MINUTES OF THE

NEW MEXICO STATE BOARD OF FINANCE

REGULAR MEETING

Santa Fe, New Mexico

September 17, 2013

A Regular Meeting of the New Mexico State Board of Finance was called to order on this date at 9:10 a.m. in the Governor’s Cabinet Room, Fourth Floor, State Capitol Building, Santa Fe, New Mexico.

1. **ROLL CALL: QUORUM PRESENT**

**Members Present:**
The Hon. Susana Martinez, President [present 9:20-12:15 p.m.; 1:00-1:30 p.m.]
The Hon. John Sanchez, Lt. Governor [leaving 1:30 p.m.]
The Hon. James B. Lewis, State Treasurer
Mr. Robert J. Aragon, Public Member
Mr. Del Archuleta, Public Member [by telephone 12:15 – 12:45 p.m.]
Mr. Michael Brasher, Public Member, Secretary
Mr. John Kormanik, Public Member

**Members Excused:**
None.

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

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

**Others Present:**
[See sign-in sheets.]
2. APPROVAL OF AGENDA
ANNOUNCEMENT: NEXT REGULAR MEETING TUESDAY,
OCTOBER 15, 2013

Mr. Aragon moved for approval of the agenda, as published. Mr. Kormanik seconded
the motion, which passed 5-0 by voice vote.

3. APPROVAL OF MINUTES: July 17, 2013 (Special Meeting)

Treasurer Lewis moved approval of the minutes of the July 17, 2013, meeting, as
submitted. Mr. Aragon seconded the motion, which passed 5-0 by voice vote.

EMERGENCY FUND BALANCES

Presenter: Stephanie Schardin Clarke, Director

4. Emergency Balances – September 2013

   Operating Reserve Fund $ 1,905,150.00

   Emergency Water Fund $ 118,400.00

Ms. Clarke noted that the balance in the Operating Reserve Fund excludes the roughly
$92,000 that was approved as a contingent grant to the Navajo Nation. However, the money has
not yet been disbursed because there is still a question of whether the contingencies have been
met.

PROPERTY DISPOSITIONS

Presenter: Ted Burr, Associate Superintendent of Finance

5. Deming Public School District – Requests Approval of Sale of Real Property
to the Village of Columbus (in exchange for 50 acre feet of water per year
for 99 years)

Mr. Burr requested approval of the sale of an unused, old school property to the Village of
Columbus, which plans to use the property as a medical clinic for the community and for office
space and other public purposes.

Mr. Burr stated that the Board of Finance granted approval in 2010 to the Deming Public
School District to transfer about 80 percent of the property. However, before the deed could be
recorded, some of the members of the Village administration were arrested and the transaction
was terminated. He said the replacement officials have found grants to help transfer 100 percent
of the property. As consideration for the purchase, the Village will make available 50 acre-feet of
non-potable water per year for 99 years from the Village wells. The district reports that the building does not meet adequacy standards for public schools, and the total area to be sold is about 5.863 acres.

Mr. Aragon moved for approval. Treasurer Lewis seconded the motion, which passed 5-0 by voice vote.

Presenters: Douglas A. Echols, Deputy County Attorney; Craig Daugherty, Deputy Fire Chief

6. San Juan County – Requests Approval of the Option to Lease Real Property to Skyway Towers, LLC ($2,500 payment for two-year Option term, $10,200 annual rent if Option is exercised)

Mr. Echols stated that San Juan County has been approached by Skyway Towers to lease a piece of land less than 3/4 of an acre in size, ultimately for a cell tower. They have proposed up to two two-year options for $2,500 apiece, and during that time they can do all of their testing, get regulatory approval, etc., and then will exercise the option and do the lease agreement.

Mr. Echols said the land appraises at $7,200 a year as a cell tower site. He said the County has been offered $10,200 per year for a five-year lease with 10 five-year renewals, with the rent increasing 2 percent each year.

Mr. Echols said Navajo Dam is an unincorporated community five miles downstream from the dam, and is a very heavily supported tourist area with fishing lodges, hotels, etc., and currently the cell service is poor. With cell service, people could call 911 for emergency assistance. The other benefit is that if other cell transmitters co-locate on the site, the County will receive an additional $250 per year and have the right, at no charge, to hang one of its own emergency transmitters on the tower.

Mr. Brasher asked if the cell tower is needed for public safety reasons, and Chief Daugherty responded that it would help with 911 service. He said someone having an accident along the river would have to climb to a higher point to get cell service or else use a landline.

Mr. Kormanik moved for approval. Mr. Brasher seconded the motion, which passed 5-0 by voice vote.

Lt. Governor Sanchez welcomed Assistant Attorney General Luis Carrasco, who would be serving as legal counsel to the Board.

7. WITHDRAWN

[Governor Martinez joined the proceedings.]

Presenter: Kelly Kuenstler, County Manager

8. Luna County – Requests Approval of Sale of Real Property to the City of Deming ($724,000)
Ms. Kuenstler requested approval of the sale of real property in Deming to the City of Deming at a purchase price of $724,000. She said the property was appraised at $607,500. [This item was temporarily deferred pending arrival of Mr. Primm, who had questions of Ms. Kuenstler and had stepped away from the proceedings for a few minutes.]

9. WITHDRAWN

Presenter: Arturo Jaramillo, Cuddy McCarthy LLP, Attorney; Joan Ahlers, Chief Operating Officer, Los Alamos Public Schools

10. Los Alamos Public School Board – Requests Approval of Lease of Real Property with Paul Parker Construction Company to Two Acres of Unimproved Land ($2,327.15 per month)

Mr. Jaramillo requested approval of a lease of two acres of raw unimproved land to Paul Parker Construction. The two acres are part of a 7.55-acre tract of unimproved land that was acquired by Los Alamos Public Schools in January 2006 from the Los Alamos National Laboratories at no cost. It is an industrial area and is not a property the District would have gone out to purchase, but was offered at no cost and accepted. He stated that the property was appraised in January 2013 at $1.3 million, and the various tracts have been appraised at $261,000 per acre.

Mr. Jaramillo said the property is not suitable for educational or administrative purposes because of its location. Because of its value, the school board has created a goal of making the property productive. As can be seen from the property’s history, it has lost about $800,000 over the recession period, so the school board decided to lease the property and have had various negotiations about selling the property to commercial and industrial interests. He said this opportunity presented itself some months ago as a “test.” They entered into a 10-month lease to determine whether or not the site was usable by Parker Construction. It has turned out to be, and the lease was negotiated as a two-year lease with two two-year options for two acres of the 7.55 acres. The negotiated rent is $2,300 per month, or approximately $28,000 per year. He said the first and second extended terms would allow for an increase in rent based on the consumer price index over 24 months. The lease is written such that if the CPI goes down, the rent does not decrease from the base year, or if it is increased in the first year, it would not decrease in the second year.

Mr. Jaramillo said there are few comparable properties against which to measure the rental rate. Raw land leases in Los Alamos, without any infrastructure, are rare. He stated that he was able to find a land lease that the Board of Finance approved for a cell tower in 2010 for the Los Alamos Public Schools on two acres for $18,505 a year.

Mr. Jaramillo said the lease contains all of the standard provisions asked for by Board counsel, and the arbitration provision has been deleted and replaced with language addressing the right to proceed in any court of competent jurisdiction if there is any dispute. He stated that Mr. Parker has signed off on this change, but the president of the school board is out of town and has not yet signed off on it.
Responding to Mr. Kormanik, Mr. Jaramillo said the lease prohibits the storage of hazardous materials and requires adherence to all regulations and laws pertaining to hazardous substances.

