

Ms. Clarke explained that staff had been working with Torrance County and would
usually see a market assessment. They have been trying to find an appraiser who could do this. The Board’s rule requires evidence of fair market value so without an appraisal, she asked for guidance on what the Board would accept.

Lt. Governor Sanchez agreed from his experience as a consultant for a phone company that trying to determine value was always a challenge. Comparables initially would seem difficult and it is more than just real estate but services offered to the community. He would feel more comfortable with more data and thought the lease rental amount was a little low. He wanted to get some additional resources to prove that this was being negotiated in good faith.

Ms. Ansley, responding to Mr. Brasher, said this is an existing tower. The internet is on the tower now and when the County built the tower the intent was to add cell phones to it. The tower is two years old. The tower cost $85,000 and the building cost was $4,250.

Mr. Brasher agreed with Lt. Governor Sanchez that more data was needed.

Ms. Ansley said they were trying to get other comparable lease amounts and determine which direction to go.

Treasurer Lewis asked about their time frame.

Ms. Ansley acknowledged that they rushed to get everything done but had been unable to get an appraisal in time and wanted to request Board approval with a contingency. They received a certified appraiser list from TRD and found only one with the needed specialty who gave a price of $3,500 and said it would take six weeks to complete.

Mr. Shandler said if the Board votes to approve, staff recommends it be contingent on Director’s receipt of evidence of fair market value and Director’s receipt of the final signed version of the lease agreement.

**Mr. Brasher moved to table this item to give Torrance County additional time to get the fair market value. Treasurer Lewis seconded the motion.**

Treasurer Lewis asked how much time was needed to get it.

Ms. Ansley said T-Mobile wanted their cell on the tower two months ago. She didn’t want them to abandon this project but also wanted the best interests of the County to be served.

**The motion to table passed 5-0 by voice vote.**

Lt. Governor Sanchez requested to consider item 21 next. The Board agreed.
ADDITIONAL PROPERTY DISPOSITION

Presenters: John Bemis, Cabinet Secretary; Tommy Mutz, State Parks Director; Charles Ulm, Business Enterprise Coordinator

21. Energy, Minerals and Natural Resources Department, State Parks Division – Requests Approval of Lease of Real Property to Galisteo Street, Inc. ($3,000 monthly)

Mr. Mutz said he was here to seek approval on a lease agreement with a private entity for an historic property on DeVargas Street previously occupied by the State Parks Division. The Division recently consolidated staff to the Wendell Chino Building to cut costs and now have an opportunity to enter the lease. He highlighted the terms as a 25 year lease with a 25 year option to extend (with legislative approval). Years 1-5 would be at $36,468 per year which was the appraised value that received TRD concurrence. Years 6-25 would be at $45,000 based on a 3 percent per year escalator beginning then. Year 25 would be $78,970. The total value of the lease is $1,391,000. The proposed lessee assured the Division that he would put in $250,000 of improvements. It is a triple net lease.

Ms. Clarke said the final lease with which staff is comfortable has one change in paragraph 12 –Duty to Maintain Premises – which makes it clear that the tenant is responsible for all maintenance of the property. The concern was that it is an historic building and what is now viewed as a cash generator to the Department could become a liability if the Department is responsible to maintain the structure. Paragraph 12 includes a litany of things for which the tenant is responsible for, including structural elements. Staff had no contingent recommendations.

Mr. Spencer moved to approve the lease. Treasurer Lewis seconded the motion, which passed 5-0 by voice vote.

Presenters: Marty Eckert, Real Estate Director, Albuquerque Public Schools; Kristine Meurer, Executive Director of Family and Community Engagement; Laura Case, Director of Nursing; Gabriel Gonzales, Principal, Atrisco Heritage Academy High School

15. Albuquerque Public Schools – Requests Approval of Lease of Real Property to University of New Mexico at Atrisco Heritage Academy

Mr. Eckert said they were present to ask approval for a lease of school property for a UNM Health Clinic.

Mr. Brasher recused himself from consideration of this matter.

Mr. Spencer commented that the concept of delivering health services through schools is a great idea. It will be beneficial to students who might not otherwise have an

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opportunity to receive health care.

Mr. Spencer moved to approve the lease. Treasurer Lewis seconded the motion, which passed 4-0 voice vote with Mr. Brasher abstaining.

