MINUTES OF THE
NEW MEXICO STATE BOARD OF FINANCE
REGULAR MEETING
Santa Fe, New Mexico
April 19, 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

Members Present:
The Hon. Susana Martinez, President
The Hon. John A. Sanchez, Lt. Governor [present 9:10 a.m.-12:20 p.m.; returned 12:35 p.m.]
The Hon. Tim Eichenberg, State Treasurer [left at 12:20 p.m.]
Mr. Robert J. Aragon, Public Member [present 9:12 a.m.-1:00 p.m.]
Mr. Adelmo Archuleta [left at 12:50 p.m.]
Mr. Michael Brasher, Public Member, Secretary
Mr. John Kormanik, Public Member

Members Absent:
None

Staff Present:
Ms. Stephanie Schardin Clarke, Deputy Secretary, Department of Finance & Administration
Ms. Leila Burrows Kleats, Director, State Board of Finance
Mr. Jeff Primm, Deputy Director, State Board of Finance

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

Others Present:
[See sign-in sheets.]

2. APPROVAL OF AGENDA

ANNOUNCEMENT: NEXT REGULAR MEETING – TUESDAY, MAY 17, 2016
Mr. Brasher moved approval of the agenda, as published. Mr. Kormanik seconded the motion, which passed 5-0 by voice vote. [Not present: Lt. Governor Sanchez and Mr. Aragon.]

3. **APPROVAL OF MINUTES: MARCH 15, 2016 (REGULAR MEETING)**

Mr. Brasher moved approval of the March 15 minutes, as submitted. Mr. Kormanik seconded the motion, which passed 5-0 by voice vote. [Not present: Lt. Governor Sanchez and Mr. Aragon.]

4. **APPROVAL OF MINUTES: MARCH 25, 2016 (SPECIAL MEETING)**

Mr. Brasher moved approval of the March 25 Special Meeting minutes, as submitted. Mr. Kormanik seconded the motion, which passed 4-0 by voice vote. [Not present: Lt. Governor Sanchez and Mr. Aragon; in abstention: Mr. Eichenberg.]

**EMERGENCY FUND BALANCES**

Presenter: Leila Burrows Kleats, Director

5. **Emergency Balances – April 2016**

<table>
<thead>
<tr>
<th>Fund</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Reserve Fund</td>
<td>$1,629,453.40</td>
</tr>
<tr>
<td>FY14 Emergency Water Fund</td>
<td>$118,100.00</td>
</tr>
</tbody>
</table>

Ms. Kleats reported these balances.

[Lt. Governor Sanchez and Mr. Aragon arrived at the meeting.]

**SEVERANCE TAX BONDS**

Presenters: David Buchholtz and Luis Carrasco, Co-Bond Counsel, Rodey, Dickason, Sloan, Akin & Robb, P.A.; David Paul, Financial Advisor; Fiscal Strategies Group

6. **Approval of Form of Preliminary Official Statement and Notice of Sale Resolution, Severance Tax Bonds, Series 2016A and Refunding Series 2016B**

7. **Approval of Form of Preliminary Official Statement and Notice of Sale Resolution, Severance Tax Bonds, Series 2016A**

8. **Approval of Form of Preliminary Official Statement and Notice of Sale Resolution, Taxable Severance Tax Bonds, Series 2016C**

Mr. Paul explained that legislatively approved capital projects would be accomplished through the combined issuance of new money bonds, specifically the Series A and Series C bonds, and the Series C bonds are primarily set-aside funding. Taken together, the Series A and C bonds, when sold, would total up to $170 million, but the final financing would be closer to $150 million. He said the Series A and Series C together would look like normal long-term financing; of the $170 million, about $45-$50 million would be done through taxable financing.
at the shorter end of the yield curve. Should the State Treasurer’s Office see a benefit in purchasing the $45-$50 million of taxable financing, counsel would return to the Board in May and recommend approval, and the taxable notes would not be sold publicly in that case.

Mr. Paul stated that, in terms of capital planning, the best practice is to have a one-year capital budget and a five-year capital improvement program that projects out sources and uses that identify priority projects for investment. New Mexico is a particularly unique state because of the massive amount of area per capital, which places a greater stress on capital infrastructure than a smaller state with more people. Balanced against that is the politics of New Mexico, which have long prioritized giving legislators and the Executive different shares of how much to allocate.

Mr. Paul noted that the state’s general obligation (GO) rating has been reaffirmed from Moody’s as Aaa. He said the stress on the Severance Tax bonding program has been material, which was discussed with the Board a few months ago. He said the state is getting close to two times coverage on its bonds from the natural resource pricing, which is calculated by the prior year revenues divided by the maximum annual debt service, and New Mexico is right on the threshold where the rating is seen as vulnerable to a downgrade. He added that the firming up of oil above $40 a barrel would be of some help.

Mr. Buchholtz noted that rating agencies downgraded Midland, Texas yesterday based on the stress on that city’s economy because of the decline in oil prices.

Adding to Mr. Paul’s comments about the state’s longstanding practice of allocating shares of capital to legislators for expenditure in their district, Mr. Buchholtz stated that he sits on the board of Think New Mexico, which worked very hard last year, with very strong support from the Administration, on capital outlay reform. He said the next task would be to convince both houses of the legislature that this is an important step to take.

Mr. Paul stated that the third element of the Severance Tax program for sale next month is a refinancing of the state’s 2011, 2013 and 2014 bonds. This is an advance refunding, which means the bond proceeds will be invested in a taxable escrow of United States Treasury securities until the call date. The Board’s debt policy looks at 3 percent savings as a ratio of the present value savings on the par amount of the bonds being refunded. He said the proposed refinancing would generate total savings of $14-$15 million, and would be realized in the form of increases to senior sponge capacity over the next three years by reducing debt service over that period of time. He said this is particularly advantageous given the current circumstances of the decline in the sponge capacity. The present value savings of $14 million as a percentage of a par amount of the bonds refunded is 6.7 percent, or twice the threshold level.