Ms. Ahlers added that the lease gives the school district the right to enter the premises and inspect specifically for hazardous substances.

Responding to Dr. Clifford, Ms. Ahlers stated that, prior to her joining the Los Alamos Public Schools, the Lab was divesting itself of real estate holdings and Los Alamos County was the primary beneficiary. Sen. Pete Domenici had petitioned Congress to include Los Alamos Public Schools in the release of those lands, and this parcel was selected. Before they could divest themselves of any land, the Lab had to be sure appropriate environmental cleanup was completed.

Mr. Jaramillo added that there are no covenants requiring restricted use, other than what is consistent with the zoning, which is heavy industrial.

Lt. Governor Sanchez asked what type of environmental work was done on the property, and Ms. Ahlers responded that she did not know, but knew it was under a SWMU (Solid Waste Management Unit) designation, so there was nothing buried and no work occurred on the 7.5 acres. She said the environmental department was concerned about things being released in the air that settled on the ground, and this was remediated before the property was released to the schools.

Lt. Governor Sanchez said he would prefer more specific information about the nature of the environmental cleanup before voting on this item.

Ms. Clarke stated that staff recommends that any approval be contingent upon Director receipt of an amendment signed by the parties amending Section 21.1 of the lease removing arbitration language.

Based on the discussion, Ms. Clarke recommended that any approval also be contingent upon Director receipt of a letter from Los Alamos National Laboratory stating that remediation has occurred on the lease site.

Lt. Governor Sanchez moved for approval, with the two contingencies. Treasurer Lewis seconded the motion, which passed 6-0 by voice vote.

Presenter: Agnes Leyba-Cruz, Projects Specialist; Lupe Sanchez, Santa Fe County DWI Program
11. Santa Fe County – Requests Approval of Lease of Real Property with Christus St. Vincent Medical Center at 2052 Galisteo Street, Santa Fe ($103,024 per year)
Ms. Leyba-Cruz requested approval of a lease with Christus St. Vincent Medical Center for office space located at 2052 South Galisteo Street in Santa Fe. The appraised value of the 6,439 square foot property is $16.00 per square foot, for a rental amount of $103,032 per year. She stated that the lease term is four years, and will be used by Christus CARE Connection to operate a Sobering Center for Santa Fe County residents.

Mr. Sanchez stated that the Sobering Center is a social detox program (as opposed to a medical detox program) for alcohol or substance abuse. The 15-bed facility will accommodate 10 men and 5 women, where they have an opportunity to detox from substances. From there, they are placed into outpatient settings, or they are transferred into a long-term inpatient program.

Responding to Mr. Kormanik, Mr. Sanchez stated that the program is funded through the liquor excise tax in the amount of $300,000. He said five counties in New Mexico receive funding for detox services. He said it costs much more than $300,000 to operate the program, because about 1,300 people go through the program every year and stay for 5-7 days.

Ms. Leyba-Cruz stated that the property was purchased from the City of Santa Fe about 10 years ago and then modified to accommodate the CARE Connection services.

Governor Martinez asked if Christus is one of the 15 behavioral health providers recently audited by the Medicaid program and under investigation by the Attorney General’s Office and U.S. Attorney. Mr. Sanchez responded that he did not know. [Governor Martinez consulted the list of providers in the course of the Board’s discussion and noted that this program was not among them.]

Mr. Aragon asked how a social detox program differs from a medical detox program.

Mr. Sanchez responded that a medical detox facility has medical staff in place who can prescribe medication. He said individuals referred to the Sobering Center first receive medical clearance from Christus, Santa Fe Indian Hospital or a private physician to see they receive the appropriate medication during their stay.

Mr. Aragon expressed concern that one symptom of detoxification from heroin or opiates can be a heart attack, and Mr. Sanchez responded that individuals admitted to the Sobering Center are medically cleared before being placed in the facility. He said the facility provides emergent care and there is a nurse on staff.

Mr. Sanchez stated that he did not know what the cost was per patient and whether Medicaid money was going into the program to offset costs. He said Santa Fe County contracts with Christus CARE Connection for $300,000 per year. He said he did not know whether Christus provided additional funding to offset any costs over the $300,000.

Dr. Clifford said he would like to know if Christus is leveraging the state funding they are receiving into other revenue streams.
Responding to Dr. Clifford, Mr. Sanchez said Santa Fe County issued an RFP for these services three years ago, and the contract has a four-year term. He said Christus was the sole bidder.

Ms. Leyba-Cruz stated that the lease amount in this requested renewal has not changed from the last time.

Mr. Kormanik commented that these services are important and the Board should exercise caution when considering how it will give approval. He expressed concern that the services continue uninterrupted.

Mr. Brasher asked how people enter the program, and Mr. Sanchez responded that they could be self-referrals. The program also receives referrals from probation or parole as well as private physicians. He said there is a “huge homeless population,” and those can also self-refer. He said the various courts (magistrate, municipal and district) also make referrals.

Mr. Sanchez said he did not believe the program received funding from the County’s indigent program.

Mr. Brasher commented that he hoped the program was tracking performance outcomes, since there are “serial inebriates” who tend to “go in and out, in and out” of these kinds of programs.

Mr. Sanchez responded that he receives quarterly reports from the program. He commented that this is a difficult program to work with, and relapses are part of the process.

Mr. Aragon stated that he sought grant money from the Legislature in 1978 for a purveyor of these same types of services, who indicated that they would affirmatively address these problems if they received the funding. He commented that the problems have just expanded and grown since then, however; and while this may seem outside of the Board’s purview, if the Board approves this lease it is giving license to the delivery of a system that has not been very effective.

To Mr. Brasher’s point, Mr. Aragon said a seven-day detox has almost no effect on the long-term sobriety of anyone, and he was just concerned that this was “a program intended to be a program and not addressing a real need.” He added that, in his practice in the area of criminal law, he knows that if a person is deemed by a physician to have a substance dependency issue, they are eligible for Medicaid assistance at that point. He said, “What I’m seeing here is just another layer on top of what can already be provided, and I’m just wondering if this is another one of those entities, nonprofits, who have a wonderful-sounding program that is not really addressing a need that isn’t already addressed through Medicaid.” He said Medicaid would assist in placing someone in a long-term program. He said the trend toward 30-day detox programs is also not very effective, since it is “well documented” that someone needs at least 90 days to affirmatively address the problem.
Responding to Governor Martinez, Mr. Sanchez said that, for “high users” of the program, who are people who are regularly in and out of the hospital or jail, the program would hold those individuals up to 90 days. He said the average stay is 7 days, however.

Addressing Mr. Aragon’s comments, Mr. Sanchez said it is not easy to get people into treatment, and there are not many facilities in the state. He stated that, while the facility is small, it is a starting point for many people who make a decision to get treatment. He said this provides them an opportunity to be linked to other services, as well.

Mr. Aragon recommended tabling this item to allow time for the presenters to respond to the questions raised by the Board.

Ms. Clarke noted that the current short-term lease runs through the end of October, and asked Ms. Leyba-Cruz if a delay until the October Board meeting would interrupt services. Ms. Leyba-Cruz responded that it would not.

Ms. Leyba-Cruz said she would have someone from the Christus St. Vincent CARE Connection program present at the October meeting.