**HIGHER EDUCATION DEPARTMENT**

Presenters: Henry Mignardot, Capital Project Coordinator, Higher Education Department; Vahid Staples, UNM Budget Officer, Office of Planning, Budget & Analysis

16. University of New Mexico – Requests Approval of Construction of Atrisco Heritage Academy School Based Health Center ($791,800)

Mr. Mignardot, Mr. Staples and David Matthews, Higher Education Department General Counsel, were present and introduced themselves to the Board.

Mr. Mignardot Stated that the Atrisco Heritage Academy School Based Health Center total cost is $791,800. He described it as a design/build project using the space within the administrative building on campus with limited access by both students and the public. The Center would include eight examination rooms, a medical room, utility rooms, a nurse station, shared conference space and other space as needed to meet requirements. The project is pursuant to an agreement between the Regents at UNM and the APS Board of Education. It supports health resources per administration requirements for affordable health care grants and utilizes several funding sources for construction including the HRSA grant for $500,000 and another $291,800 for a total of $791,800.

Mr. Staples indicated this goes with the lease just approved by the Board. They agreed with Mr. Spencer that it will be positive for students and nearby community.

Mr. Brasher recused himself from consideration of this matter.

Mr. Aragon said that conceptually he had no disagreement. He asked who will manage the site and Mr. Staples replied that UNMH faculty, nurse practitioners and medical assistants will do so.

Mr. Aragon asked if it would add more personnel for UNM or APS.

Mr. Staples didn’t envision adding more personnel unless the patient load really ramped up in the future. At present there would be no increase in FTE.

Mr. Staples clarified that the clinic would have a separate entrance for community members to use the facility separated from students.

Mr. Aragon said he was concerned about safeguards to prevent any commingling of the public with students as the liability issues could be great without that; for example a
sex offender entering the property or other individuals who are ordered by court to not be in proximity with these school premises.

Mr. Steve McKernan of the University of New Mexico Health Sciences Center said it has been their concern also and that UNM has worked closely with APS and wanted to do community health care. In the license with DOH they could not exclude anyone from the clinic and normally in a school a community member cannot come into the facility. He assured the Board that at the UNM hospital people came who must be excluded from patients and were capable of excluding them.

Mr. Aragon said he didn’t see how the HIPAA Act and the Sex Offender Notification Act could be reconciled and still honor the responsibility to provide service to everyone. A lawyers could “hit the ball out of the park” with this situation. It is a wonderful opportunity to serve health needs of students and community but he needed adequate assurances on this lease with these conflicting concerns that they could actually provide a health center for the community on this site. Maybe they could serve students at one part of the day and the community at other part of the day. That safeguard needed to be addressed before he could vote to approve. It could be segregated by office hours but it isn’t in the contract.

Mr. Shandler said the lease (page 482 in electronic materials) provided for security through APS, APD and the Sheriff’s office from 6:30 to 3:30 when students were present and on page 483 it provided for the additional tri-party agreement that outlined the responsibilities and duties. So he saw the argument made by Mr. Aragon but also a counter argument if the Board wanted to proceed or wait for the tri-party agreement.

Mr. Aragon said he would be far more comfortable that there be a designated time for students while they are in class and a separate time for community to prevent any possible commingling. He felt it was a wonderful idea but the parties needed to mitigate that exposure.

Mr. McKernan pointed out that UNM would operate the clinic. They had children at UNMH all day and served the community so they were well practiced at this. They could work that out with APS and APD in the tri-party agreement and give assurance for any patient that comes in.

As far as segregating students was concerned, they wanted students to have clinical experience within the clinic but not with fellow students which would violate HIPAA regulations so it would be with community members. That opportunity will motivate the students in their plan for college education. Atrisco Heritage Academy designed the clinic around having community there to give experience to students and segregating hours would defeat that purpose. The grant for $500,000 will expire soon so if approval was postponed that funding might be lost.

Mr. Aragon understood the dichotomy here between a hospital setting and a school.
He was in support of this concept and almost ready to vote for it but couldn’t do so without a real action plan to address his concerns. He reminded that the Board had to have a special meeting pretty quickly to address Twin Forks.

Mr. McKernan said the security issues were at the hospital every day. When traumas happen, sometimes gangs show up at the hospital “to finish the job.” UNM has very significant security concerns and has 88 licensed security persons on their force and they provide a very safe environment for the patients.

