MINUTES OF THE
NEW MEXICO STATE BOARD OF FINANCE
REGULAR MEETING
Santa Fe, New Mexico
February 21, 2017

A Regular Meeting of the New Mexico State Board of Finance was called to order on this date at 9:20 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 [left at 10:35 a.m.]
The Hon. Tim Eichengberg, State Treasurer
Mr. Robert J. Aragon, Public Member
Mr. Adelmo Archuleta, Public Member
Mr. Michael Brasher, Public Member, Secretary
Mr. John Kormanik, Public Member

**Members Excused:**
None

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

**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, MARCH 21, 2017
Mr. Archuleta moved approval of the agenda, as published. Mr. Kormanik seconded the motion, which passed 7-0 by voice vote.

CONSENT AGENDA (Items 3 – 12)

Submitted by Leila Burrows Kleats, Director
3. Approval of Minutes: January 18, 2017 (Regular Meeting)

4. Approval of Minutes: February 8, 2017 (Special Meeting)

Submitted by: Stanton Riggs, County Manager
5. Chaves County – Requests Approval of Sale of Real Property Located at 1606 South East Main Street in Roswell to Roswell Realty Investors, LLC ($47,000)

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Contingent upon Director’s receipt and counsel review of fully executed purchase and sale agreement.

Submitted by: Charlene Webb, County Manager; Abigail Robinson, County Attorney
6. Grant County – Requests Approval of Lease of Real Property Located at 3200 32nd Street in Silver City to Hidalgo Medical Services ($132,000 per year cash or services)

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Contingent upon Director’s receipt and counsel review of (a) fully executed revised form of lease; and (b) fully executed board resolution or minutes of the governing body approving the revised lease.

Submitted by: Alberto Cuessy, Deputy Director, Department of Cultural Affairs
7. 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 Alvarez Group, LLC (d/b/a Pop Fizz) ($1,245 per month)

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Contingent upon Director’s receipt and counsel review of (a) fully executed revised form of lease reflecting staff’s changes; and (b) fully executed board resolution approving the revised lease.

Submitted by: Donald Jaramillo, Deputy Director; Anita Tellez, Deputy General Counsel
8. Department of Game and Fish – Requests Approval of Lease of Real Property Located in Taos County to the United States Department of Transportation,
Contingent upon Director’s receipt and counsel review of fully executed form of lease.

Submitted by Eric Martinez, Superintendent; Geno Zamora, Legal Counsel, Ortiz & Zamora, Attorneys at Law, CC

9. **Española Public School District – Requests Approval of Sale of Real Property Located at 354 Juan Medina Road in Chimayo to Santa Fe County ($150,000)**

Submitted by: Sarah Brewer, Facilities Services Specialist

10. **Los Alamos Public School District – Requests Approval of Lease of Real Property Located at North Mesa Road in Los Alamos to Los Alamos Baseball Academy ($12,000 per year)**

Contingent upon Director’s receipt and counsel review of (a) fully executed revised form of lease; and (b) fully executed board resolution approving the revised lease.

Submitted by: Charlotte Hetherington, Legal Counsel, Cuddy & McCarthy

11. **Pojoaque Valley School District – Requests Approval of Lease of Real Property Located at Highway 502 in Jaconita to Verizon Wireless, LLC ($24,000 per year)**

Contingent upon Director’s receipt and counsel review of fully executed revised form of lease reflecting staff’s changes.

Mr. Brasher commented that Verizon is a good operator, but there might be an operator in the future that is not a good one. He said the template for contracts going forward should be more specific in addressing interference in public safety communications in the event of an emergency.

Submitted by: Jay Czar, Executive Director; Susan Biernacki, Tax Credit Program Manager

12. **New Mexico Mortgage Finance Authority – Requests Approval of Private Activity Bond Allocation for South Shiprock Homes Multifamily Project Located on Navajo Street in the Navajo Nation, San Juan County (not to exceed $14,600,000)**

Mr. Aragon commended the New Mexico Mortgage Finance Authority for putting up these homes in the northwest checkerboard area of New Mexico, which is “an almost forgotten” part of the state.
Developer Nick Tinnin, former New Mexico legislator, thanked Mr. Aragon and the board. He commented that this was a project that was 40 years in the making “and it took 13 years to get to where we are now.”

