MINUTES OF THE
NEW MEXICO STATE BOARD OF FINANCE
REGULAR MEETING
Santa Fe, New Mexico
November 15, 2016

A Regular Meeting of the New Mexico State Board of Finance was called to order on this date at
9:05 a.m. in the Governor’s Cabinet Room, Fourth Floor, State Capitol Building, Santa Fe, New Mexico.

1. ROLL CALL: QUORUM PRESENT
   ANNOUNCEMENT: NEXT REGULAR MEETING – TUESDAY, DECEMBER 20, 2016

   Members Present:
   The Hon. John A. Sanchez, Lt. Governor
   The Hon. Tim Eichberg, State Treasurer
   Mr. Robert J. Aragon, Public Member
   Mr. Adelmo Archuleta, Public Member [not present 9:15 a.m. – 11:00 a.m.]
   Mr. Michael Brasher, Public Member, Secretary
   Mr. John Kormanik, Public Member

   Members Excused:
   The Hon. Susana Martinez, President

   Staff Present:
   Ms. Duffy Rodriguez, Secretary Designate of Finance and Administration
   Ms. Leila Kleats, Director, State Board of Finance
   Ms. Donna Maestas, Deputy Director, State Board of Finance

   Legal Counsel Present:
   Ms. Sally Malave, Attorney General’s Office

   Others Present:
   [See sign-in sheets.]

2. APPROVAL OF AGENDA

   Item #16 was moved from Consent Agenda to Action Agenda, to follow Item 25.

   Mr. Brasher moved approval of the agenda, as amended. Mr. Archuleta seconded the motion, which passed 6-0 by voice vote.
3. **EXAMINATION OF BIDS: SEVERANCE TAX BONDS, SERIES 2016D AND TAXABLE SEVERANCE TAX BONDS, SERIES 2016E**

[Mr. Archuleta excused himself from the meeting during this presentation.]

Lt. Governor Sanchez stated that this item is for the purpose of publicly examining bids received for the purchase of the State of New Mexico Severance Tax Bonds, Series 2016D and Taxable Severance Tax Bonds, Series 2016E. The exact amount will be determined when all bids have been reviewed. A Notice of Bond Sale has been published in *The Albuquerque Journal*, a newspaper of general circulation in the State of New Mexico, once at least five days prior to the date of this meeting. A Notice of Bond Sale also has been published in the *Bond Buyer*, a recognized financial journal outside the State of New Mexico, one time at least five business days prior to the date of this meeting. Please proceed with the bids.

**Severance Tax Bonds, Series 2016D**

Mr. Paul reported that the following eight (8) bids were received, with Hutchinson, Shockey, Erley & Co. submitting the winning bid:

<table>
<thead>
<tr>
<th>Bidder</th>
<th>True Interest Cost (TIC)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hutchinson, Shockey, Erley &amp; Co.</td>
<td>2.413433</td>
</tr>
<tr>
<td>Wells Fargo Bank, National Association</td>
<td>2.550007</td>
</tr>
<tr>
<td>Piper Jaffray</td>
<td>2.555354</td>
</tr>
<tr>
<td>Robert W. Baird &amp; Co., Inc.</td>
<td>2.562757</td>
</tr>
<tr>
<td>JP Morgan Securities LLC</td>
<td>2.583973</td>
</tr>
<tr>
<td>Morgan Stanley &amp; Co., LLC</td>
<td>2.590687</td>
</tr>
<tr>
<td>FTN Financial Capital Markets</td>
<td>2.627841</td>
</tr>
<tr>
<td>Jefferies LLC</td>
<td>2.666064</td>
</tr>
</tbody>
</table>

Mr. Paul noted that the difference between the winning bid and the cover bid was 14 basis points, an indicator of the enormous volatility that the markets have taken during the past week, with different firms taking very different perspectives on where the market is heading going forward.

**Taxable Severance Tax Bonds, Series 2016E**

Mr. Paul reported that the following seven (7) bids were received, with JP Morgan Securities submitting the winning bid:

<table>
<thead>
<tr>
<th>Bidder</th>
<th>TIC</th>
</tr>
</thead>
<tbody>
<tr>
<td>JP Morgan Securities, LLC</td>
<td>2.132152</td>
</tr>
<tr>
<td>Robert W. Baird &amp; Co., Inc.</td>
<td>2.151439</td>
</tr>
<tr>
<td>Mesirow Financial, Inc.</td>
<td>2.153643</td>
</tr>
<tr>
<td>Raymond James &amp; Associates, Inc.</td>
<td>2.254688</td>
</tr>
<tr>
<td>Morgan Stanley &amp; Co., LLC</td>
<td>2.270053</td>
</tr>
<tr>
<td>Wells Fargo Bank, National Association</td>
<td>2.367935</td>
</tr>
<tr>
<td>Stifel, Nicolaus &amp; Co., Inc.</td>
<td>2.381887</td>
</tr>
</tbody>
</table>
CONSENT AGENDA
Presenter: Leila Kleats, Director

Mr. Aragon moved approval of the Consent Agenda, subject to the contingencies presented by Ms. Kleats. Mr. Kormanik seconded the motion.