Mr. Aragon appreciated and had seen it at the ER but that didn’t address this very unique circumstance. He didn’t want to see a lawsuit because the Board didn’t anticipate the potential problem of this sort. Before allowing the community into a public school clinic they needed to deal with the issue and he couldn’t support this lease because of it.

Lt. Governor Sanchez asked if police would be there full time or what other details could be shared.

Mr. Mark Atwood with the APS police force said the APS police force and the county sheriff were on duty on other campuses with security in mind. This campus setting would be very secure and the public use was designed with security in mind. It was not like other school campuses. The public access is from outside the boundary of the school so the public wouldn’t have access to the campus.

Mr. Spencer said he appreciated the concerns raised by Mr. Aragon and would hate to have the hospital and school get sued, but it appeared they have given proper thought to security and the Board should let them move ahead with this concept. Potential litigation is always out there.

Mr. Spencer moved to approve the lease. Treasurer Lewis seconded the motion, which passed by 3-1 on voice vote with Mr. Aragon voting against and Mr. Brasher abstaining.

Presenter: Stephanie Schardin Clarke, Director

17. Update on University of New Mexico Hospital Addition

Ms. Clarke reported that UNM sent a letter withdrawing their request and indicated their intent to work with interest groups. The Board will await further requests from UNM on a future agenda.

Mr. Brasher noted that one issue was community involvement and he wasn’t sure what the Board’s role is. The hospital project came to the Board after what had been approved by UNM and before the business plan was approved by this Board. The process was backwards. He said he had a good meeting with UNM. UNM does good work but the process needs to be improved.
Mr. Brasher said his suggestion had been that they needed to have a public meeting with all the groups together and not with a presentation but to listen to the community. Unfortunately, that would happen after the hospital addition had already been approved by the regents. He had hoped that such dialogue could take place for some possible changes. He understood that the hospital put up money for engineering and architectural fees. But at the end of the forum they could see if changes were needed to accommodate the needs of the public. He didn’t like the budget part of the process.

Mr. Brasher continued that Bernalillo County never sees these projects in a public meeting and the hospital board meeting probably isn’t well attended. A televised meeting to review the study and look at the problems and share the goals and have public respond would be appropriate. When goals are established, the budget should address the goals.

Mr. Brasher said that maybe the hospital went through some process, but the people with whom he talked felt it was not very public. It is not about faulting any individual or group, but the job of communicating with the general public. He said there are 6.5 mils available and 6.4 of them go to the UNM Hospital so no other money was available for health care services.

Mr. Brasher asked Mr. Shandler what the Board’s role is for UNM. Referencing agenda item #12, he said people from Ribera came to tell the Board that they had already put all this money into the project, installing fire suppression equipment and other things done and now need the Board’s approval and need it now. UNM in a news article said if this project was acted on in September construction would be done in October and that is very quick. Engineering and architectural work is part of the project and obviously has already been accomplished. He could understand some program development money being spent ahead, but site specific engineering and architectural work is part of the project to be approved. If the Board didn’t have a role in that, they should just move on.

Mr. Shandler said state law Section 21-1-21 says, “no expenditures shall be made by any state educational institution confirmed by the state constitution for the purchase of real property or the construction of buildings or other major structures or other major remodeling projects without the prior approval of the proposed construction or remodeling by the State Board of Finance.”

Mr. Brasher asked how much UNM has spent so far on this project.

Mr. McKernan said he believed their process was in accord with state law. Land was previously purchased. He said, “No expenditure has been made related to construction on this project.” The engineering and architecture was approved by the hospital board and board of regents about seven or eight months ago. He estimated they had spent about $1 million on design during that time.

Mr. Brasher explained that, when it comes to the Board and they continue to spend
money and get so far into it, the Board is faced with having to approve it or else millions of dollars are wasted. If the Board allows that to happen, it is not a good process. Projects need to get to this Board much earlier. The expectation that this Board will approve the project, including all that has already been spent of taxpayers’ money—Never mind how they get the requisitions and contracts without all the approvals in place.

Mr. Brasher concluded that there is an incredible lack of understanding about what is planned. The conversation that has happened has been very good. His preference was to have a public meeting that would include county commissioners to make the process clearer to the public.

Mr. Aragon asked Mr. McKernan if UNM had selected a general contractor.

