MINUTES OF THE

NEW MEXICO STATE BOARD OF FINANCE

REGULAR MEETING

Santa Fe, New Mexico

May 16, 2017

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

1. **ROLL CALL: QUORUM PRESENT**

**Members Present:**
The Hon. Susana Martinez, President [leaving at 12:35 p.m.]
The Hon. John A. Sanchez, Lt. Governor
The Hon. Tim Eichenberg, State Treasurer [leaving at 12:55 p.m.]
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, JUNE 20, 2017**

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

[Lt. Governor Sanchez arrived at the meeting.]

**CONSENT AGENDA (Items 3-8)**  
Submitted by Leila Burrows Kleats, Director

3. [Moved to regular agenda for separate action.]

Submitted by: Gerald Hoehne, NMHED Capital Projects Director; Heather Zack Watenpaugh, University Architect and Campus Planning Officer

4. **New Mexico State University, Alamogordo Campus – Requests Approval of Campus-wide Roof Replacement and Repair**  
($1,000,000)

[Contingent upon closing of Series 2017 General Obligation Bonds.]

Submitted by: Gerald Hoehne, NMHED Capital Projects Director; Heather Zack Watenpaugh, University Architect and Campus Planning Officer

5. **New Mexico State University, Carlsbad Campus – Requests Approval of Main Building New Fire Sprinkler System Phase II**  
($1,000,000)

[Contingent upon closing of Series 2017 General Obligation Bonds.]

Submitted by: Gerald Hoehne, NMHED Capital Projects Director; Heather Zack Watenpaugh, University Architect and Campus Planning Officer

6. **New Mexico State University, Doña Ana Campus – Requests Approval of DACC Central Campus, Classroom and Roof Renovation**  
($1,500,000)

[Contingent upon closing of Series 2017 General Obligation Bonds.]

Submitted by: Gerald Hoehne, NMHED Capital Projects Director; Heather Zack Watenpaugh, University Architect and Campus Planning Officer

7. **New Mexico State University, Grants Campus – Requests Approval of Campus Roads and Parking Lot Improvements**  
($1,500,000)
[Contingent upon closing of Series 2017 General Obligation Bonds.]

Submitted by: Gerald Hoehne, NMHED Capital Projects Director; Heather Zack Watenpaugh, University Architect and Campus Planning Officer
8. Western New Mexico University – Requests Approval of Harlan Hall Science Building Renovation, Phase II ($2,000,000)
[Contingent upon closing of Series 2017 General Obligation Bonds.]

Mr. Eichenberg requested that Item 3 (Approval of Minutes) be removed for separate action.

Mr. Archuleta moved approval of the Consent Agenda, as amended, with the contingency items provided. Mr. Aragon seconded the motion, which passed 7-0 by voice vote.

REMOVED FROM CONSENT AGENDA FOR SEPARATE ACTION

3. Approval of Minutes: April 18, 2017 (Regular Meeting)

Mr. Brasher moved approval of the April 18, 2017, minutes, as submitted. Mr. Aragon seconded the motion, which passed 6-0 by voice vote, with Mr. Eichenberg in abstention.

EMERGENCY FUND BALANCES
Presenter: Ms. Leila Burrows Kleats, Director
5. Emergency Balances – May 16, 2017
   Operating Reserve Fund $ 1,101,421.00
   Emergency Water Fund $ 499.56
   Emergency Hardship Fund $ 972,748.00

Ms. Kleats reported these balances.

SEVERANCE TAX BONDS AND NOTES
Presenters: Jill Sweeney, Co-Bond Counsel, Sherman & Howard, LLC; Luis Carrasco, Co-Bond Counsel, Rodey Law Firm; David Paul, Financial Advisor, Fiscal Strategies Group
10. Approval of Resolution Reauthorizing Certain Severance Tax Bond Projects

Mr. Carrasco stated that, each year, the legislature passes a bill authorizing certain changes in previously issued Severance Tax Bond projects. The resolution before the board memorializes
that it is taking this opportunity to effect the intent of the legislature by amending the project list.