Submitted by Leila Kleats, Director
4. Approval of Minutes: October 18, 2016 (Regular Meeting)

Submitted by: Julie Morgas Baca, County Manager
5. Bernalillo County – Requests Approval of Extension of Private Activity Bond Allocation for the La Vida Nueva Project ($18,000,000)

6. Bernalillo County – Requests Approval of Extension of Private Activity Bond Allocation for the Sterling Downtown Project ($10,000,000)

Submitted by: Donna Maestas, Deputy Director
7. Private Activity Bond Cap Allocation Expiration Date

Submitted by: Adren Nance, County Attorney; Adrienne Kozacek, Assistant County Attorney
8. Valencia County – Requests Approval of Donation of Real Property Located at Puerto Del Sol to the Town of Tomé Land Grant-Merced

Submitted by: Norma Cavazos, Superintendent; Emily Vigil, Board President; R. Daniel Castille, Attorney for the Board of Education of Jemez Mountain Public Schools, Cuddy & McCarthy, LLP
9. Jemez Mountain Public School District – Requests Approval of Sale of Real Property Located in the Community of Coyote in Rio Arriba County, known as the Old Coyote School ($85,000)

Submitted by: Tom Sullivan, Superintendent
10. Moriarty-Edgewood School District – Requests Approval of Lease of Real Property Located at 285 Dinkle Road in Edgewood to Presbyterian Medical Services d/b/a Head Start/Early Head Start ($650 per month for 9 months per year, August through May)

Ms. Kleats stated that approval of this item is contingent upon Director’s receipt and counsel review of (1) school board resolution or approved minutes indicating school board’s approval of form of lease and (2) fully executed revised lease containing staff’s changes

11. Moriarty-Edgewood School District – Requests Approval of Lease of Real Property Located at 285 Dinkle Road in Edgewood to Smarty Pants Preschool ($24,996 per year)

Ms. Kleats stated that approval of this item is contingent upon Director’s receipt and counsel review of (1) school board resolution or approved minutes indicating school board’s approval of form of lease and (2) fully executed revised lease containing staff’s changes
Submitted by: Joan Ahlers, Chief Operations Officer

12. Los Alamos Public School District – Requests Approval of Lease of Real Property Located at 2101 Trinity Drive, Suite P, in Los Alamos to Just for Grins ($22,344 per year)

Submitted by: Leigh Brunner, Attorney; Jennifer Salazar, DCA General Counsel; Scott Canning, Horticulture and Special Projects Director, Santa Fe Botanical Garden

13. Department of Cultural Affairs – Requests Approval of Amendment No. 2 to Lease of Real Property Located off Camino Lejo in Santa Fe to Santa Fe Botanical Garden ($9,892.20 per year)

Submitted by: Pamela Nicosin, Acting Director

14. General Services Department, Facilities Management Division – Requests Approval of the Acquisition of Real Property by Donation Located on East Fiesta Road in Carlsbad from the City of Carlsbad and Acceptance of Certain Special Exceptions

Ms. Kleats stated that approval of this item is contingent upon Director’s receipt and counsel review of (1) revised Appraisal Report and (2) revised TRD Report of Review

15. General Services Department, Facilities Management Division – Requests Approval of the Acquisition of Real Property by Donation Located on Onate Road in Angel Fire from the Village of Angel Fire and Acceptance of Certain Special Exceptions

The motion for approval of the Consent Agenda, subject to the contingencies presented by Ms. Kleats, passed 5-0 by voice vote.

**EMERGENCY FUND BALANCES**

Presenter: Ms. Leila Kleats, Director

17. **Emergency Balances -- November 2016**

<table>
<thead>
<tr>
<th>Fund</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Reserve Fund</td>
<td>$1,850,000.00</td>
</tr>
<tr>
<td>Emergency Water Fund</td>
<td>$106,421.56</td>
</tr>
<tr>
<td>Emergency Hardship Fund</td>
<td>$1,000,000.00</td>
</tr>
</tbody>
</table>

Ms. Kleats reported these balances, noting that a new fund, the Emergency Hardship Fund, has been added. This was the appropriation made in Senate Bill 9 in the Special Session “for any agency experiencing hardship as a result of this legislation.”

Mr. Aragon noted that the legislature offered no guidance on how these funds would be distributed, and wondered if it might be necessary to promulgate some kind of criteria.

Ms. Kleats responded that there is no policy in place for this particular fund, and said staff was recommending that the existing policy that is in place for the other emergency funds be applied. This would ensure that the funds would be used for the most egregious cases.