Mr. McKernan said through one of the other actions taken by the hospital board and the regents they selected a construction manager at risk and had an option for that manager to become the general contractor. Contract conditions included that the contract could be severed at any time prior to final approval taken by the regents and the State Board of Finance. A contractor at risk was chosen to get the contractor working closely with the architect on design and construction, which normally makes projects more efficient and cost-effective.

Mr. Aragon asked if they hired Bradbury Stamm. Mr. McKernan answered in the affirmative.

Mr. Aragon asked, if this request was approved by the Board, whether Bradbury Stamm would be the contractor.

Mr. McKernan said they would go back and do a formal evaluation of Bradbury Stamm and then decide whether to award them the contract for the project, and confirmed that UNM would follow all state procurement processes.

Mr. Aragon concluded that they had in fact hired a contractor, subject to some administrative technicalities.

Mr. McKernan said the construction manager at risk contract was relatively limited in scope only as a consultant until approval was given and they had a formal process for approval. He said construction on the project would not proceed until they had final approval by the board of regents.

Mr. Aragon asked if subcontractors were included and Mr. McKernan answered in the affirmative.

Mr. Aragon concluded that UNM had spent a million dollars prior to Board approval and taken steps to further the construction. He said he personally knew at least five subcontractors anticipating doing the cement work, steel work, etc. So UNM was lining
up the construction work even without Board approval. He said the Board could march those sub-contractors up for testimony in public and they could attest in public they are lining up to work absent Board of Finance approval.

Mr. Aragon said he joined Mr. Brasher in asking why the Board was being presented with a proposition in which UNM has already spent money. He was taken aback to hear the board of regents or UNM itself didn’t get Board of Finance approval before going ahead. They have a contractor and they have contacted subcontractors and are anticipating doing business before approval.

Mr. McKernan agreed that most of what Mr. Aragon said was accurately portrayed, but UNM had protected itself by putting contingencies in all contracts that they were subject to final approval. It was made clear to contractors and subcontractors in writing and the project was not moving ahead until the Board of Finance approved it. Contractors and subcontractors were also told in a public meeting that they needed one final approval by the Board of Regents.

Mr. Aragon thought it would be enlightening to read back what was just said on the record here because it is not an RFP but a contractor that has been selected and a million dollars spent toward completion.

Mr. Aragon said he didn’t want to be here in that role. He said there was violation of state statute by moving ahead on construction before approval. If they spend a nickel on that project they are spending taxpayers’ money without approval. His role on the Board was not just to rubber stamp something that was already started without approval.

Mr. McKernan said they had a contract for the architect and a contract for the construction manager at risk. They had not awarded a contract as general contractor yet and UNM had not awarded any subcontracts to any other contractor.

Mr. Brasher wondered if the Board walked away having voted no to this request what the amount of liability by the University would be.

Mr. McKernan said just for expenses out-of-pocket by the architect and engineer they owed Bradbury Stamm $300,000 for construction manager services.

Mr. Brasher wondered if this Board should perhaps take this up in a community forum here.

Lt. Governor Sanchez commented that for some publicly-financed projects to Mr. Aragon’s point that maybe it’s simply a culture that has existed for many years in that the Board took a position at some point in time that was a rubber stamp. His hope is that now the Board can be proactive with it rather than reactive. So policies and attitudes and culture have to change. The Board has a responsibility to taxpayers of this state to hold true to those authorities placed in it to protect taxpayers.
He was not sure if the Board would be overstepping its authority if Board members requested on any project to host some type of public forum or whether that would violate the Open Meetings Act if more than three members got together outside of this room.

Mr. Shandler advised that four or more members could sponsor a forum but would have to notice it as a public meeting. Four or more members could attend a public meeting at UNM and it wouldn’t raise any Open Meetings Act issues and would not need to be noticed. Fewer than four members attending would not raise any Open Meetings Act issues either.

In response to earlier questions, Mr. Shandler stated that the Board’s predecessors identified the Board’s role in approving higher educational capital projects by administrative code rule as “they shall review all major capital projects to determine whether the proposed project is in keeping with the overall state-wide plan for higher education and the source of fundings for the project should also be carefully reviewed to determine that sufficient funds are available for the project and the use of the funds would not have an adverse effect on other portions of the institution’s budget.” Mr. Shandler concluded that had been the checklist for the predecessors of the Board.

