MINUTES OF THE
NEW MEXICO STATE BOARD OF FINANCE
REGULAR MEETING
Santa Fe, New Mexico
June 19, 2018

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

1. ROLL CALL — QUORUM PRESENT

Members Present:
The Hon. Susana Martinez, President [present 9:30 – 2:20 p.m.]
The Hon. John A. Sanchez, Lt. Governor
Mr. Robert J. Aragon, Public Member
The Hon. Tim Eichenberg, State Treasurer
Mr. Adelmo Archuleta, Public Member
Mr. Michael Brasher, Public Member, Secretary
Mr. John Kormanik, Public Member

Members Excused:
None.

Staff Present:
Ms. Donna Maestas, Acting Director
Ms. Duffy Rodriguez, Secretary of Finance and Administration

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

Others Present:
[See sign-in sheets.]

2. APPROVAL OF AGENDA
ANNOUNCEMENT: NEXT REGULAR MEETING — TUESDAY, JULY 17, 2018
Ms. Maestas requested that Item 24e [Western Albuquerque Land Holdings (formerly SunCal)] be removed from the agenda, as the former SunCal TIDD is the same as the DevCo TIDD listed as Item 24a.

Mr. Brasher moved for approval of the agenda, as amended. Mr. Aragon seconded the motion, which passed 6-0.

CONSENT AGENDA (Items 3-7)
Presenter: Donna Maestas, Acting Director

Submitted by: Donna Maestas, Acting Director

3. Approval of Minutes: May 15, 2018 (Regular Meeting)

Submitted by: Jay Czar, Executive Director, New Mexico Mortgage Finance Authority

4. New Mexico Mortgage Finance Authority – Requests Approval for Change of Financing Structure and Extension of Private Activity Bond Cap for JLG NM Central 2017 LLLP

5. New Mexico Mortgage Finance Authority – Requests Approval for Change of Financing Structure and Extension of Private Activity Bond Cap for JLG NM North 2017 LLLP


Submitted by: Gerald Hoehne, Capital Projects Director, New Mexico Higher Education Department

7. University of New Mexico, Valencia Campus – Requests Approval of the Photovoltaic, Solar Power System Phase 2, Arts and Sciences Building ($400,000)

Mr. Eichenberg moved for approval of the Consent Agenda, as published. Mr. Aragon seconded the motion, which passed 6-0, with Mr. Brasher in abstention on Item 7.

SEVERANCE TAX BONDS AND NOTES
Submitted by: Parker Scheken, Co-Bond Counsel, Sherman & Howard, LLC; Luis Carrasco, Co-Bond Counsel, Rodey Law Firm; David Paul, Financial Advisor, Fiscal Strategies Group

8. Consideration of Amending Resolution for State of New Mexico Severance Tax Bonds, Series 2018A – Maximum Principal Amount of ($171,054,220)
Mr. Paul reported that there were eight active bidders in today’s bond sale with 34 cumulative bids, and Stanley was the successful bidder, coming in with a true interest cost of 2.41 percent. A list of the bids and interest rate on each of the bids has been distributed to board members.

On a second matter, Mr. Paul stated that the general obligation bond rating with the state has been under pressure both from Moody’s and Standard & Poor’s, both of which had a negative outlook on the GO rating since late 2016. Yesterday, Moody’s revised the rating from Aa1 with a negative outlook to Aa2 with a stable outlook. In its press release, Moody’s noted that, while the state has been tremendously successful in restoring balances to strong levels, it has also incorporated a new credit criterion, which now reflects unfunded pension liabilities as debt of the state. Mr. Paul added that, even at the Aa2 level, with those added liabilities, the state has a high level of liabilities relative to its new peer rating among the states.

Mr. Paul commented that, in the wake of Detroit and other municipal bankruptcies, the world has been left with open questions of what happens to the panoply of liabilities that a governmental entity has in the event of an insolvency or bankruptcy and how pension liabilities are to be treated. In Detroit, the liabilities came first and the GO bonds came last because there was no revenue assigned to them. In New Mexico, the argument was made to the rating agencies that GO bonds do have a pledged revenue assigned to them; the response from the rating agencies was that they had no idea how that pledge would be handled by a judge should there be problems down the road.