Ms. Kleats agreed to bring a proposal forward at the December meeting.
PRIVATE ACTIVITY BONDS
Presenter: Jay Czar, Executive Director; Gina Hickman, Deputy Director of Finance

22. New Mexico Mortgage Finance Authority – Report of Projected Need for Private Activity Bond Volume Cap

Mr. Czar stated that, for 2017, the Mortgage Finance Authority (MFA) is requesting no current-year PAB cap for its single family first-time homebuyer mortgage program, and instead, is requesting allocation of 2016 carryforward volume cap for its 2017 PAB single family housing program needs. For the multifamily category, MFA is requesting a PAB cap in the amount of $75,000,000 for all affordable multifamily projects around the state and that all of its 2017 PAB cap allocation for single family housing be awarded as 2016 carryforward. He commented that this would give the MFA a tremendous amount of flexibility, allowing them to use the funds over a three-year period. It also reduces the cost of preserving the PAB bond cap.

Ms. Hickman stated that, last week, MFA had more than $9 million in reservations, and so the demand for the program continues to be strong.

QUALIFIED ENERGY CONSERVATION BONDS
Presenter: Donna Maestas, Deputy Director

23. Announcement of Return of Allocation

Ms. Maestas reported that, on October 17, the Town of Silver City returned an unused allocation in the amount of $490,000 of Qualified Energy Conservation Bond (QECB) allocation. They had a $4.4 million water meter project in 2015, and the $490,000 is the unused amount. The total of QECB capacity is now $493,999.

24. Report of New Mexico High Education Institutions Eligibility

Ms. Maestas stated that, within the last few months, Clovis Community College and Eastern New Mexico University have approached staff with their desire to issue QECBs. However, it turns out that the definition of “qualified issuer,” which is in the State Board of Finance rule, state statute and Internal Revenue Service code, is “state, county, municipality, or Indian government.” She said board counsel and bond counsel both agreed that a Higher Education Institution is not a qualified issuer under this definition. She commented that the two institutions were not happy with that response; and while pointing out that higher education institutions in other states are issuing these bonds, they did not indicate how that was being done. Ms. Maestas said both institutions were invited to give the board more information or to give a legal opinion differing from that of board counsel, but staff has not heard back at this point.

HIGHER EDUCATION DEPARTMENT

Presenters: Dr. Harrison Rommel, Interim Institutional Finance Director, New Mexico Higher Education Department; Glen Haubold, Associate Vice President, Facilities and Services; Heather Zack Watenpaugh, University Architect and Campus Planning Officer; Alton Looney, Executive Director, Project Development and Engineering, Facilities and Services

25. New Mexico State University – Requests Approval of the Alumni and Visitor Center Addition ($570,000)
Mr. Rommel stated that New Mexico State University (NMSU) is requesting approval of the feasibility study, design and construction of approximately 1,600 square feet of the Alumni and Visitor Center addition. The proposed project would enlarge the existing gallery display space to display gifted specimens from the Zuhl collection, office and storage space and, if funding allows, a classroom. He said this project is to be paid for through donor funding. He noted that the equivalent 1,800 gross square foot Soil Instrument Storage Building and Nutrition Building was approved for demolition, and that has been completed.

Responding to Mr. Brasher, Mr. Looney said the new office space would be about 150 square feet, roughly 8 percent of the total project.

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

**SEVERANCE TAX BONDS AND NOTES**
Presenters: David Buchholz, Co-Bond Counsel, Rodey, Dickason, Sloan, Akin & Robb, P.A.; Jill Sweeney, Co-Bond Counsel, Sherman & Howard, LLC; Luis Carrasco, Co-Bond Counsel, Rodey, Dickason, Sloan, Skin & Robb, P.A.

20. Approval of Supplemental Severance Tax Note Resolution, Series 2016S-D

Mr. Carrasco stated that this Supplemental Severance Tax Note Resolution is in the maximum principal amount of $10,000,000, an amount that is still subject to change as the amounts available in the Severance Tax Bonding Fund become available towards the end of the year. He said Ms. Kleats has indicated that this amount could go all the way to zero, but they would be back in December with the final determination on the sizing.

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

21. Approval of Amending Resolutions Relating to the Issuance of Severance Tax Bonds to Reflect the De-authorization of Certain Severance Tax Bond Projects and the Re-appropriation of Severance Tax Bond Proceeds for Other Projects

Mr. Carrasco stated that Senate Bill 8, which was passed in the recent special legislative session, de-authorized approximately 70 prior projects that had been approved for funding from the Severance Tax Bonding Fund. The proceeds from that will be applied to various uses, as stated in the bill. Mr. Carrasco said this resolution amends the resolutions for those prior bond issues to remove those de-authorized projects from the authorized projects list. The funds remaining will be used to fund $22,500,000 for statewide road projects through the Department of Transportation.