There was also some discussion about definitions of construction and the predecessors provided definitions in another Board rule regarding bond proceed disbursements that had been applied universally. Mr. Shandler stated that if the Board wanted to change the definition of construction it would be something to look at universally with how bond proceeds were disbursed and if it complied with state law. There would be a lot to study if the Board wanted to move oversight earlier in the process.

Ms. Clarke said, logistically speaking, if the Board approves capital projects prior to engineering and architectural work being done, to the Board should expect more requests for approval of budget increases because now the budgets received are better informed as a result of that work being done prior to submission to the Board. That might not make a difference whether the Board should move in this direction or not, but should be expected.

Mr. Brasher wasn’t sure he agreed. Universities would need to do program development before submitting a project, but what the Board was now getting is site specific architectural and engineering work. He saw this as different from program development. The Board members didn’t want to be a road block in construction or delay a capital project.

Ms. Clarke suggested the Board should also consider master planning expenses that would inform construction and location, and whether they believe universities should come to the Board for approval before incurring master planning expenses.
Treasurer Lewis observed an issue that was brought up was the example that going to the legislature. Getting approval of money for a project does require Board approval. But the legislature also requires some matching funds and with a bond project, the voters would not have even voted on it yet. That situation brings up the need to look at the dynamics involved. He agreed with Mr. Brasher that due diligence was essential before coming to this Board to make sure the approvals were there. So the Board needs to define what that process is when making people come before the Board.

Mr. Saavedra said the University was having these meetings and they were willing to add the public meetings to the process and they respected the Board. He said the process at UNM was scrutinized by the hospital board, the board of regents, and the Highway Department and not once did UNM get any concerns with this project. They did want to address any concerns.

Presenters: Dr. Jose Garcia, Cabinet Secretary; Henry Mignardot, Capital Project Coordinator; Dr. James Fries, President, New Mexico Highlands University

18. Higher Education Department – New Mexico Highlands University Student Union Building Project Status

Mr. Mignardot said the Board’s subcommittee was formed to further review the project. In the July 10, 2012 meeting of the Higher Education Department’s Capital Projects Committee they had a conditional approval of the project for 90 days for Highlands to propose how they would avoid this problem in the future and avoid construction deficiencies and cost overruns.

They provided a status report to the subcommittee and expected to submit it to the Higher Education Board on October 17, 2012 which would be in 90 days.

In his status report he shared that the project was 78 percent completed. He listed several components of the construction as part of the report.

As part of subcommittee’s request, the Department of Higher Education made several recommendations, including:

1. That state agencies such as Construction Industries Division, and State Purchasing Division provide a list of preferred contractors and vendors and to list those who had completed a public service project satisfactorily effective July 1, 2013.

2. Revision to administrative code for post-secondary education institution finances. All capital outlay projects should follow the procedure with approval of higher education projects; to establish long term capital project requirements of government entities and to establish funding and project management and that a quality plan be developed by institutions of higher education for use on all capital projects and referenced in the documents submitted to the Board.
The revised budget for the Student Union was approved at $25,434,865. The proposed completion date for the project is December 2012.

Presenters: Lieutenant Governor John Sanchez, Subcommittee Chairman; Michael Brasher, Subcommittee Member; Robert Aragon, Subcommittee Member

19. Report of Board of Finance Subcommittee – New Mexico Highlands University Student Union Building Construction Issues

Lt. Governor Sanchez said that he was asked to chair this subcommittee that included Mr. Brasher and Mr. Aragon. He thanked Dr. Fries for hosting the subcommittee and for their cooperation. There were three different issues for the subcommittee to report on: to investigate further the circumstances surrounding the cost over-run, to discuss potential recourse against Makwa Builders, and to explore possible process improvements going forward. Each member covered one of those issues.

He asked Mr. Brasher to comment on the procedures portion of this project including the failures and findings. Ms. Clarke handed out the draft subcommittee report.

Mr. Brasher said an RFP process was not used because of time constraints in the 2006 General Obligation Bond reversion limit and the ITB process was selected to not lose that money with two requirements—the contractor had to have completed a project of more than $10 million within the last five years and must have completed a LEED Silver project. So the contractor was selected.

Among the findings of the subcommittee were that with a full RFP process, the University could have saved money and had a much faster completion of the project. A Project Manager from among senior staff that was dedicated to the process on-site would have been very helpful and could have made Makwa more accountable for the promises that were made in the contract. The subcommittee supported a proposal by the State Purchasing Agent, Larry Maxwell, to require the purchasing agents of all public entities in the state to participate in procurement training classes.