Mr. Paul stated that Item 6 on the agenda would approve the Series A bonds and the refinancing, and Item 7 would be if the Board chose not to go ahead with the refinancing. He said Item 8 would approve the Series C taxable financing. All of these would be done through a competitive bid at the next meeting of the Board.
Mr. Buchholtz discussed an unprecedented federal indictment against the mayor of Ramapo, New York, as well as the town council and other members of that administration, for preparing and forwarding misleading statements to the market in connection with the sale of municipal bonds. There was also a Securities and Exchange Commission action against the town and members of the council relative to what appeared to be repeated misstatements, false statements and misleading activities in preparing budget balances.

Mr. Archuleta suggested that future bond issues being reviewed by the Board include a due diligence report as a supplemental action item. Such a report would detail what staff and other parties relied upon to make their decisions. He said the report would contain statements from the appropriate parties stating that they have reviewed the relevant documents and representations from the bond attorney, etc., and addressed all items to the best of their ability. He added that this would also be part of the audit trail.

Mr. Buchholtz agreed that more diligence is always better diligence, and he would be happy to work with the Board and staff to accomplish what Mr. Archuleta was requesting.

**Item 6**

Mr. Buchholtz stated that Item 6 is the calling for bids of a combined issuance of new money bonds and also the refunding bonds that Mr. Paul has discussed. The amount of the new money bonds could be as high as $175 million, but it is likely it will be in the range of $120-$130 million.

Mr. Buchholtz stated that, if the Board approves this item, it would not act on Item 7.

Mr. Archuleta moved for approval of Item 6. Mr. Brasher seconded the motion, which passed 7-0 by voice vote.

**Item 7**

[No action.]

**Item 8**

Mr. Buchholtz stated that, because of the limitations that are placed on capacity for short-term notes, they are likely to have to sell a long-term piece. This allows moving forward with a market sale of those bonds, but they are in discussions with the State Treasurer's Office. If those discussions are successful, they will not open a bid at the next meeting, but would present a resolution that would sell a bond to the State Treasurer. In order to have the opportunity to do a bid if necessary, counsel is asking the Board to approve this item today.

Mr. Kormanik moved for approval of Item 8. Mr. Archuleta seconded the motion, which passed 7-0 by voice vote.
PROPERTY DISPOSITIONS

Presenters: Doug Echols, County Attorney; Liza Gomez, Board of Directors Member, Northwest New Mexico Seniors, Inc.

9. **San Juan County – Requests Approval of Lease of Real Property, Blanco Senior Center, Located at 7338 Highway 64 in Blanco to Northwest New Mexico Seniors, Inc. ($20,360 per year in-kind services in lieu of cash)**

Mr. Echols stated that this lease and the next one on the agenda were virtually identical. They call for quarterly payments, or quarterly reconciliation of services, in lieu of cash payments. They have excluded from the value of services in lieu of cash those meals and other items paid for with money from Aging & Long Term Care. The senior centers are very comfortable that they believe that, based on the established schedule, they will be able to continue to operate the other services they provide and never have any significant cash outlay. He said they particularly appreciate being able to consider the value of volunteer services. Currently, an hour of volunteer services is worth $20.40, and last year it was $19.77. He said they set the rate at a flat $20.00 for the four years, and also did not escalate the rent on either of the leases, as this year’s appraisal was actually less than the one done four years ago.

Mr. Kormanik asked how many clients are served by these programs. Mr. Echols responded that, in Blanco, they are serving 15-20 per day in house. Ms. Gomez said they home-deliver 280 meals per month.

Mr. Echols also clarified that 60 is the required minimum age. Otherwise, there are no limitations. They request a donation of $3 per meal, and one meal per day is served. He said he understands that many seniors are able to pay this at the beginning of the month, but later in the month it is more difficult for them.

**Mr. Primm recommended that approval of this item be contingent upon Director’s receipt, with counsel review, of fully executed lease agreement, including exhibits and First Amendment.**

Mr. Aragon moved for approval, with the contingency. Mr. Brasher seconded the motion, which passed 6-0 by voice vote. [Not present: Lt. Governor Sanchez.]

10. **San Juan County – Requests Approval of Lease of Real Property, Lower Valley Senior Center, Located at 17 Road 6668 in Kirtland to Northwest New Mexico Seniors, Inc. ($20,268 per year in-kind services in lieu of cash)**

Mr. Primm recommended that approval of this item be contingent upon Director’s receipt, with counsel review, of fully executed lease agreement, including exhibits and First Amendment.
Mr. Echols stated that Lower Valley is considerably busier than the Blanco Senior Center discussed in the last agenda item. He said lunch is served to 70-80 people per day, which includes many people from the Navajo Reservation, which for reasons unknown has closed its senior centers in Shiprock and Fruitland.

Mr. Aragon moved for approval, with the contingency. Lt. Governor Sanchez seconded the motion.

Mr. Aragon commented that the matter of services received in lieu of compensation is something the Board has discussed on several occasions, because there are no set parameters and the arrangements being made “are all over the place.” He said the Board should have some policy that is equally applicable to all entities and agencies. He said he realizes these are vital services, but the Board needs to get a handle on this at some point in the future so there is consistency in application.

Ms. Clarke commented that any effort to streamline this would be very beneficial to staff, because it takes up a great deal of their time. She credited Mr. Primm for developing a template that staff has been rolling out over the past six months, and which has been useful, although it does not yet apply neatly in all categories. She said she would like to reassure the Board that, over the past nine or ten years, staff has formalized its analysis of these services in lieu of cash, so even though the type of services in terms of value is all across the map, staff has done a good job of documenting that there is some basis for the fair market valuing of those services. Perhaps the state or federal government has established a reimbursement rate in some instances (e.g., daycare, dental work); and in terms of volunteer hours, staff has found a national survey that it updates annually that establishes volunteer services at about $20 per hour. She stressed that staff is careful to make sure that whatever service is being received is something of value to the public entity and not something they don’t really need.