Mr. Aragon moved for approval. Mr. Kormanik seconded the motion, which passed 5-0 by voice vote.
DEPARTMENT OF FINANCE AND ADMINISTRATION, LOCAL GOVERNMENT DIVISION
Presenters: Rick Lopez, Director; Michael Mariano, E911 Bureau Chief; Glen Condor, GIS Manager; Jolene Gonzales, Finance Analyst; Bill Range, Program Manager; Gary Gegenfurtner, GIS Program Manager

16. Department of Finance and Administration, Local Government Division – Requests Approval of E-911 Program Funding for Fiscal Years 2016 and 2017 ($912,372)

Mr. Lopez stated that, since last appearing before the Board of Finance, the Enhanced (E)-911 Bureau staff has been working diligently on an array of issues, such as NextGen 911, consolidations, budget cuts, contract amendments, emergency equipment replacement, and other items. He said they appeared before New Mexico Department of Information Technology’s project certification committee to close out three projects and two new ones. He said they are requesting approval today of two operating budget amendments for Fiscal Year (FY) 2016 in the amount of $7,000 for Data Multiprotocol Label Switching (MPLS) Networks in Quay and McKinley counties; and FY 2017 capital project requests in the amount of $905,375 for a public-safety answering point (PSAP) upgrade in Valencia County, uninterruptible power supply batteries and equipment replacement in Luna, Socorro and Lincoln counties, and a New Mexico Department of Public Safety District 2 Las Cruces map server, for a total of $912,372.

Mr. Lopez said the FY 2016 amendments are due to under-billing in the monthly MPLS data network line item for charges specific to each county.

Mr. Kormanik commented that the drop in the FY 2017 fund balance by $6 million is apparently the result of Senate Bill 8. His other concern is that they are projecting a reduction in revenues of 2 percent a year, going into a negative balance in FY 2021. Given those elements, he asked what the E-911 Bureau’s long-term plan is for the sustainability of the system.

Mr. Lopez responded that they are just trying to deal with the $6 million deficit and changes in the revenue stream. He stressed the need for “strong leadership” from all sources to help them find another funding source.

Mr. Kormanik asked Mr. Lopez if he was proposing any legislation as manager of the program, and Mr. Lopez responded that he was not proposing any legislation or making any recommendations, but was hoping to gather together local managers and people from the industry and have a discussion on how to move forward. He said they are looking at what other states are doing. He said Arizona has a managed service center, for instance, which has resulted in cost savings.

Mr. Brasher commented that a centralized system would make more sense, and questioned why another facility in Los Lunas was being created just for Los Lunas. He said there was no reason why the City of Albuquerque or Bernalillo County couldn’t handle that for Los Lunas. He said there has to be a new way to do things.

Mr. Lopez agreed, but said the system “is a local issue and a local decision” and they have gotten “pretty much to the level of consolidation” statutorily and rule-wise. He said it would be difficult for some entities to shut down and consolidate with other systems.

Mr. Brasher remarked that it would be “much easier” to do that if there was no money coming from the state anymore. Mr. Lopez agreed, and said if there were no money coming from the state level,
those entities would have to figure out how to get money at the local level to maintain the current system. He said, “We’re going to have to have discussions on how this regionalization and different way of doing business is going to happen, and until we do that, I guess we have to maintain as we go through.”

Mr. Aragon commented that, based on the numbers, “this program is on life support.” He expressed concern that continuing to approve expenditures for this program was counterintuitive, because it was obvious from the information provided that the situation was dire. He said this may be a local issue, but this was now before a state board, and the board would be enabling a local entity to do something that was financially imprudent without compelling them to have discussions on ways to consolidate.

In response to questioning as to why Valencia County wasn’t trying to work with Bernalillo County on a consolidation plan, for example, Mr. Lopez pointed out that it is very challenging to get groups to agree to consolidate, adding that they were “still struggling and trying to negotiate with Bernalillo County and the City of Albuquerque to consolidate. That has to come first. We’re working with the system that we have. We need to fund it so it doesn’t die, and we need to figure out how we do funding in the future.”

Mr. Lopez said they will be appearing before the board between now and April to discuss the FY 2018 budgets, and between now and then, “we will make sure to get all our entities together and those areas, especially Bernalillo County and the City of Albuquerque and Sandoval County, to give us some reasons and some thoughts about consolidation to figure out how we attack. That’s where I’m talking about leadership. We need to have a chance to see where we’re headed in the future, to go through these numbers and have a long term plan on how they do that, because they’re going to see that they cannot afford this if the money is not there.”

Shirley Valdez, PSAP 911 director at the Valencia Regional Emergency Communications Center in Los Lunas, stated that the county is growing “by leaps and bounds” and they only have nine workstations at the center, and they have not had a 911 upgrade in seven years. She said Valencia County would break ground in December for a new building that will have 13 workstations, and is constructed to accommodate 18. She said they do not have enough workstations to man the current workload. She said the equipment room “is being taped together with everything that we have.” She said that, if they cannot get state funding for these upgrades, it will fall on local government, which does not have any money.

Responding to Lt. Governor Sanchez, Ms. Valdez said there has been no discussion with Bernalillo County about having them take over.

Mr. Lopez commented that, if Valencia County is going to have a new facility, and the areas around that are breaking down, this is the time to decide on the benefits of regionalization for those areas. He said they could use the money they are requesting today to cover future expenses and regionalization. He said the upgrade being requested today would buy about six years’ time for Valencia County.