Governor Martinez asked that information brought forward at the next meeting include recidivism rates, and whether there are social workers and others who follow up with people who have been in jail and are now leaving the program. Without that continuum of care, she said it becomes a revolving door because “they see you as a way out of jail” and so nothing really changes.

Mr. Sanchez stated that the majority of people coming into the program are not referrals from jail; rather, people who have been in jail are in supervised probation programs.

Governor Martinez commented that 1,300 clients annually is a lot. She said she would like to know how much the cost is per client, and what the source of the funding is.

Mr. Kormanik asked that someone from the Behavioral Health Services Division of the Human Services Department be present at the October meeting.

Dr. Clifford asked that someone from the Local Government Division, which oversees the DWI program, also be present.

Mr. Brasher moved to table this item to the next meeting. Mr. Kormanik seconded the motion, which passed 6-0 by voice vote.

**Item 8 continued:**

Presenter: Kelly Kuenstler, County Manager

8. **Luna County – Requests Approval of Sale of Real Property to the City of Deming ($724,000)**
Continuing with her presentation, Ms. Kuenstler said the sentence in question is in the last paragraph of item 4 of the real estate sales agreement between Luna County and the City of Deming, which states, “The remaining monetary balance shall be due to purchaser.” She said she and Mr. Primm have agreed that the sentence should be stricken.

Mr. Primm said it appears that the confusion was that staff views the sentence to explain what should be done with the entire balance of the purchase price after deduction of seller’s closing costs, whereas the County may have understood the sentence to refer only to any amounts for closing costs that would be left over. Because that doesn’t necessarily make sense to staff or Ms. Kuenstler, it seems easier to simply strike the sentence. Elsewhere in the contract, it is made clear that the balance of the $724,000 shall be paid to the seller.

Mr. Primm requested that any approval of this item be contingent upon Director’s receipt, with counsel review, of the final signed and dated Agreement for Sale containing staff’s required changes.

Ms. Kuenstler agreed to this change.

Mr. Kormanik asked what the City plans to do with the property, and Ms. Kuenstler responded that the City is negotiating to lease the entire block, minus a small piece, to Bencor, which manages Walgreens.

Mr. Kormanik asked if this would be a sole source procurement for the City, and Ms. Kuenstler responded that she could not speak for the City but could contact the Deming City Attorney by telephone, if necessary.

Mr. Primm clarified for Mr. Kormanik that the City of Deming’s lease of this property would not fall under the jurisdiction of the Board of Finance. He said this item came before the Board previously when there was an arrangement between Bencor and its clients, and at that time the City of Deming and the County of Luna formed a JPA. It is a requirement that the JPA be extinguished prior to the effectiveness of this currently proposed sale agreement, and that JPA has been extinguished.

Mr. Primm explained that this transaction with Walgreens would have come before the Board under the “old version.” He added that there were a number of items that were identified in the Walgreens lease that were of concern to staff. These related to contingent liabilities and warrantees being made, and terms within the lease that were ones staff wanted to make sure the entities were entering into with their eyes open. He stated that staff had some questions regarding the term of the lease and how the tenant was selected at the time, although he could not immediately recall what the issues were.

Mr. Primm commented that if the Board were concerned about the next steps and what the City was doing, it might be prudent to follow up on some of the contract language issues. He stated that the County has assured staff that the City’s contract would address all of the issues.
identified by staff, but staff has not received a similar confirmation from the City that they would address those issues going forward.

Ms. Kuenstler stated that the original intent was for the City and County to enter into a joint economic development agreement because this block is half-owned by the City and half-owned by the County. She said the joint agreement would lease the property to Bencor over a 20-year period. She found the lease attractive because, after 20 years, the taxpayer would be more than made whole, and after that period the City and County could renegotiate for the land. She said the County's first intent was to bring that agreement between the joint economic development project and Bencor to the Board of Finance. When the County sent the first agreement to the Board, there were "tons of questions" posed by Board staff, which she found extremely thorough. When the County turned around and presented the questions to Bencor, Bencor declined to be part of this agreement, saying they had done this in all 50 states and had never had this many problems. She said the County subsequently decided to sell the property to the City of Deming, which was named fiduciary for the joint economic development agreement.

Ms. Kuenstler stated that her concern with respect to this transaction is whether the property is selling above appraisal price and is she making the county taxpayer whole. Based on her calculations, the taxpayer has about $724,000 in the property, and that was the reason for the purchase price. She stated that she feels this is the extent of her responsibility in terms of the County's role, and what the City does with the property is out of her hands. She said it is up to the City to comply with the Procurement Code and laws that govern their sale or lease of real property.

Ms. Kuenstler said the County made the decision to sell the property out of concern that Bencor would decide not to locate a Walgreens in Luna County, which is economically struggling.

Mr. Brasher said the Board recognizes the importance of underserved communities having essential services, but he hopes the City will give careful consideration of what has been said in this meeting.

Mr. Primm said a second contingency could be a statement from an individual at the City, whether their legal counsel or city manager, stating in effect that they will take under advisement the changes staff recommended to the original lease, and changes of that nature, and especially will see fit to make any changes required to meet statutory and constitutional sufficiency.

Mr. Brasher moved for approval, with the two contingencies. Treasurer Lewis seconded the motion.

Ms. Kuenstler clarified the County has already required in the agreement that the City take into effect the statutory and constitutional issues that arose.
Mr. Primm asked where this acknowledgement appears in the agreement, and Ms. Kuenstler responded that it does not appear in the agreement but is on record at the County Commission meeting. She said the commissioners asked her to ensure that the City would give her a statement indicating that it would comply with all statutory and procurement issues.

Mr. Primm said it sounds like the Board has emailed assurances from the County and there is something in the County records. At this point, he would say the weakness is that the City has not come forward with a direct statement to the Board saying they would make the changes.

**The motion and second were withdrawn.**

Mr. Aragon commented that the City will be required to comply with statutory and constitutional requirements anyway as a matter of law. He said the Board’s concern is whether the dollar value equal to the appraisal value, and staff has indicated that it is.

**Mr. Aragon moved for approval, subject to the initial contingency. Mr. Brasher seconded the motion.**

Ms. Kuenstler stated that Sen. John Arthur Smith plans to meet with Dr. Clifford over some concerns that Bencor and the County had with the economic development process. She added that, as County Manager, she has to be very careful in directing the City on what they need to do in their lease.

**The motion passed 6-0 by voice vote.**

Presenter: Vernon Wilson, Airport Manager

12. **Doña Ana County – Requests Approval of Lease Agreement with Angel Peralta for Airport Space ($0.16 per square foot noncommercial operations, $0.10 per square foot per year plus 2 percent of gross receipts and $0.06 per gallon fuel flowage fee if used for commercial operation)**

Mr. Wilson requested approval of a standard lease for undeveloped property at the Doña Ana County Airport. He said the lessee proposes to erect a hangar for use as a flight training school. As with most of the airport’s leases, the term is for 25 years with an option to renew for an additional 10 years. He said the land lease is coupled with a CPI escalation clause, which is applied annually; and the lease rate is reduced if used for commercial purposes, in which case an additional charge of 2 percent of the gross receipts is charged as rental.

Mr. Wilson commented that the agenda is somewhat misleading because the $0.06 per gallon fuel flowage fee is not contingent upon commercial use or any use.

Mr. Wilson stated that the improvements will revert to the lessor at the termination of the lease.
Mr. Wilson stated that there was only one bidder in response to the RFP.