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

11. **Approval of Severance Tax Note Resolution, Series 2017S-A**

Mr. Carrasco stated that this resolution is in the maximum amount of $50 million, which will be adjusted as the closing date approaches. He said this resolution authorizes the publication of the Notice of Sale to the State Treasurer in an overnight sale 30 days hence. He said no projects have been identified at this time; the questionnaires for these projects are due at the close of business today. He said the note would be used to fund the majority of projects on the Authorized But Unissued List. Should the legislature sign a capital outlay bill in the upcoming special session, the intent is to use this note series to fund some or all of those projects. An amending resolution will be brought to the board at the June meeting for final action.

Ms. Kleats stated that the current estimate for revenues in the current fiscal year is about $5 million stronger than last year. Due to the legislative change made in 2013, the calculation is based on the lesser of current year revenues or prior year revenues. Staff estimates the senior note to be about $10 million and the super sweep to be about $22 million, and the resolution is set at $50 million in the event revenues come in a bit higher than anticipated. While the senior and supplemental notes will not change, any additional revenues will increase the size of the super sweep.

Ms. Kleats clarified that, every June 30 and December 31, the board is required to set aside enough money in the Severance Tax Bonding Fund to make the next two debt service payments, and any amount above and beyond the amount needed for those payments would typically be transferred to the Severance Tax Permanent Fund. She explained, however, that legislation passed in 2016 allowed this “super sweep,” where those monies could be used to restore general fund allotments from prior years.

Mr. Aragon moved for approval. Mr. Brasher seconded the motion, which passed 7-0 by voice vote.

12. **Approval of Supplemental Severance Tax Note Resolution, Series 2017S-B**

Ms. Sweeney said that, while historically the purpose of this note has been to provide funding to the Public School Capital Outlay Council (PSCOC), this note will also provide funding to the Public Education Department (PED).

Mr. Carrasco said this resolution is in the maximum principal amount of $125 million, and would authorize the publication of the notice of sale to the State Treasurer, with the overnight sale to take place on June 29.
Ms. Kleats said the sizing is estimated to be about $121 million for the supplemental note. Of the total, about $12.5 million will go the PED for instructional materials and student transportation as certified by the Secretary. Legislation was also authorized in the 2016 special session. She said the balance is available for the PSCOC, which will determine the projects to be funded with the proceeds.

Mr. Kormanik moved for approval. Lt. Governor Sanchez seconded the motion, which passed 7-0 by voice vote.

**HIGHER EDUCATION DEPARTMENT**

Presenters: Gerald Hoehne, NMHED Capital Projects Director; Garrey Carruthers, Chancellor; Glen Haubold, Associate Vice President, Facilities and Services; Heather Zack Watenpaugh, University Architect and Campus Planning Officer

13. New Mexico State University – Las Cruces Campus – Requests Approval of a New Art Building ($23,000,000)

Mr. Hoehne stated that New Mexico State University (NMSU) is requesting approval to design and construct a new Art Building for their College of Arts & Sciences, replacing the existing Dan W. Williams Hall and Annex. The new building will be a two-story facility with approximately 51,886 gross square feet. NMSU has determined that renovating the existing Williams Hall (built in 1938) and Annex (build in 1983) would be more costly than constructing a new building. The sources of funding will be 2017 General Obligation Bonds in the amount of $22,500,000 and $500,000 of gift funds.

Chancellor Carruthers stated that this particular building has received $800,000 in private donations and $400,000 more in terms of pledges to develop it.

Ms. Watenpaugh stated that the 1938 Williams Hall was designed as a gymnasium and converted into an art building in 1972. She said there would be significant cost savings by not relocating the Art Department twice.

Lt. Governor Sanchez noted a trend where enrollment is going down while large investments, although they are necessary, continue to be made in bricks and mortar. He asked how these large capital investments could be justified in the long term. He added that NMSU is uniquely positioned because of its close proximity to El Paso and the possibility that it could reach out more toward potential students in Mexico and Latin America.

Chancellor Carruthers responded that he felt NMSU would return to stable or increasing enrollments. The population in New Mexico, while it did decline for a couple of years, is now stable, but there are seven colleges and universities and 22 community colleges all vying in the same pool in New Mexico, and most people in the industry have come to realize that they can only develop a campus for a certain size. He said he thought NMSU’s enrollment would
probably top out at about 16,000 or 17,000 students on its campus. He said they are offering a tuition opportunity in Mexico, and he would prefer to internationalize south of the border, since NMSU has a large number of Spanish-speaking faculty members and 46 percent of the student population is Hispanic. He added that applications for the fall semester are up 3.9 percent and admissions are up 16.7 percent.