Ms. Rodriguez assured the board that the Department of Finance and Administration (DFA) has been working with the Local Government Division and is aware of the problems and what impacts can be expected. She said they will work on this in the months ahead and will report back to the board and legislative committees. She stressed the need for partnerships with everyone involved.
Mr. Kormanik said he would like to see three or four of the largest 911 system users appear before the board and discuss their ideas for regionalization.

Lt. Governor Sanchez agreed.

Responding to Mr. Eichenberg, Ms. Valdez said the cost of the new facility in Valencia County is $3.2 million. They will break ground in early December. She said only the 911 center will be housed in the facility.

Addressing Mr. Lopez, Lt. Governor Sanchez said, “You talked about leadership here, and I think that leadership really starts with you and your staff. And so we are directly charging you to move on this, and we will support you.”

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

SEVERANCE TAX BONDS AND NOTES
Presenters: David Buchholtz, Co-Bond Counsel, Rodey, Dickason, Sloan, Akin & Robb, P.A.; Jill Sweeney, Co-Bond Counsel, Sherman & Howard, LLC; Luis Carrasco, Co-Bond Counsel, Rodey, Dickason, Sloan, Skin & Robb, P.A.; David Paul, Fiscal Strategies Group; Naomi Barnes, Disclosure Counsel, Kutak Rock; Noelle Graney, Associate, Kutak Rock

18. Acceptance of Bids and Adoption of Bid Resolution, Including Form of Official Statement, Severance Tax Bonds, Series 2016D

Responding to Mr. Brasher, Ms. Kleats said the lead person on the Kutak Rock contract is Ken Guckenberger, who is based in Denver. Ms. Barnes and Ms. Graney are located in New Mexico.

Mr. Brasher said he was on the committee that selected Kutak Rock, and recalled that there were principal people that the board would be dealing with. He commented that he wasn’t very happy about the Governor having to amend an agreement that Kutak Rock put together and presented at the last meeting, and added that he was not entirely comfortable with the firm at this point.

Ms. Sweeney and Mr. Paul reviewed the resolution, which included acceptance of the highest bid from Hutchinson, Shockey, Erley & Co. The bonds were downsized to $26,725,000.

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

19. Acceptance of Bids and Adoption of Bid Resolution, Including Form of Official Statement, Taxable Severance Tax Bonds, Series 2016E

Mr. Paul stated that the bonds for Series 2016E were offered at $19,950,000 and were downsized to $19,090,000.

Ms. Sweeney reviewed the resolution, accepting the bid of JP Morgan Securities as the winning bidder.
Ms. Barnes stated that the board packet contains a redline version of the Preliminary Official Statement, reflecting changes made by Kutak Rock based on comments from the board. She said they would post the Official Statement once the pricing terms are known.

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

**STATE TREASURER’S OFFICE**
Presenter: New Mexico State Treasurer Tim Eichenberg
27. Quarterly Investment Reports for Quarter-Ended September 30, 2016

Mr. Kormanik noted that there has been a drop in the general fund balances of about $500 million between October 2015 and October 2016. He said the board has seen this trend for several months, now, and asked if this is continuing.

Mr. Eichenberg responded that State Treasurer’s Office has spent an average of $58 million a month from the general fund over the last year.

[Mr. Archuleta returned to the meeting.]

**GENERAL SERVICES DEPARTMENT**
Presenters: Pamela Nicosin, Acting Director; Ed Burckle, Cabinet Secretary; Ron Spilman, State Controller

Ms. Nicosin reviewed the report, noting that the ending balance from the previous month and the beginning balance for the following month were identical, at $21 million. She also noted an adjustment of $9.4 million, taking away from the beginning cash balance, which was required due to an underreporting of payments to vendors dating back to June 2013. This underreporting occurred every month after that, until now. She stated that the Trial Balance Report from Share has been used to reconcile the CBRF Financial Status Report since Share became the system of record for the state. In February 2013, the Share Trial Balance Report changed; as a result, the payment to vendors was located in two different places on the report. All of the projects that were budgeted and approved by the Board of Finance were under one fund, and it was listed separately from all of the new projects that were approved after that date. At the time of the change, the Property Control Division (now Facilities Management Division) was not notified, and so continued to calculate the trial balance without including the new line item. This error was carried forward every month, with the discrepancies in balances continuing to widen, and that balance is now at $9.4 million.

Ms. Nicosin stated that the ending cash balance on the Financial Status Report for August 2016 was $21,344,837, while the correct amount is $11,932,179. An adjustment has been reported on the September report, resulting in a -$2,088,535 for uncommitted cash, which represents the amount in the fund that has not been approved for use. She noted that the fund still has a healthy balance of about $12 million. In order to turn the uncommitted cash from a negative to a positive amount, Facilities Management Division has reviewed all of the CBRF projects and identified projects that have been
completed and have excess funds to be returned, as well as projects that have not been started and have lower priority. These projects have been identified as "CBRF Funds to be Returned." The report also shows the pending distribution for October, which has already been deposited. These actions will result in an uncommitted cash balance of $183,559.