Ms. Clarke suggested that staff share the template with Board members and seek feedback on whether that is a step in the right direction.

Mr. Aragon responded that he appreciated staff’s assistance, because every time he makes those inquiries, his questions are satisfied. He said he was suggesting, however, that there be some transparency in these calculations that the public can rely on.

Mr. Archuleta recommended that, as standard practice with these kinds of transactions, staff describe to the Board the due diligence it has done and that staff state that they are satisfied that the service being provided in lieu of cash is at fair market value.

Responding to Mr. Brasher, Mr. Echols said Aging & Long Term Care selects who will be the food provider at the senior centers. He said Northwest New Mexico Seniors has been running the centers for 20 years and do a good job. He added that they are the only people who applied for the one part that was subject to request for proposals (RFP).
Mr. Brasher asked if they went out for RFP or used some other process to see if there might be other parties interested in providing these services. Mr. Echols responded that they do not have anybody in their area to provide senior services, but agreed that Mr. Brasher had raised a good point, as perhaps somebody might want to form a senior services entity for that purpose.

The motion passed 7-0 by voice vote.

Presenters: Erin K. McSherry, General Counsel, Department of Cultural Affairs; Rebecca Avitia, Executive Director, National Hispanic Cultural Center; Christopher Saucedo, President, National Hispanic Cultural Center Board of Directors; Edward Lujan, Board Member, National Hispanic Cultural Center Foundation; Anna Sanchez, Director, National Hispanic Cultural Center Foundation

11. Department of Cultural Affairs, National Hispanic Cultural Center – Requests Approval of Lease of Real Property Located at 1701 4th Street, SW in Albuquerque to the National Hispanic Cultural Center Foundation ($31,965 per year cash or in-kind services)

Ms. McSherry reported that, since the last Board meeting, two changes have been made to the lease to satisfy the Board’s concerns. One specifies that any advertising in-kind services would be limited to ad buys and would not include any creative services; and second specifies that the value for the hotel and plane flights would be based on the contracted value with the hotel or flight provider.

Ms. McSherry stated that one concern of the Board was the value of retail space. She noted that the appraiser found that, if the value were to be based on gross sales, the retailer would have to make $146,000 to $219,000 gross per year for a percentage value to make sense for that space to equal the value being provided for the lease.

Lt. Governor Sanchez asked Ms. Malavé if the concerns about the Procurement Code have been satisfied. Ms. Malavé responded that she provided a memo to the Board describing what she believes the rule says, and she also included communications that she had with Deputy Secretary Clarke, Ms. McSherry and with the Board regarding her reading of the rule and what the Board’s practice has been. If the Board believes that the practice has been that it is procuring the service rather than the lessee, and if the service either can be procured or is exempt from procurement, then that is the route the Board may take. In this case, the airline tickets and hotel rooms are exempt, and the Board can give approval. She said she would also suggest that the Board amend the rule to make it clear that the Board is not selecting the lessee but is talking about services in lieu of rent.

Ms. Clarke said that, in her years of working with the Board and with previous Board counsel Marty Daly, she was taught that when there is lease or where there are services in lieu of cash rent, then the landlord is also procuring something, whether it is goods or services. In the case of this lease, the hotel rooms and airline fare are exempt from the Procurement Code, so no further action is necessary to procure those. She added that, in a strict reading of the
rule, any time there is a lease of services in lieu of cash rent, one would be selecting the tenant, which in this instance would be the Foundation. She said she didn’t know how someone could do that, because the Procurement Code doesn’t speak to procuring a tenant to occupy someone’s real property. She said she did not understand how that could be reconciled. She said she felt the Board’s intent was clear in this case.

Mr. Brasher noted that the documents include a statement that the Foundation is the only entity that can provide these services, but there is no way of knowing whether this is true or not. He said he was prepared to support this request, however.

Responding to Mr. Kormanik, Ms. Avitia said there are about 400 volunteers.

Mr. Kormanik commented that the Board often deals with organizations with an extensive volunteer structure, and it is difficult for him to understand the complexity of the contribution and how that is incorporated into the Board’s decision making. He said there are literally hundreds of volunteers that are contributing in this case and the Board is not seeing any evidence of what value they are providing.

Ms. Kleats said staff spoke with Ms. McSherry about valuing the hotel and airline tickets. She said the Foundation is receiving them at a discount rate, so there was discussion about whether they should be valued at market. She said they decided it would be easier to go with the discounted rate.

Ms. Avitia said it has been the practice of staff to purchase the hotel rooms and plane tickets in one bundle, with a contract documenting their value. She said they felt it most appropriate to follow the same process that they would if they were paying money for them or trading for space. She said the contracts for these services would be documented in their files going forward. She noted that the values assigned are the same values provided to the Internal Revenue Service.

Ms. Avitia said they do not arrange travel for artists. This has a lot to do with their changing schedules, and artists do not necessarily want to share their travel plans. She said they tend to give the artist the code or the ticket and let them make arrangements for themselves.

Ms. Kleats recommended that approval of this request be contingent upon Director’s receipt, with counsel review, of fully executed lease, including exhibits.

Mr. Aragon moved for approval, with this contingency. Mr. Archuleta seconded the motion, which passed 7-0 by voice vote.

Presenters: Martin W. Eckert, Real Estate Director; Ruben Hendrickson, Chief Operations Officer; Art Melendres, Legal Counsel, Modrall Sperling Law Firm

12. Albuquerque Public Schools — Requests Approval of Lease of Real Property Located at 4000 Osuna Road, NE in Albuquerque to Wagner Equipment
Mr. Brasher disclosed that he is an employee of the Albuquerque Public Schools Board of Education. He said he does not have a financial interest in this item, and feels he can judge this request fairly.