Mr. Brasher moved approval of the Consent Agenda, with the contingencies. Mr. Aragon seconded the motion, which passed 7-0 by voice vote.

Mr. Archuleta asked the record to reflect that he would abstain on Item 3 (Approval of Minutes – January 18, 2017).

EMERGENCY FUND BALANCES
Presenter: Ms. Leila Burrows Kleats, Director
   Operating Reserve Fund $ 1,149,299.18
   Emergency Water Fund $ 85,000.56
   Emergency Hardship Fund $ 896,332.00

Ms. Kleats reported these balances.

EMERGENCY FUNDING REQUESTS
Presenter: Hanna Skandera, Cabinet Secretary; Paul Aguilar, Deputy Cabinet Secretary
14. Public Education Department – Requests Emergency Funding for Outstanding Legal Fees (not to exceed $540,000)

Ms. Skandera stated that, in 2014, two lawsuits challenging the sufficiency of the funding of the state’s primary and secondary education were filed, and were consolidated in 2015. She said both lawsuits seek declarative and injunctive relief, requiring the state to provide a sufficient education to all New Mexico students, with a particular focus on at-risk students and students for whom English is a second language. She said the Public Education Department (PED) is the lead in defending these lawsuits.

Ms. Skandera requested a grant of $540,000 from the board to pay for outstanding legal fees associated with these lawsuits, noting that these monies have already been spent in defending the lawsuits. In the 2016 legislative session, the PED requested $2 million in special appropriations to cover the projected costs, but were appropriated only $1.2 million. Through the current fiscal year, she said considerable time and effort has been spent providing appropriate documentation (more than one million pages) in defending these lawsuits along with numerous depositions of witnesses for both sides.

Mr. Aragon noted that the legislature is still in session, offering an opportunity for PED to obtain funding to cover these costs, and recommended that the board provide the money to PED in the form of a loan at this time. He said the board took similar action at the Special Meeting of February 8 with the Administrative Office of the Courts. In that instance, the board’s
motion for approval of the loan stipulated that it be converted to a grant if the funding request from the legislature was not successful.

Responding to Mr. Kormanik, Mr. Aguilar said PED requested two pots of money; one was a supplemental appropriation of $1 million for the current fiscal year, and the other was for $2.5 million as the lawsuits go to trial in August 2017, which is expected to last six weeks. He said the section 5 appropriation is asking PED to reduce the blow-the-line targeted investments on the Governor’s initiatives by $750,000, and that money is already encumbered and districts have already hired staff and begun implementing those programs.

Mr. Archuleta said he supported this funding in the form of a loan that would be converted to a grant if legislative monies were not appropriated to cover the amount requested.

Responding to Mr. Archuleta, Ms. Skandera said PED’s general counsel is monitoring all related expenditures.

Mr. Aragon said Article XII, Section 1 of the State Constitution calls for “an adequate level of funding for education,” but his wife, a member of the Albuquerque Public Schools (APS) Board of Education, asked the superintendent six months ago what that meant, and she still has not had the question answered. The other members of the school board also have not been able to answer that question. He expressed concern that the state not find itself in a situation similar to what happened with the Zuni lawsuit, which cost the state hundreds of millions of dollars in annual payouts over several years and has not resulted in any reportable increase in graduation rates or literacy rates.

Mr. Aragon asked Ms. Skandera if PED would seek all costs in attorney’s fees from the plaintiff if the state prevails in these lawsuits. He said he thought it was imperative “that we stop allowing these folks to file lawsuits when they can’t even define what is adequate.” Ms. Skandera responded that PED would seek to recover those expenses. She said PED would also continue to support legislation prohibiting school districts from using public monies to file such lawsuits. Ms. Skandera said two nonprofits are behind the lawsuits: the New Mexico Center on Law and Poverty and MALDEF.