Responding to a question from the board on a procedural matter, Ms. Malavé recommended that GSD create a revised list of projects and bring it forward for board approval.

Mr. Spilman commented that the $2 million deficit was not as dire as it would appear. He said the board is looking at a project spend over the next 20 months. Distributions from the Land Grant Permanent Fund should amount to about $12 million over that period of time, so it would be premature to shut these projects down altogether.

Mr. Burckle agreed. He said there is $12 million in unencumbered funds, meaning that contracts have not been issued for those projects, so there is still "plenty of money in the bank." He said they would reprioritize the January-June 2017 project schedule and bring it to the board at the December meeting.

29. Facilities Management Division – Inventory of Buildings Report Including an Approved Checklist of Conditions

Ms. Nicosin presented this report. She said there were no changes to it, and it was the same report presented to the board six months ago.


Ms. Nicosin presented this report. She noted that the staff architect has left, and there are no funds available to replace him or her.

TAX INCREMENT DEVELOPMENT DISTRICTS
Presenter: Leila Kleats, Director

32. (A) Hearing on Western Albuquerque Land Holding’s (WAHL’s) Petition to Amend 2.61.3.9(D) NMAC, Dedication of a Portion of the State’s Gross Receipts Tax Increment (the TIDD Rule)

Lt. Governor Sanchez stated that the board would start with staff explaining the proposed rule amendments and public comment received, and why these amendments should or should not be adopted and then the board may start deliberating the merits of the rule amendment. He said the board may modify the rule as long as it is the logical outgrowth of the record generated through the rulemaking process.

Lt. Governor Sanchez stated that the rules become effective upon publication in the New Mexico Register. Second, the legal standard is that the board needs to “inform the public” of its reasoning when it chooses to amend the rules. The comments of one member on the record, if it explains the board’s reasoning, satisfy this legal standard.
Lt. Governor Sanchez asked board members to disclose any communications they have had outside the public comment process that would not affect their consideration of the rule.

Mr. Brasher disclosed that he had a telephone conversation with Mr. Minzner, and they only discussed items that were on the public record.

Mr. Kormanik, Mr. Eichenberg and Mr. Aragon also disclosed that they had spoken with Mr. Minzner by telephone regarding the issues before the board.

Ms. Kleats stated that, at the September 20, 2016 meeting, the board approved publication of notice of proposed changes to 2.1.3 NMAC, Board’s Rule Governing the Dedication of a Portion of the State’s Gross Receipts Tax Increment. In accordance with 2.1.2.8 NMAC, in mid-October, notice of the proposed rule change was published on the board’s website, in the New Mexico Register, and in the Albuquerque Journal. The public comment period ran from October 14, 2016 to November 13, 2016. During the public comment period, staff received public comment from nine interested parties. Those comments are identified in the board’s materials beginning on page 1,492 of the electronic agenda, and are: ABQWest Chamber of Commerce; Associated General Contractors of America; Legislative Counsel Service; Legislative Finance Committee; NAIOP, Commercial Real Estate Development Association, New Mexico Chapter; New Mexico Association of Commerce & Industry; Pulte Homes of New Mexico, Inc.; and Titan Development.

Dick Minzner, Attorney for Western Albuquerque Land Holdings, presented WAHL’s petition.

Mr. Minzner said the existing rule was adopted by the Board of Finance in 2008. The rule says that, when the Board of Finance makes a dedication to a tax increment district of a portion of the state gross receipts tax, that dedication is not effective until after the legislature has authorized the bonds to be issued against it. He said, “We are asking that the mandatory structure that the Board of Finance has placed on itself, that its dedication is not effective until after the legislature acts, be removed and be made optional by the board, saying that when the board makes its dedication, it may condition the effectiveness of that dedication on legislative approval of the bonds.”

Mr. Minzner said the rule has two aspects: “One has to do with time, and whether it is a wise thing to have the legislative action be required before the effectiveness of the board rule. A second issue has to do with the requirement of legislative action at all... The timing issue raises two problems. One, it prevents a Tax Increment Development District (TIDD) from collecting the state increment dedicated by the Board of Finance, and then going to the legislature and saying we have in hand $10 million, $15 million, we’d like to issue sponge bonds against that $10 million or $15 million we’ve collected for infrastructure that has already been built or substantially built. That I think is optimal for going to the legislature because they can see what they are buying or what the TIDD is buying, there’s no doubt about the money being available. That strategy is prohibited by the existing rule because you can’t collect the money before you get the bonds. Statute doesn’t require that.