Ms. Clarke asked that any approval of this request be contingent upon staff’s receipt of the final signed version of the lease.

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

13. **Doña Ana County – Requests Approval of Lease Agreement with Francis Aviation for Airport Space ($0.16 per square foot noncommercial operations, $0.10 per square foot per year plus 2 percent of gross receipts and $0.06 per gallon fuel flowage fee if used for commercial operation)**

Mr. Wilson stated that, under this standard lease, the lessee proposes to install a self service fuel island. While the base rental is small even with the escalator clause, the increased volume of fuel flowage is substantial and is beneficial to the airport based on the $0.06 per gallon flowage fee.

Ms. Clarke asked that any approval of this request be contingent upon staff’s receipt of the final signed version of the lease.

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

Presenter: Jesse Fuentes, Superintendent

14. **Loving Municipal Schools – Requests Approval of the Sale of Real Property to Jason Holland ($156,000)**

Mr. Fuentes stated that Loving High School has an Architecture/Construction Career Pathway Program, which leads into a building trades pathway. He said this is articulated through NMSU-Carlsbad, through Fiscal Year 14, and provides the opportunity for students to receive up to 24 hours of college credit. This is the second home that the students have built, and the craftsmanship is exceptional. He said the economic boom in Lea County has also created a need for additional housing.

Mr. Fuentes said the sale price of the home is equal to the appraised value of $156,000, and they have received an offer for the full amount.

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

15. **WITHDRAWN**
**Higher Education Department**

Presenters: Henry Mignardot, Staff Manager and Capital Projects Coordinator; Dr. Gerald Burke, Chairman, Capital Projects Committee; Debbie Romero, DFA Capital Outlay Bureau Chief

16. **Presentation on Higher Education Capital Project Planning Process**

Dr. Burke reported that HED, the Legislative Finance Committee, DFA and the Energy, Minerals & Natural Resources Department just held a series of four capital outlay hearings statewide. He said the committee met last Wednesday and evaluated all of the requests, and preliminarily prepared a proposal for going forward. Dr. Burke stated that, if a general obligation bond is necessary over and above the final legislative appropriation, the committee that he chairs will go out and solicit support to get the general obligation bond passed. He said he has done this for 14 years, and with the exception of the 2010 general obligation bond, all of the bonds were passed by the voters.

Mr. Mignardot and Ms. Romero discussed the vetting and prioritization processes that were followed.

Dr. Clifford said he realizes that, because of the timing, the executive order requiring audit compliance as a condition of receiving state funding was not used in screening this year’s projects. He said it will be applied as a screen in the future for capital outlay projects, and would encourage HED to make that one of its key tasks with regard to the approval of funding.

Dr. Clifford commented that the proliferation of campuses and facilities around the state has been a factor contributing to the inefficiency of New Mexico’s higher education sector. He asked if HED will prevent the unnecessary duplication of facilities around the state going forward.

Dr. Burke responded that he was on the Commission on Higher Education, and for 20 years prior to that presented NMSU’s projects to the Commission and Board of Educational Finance. He said the interpretation for years at the Commission was that if it was a community college and was in someone’s taxing district, they had the right to build facilities there. He said the Commission could only deny requests that were outside of the entity’s taxing district. He clarified that the Commission no longer exists. He said there is now a much more stringent process involved in any institution wanting to open another campus, and there is legislation that applies to it. He stated that, in the last five years, there have been no more branches, satellites or “tweaks.”

Dr. Burke added that the Capital Projects Committee emphasizes that two-year schools have taxing ability and that they should come up with money on their own, such as through general obligation bonds. He said Santa Fe, San Juan, Doña Ana and CNM have all put up 60 percent of the cost of their facilities from local sources.

Responding to Dr. Clifford, Dr. Burke stated that, with respect to the list of projects, there is one replacement building and one new building at a specialized entity. Other than that, all capital
outlay recommendations are for infrastructure, remodeling and project completion.

Mr. Mignardot stated that HED verbally discourages proliferation of campuses at all of its hearings and is in the process of tightening the learning center rule. Right now, learning centers have to be vetted by HED and through the legislative process.

Dr. Burke stressed that they take out web-based instruction when reviewing the full-time equivalent enrollment numbers for institutions. He commented that one institution has impressive enrollment numbers but most of it is web-based.

Dr. Burke said there are incentives to teach online now, while there used to be disincentives.

Dr. Clifford commented that there is an incentive for a cost-conscious manager to use online education because their costs of providing that unit are presumably lower. He said cost containment is a major concern of the state, and that should be encouraged when looking at educational plans for each campus.

Dr. Clifford commented that he understands the NM School for the Deaf and the NM School for the Blind and Visually Impaired fall under HED’s oversight and they are typically included in this planning process.

Mr. Mignardot responded that they fall under HED’s oversight but fall under the PSCOC (Public School Capital Outlay Council) and PSFA (Public School Finance Authority) funding cycle, as well.

Dr. Clifford said the issue is that when the school districts receive state funding from the PSCOC, they are required to develop a local match on a sliding scale at 90 percent, but the special schools do not have a property tax base to tap. He asked how that match is provided, and whether it is addressed in the plan.

Mr. Mignardot responded that there is a new administrative code that requires the special schools to go through the PSFA for full funding, and PSFA will provide that funding if they can get a 50 percent match, which they seek from HED and other sources.

Mr. Aragon said he read recently that UNM has acquired the First Baptist Church property on the corner of Central and Broadway for the purpose of entering into a private/public agreement with centers of excellence and the City of Albuquerque to encourage economic growth. He asked Dr. Burke if UNM approached the Capital Projects Committee regarding the acquisition of that property, and Dr. Burke responded that they have not come forward at this point.

Mr. Aragon said there is a process and he thought this acquisition outside the process was a “blatant, gross attempt” to circumvent the executive order of this administration.
Dr. Burke stated that economic development projects that are done under the University Research Park Act do not come to the Commission on Higher Education for review, but if he understands the statutes correctly, land acquisition should come before the Commission.

Mr. Aragon commented that if UNM acquired the First Baptist Church this is a $2 million acquisition and would appear to belong to UNM in fee simple. If so, then it would fall under the governance of the UNM Board of Regents and at some point would be a responsibility of the taxpayers. He questioned whether this acquisition has been properly vetted.

Mr. Aragon said he understands UNM Hospital entered into a lease or management agreement recently with McKinley County hospital. He asked if that process was reviewed by the Capital Projects Committee, and Dr. Burke responded no.

Mr. Aragon stated that he read the applicable statutory language this morning to confirm that the Board of Finance has purview over this process, and so apparently UNM has circumvented the Board as well as the Commission on Higher Education in both instances.

Dr. Burke stated that Dr. Ben Woods has just determined that UNM is seeking a federal grant to purchase the 7-acre First Baptist Church site.

Mr. Mignardot said he would research Mr. Aragon’s questions and concerns and would report back to the Board.

Responding to questions from Mr. Aragon, Dr. Burke stated that there is no question that the cost of tuition is rising; and whether eliminating some of these small schools will help or not is unknown. He stated that he personally feels that the Lottery Scholarship Act encourages institutions to raise tuition because they know they can pick up the difference from either lottery funding or Pell Grant funds.

Mr. Brasher asked if there is a process at the institution level where there is some formal ascertainment on what the problems, needs, goals and objectives of each university are before a project ever gets to the Capital Projects Committee, and prior to that is there community input prior to going before the board of regents.