Overall, the subcommittee found that the selection process was rushed to meet the time frame. A more competent contractor might have been selected and performance measures would be helpful to maintain in a database for the state so that state entities could know when a particular contractor had past problems and could learn from those mistakes.

Lt. Governor Sanchez spoke to the actual construction deficiencies. He prefaced that despite all the problems, the final outcome now would be a building the State of New Mexico could be proud of. The shoddy construction of Makwa was appalling and blatant and actually went back to the architects and engineers that were hired to supervise the job.
Lt. Governor Sanchez continued that a project should not be started and allowed to continue with that lack of quality supervision. It would have saved money when a 50 foot wide balcony was three inches off level and nobody caught that. It is inexcusable and took thousands of dollars to correct. The university should hold both the construction company and the architect responsible for that.

He continued that these are tax dollars and the university should hold the engineer and the architect responsible and accountable for those mistakes as well. To think this amount of money has been spent to correct that kind of neglect and to believe Makwa could just walk away is absolutely wrong. The list goes on and on. He was pleased to hear of Regulation and Licensing Department Superintendent Dennis’ plans to move on this and hoped the university would pursue all legal action against Makwa.

Fortunately the students wouldn’t see the problems in that project. But regarding the shoddy workmanship, he said we have a responsibility to ensure that this never happens again, not just at Highlands University but everywhere in the state. He clarified that this is the subcommittee’s initial report—not the final report. The subcommittee will continue to investigate changes in statutes to make sure it doesn’t happen again.

Mr. Aragon addressed the legal recourse section of the report.

Mr. Aragon said it was enlightening to see what was there and he couldn’t imagine how anyone would have missed what happened there. He was more than disappointed. He disagreed that the University has sought appropriate legal recourse. The controversy came to light first in October 2011 and should have come to light sooner. The subcommittee will make recommendations as to recourse the Board of Regents should take with regard to members of its staff and to the university bureaucracy that allowed this to transpire.

Mr. Aragon continued that the subcommittee found things that could not be answered. The Board’s bond counsel is the general counsel to the university and he believes that might be a conflict of interest. At both meetings of the subcommittee, the Board’s bond counsel was present. That is a conflict and a conflict exists. He said the Sutin firm will remain in conflict and that prohibits sharing some of the information under attorney-client privilege. He said it isn’t so much Highlands as the Board’s bond counsel serving two masters.

What concerned him most was the recognition of concerns dating back to the regents meeting in October 2011. There was a difference of $3 million from what Makwa anticipated and what the University thought they owed Makwa. He said he thought the University should have sought mediation at that point but didn’t and still hasn’t demanded it. There is a letter from Makwa’s counsel in April 2012 and the first response was August 10, 2012. Mediation pursuant to the contract is no closer now than it was last year; at least there is no evidence of mediation except an exchange of one letter each
Mr. Aragon summarized that in the legal issues, he didn’t believe Highlands has taken due steps to remedy the situation; probably no mediator has been appointed; and there are conflicts within the Sutin firm.

Treasurer Lewis thanked the subcommittee and was glad to see they got the Construction Industries Division involved and addressed the RFP process. He said state government probably needs to look at that to see if there are issues. It was an excellent document to review.

Mr. Brasher noted the contract was terminated “for convenience” and he hoped without prejudice. There may have been a good reason for that but he wondered why Highlands chose to terminate for convenience. Makwa should have been fired. He asked if this would weaken the position of the university going after Makwa. Also there shouldn’t be a confidentiality issue here but that was his question.

Dr. Fries thanked the subcommittee for their work and for visiting the campus and addressing the issues. They expected the project to be completed in December 2012.

Dr. Fries said Highlands provided a time line to the Board a long time ago that provides a fair amount of detail of the process they had been through. They were making decisions based on what they knew at the time in their desire to get the project completed. Termination for convenience was not arrived at in haste but was taken through the board of regents and on advice of counsel. The primary concern for the university when action was taken in February 2012 was completion of the project. The project was two months overdue at the time. But under termination for cause it could have taken months or even years to get the project going again because they didn’t know what would happen in the legal process.