Mr. Aragon asked what the “project administration management fee” involved.

Mr. Archuleta responded by explaining that all of the universities charge themselves a 5 percent fee internally to pay for their planners, architects and on-campus staff in a given project. Since they cannot take it from I&G funds, they tax themselves per project to pay for their own staff. In this case, the $949,000 is set aside for NMSU’s internal work on the overall management of this job.

Mr. Haubold said that was correct. He added that the State Board of Finance issued a directive about this several years ago.

Mr. Aragon commented that, while he supported this project, he found it “galling” that NMSU was being charged a $139,000 LEED consulting fee to confirm that the architect has designed the project to LEED specifications, even though the architect is required to do that anyway.

Mr. Brasher said he wasn’t sure that LEED certification wasn’t the only certification available. He commented that the LEED program needs to be looked into, at least to make sure that there are energy savings by building to those standards.

Responding to Governor Martinez, Chancellor Carruthers said NMSU has no particular funding dedicated to this project, which is being funded with General Obligation Bonds and donations. He said it would be very difficult to use any reserves to invest in this project.

Governor Martinez noted that NMSU has almost $338 million of unrestricted reserves, according to the DFA.

Angela Throneberry of NMSU’s Administration & Finance Department responded that she did not have immediate access to NMSU’s overall budget. Within their instruction and general budget, however, NMSU maintains a 10 percent reserve level, which is based on guidance from NMHED, which states that universities should maintain reserves of 6 percent or higher during times of economic uncertainty.

Governor Martinez stated that NMSU’s enrollment was 18,518 in the fall of 2010, and in the fall of 2016 was at 14,827, a decline of 3,691 students. She asked what plans are in place to increase enrollment in the future.
Chancellor Carruthers responded that enrollment declined during that period all across the United States. Young people who could not find jobs during the Recession chose to go to universities, and enrollment then spiked. He said there are currently very large graduating classes as a result. He said the fact that New Mexico has the lowest high school graduation rate in the country also contributes to the problem.

Ms. Kleats requested that approval of this item be contingent upon closing of Series 2017 General Obligation Bonds.

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

Presenters: Gerald Hoehne, NMHED Capital Projects Director; Garrey Carruthers, Chancellor; Glen Haubold, Associate Vice President, Facilities and Services; Heather Zack Watenpaugh, University Architect and Campus Planning Officer; Angela Throneberry, Senior Vice President, Admin and Finance; D’Anne Stuart, Associate Vice President, Admin and Finance; Katherine Creagan, Modrall Sperling; Erik Harrigan, RBC Capital Markets

14. New Mexico State University — Requests Approval of System Refunding and Improvements Revenue Bonds ($85,000,000)

Mr. Hoehne stated that this request is for approval of Series 2017 Refunding & Revenue Improvement Revenue Bonds, including $35,000,000 in new money and $47,275,000 refunding. The proposed new money will allow for the construction of new residence hall and several renovations within the existing campus housing portfolio, which has 3600 beds. The proposed new residence hall will be constructed in the center of campus, at the now vacant Monagle Hall site, providing an estimated 300 beds. In addition, the proceeds will be used to renovate existing facilities, including Pinon Hall, Rhodes Garrett Hamiel, Garcia Hall, Chamisa, and Vista del Monte. With the exception of the refunded Series 2006 bonds, the debt service will be paid from the Auxiliary Housing revenues. NMSU notes that issuance of the Series 2017 System Revenue Bonds will not increase tuition and fees.

Chancellor Carruthers discussed changes NMSU has made recently. He said NMSU now has a residency requirement for all first year students except Doña Ana County residents, married students, and veterans. He said GPA averages are from .2 to .5 higher if they live on campus, and there is a 14 percent higher retention rate of non-white students living on the campus. He said this is important because NMSU is 46 percent Hispanic. He added that if students live on campus, 79 percent of them are inclined to participate in extracurricular activities, which is a higher percentage than for students living off campus. He said the new dormitory would be in the heart of the campus.