Dr. Burke responded that it depends on the institution, and some institutions do an extremely good job of what Mr. Brasher is talking about. He stated that, in recent years, the process has worked well, but “twenty years ago it was sexy to have a new building, so everything that came forward was new buildings. I think they are honestly looking at their long-range plans and trying to upgrade what they have, make it better, and not build new facilities.”

Mr. Kormanik commented that what should drive the capital outlay process is the overall composition of the higher education plan for programs. He asked if HED has a plan with regard to specializing programs in various schools. For instance, there is an engineering school, but is there a business school, an education school, etc. If each university specialized in a program area, it could create economies of scale and provide more focused educational opportunities in
specific areas. He contrasted this with the goal of providing these opportunities around the state in various areas, which would tend to water these programs down.

Mr. Mignardot responded that these programs tend to arise under Research Projects and Special Projects (RPSP), which was originally designed to incentivize institutions that come up with these programs to ask for incubator funds to initiate them and eventually incorporate the program into their operating budget. Over time, the RPSP became a recurring request without the scrutiny and review suggested by Mr. Kormanik. He said the process has now been totally revamped and now, with the assistance of the Governor’s Office, each project is reviewed in terms of which institution is the most viable to provide this program. He said the Board will see some significant consolidation of these programs going forward.

Dr. Burke added that the Capital Projects Committee takes a very strong look at FTE per student.

Governor Martinez asked Dr. Burke which institution he had been referring to when he mentioned earlier that one institution in New Mexico has impressive enrollment numbers but most of it is web based. Dr. Burke responded that he had been referring to the Los Alamos branch of UNM. He said they have 400 web-based students and 113 on campus.

Ms. Romero clarified that the land and building on which the UNM-Los Alamos campus are located are owned by Los Alamos Public Schools and leased to UNM. Mr. Mignardot added that HED recently turned down a project request from UNM to fund a building on the property, which he hoped would send a message to UNM “that there’s a problem with that.”

Dr. Burke noted that, about 30 years ago, the Los Alamos Public Schools leased buildings and grounds to UNM for one dollar a year, which is how this campus evolved.

Governor Martinez commented that she met with the presidents and regents at the universities last year and told them she would not support capital outlay requests for higher education if there were not a connection between outputs and graduation rates. When she asked one of the presidents what the graduation was at his four-institution, he said it was about 40 percent, and that this was in six years, and that the graduation rate in four years was about 11 percent.

Governor Martinez also stated that the two-year and four-year institutions are neither aligned with each other nor with PED, so that students transferring from a two-year institution to a four-year institution often have to take courses over again because their credits can’t be transferred. She noted that half of high school graduates have to take remedial courses in college, something that should only be permitted in two-year institutions because it costs less, and then the student can transfer to the four-year institution.

Presenters: Colonel David W. West, Chief of Staff; Colonel Judy Scharmer, Chief Financial Officer; Kent Taylor, Director of Facilities
17. New Mexico Military Institute – Requests Approval of Boilers and Chillers Replacement Project ($1,200,000)

Col. West stated that the New Mexico Military Institute (NMMI) is seeking to replace aging and inefficient boilers and chillers on campus. He said NMMI has loop and non-loop systems, and will first replace the loop system. He commented that their youngest boiler is about 20 years old.

Mr. Mignardot said the funding sources are NMMI’s capital fund balance of $200,000 and a Severance Tax Bond appropriation of $1 million.

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

18 New Mexico Military Institute – Requests Approval of Tennis Courts Replacement Project ($850,000)

Col. West stated that NMMI has tried for several years, without success, to fund this project with the use of Severance Tax Bonds. He said the tennis court complex consists of four sets of three courts each, and is an asphalt type court that has been repaved twice. He said replacement of the tennis courts is critical to NMMI’s mission in supporting excellence in physical fitness for male and female students. NMMI views the condition of the courts as a safety issue and may have to close the courts if this is not addressed in the near future.

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

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

19. Eastern New Mexico University – Requests Approval of Administration Building Piping ($1,610,000)

Mr. Mignardot stated that Eastern New Mexico University (ENMU) is requesting approval of piping replacement at ENMU’s administration building in Portales at a cost of $1,610,000. The project calls for the replacement of various piping systems that supply heating, cooling and domestic water to the 37,000 square foot facility. He said the building, constructed in 1930, is the oldest facility on the Portales campus, and ENMU reports that the infrastructure is at the end of its useful life and at risk of failure.

Mr. Mignardot stated that the funding source for the project is ENMU reserve funds. Construction is to be completed around November 2013.

Responding to Lt. Governor Sanchez, Mr. Smart stated that the project has not been bid yet, so he could not definitely state what materials would be used. Lt. Governor Sanchez suggested that ENMU exercise caution with that, as prices tend to fluctuate.
Responding to Mr. Kormanik, Mr. Smart stated that ENMU has completed about $110 million of construction on campus in the past 10 years, about half of which they funded themselves. He added that ENMU is very fiscally conservative, and sets aside funds annually for maintenance and renovation of the facilities. He stated that ENMU has a long-term plan to maintain its facilities for many years.

Responding to Dr. Clifford, Mr. Smart indicated that ENMU’s four year graduation rate is probably roughly in line with the 11 percent rate mentioned by Governor Martinez earlier in this meeting, as that is roughly the national average. He was not sure of the six-year graduation rate. Dr. Clifford asked that ENMU provide that data for the Board.

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

[Mr. Archuleta joined the proceedings by telephone.]

[Governor Martinez stepped away from the proceedings.]

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

20. **New Mexico State University – Requests Approval of Golf Course Irrigation Systems Upgrades ($1,500,000)**

Mr. Mignardot stated that New Mexico State University (NMSU) is requesting approval of golf course irrigation systems upgrades at a total cost of $1,500,000. He said the funds for this project come from $62 million System Refunding and Improvement Revenue Bonds, Series 2013, approved by the Board in March 2013. The golf course opened in 1963 and NMSU reports that the irrigation system is beyond its useful life and is in need of full replacement. The system waters about 95 acres of turf grass. The project includes 1,140 sprinklers, new looped piping and several other system components.

Mr. Walke stated that the cost of the replacement would be repaid with golf course revenues.

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

21. **New Mexico State University – Requests Approval for Institute for Public Policy Budget Increase ($15,279,718)**

Mr. Mignardot stated that this project is to design and construct the Institute for Public Policy (IPP) by remodeling and adding to the Hershel Zohn Theater and remodeling part of the Branson Library. Funding will be provided in part by a grant from the U.S. Department of Defense for the Institute for Public Policy, the Domenici Institute and the Domenici Archives. The project will
remodel a portion of Branson Library to house the Domenici Archives and will also completely remodel and add to the Hershel Zohn Theater to create the IPP including the Domenici Institute and College of Business.

Mr. Mignardot stated that the IPP is a joint project of the College of Business and the Library at NMSU. A federal grant was procured by these two departments to house the Domenici Archives and the Domenici Institute and Institute Fellows. The federal funds were joined with state funds, first for planning and then for renovations and construction of the facility. The state funds allow for a more complete design of the facility, better integrating it into the fabric of the campus.

Mr. Mignardot stated that the original project cost was $13,794,718, and there have been two private donations, one for $495,000 from the Peyton Yates Foundation and the second for $990,000 from Stan Fulton, totaling $1,485,000, for a total of $15,279,718. Because this project exceeded 10 percent of the original budget, it is back before the Board of Finance for re-review.