Dr. Fries had questioned the ethics of the performance bond company being from the same firm as Makwa’s counsel. They were probably naive in the hope that the subcontractors would have stuck with it and handled the bids they had in place. Makwa had gone through three sets of project managers. The contract called for mediation and an arbitration process and in going through the process, Makwa filed a notice of claim for payment that the university rejected. Makwa followed it with another claim, which was also rejected.

Dr. Fries continued that the university has filed for declarative judgment to avoid mediation and intends to file action against Makwa in San Miguel County, which they believe will be a more positive position for the university. As the subcommittee indicated, it is a step to move forward with legal action.

Mr. David Matthews, Higher Education Department General Counsel, said he had kept on top of the legal actions regarding Makwa and, in doing so, talked with the Calvert
& Menicucci law firm in Albuquerque and had two very long conversations with Mr. Mike Menicucci, who is both an engineer and an attorney and has always practiced construction law and represents two subcontractors against Makwa at present. Mr. Menicucci offered to come here or to the subcommittee to detail what has happened. Mr. Matthews believed Mr. Menicucci has a very good understanding of what happened and concurred with comments made by Lt. Governor Sanchez that any contractor would have had trouble with those original plans. Mr. Matthews also believed the actions being taken now by Highlands are appropriate.

Mr. Aragon appreciated the comments brought to the Board. As the process winds itself down it is important for the subcommittee to make its final recommendations.

Lt. Governor Sanchez agreed and believed their work would help all Higher Education projects and governing bodies at universities. There may be laws that need to be changed. He thanked Mr. Brasher and Mr. Aragon for their involvement and for the cooperation of Highlands. He asked if there were any contingencies on the action taken by the Board at the last meeting.

Ms. Clarke said there was one—that the parties come back quarterly until the project is complete.

Lt. Governor Sanchez urged the Board to act on these recommendations so this doesn’t happen again.

Referring to previous discussion related to expenditures for architectural and engineering work, Ms. Clarke suggested that the Board could approve something akin to an inducement resolution preliminarily to deal with engineering and architecture work prior to construction.

Presenters: Dr. Jose Garcia, Cabinet Secretary; Henry Mignardot, Capital Project Coordinator

20. Higher Education Department – Sources and Uses of Funds for each Four Year Institution

Mr. Mignardot reported that the Higher Education Department had provided electronic copies of the report as requested. He commented that for all institutions, the funding sources, budgets and actuals were provided. Audits are due on November 15 this year.

The Board had no questions on the report.

BONDS

Presenter: Thomas E. Clifford, PhD, Cabinet Secretary, Department of Finance and Administration
22. **Presentation on Possible Creation of Unemployment Trust Fund Bonding Program**

This matter was deferred.

**STATE TREASURER’S OFFICE**

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


Ms. Linda Roseborough provided the report and shared highlights of changes in the portfolio and changes that had taken place in the Treasurer’s Office.

She said that last week, the Federal Open Market Committee met and Mr. Bernacke gave news that they would add more stimulus to the economy by purchasing more agency mortgage-backed securities. He didn’t think monetary policy could solve the problems facing today’s economy but expected that it could “nudge growth in the right direction.”

Information received suggested that economic activity continues to expand at a moderate level. Gains in employment are slowed and unemployment rates remain elevated. Household spending continues to advance. Growth in fixed income sectors is slowed. The housing sector has shown signs of improvement, inflation is subdued and longer-term inflation expectations remain stable. Without further policy accommodation, economy growth might not be strong enough to generate sustained improvement in the labor market.

After two more disappointing payroll reports since the last meeting and high unemployment rates, the Fed decided to take action and announced they would purchase $40 billion of mortgage-backed securities each month without setting an exact total purchase and would increase purchase size if the labor market didn’t improve. They will discontinue that program once the labor market improves. If successful, this policy would result in more loans, more house purchases and easing of lending standards.

She said the report on the General Fund portfolios was provided in executive summary on page 789 of the electronic materials. She reviewed the fiscal year balances and the investment earnings at month end.

24. **Quarterly Investment Reports for Quarter-Ended June 30, 2012**

Ms. Roseborough said the Treasurer’s Office would continue to help bring up the shortfall this year with the fiscal agent bank and hold collected balances at an average of approximately $60 million. The average collected balance for July was $60 million at an earnings credit rate of 50 bps giving estimated monthly earnings of $25,027.
Ms. Roseborough proceeded to the Investment Compliance Review and stated that the State Treasurer’s Office did not have any material compliance issues this month or for year end. She called attention to the current projects.