Responding to Lt. Governor Sanchez, Ms. Kleats said staff’s concerns are whether their projections of future revenues, which are based on increases in enrollments, would pan out. Page 344 of the electronic agenda includes projections of residency for 2017 as well as first
time students in 2017, and those are significantly less than the capacity they have indicated in their applications. For example, they are projecting about 2,400 total residents in student housing, and their application indicated there are 3,400 beds. She said she was not sure if that included the new residence hall, which will include 300 beds.

Ms. Throneberry responded that they took a very conservative approach in the pro forma, which has two major variables. From a rental rate standpoint, they used the occupancy for the current year and increased the capture rate for freshmen from 47 percent to 55 percent, or about 140 students, which they thought would be very much doable under the new model. All other occupancy rates were held flat throughout the pro forma. When the new facility comes on line, they plan to “de-densify” Garcia Hall to half capacity, or about 450 beds, to create larger spaces for students who remain there. She said the pro forma model is very strong, extremely conservative, and allows them to meet the debt service needs while providing a price range for students to be able to live affordably on campus.

Ms. Throneberry noted that they have not built in any increases in enrollment in the pro forma; all they addressed was the capture rate for freshmen students.

Mr. Aragon said he thought students should have the right to not live on campus, citing the Privileges & Immunities Clause of the U.S. Constitution, which implies the right of free association and travel. He also cited the First Amendment.

Chancellor Carruthers responded that freshmen students could opt out of on-campus living as part of the application process. He added that this is a best practice in most universities around the country, and some are requiring two years’ residency.

Mr. Archuleta commended NMSU and Chancellor Carruthers on developing a good strategy and model for improving efficiencies in graduating students from NMSU.

Chancellor Carruthers stated that NMSU estimates that room, board, tuition, books and fees would cost a total of $55,000 in a four-year program, making this university very affordable.

Mr. Brasher said he was very concerned about the risks and the declining enrollment issue.

Responding to Governor Martinez, Chancellor Carruthers said NMSU is requesting a 6 percent (blended) tuition increase from the Board of Regents. A survey of the students showed that 55 percent of the students support a tuition increase. Ms. Throneberry added that the five-year average tuition increase at 12 credit hours is .9 percent.

Ms. Throneberry said the vacancy rate in the residence halls is currently 20 percent. In the apartments, it is 26 percent, and it is 50 percent in family housing. The Greek complex (254 beds) and Cole Village (51 years old) will be taken offline. She said they have also tightened up
the rules for family housing and will no longer offer month-to-month leasing and will do background checks to make this a more desirable place for family living.

Mr. Kormanik asked what the bond ratings would be on this project. Mr. Harrigan responded that the university is currently rated AA3 with a negative outlook and AA- with a stable outlook by Standard & Poor’s. Those ratings were refreshed in October 2016 and RBC Capital Markets expects that those ratings will be maintained. In early 2016, Moody’s downgraded the university from Aa2 to Aa3, and the outlook was revised from stable to negative. Standard & Poor’s downgraded the university in October from AA to AA-, citing several factors, but one was declining enrollment and uncertain budget issues. RBC does not anticipate that the rating agencies will take further action because enrollment has stabilized and the university has been able to manage the reductions in 2017 and any potential reductions in 2018.

Mr. Archuleta moved for approval. Mr. Eichenberg seconded the motion.

Ms. Kleats read a summary of the Parameters Resolution:

If the Board votes to approve this item, the parameters resolution issued by the Board authorizing New Mexico State University’s System Refunding and Improvement Revenue Bonds, Series 2017, in summary provides that: the Bonds are being issued to (i) purchase, erect, alter, remodel, expand, improve, repair, furnish and equip buildings, improvements and facilities for the use of the University, including, but not limited to student housing facilities (ii) to fund capitalized interest on a portion of the Series 2017 Bonds, (iii) to refund, refinance, and defease certain outstanding obligations of the University, and (iv) pay the costs of issuance of the 2017 Bonds;