Governor Martinez stated that the New Mexico Center on Law and Poverty uses money it receives from the legislature to sue the state.

Ms. Skandera said MALDEF is a national organization and does not receive money from the New Mexico legislature.

Responding to Governor Martinez, Ms. Skandera said $2.7 billion of the state’s budget goes to K-12 education, or 43 percent of the state’s budget; of that, 1 percent goes into targeted investments where outcomes are regularly measured. To date, for example, truancy rates across the board have dramatically been reduced. In addition, the state graduation rate is 71 percent, which is the highest in history.
Ms. Skandera provided examples of struggling schools that improved because of the 1 percent targeted investments program. She said 19,000 students have been impacted in struggling schools, and are improving 200-300 percent compared to the state improvements. She said these schools have turned around from “D” to “A” ratings.

Responding to Mr. Eichenberg, Ms. Skandera said PED has eliminated more than 40 positions since 2011, 18 within the last year. She said these lawsuits are on top of PED’s basic deliverables, and have put an unexpected burden outside of the traditional budget process outside of work and costs.

Mr. Aguilar said today’s request would cover PED’s costs to the end of January 2017. Their request from the legislature is for $1.3 million, and they are looking at another $700,000 in legal fees between now and June 30, 2017. They expect some high expenditures in July and August, and then “extremely high expenditures” through the six-week trial period. They also anticipate an appeal, and those expenses are built into the projections.

[Lt. Governor Sanchez left the meeting.]

Mr. Aragon asked if the plaintiffs have defined what constitutes “adequate funding.” Ms. Skandera responded no. She said a 2007 study defined the number, but there was general agreement that it was “too big.”

Mr. Aragon said Donald Duran, a member of the APS School Board, was asked what the predicates were to establish the base for the 2007 study, and Dr. Duran could not answer that question. Mr. Aragon wondered if the plaintiffs have identified the data that was relied on to create that opinion.

Mr. Aragon also asked if the plaintiffs have identified how much funding would be needed moving forward, and what the impact would be to the economy of New Mexico, and Ms. Skandera responded no.

Mr. Aragon commented, “It is the adults and, in particular, two organizations and the politicians whose campaigns they fund, who are the folks who are anti-student, anti-parent, anti-taxpayer, and anti-economic development because they... want to gut and do not address any of those outcome based programs that this Administration and Secretary Skandera have achieved. And I hope that is included in the lawsuit, as well.”

Responding to Governor Martinez, Ms. Skandera said the graduation rates for Las Cruces and Gadsden are 80 and 81 percent, respectively, but she would have to verify that. Governor Martinez pointed out that Gadsden, which is a border district school, has a 100 percent poverty rate with free lunch and free breakfast; and Spanish is the first language for 60 to 65 percent of the students. When her Administration took over, all the schools in the district were at “D” and “F” levels and now there are three blue ribbon schools in the district. She said they have an
“amazing superintendent who has embraced every one of the reforms, and now this legislature is gutting it at 21 percent.”

Ms. Kleats said the resolution approving this emergency loan states that the PED has requested emergency funding in the amount of $492,566.71. She stated that based on the discussion, it appeared the board may need to revise the dollar amount.

Ms. Kleats also noted that this resolution was drafted very similarly to the one approved by the board at the February 8 Special Meeting for the Administrative Office of the Courts. The funding would be provided in the form of a loan, pending any legislation that is enacted into law that would cover the loan amount; and in the event the legislature does not make an appropriation to cover those costs, the loan would automatically convert to a grant.

Mr. Archuleta moved to approve a loan of up to $540,000 and that up to $540,000 could become a grant, or any portion that is unfunded by the legislature, but in no case would this be for more than $540,000. Mr. Aragon seconded the motion.

Governor Martinez noted that the Attorney General gave the PED special authorization to handle this lawsuit through its own resources. She added that in the FY18 budget coming out of the House, the Attorney General’s budget increased by 11.9 percent and the agency has lost 20 attorneys. She commented that this is a difficult lawsuit and “is probably unpopular for those that lean towards the status quo.”

The motion passed 6-0 by voice vote.