“Second problem on the timing front is the legislature meets only once a year. The process for getting authorization for this to use these incremental revenues is already very extended. The board only considers these dedications in July or December. You have to ask six months before the meeting to have your project considered for dedication, and the passage of time, of course, in any construction project may well mean you don’t have the same financing price that you thought you had a year or two ago. So that delay in going forward with construction may adversely affect the project. You could, of
course, go forward with the construction before the legislature acts, but then you’re not going to get the increment on the construction gross receipts tax that you would otherwise be entitled to get to devote to the TIDD.

"The third issue, which we’re willing and anxious to discuss if the board wants to, is the issue of does the statute actually require that the legislature approve bonds. Does the statute permit what we call a direct pay or a pay-as-you-go system. That is, can the Board of Finance, should it choose, dedicate money to the TIDD and, without the issuance of the bonds, the TIDD has the option of spending it. There is a little ambiguity in the statute. That is, at one point it seems to say that bonds are required, but at another point it says pretty clearly they are not, and there are numerous other places that we contend to say they are not.” He stated that §5-15-15(C) NMSA states, “As to a district formed by a county, all or a portion of any of the following gross receipts tax increments may be paid by the state directly into a special fund of the district to pay the principal of, the interest on and any premium due in connection with the bonds of, loans or advances to or any indebtedness incurred by, whether funded, refunded, assumed or otherwise, the district for financing or refinancing, in whole or in part, a tax increment development project within the tax increment development area.” He said this clearly states that bonds are not the only usage that can be made of money.

The floor was opened to public comment.

Laird Graeser stated that he was a contractor for the Legislative Finance Committee but was not authorized to speak on their behalf. He commented that he probably has more experience than anyone else in the state on the analytical side of TIDDS, noting that he and Norton Francis did the analysis on the Mesa del Sol project as well as the original Sun Cal project. Mr. Graeser said he also did analyses on the Forum and Winrock projects as well as the Las Cruces TIDD projects. He commented that, in history, analysts have had a lot of difficulty with some of the protections that were written into the TIDD Act because it is so different. Most other states, in their tax increment financing statutes, have used local property taxes and they are not allowed any sort of sales taxes or gross receipts taxes to be used on an incremental basis. This makes New Mexico unique in that respect.

Mr. Graeser stated that, when the original TIDD statute was enacted by the legislature in early 2006, the thought was that it needed additional protections because of its unique nature, and the legislature accordingly added two provisions. One was “another bite of the approval apple” by the legislature, and the other was that the project be “in the best interests of the state,” which has proven to be very challenging to interpret. He added that, subsequently, they have found that long-term bonds are not marketable in these projects; and if the rule is modified to remove that protection, the board might also want to give the statute and the analysts “more help” in defining what is considered to be in the best interests of the state.

Mr. Graeser stated that he and Mr. Francis felt that sponge bonds made the most sense in these projects. He said having the ability to take real money to the legislature with a sponge bond in mind would provide adequate protection.

Jon Clark, chief economist for the Legislative Finance Committee (LFC), said the LFC sent the board a letter on this issue. He said the last point the letter makes is that there is some ambiguity in statute as to whether or not it does require approval for bonds by the legislature. The LFC would prefer that this be addressed in statute first before being considered as a rule change by the Board of Finance. He said the
LFC was concerned about changing the regulations and limiting legislative authority without changing the enabling statute.

Dick Minzner stated that WAHL "is not in any way contending that, if the issuance of bonds and approval of those bonds by the legislature is required by statute – we think that’s unclear – we’re not contending that a rule of the Board of Finance can override the statute. We are simply asking that the board remove the impediment to the statute doing its work, whatever it is. If the statute does in fact require legislative approval of bonds, then that’s the case. If the statute doesn’t require legislative approval of bonds, there’s no reason why the board should mandate that, as the present rule does, and deprive itself of the option of going directly to the direct pay route, as we contend is provided for in the statute. And if the statute is ambiguous, we think it’s supposed to be interpreted in a way that furthers its principal purpose."

With respect to timing problems, Mr. Minzner said WAHL has been negotiating with Presbyterian Hospital and the City of Albuquerque to have a hospital on the west side of Albuquerque. He said a lot of infrastructure will be necessary, and WAHL has been asked by Presbyterian to get a TIDD formed and get adequate dedication to pay for the infrastructure. He said they are giving them a very favorable deal on the land they need, and they would like not to be put "on this very, very long treadmill" in terms of timeline requirements.

This concluded the public comment portion of the meeting, and the public comment period was closed.

Ms. Malavé noted that §5-15-15, the statute referred to by Mr. Minzner, references the various types of gross receipts taxes that a district can use to finance public infrastructure. She said there are numerous local, municipal, county and other types of gross receipts taxes referenced: more specifically, there are seven enumerated under "municipal" and seven under "county," and the seventh one on each is the state gross receipts tax. She said that, as Mr. Minzner stated, a district formed by a county can put the gross receipts tax increments into a special fund. In looking at the various taxes that were contemplated for use in the TIDDs, she noted that the only one that requires State Board of Finance and legislative approval is the state gross receipts tax, and that there are other taxes that may be accumulated in these funds that are not considered by the Board of Finance. She commented that, based on her reading of the statute, the legislature separated the state gross receipts tax increment from the other gross receipts tax increments for special treatment.