Mr. Aragon disclosed that his wife is a member of the Albuquerque Public Schools Board. He stated that he does not have a conflict of interest.

Mr. Hendrickson stated that, in the last two years, the Albuquerque Public Schools (APS) has gotten into the bus business as owner-operators. For a number of years, they contracted with providers, but the number of contractors has declined from 16 to 13. He said there are 400 routes, and APS operates about one-third of them. Two years ago, some of the contractors began exiting the business because they felt transportation funding was insufficient, and in July 2015, they lost their biggest contractor, Durham, which operated one-third of the routes and owned one-third of the buses. He stated that Durham offered to continue their operations if APS gave them an increase amounting to $800,000-$1 million. Mr. Durham said it would have been necessary to offer the same rate to the other contractors, which would have had a $3-$4 million impact on the budget. He said APS made the decision to take over in July 2015, and has been doing quite well, operating at cost.

Mr. Hendrickson said they are in a leased facility, which is adequate for their current needs but would not meet long-term needs. APS believes more operators will leave the business and APS will have to step in and fill the void. He said he asked Mr. Eckert to locate a suitable property to meet these future needs.

Mr. Eckert said he was aware that Wagner Equipment Company had purchased 60 acres near Rio Bravo and I-25 to build a new facility. He said he met with the realtors who had helped Wagner purchase this property, and negotiated an agreement that would allow APS to purchase the property and operate out of the facility after Wagner moves out and relocates to Bloomfield, New Mexico.

Mr. Eckert said that, during that same time period, APS negotiated with the tenants that Durham was leasing to, and also looked at other properties. He commented that there is not a readily available market of industrial properties available for this type of operation.

Mr. Eckert said APS negotiated a short-term lease so they could operate out of the property while this transaction was being approved, and was requesting approval from the Board today for this lease.

Mr. Aragon said he wished to make two points: All leases are fungible; and under 13.6.2-1, the Board has authority to review things. He said one of his ongoing concerns is the premise that the Board only has the authority to say yes, but noted that the Board’s authority is vested by statute and it is clearly delineated to make sure that this is a viable proposition.
Mr. Aragon asked where APS is obtaining the funding from. Mr. Eckert responded that APS has the funding in place, and one of the sources would be from House Bill 33 (HB33) Mill Levy funds, which were authorized by the voters in February 2010, in the amount of $6,722,410.49.

Mr. Aragon asked if he was correct that the 2010 bond resolution did not specify the acquisition of property for this purpose.

Mr. Melendres responded that the resolution approved by the APS Board contains language set out in statute, “which is essentially erect, remodel, make additions to, and acquire property.”

Mr. Aragon said he has the bond resolution, which talks about improving the schools but doesn’t discuss acquiring the property.

Mr. Melendres responded, “The general language does refer to acquiring land for school purposes.”

Mr. Melendres noted that a citizen in Albuquerque has challenged the most recent APS Board election, bond election and mill levy election, saying that all of the specific projects that are contemplated by the board with the funding are to be listed on the ballot. He said these would be multiple in number, and a hearing is scheduled on April 27, 2016. The position of APS is that, in accordance with the Constitution and state law, the purposes for which the money will be spent is what is required, and not the specific project itself. He commented, “I guess we’ll soon find out.”

Mr. Aragon said the General Obligation Bond Question asked, “Shall the Albuquerque Public School District issue $200,000,000 of general obligation bonds to erect, remodel, make additions to and furnish school buildings within the district, to purchase or improve school grounds...?” He said it references back to a capital master plan of APS, but nowhere in the bond resolution, for example, is there a health clinic specified, yet in the site and facility construction master plan adopted by the school board, it has an employee health clinic. He said he felt APS “intentionally and deliberately lied to the voters” by having a general statement in the bond question. He said the reason for this “misrepresentation and vagueness is so that it leaves an administration that is not responsive to anybody to do whatever they want.”

Mr. Aragon stated the bond question did not specify the purchase of this property, either, and Mr. Eckert responded that this was correct, and the property was not for sale at that time. Mr. Aragon questioned how a property that was not available in 2010 could be contemplated prospectively in 2015.

Mr. Melendres responded that the language used in the most recent mill levy election, and in elections going back 20 years or so, follows the statute, “which is purposes for which money will be spent.” He said there is a distinction between the state requirement to list specific projects, while the city lists projects in the name of roads, libraries and senior citizen centers.
without specific reference on the ballot as to location. He said the school bond statute says to list purposes, and that is to acquire land. He said the schools use the facilities master plan in accordance with the statute to lay out a variety of projects which are available for use by the schools.

Mr. Aragon questioned how it was possible for a 2010 bond resolution to contemplate a property that didn’t become available until 2015. Mr. Melendres responded that the specific project was not listed, and at the time it was only contemplated in the context of acquiring land as part of the statutory authority to have the use of HB33 and GO bond monies for purposes going into the future. He said, “The flexibility that we believe is in the statute is just exactly this situation.”

Mr. Aragon said “a total lack of transparency seems to be a problem with APS.” Referring to the APS capital master plan, he noted that an employee health center is on the list and, surprisingly, is in front of a long list of high schools. He said nowhere is there anything related to the acquisition of this site.

Responding to Governor Martinez, Mr. Melendres stated that the site currently is the Caterpillar dealer’s site and is used to maintain their heavy equipment. They also have space for sales. When APS acquires it, it will be used to store school buses and conduct repairs and maintenance on the buses. Governor Martinez commented that a bus storage and maintenance facility is not referenced in the bond question, and this is one of her biggest concerns.

Mr. Aragon commented that it is a “systemic practice of APS to hide and dodge” and they go into closed session in violation of the Open Meetings Act. He expressed concern about “inherent corruption and a lack of transparency.”

Mr. Aragon said APS has about 97.5 acres of vacant land in its inventory in the Pajarito Grant on the southwest part of Albuquerque. He said this location could service the entire APS district, which includes a small part of Sandoval County in Corrales. He added that about 30 schools are operating at about 70 percent capacity.