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

Presenters: Dr. Joe Shepard, President; Sherri Bays, Vice President, Business Affairs

22. Western New Mexico University – Quarterly Report on Residential Building Construction

Dr. Shepard made a presentation.

Dr. Clifford asked what percentage of the enrollment at WNMU comprises distance education students. Dr. Shepard responded that about 40 percent of their courses are currently available online. He said WNMU students tend to take the "hybrid approach." The trend is for the older students (over 25) to take on-campus courses, while the younger students prefer online courses.

Dr. Burke stated that enrollment at WNMU is 2,150 FTEs, of which 637 are web-based.

Mr. Kormanik asked Dr. Shepard to discuss the outcomes associated with online education courses, e.g., are they comparable to what people get when sitting in class, and is there a restructuring of the class to accommodate the new platforms.

Dr. Shepard responded that WNMU and other universities around the country have found that the hybrid approach is better. He said New Mexico will one day see a tuition model similar to Netflix, where the student pays a subscription rate each month and takes as many courses as they like, and 10 to 20 years from now there will be something like the Amazon.com model, with students selecting courses from different universities around the country.

Mr. Aragon said this would seem to lower the cost per credit hour.
Dr. Shepard responded that this would be true to a certain degree. He said Grand Canyon University and University of Phoenix are for-profit schools and their tuition is now very similar to the in-state tuition of Arizona and California, so this is already driving the price down. He noted that Grand Canyon University is already in Albuquerque.

Dr. Shepard added, however, that out-of-state tuition for WNMU is less than the in-state tuition for Arizona, Texas and California. He said WNMU’s in-state tuition is $4,500.

Dr. Shepard agreed with Dr. Burke’s statements that the lottery scholarship program is driving up the cost of in-state tuition, and that should be addressed at some point. He said this is also true of the other subsidy programs.

**RECONSIDERATION OF ITEM 21**

*New Mexico State University – Requests Approval for Institute for Public Policy Budget Increase ($15,279,718)*

Mr. Brasher moved to reconsider Item #21. Mr. Aragon seconded the motion, which passed 6-0 by voice vote.

Mr. Brasher asked Ms. Clarke to discuss the naming rights associated with the two private donations, one for $495,000 from the Peyton Yates Foundation and the second for $990,000 from Stan Fulton.

Ms. Clarke responded that there are naming rights associated with the Peyton Yates Foundation rights. She said a naming was also offered by NMSU in conjunction with the Stan Fulton gift. She stated that information she has received from the institution states that there is a new lecture hall, to be named the S.P. and Estelle Yates Theater, and a commons area to be named the Stan Fulton Atrium.

Mr. Brasher commented that the Board has had a number of discussions about naming rights, and he does not support naming rights. He asked for comments from the Board.

Mr. Aragon said the Board last discussed this concern in connection with a tennis facility at UNM, which he voted against. If an institution is to allow naming rights and is trying to obtain “the biggest bang for the buck,” and that is up for consideration, then certainly the Board should consider that. He added that there is a move afoot to try to obtain as much private contribution as possible via this vehicle. He said he tends to disagree with the concept, and thought the Board had created a policy with its last vote, in which he was a minority and shared the same sentiments. He stated that he feels there is too much potential for abuse, citing the Manny Aragon Building is an example. He said Mr. Aragon is a cousin, and it was hurtful to the Aragon family that the plaque was removed.
Mr. Brasher commented that Mr. Aragon had raised a very good point: if the Board wants to get the most money for the naming rights, perhaps it should seriously consider requiring an RFP process.

Mr. Haubold noted that the naming rights associated with this project are for a room, not a building. He said he can understand the Board’s concern, but for quite some time university financial officers have been offering up naming opportunities “for everything from bricks to honor walls, to any number of things.”

[Mr. Archuleta signed off from the proceedings, stating that he was unable to hear the discussion.]

Lt. Governor Sanchez stated that he understands the concerns of Mr. Aragon and Mr. Brasher, but as an elected official, he would like to reserve the right to judge naming rights based on what he believes is in the best interest of the state.

Mr. Kormanik moved to approve Item 21, as stated. Treasurer Lewis seconded the motion, which passed 3-2 by voice vote, with Mr. Brasher and Mr. Aragon voting against the motion.

[Ten-minute lunch break.]

[Governor Martinez returned to the proceedings.]

GENERAL SERVICES DEPARTMENT

Presenter: Pamela Nicosin, Acting Deputy Director

Ms. Nicosin reviewed the CBRF Financial Status Report, which reflected an uncommitted cash balance as of June 1, 2013 of $16,599,610. There were no emergency declarations in the month of June.


Ms. Nicosin reviewed the CBRF Financial Status Report, which reflected an uncommitted cash balance as of July 1, 2013 of $16,108,630. There were no emergency declarations in the month of July.

DEPARTMENT OF FINANCE AND ADMINISTRATION
Presenter: Ricky Bejarano, Deputy Secretary and State Controller; Joanne Chavez, CAFR Unit; Ron Spillman, Cash Control Unit

[Governor Martinez and Lt. Governor Sanchez left the proceedings in the course of this presentation.]

Mr. Bejarano presented a report. Mr. Bejarano stated that the CAFR has never been audited, and so the term “audited CAFR” is a misnomer. Last year, for 2011, DFA saw some issues with the CAFR and contracted with Deloitte, LLP, to give an assessment of where the CAFR is now and where the state needs to be in order to issue an audited CAFR.

Mr. Kormanik said he understands the liability against the general fund was originally $70 million, is now at $100 million, and asked if this is the result of the CAFR or a separate reconciliation process. Mr. Bejarano responded that the $70 million was an estimate based on the information available at the time. Now that information has been received from all agencies, the final number is $101 million, which he believes is a “good” number and will not change in any significant way.

Responding to Dr. Clifford, Mr. Bejarano said this discrepancy will be a disclosure in the general fund report for 2013, and the entries will be booked against that. He said he believes this is an accounting entry and therefore does not need an appropriation. While the legislature does not agree with that, he said he sees this as the result of non-reconciliation for the past several years.

Mr. Bejarano commented that, although a CAFR audit has been required since 2003, he has not seen correspondence from any oversight agency asking why that has not happened. He said DFA decided on its own to inform the Office of the State Auditor that the CAFR would be audited for 2014. He added, “The 2014 CAFR will not be pretty. We’re getting ready to issue Requests for Proposals for that, and it will get us on track to be accountable, transparent, and move us forward to receive an audited CAFR. And hopefully within a couple of years we can turn the tide around.”

Responding to Dr. Clifford, Mr. Bejarano said his office intends to move forward with an RFP for a 2013 audit, but the legislative appropriation of $250,000 is not enough to cover the cost, which should be about $1 million, which is the going rate among the “Big Four” auditing firms.

Mr. Kormanik said there were significant issues during the last legislative session regarding the actuarial soundness of the state’s pension funds, and asked if the audited CAFR would certify potential liabilities for the retirement funds.

Mr. Bejarano responded that GASB 67 and 68 will not be implemented until 2014, so currently the pension liabilities shown in the CAFR are in accordance with GAAP and GASB. For 2014, it will reflect the blended discounted rate up to 30 years, and that liability will
skyrocket and reflect an underfunded pension liability.

Mr. Kommanik asked if, at that point, this would mean there would no longer be any question about the future liabilities of the pension funds. Mr. Bejarano said that was correct.