A. The aggregate principal amount of the 2017 Bonds shall not exceed $85,000,000 and may be issued in one or more series provided the total par amount does not exceed $85,000,000;
B. The net effective interest rate on the Bonds shall not exceed 5.10%;
C. The 2017 Bonds shall have a final maturity no later than April 1, 2043;
D. The 2006 Bonds are being refunded to produce at least a 3% present value savings. The portions of the outstanding Series 2010A Bonds, Series 2010B Bonds, Series 2010D Bonds, and Series 2013B Bonds are being refunded to restructure the University’s outstanding obligations related to its student housing and not for economic savings.
E. The Board of Regents of the University shall adopt the Sale Resolution in substantially the form submitted to the State Board of Finance, and shall provide a signed copy to the State Board of Finance Director;
F. The University shall provide the State Board of Finance Director a certification required by Section 2.61.5.10(A)(2)(g) of the Approval Regulations to the effect that all statutory requirements for the issuance of the Bonds have been complied with by the University;
G. The Bonds shall be delivered to the Purchasers on or before November 30, 2017; and
H. At the time of issuance of the Bonds, the University shall pay, or cause to be paid, the fees and costs, if any, of review, analysis and recommendations of the financial advisor and/or bond counsel to the State Board of Finance relating to the Bonds, as required by Section 2.61.5.16 of the Approval Regulations.

Ms. Kleats requested that approval of this request be contingent upon Director’s receipt and counsel review of fully executed Certificate of Statutory Compliance, Sale Resolution adopted by the Regents, Bond Purchase Agreement, and the Preliminary Official Statement as posted.

Mr. Archuleta asked NMSU if they heard anything that they could not comply with. For instance, what if the 3% was not achievable for the 2006 bond refunding. Mr. Harrigan responded that the bonds would not be refinanced, then.

The resolution and contingencies were accepted as friendly.

The motion, as amended, passed 4-3 by voice vote, with Mr. Eichenberg, Mr. Archuleta, Lt. Governor Sanchez and Mr. Kormanik voting in favor, and Mr. Aragon, Mr. Brasher and Governor Martinez voting against.

Lt. Governor Sanchez said he supported this request because the state’s universities need to maintain high standards, and he would encourage Chancellor Carruthers and his team not to accept the trend of declining enrollment and to fight hard to reverse it.

[Governor Martinez left the meeting.]

GENERAL SERVICES DEPARTMENT

Presenters: Christopher Lee, Acting Director, Facilities Management Division; Elizabeth Jeffries, Property Manager, Facilities Management Division; Alexis Johnson, General Counsel, General Services Department; Calvin Steckler, Facilities Manager, Department of Public Safety; Brian Coss, Deputy Director, Law Enforcement Academy, Department of Public Safety

15. Facilities Management Division – Requests Approval of Real Property Known as the Bonanza Creek Firing Range in Santa Fe County and Acceptance of Certain Special Exceptions and Waiver to Accept Special Warranty Deed ($1,100,000)

Mr. Lee stated that the General Services Department (GSD) is requesting approval to purchase 160 acres of vacant land adjoining the New Mexico National Guard property known as the Bonanza Creek Firing Range for use by the Department of Public Safety (DPS). DPS is currently leasing the property, which enables the agency to provide live weapons training that is unavailable anywhere else in the region. According to GSD, purchase of the property will be more cost effective and will reduce the risk that the state loses the lease. The purchase will be...
funded through 2015 Severance Tax Bonds ($1,000,000) and a legislative appropriation from the Capital Buildings Repair Fund ($1,000,000). The conveyance is via a special warranty deed that includes restrictions on lighting, noise, and projectiles. GSD is requesting a waiver of the board rule that transfer be conveyed via warranty deed. The appraised value of this property is $1,100,000.

Responding to Mr. Eichenberg, Mr. Steckler said the lease originated in 1994, and since about 2013 has been on a month-to-month basis. He introduced owner representative Richard Hughes. He said there is an obligation on the state to clean up the property when the premises are returned to the owner, but the question is how far that obligation would go and what Mr. Hughes’ position would be. For several years, the state has been in a negotiation mode with Mr. Hughes. Within the lease that was presented to the state some time ago and which has not been signed, there were concerns and issues raised by the state regarding environmental issues. If it is kept as a gun range for state purposes, most of those concerns would dissipate; however, should it become more like a “divorce than a marriage of interest,” there would be a significant conversation about who is responsible and for what. He said there are no immediate environmental concerns other than metals on the property. He added that, as long as the state is purchasing the property from this seller and has been the long-term user of the property for the purposes of a gun range, he thought everyone was safeguarded. He said the estimated cost to clean up the property “from top to bottom” is between $500,000 and $5 million.