Mr. Frederickson agreed that enrollment has been declining for the past ten years, and it will be necessary for them to address this issue and consolidate.

Mr. Aragon asked APS representatives to admit on the record that it is physically impossible for a 2010 bond issue to “magically” project to 2015 and that this project was not contemplated in 2010. Mr. Melendres responded that this specific project was not contemplated in 2010.

Responding to Mr. Aragon, Mr. Frederickson said the APS School Board recently approved a scheduling change for high school teachers and that the change added about $4.3 million to the budget shortfall. Mr. Aragon asked if he understood the high school teachers would be paid the same amount of money next school year for teaching one less class than they are teaching this
year, and Mr. Frederickson responded that they will be going back to what they were making two years ago.

Mr. Aragon noted that these teachers, who indicated they were “exhausted,” would be allowed to teach the additional class next year that they are currently teaching and receive up to an additional $12,000 per year, which was a “movida manipulated” by Albuquerque Teachers Federation (ATF) president Ellen Bernstein. Under this agreement, teachers would essentially give themselves a raise of up to $12,000, which is a complete circumvention of House Bill (HB) 2.

Mr. Aragon remarked that APS has a $10 million deficit, yet is proposing the purchase of a property that was not contemplated in the 2010 bond sale.

Responding to Governor Martinez, Mr. Frederickson said the bonds are not completely fungible, in that they cannot use HB33 money to pay teacher salaries. He stated that the teacher schedule was put in place in 2008 and was advocated by the administration at that time. He said teachers would teach five out of seven periods per day, with the remaining two periods reserved for prep time and for professional learning communities (PLCs). This schedule was in place until the 2015 school year, at which point it was decided to go back to six periods and to eliminate the PLCs. Instead, classes would be dismissed early on Wednesdays and the teachers would collaborate during the afternoon. He said they reinstated the old schedule because of morale issues at the high school level and because “we believe it degraded the educational experience for our high school students.”

Mr. Frederickson clarified that, under the previous “seven and five” schedule, teachers would essentially be allowed to “sell” their prep period. He said most choose not to today, because if they were to sell their prep period under the current schedule, they would be teaching for seven periods a day, or from 7:30 to 2:30, “which gets to be a bit much.”

Governor Martinez commented, “So they sell their prep period as though it is a property right that they have to sell.” Mr. Frederickson responded that they could choose not to. If they choose to work the extra period, they are compensated anywhere from $7,000 a year to $12,000, depending on their tier.

Governor Martinez commented that this contradicted HB 2 and was going around the intent of the legislature.

Mr. Frederickson responded that selling a prep period is not unique to APS. He said he understands this happens at other school districts. Governor Martinez asked how a teacher prepares if they no longer have a prep period because they have “sold” it. Mr. Frederickson responded that they would have to do it before or after school.

Governor Martinez asked where in the bond does it say that APS can have a school bus maintenance building as part of the bond that was sold in 2010. Mr. Melendres responded that
it does not specifically identify any project, including this one. Governor Martinez asked how APS could argue that this should be allowed. Mr. Melendres responded that the statute states that the school district can issue bonds or ask for a mill levy to acquire land for school purposes. The definition of “school purposes” is very broad and can apply to an administration building or maintenance and operation facilities used for the fleet, for example.

Mr. Aragon noted that the Rio Rancho schools have the same teaching schedule as APS, but Rio Rancho has a high school graduation rate of 82.9 percent while APS’s graduation rate is 62 percent. He said this schedule is actually educationally disadvantageous to the students rather than being beneficial and was adopted by a 6-1 vote in response to pressure from Ms. Bernstein. Starting in 2016-2017, a high school teacher will be able to get their base salary plus a pay raise on their own volition that will give them up to a $12,000 pay increase regardless of what HB2 said.

Responding to Mr. Aragon, Mr. Frederickson said it was not clear exactly how many bus routes APS would be taking over. Right now it is 122, but he hoped it would not be the entire 400. He said he hoped there would be sufficient funding to pay some contractors to continue operating buses.

Mr. Eckert said the vacant land in the Pajarito Grant cited by Mr. Aragon has no water or sewer available and the parcels are not contiguous. He said the new facility will accommodate APS’s buses into the future, and will accommodate many other potential uses, if needed. He said it is a very big facility, with five acres in the front that APS could potentially lease out. He said no retrofitting would be necessary at all.

Mr. Aragon observed that the sales comparison approach used in the appraisal was rounded to $13,270,000, although the market value using an income approach was $9.5 million. Mr. Eckert responded that the sales comparison approach was $13.27 million, the cost approach was $13.12 million, and the income approach was $9.51 million. He said they had negotiated a purchase price of $11.7 million before they ever contacted the appraiser. The appraisal was done after they negotiated the transaction.

Responding to Mr. Aragon, Mr. Eckert agreed that the appraisal included an estimated annual rental value of $627,760 as part of the income approach to value. He said he believed Mr. Aragon was “looking at apples and oranges.” He said the income approach to value is estimating a market rent for discounting purposes to acquire property, but APS is looking at a short-term leaseback. He said the definition of market value requires that there be arms-length market transactions, and this property is unique and is part of a larger transaction, so the leaseback is a small component. He said there wouldn’t be any market transactions readily available for an appraisal to estimate rent for what APS is doing.

Mr. Aragon asked if he understood correctly that the lease agreement the Board was being asked to approve would generate an annual rent of $504,000, and Mr. Eckert responded that this was correct. Mr. Aragon said that, over the four-year period of the contract, the market
value rent is being discounted by almost $500,000 on the buyback. He said the state cannot approve that because the appraisal the Board is being asked to rely on says that the annual rent is $627,760, which means APS is asking the state to approve a benefit of about $123,760 annually to a private entity, which violates the Anti-Donation Clause.