One project is an evaluation of state statutes related to the Treasurer’s Office as well as the Investment Policy. The primary statute is 6-10-10. The effort is to work for changes that would make the policy better in practice and more concise. The review revealed municipal bonds that could be purchased throughout all portfolios. But the Treasurer’s Office was amazed to determine that they didn’t have single municipal bond action authority. By statute there were instances where they could purchase municipal bonds but in other instances they could not find the statute where the General Fund could buy certain types of municipal bonds. They are now working with their legal counsel to try to clarify that and will propose some statutory revisions so that the General Fund could invest in all municipal bonds.

She also called attention to the LGIP management. LGIP by statute is required to be rated by S&P and with that rating comes oversight and reporting. The rating doesn’t guarantee any funds for LGIP participants nor does it provide insurance. It is a mechanism to ensure that the portfolio is rated at the highest standard.

Portfolio monitoring by S&P includes the constraint that no one issuer concentration may be greater than 5 percent. The rule comes into play at purchase but because of large withdrawals by participants, the LGIP has contracted. So while it wasn’t an issue at time of purchase, the shrinkage could result in a problem with the5 percent limit. To solve it they used the 10 day cure period and rolled over on the ninth day and it was no longer an issue. They will continue to monitor withdrawals and watch the concentration of the fund.

Treasurer Lewis added that county treasurers had authority to purchase municipal bonds but the Treasurer’s Office couldn’t. He didn’t know if it was just an oversight but they were trying to address it. At present the code was piecemeal so they were working on reworking the investment policy to make it clear. From 1987 there was a natural relationship of financial officers at counties and municipalities with the Secretary of State but not with the State Treasurer.

Treasurer Lewis continued that last week at the National Treasurers’ Conference there was a roundtable looking at how many states have S&P look at due diligence. It became evident that it gives people a process of hope to try to optimize the flexibility in the rules if not the statute.

So they are looking at the statutes to try to get them to track. Legal counsel is working on it and trying to make sure the Treasurer’s Office can track them well and determine through LCS if the bills can help in that regard.
Mr. Spencer asked what kinds of municipal bonds the General Fund cannot buy.

Ms. Roseborough said legal counsel was checking to see if they are authorized investments and there were questions. They also went through outside counsel Sutin Thaye and could identify them as asset-backed securities. If they applied the definition of asset-backed securities to municipal bonds, they have authority to purchase all of them, but if they took at it in the true sense, there is a matrix of what they can or cannot purchase. The bonds vary from public housing bonds, university bonds, industrial revenue bonds and many others.

Treasurer Lewis said they were going through the statute to see if they tracked. The investment policy is a little bit of everything. That’s why each year the Treasurer’s Office does a major policy rewrite and brings it to the Board from a legal and investment perspective.

Mr. Aragon asked if he would make statutory recommendations to the legislature.

Treasurer Lewis responded in the affirmative. They would also make recommendations in cash management.

The agenda was reprioritized.

Presenter: Stephanie Schardin Clarke, Director

27. Election of Secretary of the State Board of Finance

Ms. Clarke noted that Mr. Gasparich resigned from the Board so the Board needs to elect a new secretary.

Lt. Governor Sanchez moved to elect Mr. Brasher as Secretary of the Board. Mr. Spencer seconded the motion, which passed 5-0 by voice vote.

Lt. Governor Sanchez excused himself from the meeting at 3:00 p.m.

Mr. Brasher chaired the remainder of the meeting.

GENERAL SERVICES DEPARTMENT

Presenter: Charles Gara, Director, Property Control Division


Mr. Gara said the reports for June and July were in the electronic materials and offered to answer questions. There were none.

Mr. Brasher thanked Mr. Gara for the reports.

STAFF ITEMS
Presenter: Stephanie Schardin Clarke, Director
28. Fiscal Agent / Custodial Bank Fees

Ms. Clarke reported that recent billings are in line with historic trends.

29. Joint Powers Agreements

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

She announced the special meeting was scheduled for Friday at 2:00 p.m. Staff will set up a calling number to this room.
ADJOURNMENT

Mr. Spencer moved to adjourn the meeting. Treasurer Lewis seconded the motion, which passed 4-0 by voice vote.

The meeting was adjourned at 3:03 p.m.

Susana Martinez, President

10.16.12

Date

Michael Brasher, Secretary

10.16.12

Date