Mr. Eichenberg noted that the appraiser dismissed the hazardous materials and the cost of cleanup, considering the property vacant and hazard free. He questioned how the purchase price could be justified given the change from a warranty deed and title policy to a special warranty deed. He said there is no guarantee that there will be a title policy, which concerned him since this was going to be state property. Mr. Steckler responded that they went through a long analysis and discussion of what their liabilities would be if they vacated the property, and so they see ownership of the property to be of value to the state because the state would have control over it.

Ms. Kleats stated that this was a challenging appraisal because of the lead on the property and the special warranty deed. There are also mineral rights that are not included in the appraisal but are being transferred along with the property. She added that the Facilities Management Division is requesting a waiver of the board rule that the transfer be conveyed via warranty deed. She said there are certain special exceptions in the title binder and Mr. Johnson has provided a very thorough explanation of all of those special exceptions and would be happy to discuss any of them.

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

[Mr. Eichenberg left the meeting.]

Presenters: Christopher Lee, Acting Director, Facilities Management Division;
Alexis Johnson, General Counsel, General Services Department

16. Facilities Management Division – Requests Approval of the Acquisition of Real Property by Donation of the Vietnam Veterans Memorial, Located along Country Club and the north side of Oñate Road in Angel Fire from the State Parks Division of the Energy, Minerals and Natural Resources Department

Mr. Lee stated that the Facilities Management Division (FMD) is requesting approval of the acquisition of approximately 32.16 acres of real property by donation from the State Parks Division (SPD) of the Energy, Minerals and Natural Resources Department. In 2005, SPD received the property and all improvements as a donation from the David Westphall Foundation to be used as a state park dedicated to United States Vietnam Veterans. The quitclaim deed from the Foundation to SPD covenants that the property be used only for the purpose of a Vietnam Veterans Memorial. In the 2017 legislative session, the legislature approved transfer of the operations and maintenance of the property to the New Mexico Department of Veterans Services; since it is not authorized to own real property, the legislature approved the transfer of the property to FMD.

Ms. Kleats said State Statute requires that any acquisitions by FMD received Board of Finance approval. As some information was missing from the earlier acquisition by SPD, staff views this as a cleanup opportunity. She requested that approval of this item be contingent upon Director's receipt and counsel review of (1) a revised deed (including mineral rights); (2) full-sized site improvement survey for all property included in the transfer (including Lot 9, Block 1 of the Val Verde subdivision); (3) current title binder transferring title to FMD, with standard exceptions deleted, and a letter from general counsel describing any special exceptions and the impact of those special exceptions on the intended use; and (4) fully executed donation agreement.

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

Presenter: Leila Kleats, Director


[Informational item.]

STATE TREASURER’S OFFICE

Presenters: Vikki Hanges, General Fund Portfolio Manager, State Treasurer’s Office

18. Monthly Investment Reports for Month-Ended March 31, 2017


Ms. Hanges presented these reports. She noted that, for the month of March, STO earned $2.4 million in income; and for the quarter, $6.9 million.
TAX INCREMENT DEVELOPMENT DISTRICTS

20. 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

Ms. Malavé advised the board that, if attorney Pat Rogers or any other representatives of Western Albuquerque Land Holdings present today intended to present public comment, it would require a reopening of the public hearing and additional public notice.

Lt. Governor Sanchez agreed that the board would proceed with deliberations today and it was not necessary to reopen the public hearing.

Mr. Archuleta stated that his only concern all along has been the constitutionality of this; otherwise, he was prepared to approve the rule change, pointing to the importance of breaking down as many economic development barriers as possible so that people wanting to invest in New Mexico know they have a clear path to that. He said the rule as written creates great uncertainty.

Ms. Malavé said the constitutionality issue here is that the TIDD Act requires that dedication of state gross receipts taxes, like all public monies, receive legislative approval.

Mr. Aragon agreed with Mr. Archuleta’s comments. He said one important consideration is that this creates a conflict of law because the regulation goes outside the parameters of the statute itself. As to the merits of the issue, he said the TIDD Act is burdensome and unpredictable, in that someone coming into the state wanting to invest in infrastructure could wait many months to get that done. He said this violates the intent of the statute, which is meant to facilitate economic development.

With respect to any constitutionality issues, Mr. Aragon said he felt the board should move forward with this and see if there are any challenges to the board’s decision.