Mr. Melendres said the question about the Anti-Donation Clause has to be taken in the context of the entire transaction, and the purchase price is less than the appraised value. Because of that, and because it is an absolute requirement of the seller that they be able to have short-term use, the amount of money APS is “to the good” is about $900,000. He said this is not a per se donation if one looks at the entire donation.

Mr. Aragon commented that there are so many inherent problems with this request that he feels it is illegal. He said he spoke with bond counsel about the appropriateness of the vague language in the 2010 and 2016 bond resolutions. He said there is a problem with the funding and a problem with the language as it relates to the appraisal. In addition, APS has a deficit and has done an “end run” around HB2. He also stated that APS has adopted a system that has no educational benefit. He commented, “We have a mess here.”

Mr. Aragon asked the Board to reject this request.

Mr. Eichenberg noted that the purchase contract is contingent upon approval of the lease. His understanding is that, in most government purchases, the appraisal is done prior to making an offer. Mr. Eckert responded that there was no appraisal done until after there was a written agreement to buy the property. He said neither Wagner nor APS did an appraisal either.

Mr. Eichenberg disclosed that he has known Mr. Eckert since elementary school, and has known Mr. Melendres for about 40 years.

Mr. Eichenberg said the numbers appear to show a reduced purchase price for the short-term lease. He asked Mr. Eckert to describe the process followed.

Mr. Eckert responded that, when Mr. Eichenberg was chairman of Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA), many times they bought property and entered into agreements to buy property and then had the appraisal done. He said this has been his practice at both AMAFCA and at APS for the last ten years. He said he is a licensed appraiser and broker and believes the property is worth much more than $13.7 million, and is certainly worth much more than that to APS based on its needs. He said Wagner obviously believed the appraisal might come in less or they wouldn’t have agreed to the price they agreed to. After they negotiated the transaction, they hired the appraiser. He said the appraiser was not directed to come up with any value.

Mr. Eckert said he tried to get the leaseback value higher, but was unsuccessful. In his response to a question posed by staff, he had pointed out that if the Board of Finance were to require an escalator in the lease, Wagner would turn around and more than offset the
increased rent APS would require from them in the purchase price. He said, “We believe we’re in the driver’s seat. We have a good position. If we reopen negotiations at this point, we believe they would be in the driver’s seat.”

Mr. Eichenberg commented that he did the numbers as well and came up with a value of between $13 million and $15 million as a high.

Responding to Mr. Eichenberg, Mr. Eckert said the $4.75 million needed over and above the HB33 and GO bond monies would come from the real estate fund, which has a current balance of $1,755,887.49. He said the APS School Board approves the use of these funds.

Mr. Eichenberg noted that Mr. Melendres had stated that the bond issue allowed for a vacant land purchase. He asked how that allows for the construction of a building, unless it is in a separate bond issue, or the purchase of property that already has a building on it, which is the case here.

Mr. Melendres responded that the statute allows for property acquisition; and the definition of a school building, which is broad, refers to “a building that is to be used by a school district.” He said that could be a combination of acquiring vacant land and building on it or acquiring land with an existing building for school purposes. He said they believe that the definition of using this for the proposed purpose falls within that definition.

Mr. Eichenberg disclosed that he had a property tax consulting company and still has an outside interest in it.

Mr. Eichenberg noted that the last tax bill on the subject property was almost $150,000, and that amount would be taken off the tax rolls were APS to acquire it. He questioned why APS wouldn’t use the vacant land mentioned by Mr. Aragon, since APS already owns it and it is not in the tax base currently, and then use the bond issue for construction.

Mr. Melendres responded that they did not calculate the amount of money that would go off the tax roll when APS acquired the land, but they have looked at the cost of replicating the maintenance facility on vacant land. He said the cost benefit analysis is that this facility is a first class maintenance operations facility for large equipment.

Mr. Eichenberg commented that if they were just looking at the building, they would be looking at it based on its depreciated value with 20 years of life. That would change if they were to build a new facility, which would have 50 years of life rather than 30.

Responding to Mr. Eichenberg, Mr. Eckert said APS commissioned a phase one environmental study and a small amount of contamination was identified. He said Wagner has done a phase two study and is working with the New Mexico Environment Department on their voluntary remediation program. The agreement is very clear that the property would be turned over to APS “clean.”
Mr. Eichenberg disclosed that he used to own ten acres of property across the street from Mr. Wagner's current purchase of 60 acres, and Mr. Wagner purchased that ten-acre parcel from him last year.

Mr. Aragon moved to disapprove this request. Mr. Brasher seconded the motion, which passed 6-1 by voice vote, with Mr. Eichenberg voting against the motion.

Mr. Kormanik said the whole discussion has been around issues that the Board does not have authority over, but unfortunately, the Board has been presented with a contingency arrangement. He said these contingencies are "pretty extreme" and include a lawsuit "and any number of areas that make it unclear with regard to what we do going forward." He said he would be much more willing to look at this if the property had already been purchased, so then the Board would just be looking at the lease.

Mr. Archuleta agreed that it would be much better if "you clear all this other stuff up and get the deal purchased, and I really hope you do, because I think you've done your homework." He said he has concern about the 2010 bond issue. In his experience with big bond issues, there are public hearings and people are informed about what the priorities are going to be, and while he respects that APS has to adjust budgets, he wonders what project or projects were set aside in that bond issue in order to accommodate this new priority.

Mr. Aragon stated that he has a serious legal concern about the bond issue as well as the ancillary issue relating to the school schedule and buyback. He said he feels the Public Education Department needs to make an inquiry into this because it clearly circumvents the intent of HB2. He asked Governor Martinez to direct Secretary Skandera to make that inquiry.

Governor Martinez said she feels it is very important that people know what they are voting for when a bond issue is placed on a ballot. She stated that the 2010 bond question was not clear enough because it did not include the purchase of a building for the storage and/or maintenance of school buses, and that is the reason for her vote in favor of not approving this request.