Dr. Clifford commented that there was an issue raised about the local share of the Educational Retirement Board plan liability, and Moody’s was inferring that this was a local liability.

Mr. Bejarano said that was correct, but he was referring to actuarial figures, which are considered credible from an accounting perspective.

Ms. Chavez said she reviewed the Moody’s report, and there were questions raised about the data developed for New Mexico because there were inconsistencies and omissions in the data. She said GASB 68 does affect the local governments and the State of New Mexico as a whole. Every audit report of every government agency in the state, including local government and school districts, would reflect the unfunded pension liability on their financial statements.

Mr. Kommanik said his point was that the 2014 audited CAFR should take all of this into consideration, and all of these issues would basically be solved.

Responding to Mr. Aragon, Ms. Chavez said the unfunded liability of ERB and PERA is the obligation of the employer, and the funding of the plan is separate from the accounting issues. She said the CAFR is going to report the accounting impact. When the liability is calculated, they take the total pension liability that the actuary has calculated and compare that to the financial position of PERA and ERB to determine the unfunded portion of the liability that will be reported in the state’s CAFR. She said the CAFR does not include local school districts or local governments.

Mr. Aragon pointed out that recent litigation before the New Mexico Supreme Court has been affirming the position that the pension fund liability is a state issue and not a local issue.

Mr. Bejarano responded that, if the court’s position holds and is not overturned, the liability will be reflected in the CAFR.

Mr. Aragon commented that this is the single most pressing financial issue facing governments around the country. He said he read somewhere that there is $10 trillion of unfunded liability in total nation-wide.

STATE TREASURER’S OFFICE
Presenter: Linda Montoya Roseborough, Chief Investment Officer; Treasurer James B. Lewis
27. **Quarterly Investment Report for Quarter Ended June 30, 2013**

Ms. Roseborough presented the Monthly Investment Reports for the months ending June 30, 2013 and July 31, 2013, as well as the Quarterly Investment Report for the quarter ended June 30, 2013. She said there were no compliance issues to report.

**STAFF ITEMS**

Presenter: Stephanie Schardin Clarke, Director

28. **Approval of Financial Advisor Contract Extension**

Ms. Clarke reported that the Board's Financial Advisor Agreement with Fiscal Strategies Group will expire on December 31, 2013. The contract allows for one additional one-year extension. If the Board approves the extension, this will be the last of the maximum four years allowed in the Procurement Code, and an RFP would be issued next fall.

Ms. Clarke said staff recommends approval contingent upon replacement of the word “Bank” with the word “Contractor” in the WHEREAS paragraph.

Mr. Kormanik moved for approval, with the contingency. Mr. Aragon seconded the motion, which passed 4-0 by voice vote.

29. **Recommendation of Selection of Contractor to Begin Negotiations of an Agreement with Staff for Custody Bank Services**

Ms. Clarke reported that the State Board of Finance issued a Request for Proposals for Custody Bank Services on August 2, 2013. Responsive proposals were received on August 30, 2013 from four firms: J.P. Morgan, Northern Trust, State Street, and Wells Fargo. She said the Evaluation Committee carefully reviewed and evaluated these proposals based on the criteria and weights set out in the RFP and assigned the following total scores:

- J.P. Morgan received 819.4 points;
- Northern Trust received 789.8 points;
- State Street received 823.0 points; and
- Wells Fargo received 574.1 points.

Ms. Clarke said the Evaluation Committee recommends selection of J.P. Morgan to begin negotiations of an agreement with staff for custody bank services.

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

Mr. Kormanik moved approval of the recommendation of the Evaluation Committee. Mr. Aragon seconded the motion, which passed 4-0 by voice vote.

30. Approval of Proposed Changes to Rule: Procedures for Designating a Fiscal Agent of New Mexico

Secretary Brasher declared the hearing record open on this item. He said staff has proposed these changes and the Board would start with staff providing testimony on why these rules should or should not adopted.

Ms. Clarke stated, “At the Board’s May 22, 2013 meeting the Board approved publishing notice of proposed changes to the Board’s rule entitled Procedures for Designating a Fiscal Agent of New Mexico.

“Item #30 on your laptops includes the version of the rule that was published for public comment. Notice of the proposed rule change was published on the Board’s website and in the New Mexico Register. The public comment period was from June 14, 2013 through July 14, 2013. No public comments were received during that time period.

“to summarize again for the record, staff has proposed the rule change in response to a new interpretation by the State Purchasing Agent this year that the Board’s contracts for Fiscal Agent Banking Services and Custody Bank Services are general services contracts. This interpretation means that the Procurement Code allows the contracts to extend for a maximum of eight years. However, the Board’s rule was more restrictive, limiting the contract terms to four years. The proposed revisions to the rule will allow future contracts to extend to the number of years allowable under the Procurement Code.”

There was no public comment.

Secretary Brasher closed the hearing record.

Mr. Aragon moved to accept the proposed changes to the rule. Treasurer Lewis seconded the motion, which passed 4-0 by voice vote.

Secretary Brasher noted the two following legal items for the record:

1. Rules become effective upon publication in the New Mexico Register.

2. The legal standard is that the Board needs to “inform the public” of its reasoning when it chooses to amend its rules. The comments of one member on the record, if it explains the Board’s reasoning, satisfies the legal standard.

Mr. Aragon moved to incorporate by reference the comments made by staff with
regard to justification of the proposed rule change. Treasurer Lewis seconded the motion, which passed 4-0 by voice vote.

31. Approval of Agreement for Fiscal Agent Banking Services and Recommendation to State Purchasing Agent for Approval and Final Award of Agreement with Wells Fargo

Ms. Clarke stated that, at its last Board meeting, the Board approved tentative award of the Fiscal Agent banking contract to Wells Fargo, and thereby authorized staff to negotiate this contract. She said staff has successfully negotiated a contract with Wells Fargo, which is ready for final approval by the Board today.

Ms. Clarke stated that, if the Board approves this contract, the next step would be for staff to finalize the contract and submit it to the State Purchasing Agent for final award.

Ms. Clarke reviewed the contract exhibits.

Ms. Clarke reminded the Board that, until final award of the contract by the State Purchasing Agent, the contents of the proposals received remain confidential.

Treasurer Lewis moved for approval. Mr. Kormanik seconded the motion.

Mr. Primm requested that any approval of this item: 1) include any revisions requested by the State Purchasing Division and concurred with by the Director after consultation with Board counsel; and 2) be subject to approval and award of contract by State Purchasing Agent.

Mr. Reynolds stated that all of the documents before the Board are substantially similar to, if not the same as, the current fiscal agent contract, but in the amendment to Exhibit B, paragraph 27, page 3, it talks about certain liability that the state undertakes as a merchant to accept credit cards. He said the language in the current fiscal agent contract ends with an ii) and does not contain an iii). As he was negotiating this contract, he could not say with certainty that what was listed in iii) were liabilities that the Board would be responsible for anyway, and that this language does not add any liability that the Board wouldn’t otherwise have. He said he was unable to point to any document or language elsewhere that says that is in fact the case. Nevertheless, as counsel, he feels he has to make the Board aware of this issue in terms of opening up any liability that the Board cannot agree to.

Ms. Clarke said one example of the liabilities Mr. Reynolds was referring to was if a state agency stored cardholder data and somehow the data was hacked. That would be something that the Board already understands the state would be liable for, but staff and legal counsel cannot say with certainty that this is the entire universe that this language could apply to.