Ms. Malavé also stated that section 21, which addresses the additional safeguards that Mr. Graeser discussed, says that once the board has made the dedication, in order for the bonds to be issued, the TIDD has to go to the New Mexico Finance Authority for vetting. If the Finance Authority agrees with the proposal, then it is prepared for presentation to the legislature. Where there are questions about whether or not legislative approval is necessary, she thinks the statute is fairly clear that it is. The statute also addresses the fact that, for legislative approval, it is not about county or municipal taxes, and people are free to use those other types of financing mechanisms, but when it comes to the state gross receipts taxes, the statute is clear that it is for securing bonds, and that the bond requires legislative approval.

Ms. Malavé also noted that there is a constitutional provision that clearly states that all public money is subject to legislative appropriation, and there is no question that state gross receipts taxes are public money and are subject to appropriation by the legislature.
To that point, Mr. Kormanik said there are situations where the legislature establishes a continued appropriation. He asked if the statute contemplates that the Board of Finance can authorize a continued appropriation for purposes other than issuing bonds without the approval of the legislature. Ms. Malavé responded that she did not believe the statute included a continuing appropriation because it requires that the project be vetted each time by the New Mexico Finance Authority.

The public hearing portion of the meeting was closed.

33. (B) Deliberation and Possible Decision of WALH’s Petition to Amend 2.61.3.9(D)
   NMAC, Dedication of a Portion of the State’s Gross Receipts Tax Increment

Mr. Brasher moved to postpone the rule amendment and deliberation to the December 2016 meeting or a later date. Mr. Aragon seconded the motion, which passed 5-1 by voice vote, with Mr. Eichenberg voting against the motion.

31. November 1 Annual Reports: Las Cruces Downtown: Taos Ski Valley; Western
   Albuquerque Land Holdings (WAHL); Winrock Town Center

[Informational.]

STAFF ITEMS

Presenter: Leila Kleats, Director

33. Approval of Amendment Number 3 to Fiscal Agent Banking Services Agreement
   to Incorporate New Exhibit F (the Card Acceptance Agreement with American
   Express, Incorporated, dated effective December 1, 2016)

Ms. Kleats stated that the reason for this request is that the American Express contract, which is an exhibit in the fiscal agent contract, expires on December 1, 2016. Staff has been working with Wells Fargo on a regular basis to work out the various discrepancies between their standard template and what staff wants to see in conformity with state law, and also as a matter of policy. She said staff has reached agreement on most of the main issues, but are still awaiting final word from them on the form of the agreement.

Ms. Kleats suggested that, if the board approves Amendment Number 3 to the Fiscal Agent Agreement to incorporate a new Exhibit F (Card Acceptance Agreement with American Express, Inc., effective December 1, 2016), approval should also include express authorization for the Director to agree to any last-minute revisions and to execute the Card Acceptance Agreement with American Express on the board’s behalf, provided that any proposed revision does not substantially or materially alter the terms of the Card Acceptance Agreement before the board today.

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

Wells Fargo representative Mark Jensen said the exhibit is being revised as part of the fiscal agent agreement. He said it refreshes the ability of the state to accept American Express cards as part of the fiscal agent agreement.
Responding to Mr. Kormanik on the status of the Payment Card Industry (PCI) data security standards issue, Ms. Rodriguez said DFA is working diligently with a contractor, who has done a Generally Accepted Accounting Principles (GAAP) analysis of all 23 agencies that take credit cards from customers. They will start the first-ever audit shortly. She said the state is being fined $5,000 a month by ViSA, and DFA covered those costs for the last fiscal year, and then Mr. Spilman came up with a formula for assessing the 23 agencies based on the number of transactions and level of compliance. The state is now collecting the fees from the agencies that are using the credit cards. Once the audit is done, a second appropriation will be necessary to keep that work going to allow for updates going forward.

The motion passed 6-0 by voice vote.

34. **Approval of Staff to Issue Request for Proposals for Bond Counsel**

Ms. Kleats stated that the current bond counsel agreement with Rodey, Dickason, Sloan, Akin & Robb, P.A. and the law firm of Sherman & Howard, LLC has an expiration date of June 6, 2017. She said staff is requesting approval to move forward with the RFP.

Mr. Brasher commented that he has spoken about this to staff. While he realizes contractors can’t appear at every single board meeting, they need to mark their calendars and make a real attempt to show up.

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

35. **Fiscal Agent/Custodial Bank Fees**

Ms. Kleats reported that fiscal agent and custodial bank billings were in line with historical averages.

36. **Joint Powers Agreements for Month-Ended October 2016**

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

**ADJOURNMENT**

Its business completed, the State Board of Finance adjourned the meeting at 12:15 p.m.

[Signature]
Susana Martinez, President

[Signature]
Michael Brasher, Secretary

New Mexico State Board of Finance: November 15, 2016