Mr. Archuleta asked how the question of legislative appropriation would be resolved; for example, does the TIDD Act compel the legislature to approve the gross receipts tax dedication, or might there be a situation where someone is several months along in a project only to have the legislature decline to approve the dedication of the monies.

Responding to Mr. Kormanik, Bond Counsel Jill Sweeney stated that a dedication to a TIDD remains in place as long as there are bonds outstanding, which can be up to 25 years, and the
statute has a diminishing clock. If no bonds are issued, there is a statutory termination provision addressing the satisfaction of contractual obligations and agreements and the TIDD remains until those various obligations are dealt with.

Mr. Brasher commented that there is a real need for the TIDD program, and it needs to function for the businesses wanting to come into the community. The state needs the employment and it needs the jobs. He said the rule runs counter to legislative intent.

Responding to Lt. Governor Sanchez, Ms. Malavé stated that the board can amend the rule, but it does not change the underlying statute, which contemplates the dedication of the state gross receipts tax for the purpose of bond financing. Under bond financing, there is a separate provision of the Act that also requires legislative approval for that purpose.

Mr. Aragon moved to approve the rule change. Mr. Brasher seconded the motion, which passed 4-1 by voice vote, with Mr. Kormanik voting against the motion.

**STAFF ITEMS**

Presenter: Donna Maestas, Deputy Director

21. Approval of Agreement and Final Award of Contract for Bond Counsel Services, and Submission to the Department of Finance and Administration Contracts Review for Approval

Ms. Maestas stated that, as reported at the last meeting, the Evaluation Committee reviewed the scores for bond counsel proposals that were received, and recommended selection of the joint proposal from Sherman & Howard and Rodey Law, which received the highest score at 772 points. The next offer was Virtue & Najjar, at 665 points, followed by Andrews Kurth Kenyon at 547 points and Nixon Peabody at 501 points.

Ms. Maestas reviewed the proposed contract, and requested approval.

Mr. Archuleta moved for approval. Mr. Brasher seconded the motion.

Mr. Brasher commended staff on doing an excellent job with this very difficult task.

The motion passed 5-0 by voice vote.

Presenter: Leila Kleats, Director

22. Approval of Agreement and Final Award of Contract for Arbitrage Services, and Submission to the Department of Finance and Administration Contracts Review Bureau for Approval
Ms. Kleats reviewed a form of contract with BLX Group, which submitted a quote most advantageous to the state. She said she received confirmation with BLX Group that they are satisfied with this form of contract.

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

23. Approval of Revised Fourth Amendment to Fiscal Agent Banking Services Agreement with Wells Fargo Bank Extending for a Term of Two Years, Clarifying Statewide Pricing Agreement Approval Process, and Expanding Scope of Services to Include Participation in State Tax Refund Return Opt-in Program

Ms. Kleats stated that the board had already approved the Fourth Amendment to this agreement, which was extending for a period of two years and acknowledging participation in the State Tax Refund Return Opt-in ACH program. Before staff was able to collect all of the signatures on the amendment, however, the State Purchasing Division notified staff that this was a Statewide Pricing Agreement and there were certain entities that were participating and there were concerns about what would happen with these participating entities if it expired. In discussions with Wells Fargo, they had indicated that they never intended this to be a Statewide Pricing Agreement available for all local governments, and that the pricing was based on large volume clients.

Ms. Kleats said staff has revised the Fourth Amendment to clarify the approval process for any entities wishing to participate under the Statewide Pricing Agreement. Under this revised process, the parties would contact her, which she would discuss with Wells Fargo and relevant parties, and written approval would be required from the State Board of Finance Director.

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

24. Approval of Second Amendment to Custody Bank Services Agreement with J.P. Morgan Extending Term for Additional Two Years

Ms. Kleats said this is an extension for two years, to 2020. She said J.P. Morgan has okayed the form of amendment.

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

25. Fiscal Agent/Custodial Bank Fees
Ms. Kleats noted that, because of the provision in the contract that says the earnings credit will be the higher of 50 basis points or the average of the previous month’s T-Bill, earnings are now at 77 basis points. She said the number is expected to be higher in May.


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

ADJOURNMENT

Its business completed, the State Board of Finance adjourned the meeting at 1:45 p.m.

Susana Martinez, President

Date 6-23-17

Michael Brasher, Secretary

Date 6/30/2017