Ms. Clarke said Wells Fargo representative Mark Jensen was available to offer any additional
Responding to Secretary Brasher, Mr. Reynolds said the credit card companies mandate a number of security measures, but any entity that agrees to accept credit card services is agreeing to a whole host of required security measures.

Secretary Brasher wondered if state agencies should be storing credit card data at all, as opposed to having it stored elsewhere. He said he thought the state should take a look at that.

Ms. Clarke said she wasn’t aware of any state agencies that were doing that. She said usually this is done through a third party processor or through a payment gateway, where a bank hosts the website for the state agency.

Secretary Brasher pointed out that some state agencies are taking credit cards over the counter. He reiterated that this should be looked into.

Mr. Kormanik said he was comfortable with the language. He commented that people hand their credit card to wait staff at a restaurant and so are subject to the same risk. To a point raised by Ms. Clarke, he said he doubted there was much credit card data stored at the state because it was all done through third party processors.

The motion for approval, with the two contingencies stated, passed 4-0 by voice vote.

32. Approval of New Rule: Distribution of Qualified Energy Conservation Bond Allocations

Secretary Brasher declared the hearing record open on this item. He said staff has proposed these changes and the Board would start with staff providing testimony on why these rules should or should not adopted.

Ms. Clarke stated, “At the Board’s June 18, 2013 meeting the Board approved publishing notice of the Board’s intent to promulgate a new rule entitled Distribution of Qualified Energy Conservation Bond Allocations.

“Item #32 on your laptops includes the version of the rule that was published for public comment. Notice of the proposed rule change was published on the Board’s website and in the New Mexico Register. The public comment period was from June 28, 2013 through July 28, 2013. During that public comment period, the Board received two sets of public comments. Those public comments, received from Santa Fe County and a representative of the group Ameresco, Inc. are included in your materials today. The Board has had an opportunity to review these comments, and may decide to incorporate changes to the published rule change based on the input of the public.

“Based on a suggestion from Santa Fe County, staff recommends incorporation of additional language in section 2.61.7.8 of the proposed rule that would make clear that only 30 percent of
each large local government allocation may be used for private activity bonds. That proposed language is shown in yellow on the staff recommendation version of the rule.

“Public commenters expressed support for altering the proposed rule to allow the Board to revoke large local government allocations if not used by a certain date. However, after consulting with contract counsel on the matter, Board staff recommends leaving the language in Section 2.61.7.8 NMAC unchanged. That language directs large local governments to advise the Board no later than September 30, 2014 of any portion of their large local government allocation that will not be used by December 31, 2014. After being advised of a return of large local government allocation, the Board will make an announcement of the amount of the return at its next Board meeting. Staff and Counsel prefer this approach because federal code creating the QECB program stipulates that large local governments may return unused allocations, but it is not clear that the Board has authority to take an action that revokes these allocations.”

Mr. Aragon moved to accept staff’s recommended version of the rule. Treasurer Lewis seconded the motion, which passed 4-0 by voice vote.

Mr. Aragon moved to incorporate by reference the comments provided by staff as the Board’s specific findings. Treasurer Lewis seconded the motion, which passed 4-0 by voice vote.

Secretary Brasher noted the two following legal items for the record:

1. Rules become effective upon publication in the New Mexico Register.

2. The legal standard is that the Board needs to “inform the public” of its reasoning when it chooses to amend its rules. The comments of one member on the record, if it explains the Board’s reasoning, satisfies the legal standard.

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

Responding to Secretary Brasher, Mr. Reynolds stated that the record has been closed, and so the Board is in the deliberation and decision phase on this item. While there is a mechanism for the Board to reopen the record, that has not been noticed on the agenda. If the decision is to take additional evidence to consider, that would have to occur at a subsequent meeting.

Mr. Aragon stated that, during the interim period between the July meeting and today, he was hand-delivered some unsolicited information in the form of a booklet. He said the envelope was addressed to him, and he opened it and began reading the contents until it occurred to him that this was additional information that was being provided despite the fact that the record had already been closed for taking public comment. He said he did not know who authored the document, as his copy did not have a signatory page, but he was “appalled that such an underhanded tactic would be utilized.”
Mr. Aragon expressed concern about the legal implications and asked Mr. Reynolds if it would be advisable for the Board to go into executive session. Mr. Reynolds responded that he did not think any of the exceptions to the Open Meetings Act would apply in this case unless there was a threat of litigation.

Dr. Clifford said the information that was sent is not in the record, so he saw no problem with it. He stated that he and Board members receive information all the time from outside parties.

Mr. Aragon responded that the problem is that the Board is acting in a quasi-judicial capacity that is clearly confined by the law, and the information that is provided in open meeting is the information that the Board is supposed to use in making a decision. He said this document was clearly intended for the Board’s consumption and specifically directed at the voting members of the Board.

Dr. Clifford said he could understand any concern that the sender is unknown, but he did not see how it could do harm for people, even advocates, to provide information to the Board. He said he realized such information could not be made part of the formal record, however.

Mr. Reynolds said he understood Mr. Aragon’s concerns. He said his opinion is that Mr. Aragon’s receipt of the information “hasn’t destroyed the process,” but he could not cite a court case to support that. He said this issue has come up in his experience with boards and commissions, though, and in those situations the boards and commissions have been advised to affirmatively state that any information received outside of the formal record will play no part in the decision-making process. If the Board feels it is not capable of doing that, then other steps may be necessary, such as reopening the record.

Mr. Kormanik stated that he feels bias has been inserted into the process based on the discussion, and so the process has been compromised. He asked Mr. Reynolds if one option would be to reopen the hearing and start the process all over again.

Mr. Reynolds responded that starting all over again is one option, and would be the cleanest. He said another perfectly acceptable option would be for the Board to reopen the public comment period after proper notice, which could take place at the next meeting.

Treasurer Lewis said his concern is that the public understands the process enough to realize that they are not supposed to submit documents to Board members after the public hearing is closed.

Secretary Brasher asked Mr. Reynolds if there is an understanding in the community of what a quasi-judicial process is, and Mr. Reynolds responded that he did not think so. He said he was not sure what to do about it other than make statements at public meetings explaining the process. He commented that the important thing is disclosure, which is to state that one has received a letter from someone, and that it wasn’t presented as part of the record and therefore would not play a role in the decision making process. He said issues arise when there are private conversations and letters that are not disclosed, and then it comes to light.
Mr. Kormanik moved to reopen this at the next meeting for public comment. Treasurer Lewis seconded the motion.

Mr. Aragon suggested to Ms. Clarke that it be communicated in the public notice that all documentation should be channeled through staff so they can be fairly distributed to members of the Board.

Secretary Brasher said people should be encouraged to comment, as well.

Mr. Reynolds asked that any information received by Board members be forwarded to staff.

Mr. Aragon asked that counsel inform all Board members by memorandum on what is appropriate contact under statute.

The motion passed 4-0 by voice vote.

34. Fiscal Agent/Custodial Bank Services

Ms. Clarke reported that FY 2013 was closed well within the Board’s appropriation limit, partly because of the soft dollar earnings credits earned by the State Treasurer’s balances with the fiscal agent. She said fees for FY 2014 are on track.

35. Joint Powers Agreements

Ms. Clarke asked the record to reflect that the Joint Powers Agreements have been read into the record.

ADJOURNMENT

Its business completed, the State Board of Finance adjourned the meeting at 3:20 p.m.

Susana Martinez, President

10-15-2013

Date

Michael Brasher, Secretary

10/15/2013

Date