Mr. Brasher agreed that clarity is important on the ballot. He looked at some of the issues that were in the lawsuit brought against APS, and he was not sure he was in agreement with some aspects of it.

Mr. Eichenberg said he voted against the motion because he was looking at the request itself, which was the lease, and because he thought it was a good value.

Lt. Governor Sanchez stated that he is a little concerned that APS is getting into the school bus business. He said he does not know of many successes when public entities try to take over private businesses.

[Lt. Governor Sanchez stepped away from the meeting.]
[Mr. Eichenberg left the meeting.]

Presenters: Shirley McDougall, Property Asset Manager; Charlotte H. Hetherington, Legal Counsel, Cuddy & McCarthy, LLP; Katherine Freeman, CEO, United Way of Santa Fe County; Mona Kay, Vice President of Finance, United Way of Santa Fe County

13. **Santa Fe Public Schools – Requests Approval of Sale of Improvements and Ground Lease of Real Property at 1409 Monterey Drive in Santa Fe to United Way of Santa Fe County, Inc. ($3,072,000 for sale of improvements, $50,000 annual ground lease payment)**

Ms. Hetherington stated that Santa Fe Public Schools (SFPS) is requesting approval of the sale of improvements and a ground lease of real property located at 1409 Monterey Drive, which is the former Kaune Elementary School, to United Way of Santa Fe County, Inc. [United Way]. United Way can use this property as a child daycare center and for early childhood education programs. The appraised value of $3,072,000 is also the sale price, and the contract provides that the first two payments will be in the amount of $1 million, and the third payment will be in the amount of $1,072,000 on the second anniversary of the real estate contract. This will allow United Way to move into the building and make it Americans with Disabilities Act compliant and do other improvements. It also proposes to lease the land on which the improvements are situated at $50,000 per year. The lease has a ten-year term, with provisions for extensions.

Mr. Kormanik asked how the community feels about this transaction. Ms. McDougall responded that they had a neighborhood meeting very early on in the process, which was very well attended. She said the neighborhood is pleased with this proposal, as residents had previously opposed a high school being located in the building and had suggested the idea of a facility like this one.

Responding to Mr. Archuleta, Ms. Freeman said United Way is comfortable making substantial improvements to the property, even with only a ten-year ground lease, because they hope to work with the neighborhood over time and eventually purchase the property. She added that they are in the middle of a capital campaign and have so far raised $2.3 million, and are confident they will be successful in raising the necessary funds.

Ms. Kleats stated that the Board received one public comment from a property owner in the neighborhood (page 917 of the electronic agenda).

Ms. Kleats said there is a reversionary clause in the lease agreement that states that, if the lessee were unable to purchase the land, the improvements would revert to the school district.

Ms. Kleats asked that the Board act on this item in two separate motions, one to approve the ground lease and the other to approve the real estate contract.
Ms. Kleats requested that approval of the ground lease be contingent upon Director’s receipt, with counsel review, of the fully executed lease.

Ms. Kleats requested that approval of the real estate contract be contingent upon Director’s receipt, with counsel review, of (a) fully executed real estate contract; and (b) executed quitclaim deed.

Mr. Archuleta moved for approval of the ground lease, with the contingency. Mr. Kormanik seconded the motion, which passed 5-0 by voice vote. [Not present: Lt. Governor Sanchez.]

Mr. Archuleta moved approval of the real estate contract, with the contingencies. Mr. Brasher seconded the motion, which passed 5-0 by voice vote. [Not present: Lt. Governor Sanchez.]

[Lt. Governor Sanchez returned to the meeting.]

HIGHER EDUCATION DEPARTMENT
Presenters: Ronald James, Capital Projects Director, New Mexico Higher Education Department; Dr. Joseph Shepard, Dean; Stan Peña, Assistant Vice President of Facilities and Operations

14. Western New Mexico University – Requests Approval of Fleming Hall/Museum Renovation ($3,200,000)

Mr. James stated Western New Mexico University (WNMU) is requesting approval of financing in the amount of $3,200,000 to renovate Fleming Hall and Museum.

Mr. Archuleta commented that, based on trending, the architectural fee is about 15 percent. There is an explanation that initially the scope of work started out as $3.3 million and then was reduced to $2.6 million, and that the architect had already spent money based on the larger scope. Even with that, he commented that the fee seems a bit high, and asked why they are willing to pay a little bit more than the norm for this project.

Dr. Shepard agreed that 15 percent is high. He explained that the building was built in 1917 and there were no as-builts, which increased the cost. In addition, the renovation work includes major items such as fire suppression, heating, ventilation and air conditioning, and an alarm system, which calls for intensive engineering. He said there are also a lot of unknowns, and it is a historic property as well.

Mr. Archuleta said he was satisfied with that answer.

Mr. Aragon moved for approval. Mr. Archuleta seconded the motion, which passed 6-0 by voice vote.
15. Western New Mexico University – Requests Approval of Acquisition of Real Property Located at 901 West 12th Street in Silver City from Dana Weatherford and Carrie Tomlinson and Acceptance of Certain Special Exceptions ($163,810)

Mr. James stated that WNMU is requesting approval of the acquisition of property at 901 West 12th Street in Silver City, which consists of a 1,529 square foot two-bedroom house on a 3,310.56 square foot lot.

Mr. Primm requested that approval be contingent upon Director’s receipt, with counsel review, of: recordation prior to closing of quitclaim deed from Carrie Tomlinson to Dana Weatherford; recordation prior to closing of January 7, 2016, plat of survey prepared by Bill Miller; and deletion of standard exceptions 1-5 from title binder at closing.

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

16. Western New Mexico University – Requests Approval of Acquisition of Real Property Located at 1201 North Mississippi in Silver City from Alan Wagman and Anne Owen McCormick and Acceptance of Certain Special Exceptions ($175,350)

Mr. James stated that WNMU is requesting approval of financing of $175,350 for the purchase of property located at 1201 North Mississippi in Silver City from Alan Wagman and Anne Owen McCormick. The property consists of a 1,703 square foot three-bedroom residence and detached garage on a 17,150 square foot lot. It is located on the west side of the campus and falls within WNMU’s master plan area.