**HIGHER EDUCATION DEPARTMENT**

**Presenters:** Gerald Hoehne, Capital Projects Director, New Mexico Higher Education Department; Chaouki Abdullah, Acting Director, University of New Mexico; David W. Harris, Executive Vice President of Administration; Vahid Staples, Budget Officer; Lisa Marbury, Executive Director, Institutional Support Services; Kyle Biederwolf, Associated Students of the University of New Mexico President; Glenda Lewis, Graduate and Professional Student Association President

15. **University of New Mexico – Requests Approval of System Improvement Revenue Bonds, Series 2017 (not to exceed $50,050,000)**

Mr. Hoehne stated that this project has been reviewed and approved by the Capital Projects Committee and Secretary Barbara Damron.

Dr. Abdullah reviewed a slide presentation.

Mr. Aragon thanked Dr. Abdullah for having “addressed literally every single issue that I raised the last time you were here.” He said UNM had allayed some of the concerns he discussed regarding student fees. While he still had concerns about the mechanism for funding
this, "I am totally satisfied with the explanation and the independent data you have provided me." He said his perspective on this project has changed.

Mr. Archuleta said he came from a poor family and put himself through college at New Mexico State University, where he went because of its engineering program, and it took him a long time to pay off his college loan. He said, "I understand the plights of New Mexicans and people that can't afford tuition; but having said that, it is extremely important that especially in the sciences...we give our kids the ability to compete with anybody in the world... especially with our two national labs here. Being able to have facilities that attract top professors that bring in research dollars from out of state, it's a huge domino effect. This is a no brainer."

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

**STATE TREASURER'S OFFICE**

Presenter: Sam Collins, Deputy State Treasurer

16. **Monthly Investment Reports for Month-Ended December 31, 2016**

Mr. Collins presented updated data through January 31. He commented that there is positive movement in the general fund balances, which increased from December to January from $1.2 billion to $1.5 billion. He said $109 million of that was a transfer from the Tobacco Settlement Fund invested by the State Investment Council. Additionally, on a cyclical basis, January balances tend to be higher because of gross taxes that are collected during the holiday season.

Mr. Collins also noted that oil and gas collections are starting to increase year over year, which is a new and encouraging trend.

**GENERAL SERVICES DEPARTMENT**

Presenter: Jimmy Rodriguez, Business Operations Bureau Chief

17. **Capitol Buildings Repair Fund Financial Status Report for Month-Ended December 31, 2016**

Mr. Kormanik asked how the Capital Buildings Repair Fund would be impacted as a result of the legislature's recent action to redirect $6 million of CBRF money as part of the solvency package.

Mr. Rodriguez responded that they have put a freeze on all of the projects that were approved in December.

Governor Martinez asked if this includes projects that address public safety issues such as mold, radon and air conditioning that doesn't always work.

Mr. Rodriguez responded that this was correct.
Governor Martinez noted that legislators have been offered ideas on how to avoid making cuts, such as dipping into the $200 million in cash balances for education, but that is a “hot topic” and not up for consideration. She said this means state workers will have to live with these problems “without getting sick.”


Mr. Rodriguez presented these reports.

STAFF ITEMS
Presenter: Leila Burrows Kleats, Director

20. Fiscal Agent/Custodial Bank Fees

Ms. Kleats stated that the electronic agenda reflects the December analysis, as January’s reports arrived yesterday, not allowing enough time to update the spreadsheet. She said she has received good news from Wells Fargo representative Mark Jensen today, which is that the earnings credit that the state receives for holding balances with Wells Fargo will be either the greater of 50 basis points or the average of the three-month U.S. Treasury bill. Because interest rates have been rising, the average has now risen to 52 basis points, and the expectation is that this trend will continue. She added that the contract also allows for any credit beyond what is owed to be rolled forward from prior months, so there should be some savings.


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

ADJOURNMENT

Its business completed, the State Board of Finance adjourned the meeting at 11:50 a.m.

Susana Martinez, President

3/21/2017
Date

Michael Brasher, Secretary

March 21, 2017

Date