Mr. Primm requested that approval be contingent upon Director’s receipt, with counsel review, of recordation prior to closing of January 7, 2016, plat of survey prepared by Bill Miller; and deletion of standard exceptions 1-5 from title binder at closing.

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

[The agenda was reprioritized.]

**STAFF ITEMS**

Presenter: Leila Burrows Kleats, Director

21. Bond Counsel Services Contract RFP – Evaluation Committee Selection Recommendation and Authorization to Staff

Ms. Kleats reported as follows: “The State Board of Finance issued a Request for Proposals for Disclosure Counsel Services on March 1, 2016. Responsive proposals were received on March 28, 2016 from two firms: Kutak Rock, and a joint proposal from Rodey Law Firm and
Sherman & Howard. The Evaluation Committee carefully reviewed and evaluated these proposals based on the criteria and weights set out in the RFP.

“During the review process, it was determined that the RFP did not provide for consideration of all factors of significance to the State Board of Finance. As such, and because the current bond counsel contract allows for an additional 1-year renewal through June 6, 2017, the Evaluation Committee recommends rejection of all proposals pursuant to the cancellation terms spelled out in the RFP, Section II.C.10.

“The Evaluation Committee also recommends that the RFP be revised and reissued at a later date and that the Board exercise its option to renew the current bond counsel contract for an additional 1-year term.

“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 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. Aragon moved to adopt the Evaluation Committee report recommendations. Mr. Brasher seconded the motion, which passed 6-0 by voice vote.

22. Disclosure Counsel Services Contract RFP – Evaluation Committee Selection Recommendation and Authorization to Staff

Ms. Kleats reported as follows: “The State Board of Finance issued a Request for Proposals for Disclosure Counsel Services on March 1, 2016. Responsive proposals were received on March 28, 2016 from four firms: Bracewell, Kutak Rock, LLC, Nixon Peabody, and a joint proposal from Rodey, Dickason, Sloan, Akin & Robb, P. A./and Sherman & Howard, LLC. 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:

“Nixon Peabody received a total score of 519 points; Bracewell received a total score of 651 points; Rodey, Dickason, Sloan, Akin & Robb, P.A. and Sherman & Howard, LLC received a total score of 757 points; and Kutak Rock, LLC received a total score of 825 points.

“The Evaluation Committee recommends selection of Kutak Rock, LLC to begin negotiations of an agreement with staff for disclosure counsel services.

“This procurement action is subject to approval by the Contracts Review Bureau of the Department of Finance and Administration. An approval of the recommendation of the Evaluation Committee would initiate negotiation of a contract, which would come back to the Board for final approval.
“Additional information related to these proposals and their evaluation remains confidential at this point. Board members that have signed a confidentiality and standards agreement have been provided 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. Brasher moved to adopt the Evaluation Committee report recommendations. Lt. Governor Sanchez seconded the motion, which passed 6-0 by voice vote.

[Mr. Archuleta left the meeting.]

STATE TREASURER’S OFFICE

Presenters: Vikki Hanges, General Fund Investment Pool Portfolio Manager; Sam Collins, Chief Investment Officer

Ms. Hanges presented this report.

[Mr. Aragon left the meeting.]

Presenter: Georgie Ortiz, Managing Principal of Office, CliftonLarsonAllen Wealth Advisers, LLC
18. Presentation of Fiscal Year 2015 Audit

Lt. Governor Sanchez stated that, earlier this year, the Board reappointed him and Mr. Kormanik to continue to serve on the State Treasurer’s Audit Subcommittee. On March 30, the subcommittee met with auditors from CliftonLarsonAllen, the State Treasurer, the staff and DFA staff to review the Fiscal Year 2015 audit findings.

Ms. Ortiz presented this report. She stated that the auditor’s opinion was unmodified, which is a clean opinion and the highest opinion that can be given. She said there were two audit findings: one related to an accounts payable in the amount of about $11,000. The State Treasurer’s Office (STO) reported that transaction, but it was for another agency. She noted that STO found that error, but did not find it timely. She said the other finding relates back to 2007 for the overall cash reconciliation for the State of New Mexico.

Ms. Ortiz said there were three additional findings for last year that were clear.

Lt. Governor Sanchez thanked STO and the entire staff of DFA for doing a great job.

Mr. Kormanik said he was very pleased with the progress that STO has made over the last year. In addition, he really appreciated the cooperation of STO with the Department of Finance & Administration.
GENERAL SERVICES DEPARTMENT
Presenters: George D. Morgan, Director; Pamela Nicosin, Deputy Director


Mr. Morgan presented this report.

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

Mr. Morgan presented this report.

STAFF ITEMS (Cont’d)

23. Dashboard Report

Ms. Kleats presented the April Dashboard Report.

Ms. Kleats reviewed the State Auditor’s Fiscal Year 2015 “At-Risk List” of local governments that are behind on their audits. She said this includes one county, six municipalities and five state agencies.

Mr. Brasher expressed concern that people have confidence that money is being properly spent. He noted that some audits have been missing for years. He wondered what other action the State Auditor takes beyond publishing these “at-risk” lists.

Governor Martinez commented that the list used to be much longer. She said the State Auditor simply asks these entities where their audit is, but it is their responsibility to set aside monies to hire an auditor.

24. Fiscal Agent/Custodial Bank Fees

Mr. Primm presented this report.

Mr. Primm stated that staff inquired about the status of the Payment Card Industry (PCI) fines that would be levied on the state for not complying with PCI standards. He said the Board would receive its first bill in the amount of $5,000 next month, and he believed it would be $5,000 per month for the foreseeable future.


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

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

Susana Martinez, President

5-23-16
Date

Michael Brasher, Secretary

5/17/2016
Date