Mr. Aragon recalled NMERB Executive Director Jan Goodwin’s testimony, about five years ago, that it takes a pensioner an average of 7.8 years to take out of every dime that they and the government have put into their pension fund, after which they are using other people’s money. He asked what happens to the state in 20 years when these pension funds will not be able to maintain the promises that elected officials made to these public employees. Mr. Paul responded that this is the fundamental issue: Does one wait to find out then, or does one convene the stakeholders to come up with a strategy that recognizes that it’s in no one’s interest to wait 20 years to find out.

Mr. Archuleta noted that corporations have been moving to defined contribution plans from defined benefit plans. He asked if pension funds are following suit. Mr. Paul responded that it is very difficult to make that transition, largely because that’s not what public employees want. Mr. Archuleta suggested that there is an opportunity for future leaders to come up with a “toned down” approach to a defined contribution plan that could include some contribution from the public sector.

Secretary Rodriguez commented that the CAFR is also referenced in Moody’s, and there is not going to be any improvement unless there is a change made to the way the state conducts its audits. This year, once again, DFA is looking at 134 individual audits, trying to bring them together into a consolidated financial statement for the state, and
there will be disclaimed portions again. The Governor supported legislation this past session to change the way the state does its audit process; and while it passed the Senate, it died in the House.

Mr. Brasher said one difference between other states and New Mexico is that New Mexico has kept government costs down and has gotten fair consideration from the rating agencies on how it handles its expenses. Mr. Paul agreed. He said Moody’s was well aware of the irony of taking this action at this time, and they recognized the actions that the state has taken in terms of magnitude and speed in responding to the difficulties the state has had over the couple of years.

Mr. Schenken stated that the final bond sizing is $122,560,000.

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

9. Consideration of Amending Resolution for State of New Mexico Severance Tax Note, Series 20185-A – Maximum Principal Amount of ($23,798,100)

Mr. Carrasco reviewed this resolution, which amends the shell project list presented at last month’s meeting. The list before the board today contains the projects determined eligible for funding for this issuance, and they are ready to go. The sum of the projects is $23,785,143.70.

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


Mr. Schenken stated that, in May, the board approved a resolution that delegated to the Executive Officer and Acting Director of the Board of Finance the authority to approve the bids that were submitted this morning. That has taken place, and this action item is the conclusion of that process.

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

11. Consideration of Amended and Restated Resolution Reauthorizing Certain Severance Tax Bond Projects

Mr. Carrasco stated that, when this was presented at last month’s meeting, there were some questionnaires that were submitted after the deadline. Legal staff was able
to do the due diligence with regard to those projects, and six projects have been added to the list.

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

**EMERGENCY FUND BALANCES**
Presenter: Donna Maestas, Acting Director
8. **Emergency Balances – June 19, 2018**

<table>
<thead>
<tr>
<th>Fund</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Reserve Fund</td>
<td>$1,683,876.50</td>
</tr>
<tr>
<td>Emergency Water Fund</td>
<td>$104,800.00</td>
</tr>
</tbody>
</table>

Ms. Maestas reported these balances, noting that the funds would revert back at the end of the fiscal year, leaving a zero balance. On July 1, the Fund would start over again with a balance of $2 million in the Operating Reserve Fund and $118,000 in the Emergency Water Fund.

**EMERGENCY FUNDING REQUEST**
Presenter: Maggie Toulouse Oliver, Secretary of State; John Blair, Deputy Secretary of State; Veronica Albin, Chief Financial Officer
13. **New Mexico Secretary of State – Requests Approval of Emergency Funds ($66,516)**

Ms. Toulouse Oliver requested an emergency grant from the State Board of Finance in the amount of $66,516 to cover attorney fees that the Secretary of State’s Office (SOS) has incurred.

Ms. Toulouse Oliver said this expense was not planned for because it was not expected. Late last year, Congressman Steve Pearce requested from the SOS that he be able to transfer several hundred thousand dollars from his federal campaign account to his state campaign account for purposes of conducting his campaign for governor. Based on state law, the maximum amounts that could be transferred were $5,500 for the primary and $5,500 for the general election. Congressman Pearce disagreed with the SOS’s interpretation and challenged that interpretation in federal court. On the basis of the First Amendment, the Court determined that the New Mexico law was unconstitutional and ruled in Congressman Pearce’s favor. Out of a desire to avoid prolonged litigation and potentially incurring more costs to the State, the SOS agreed to settle this matter and is being asked to pay Congressman Pearce’s attorney fees. At this point, the SOS understands it will be responsible for paying the amount requested from the board today. It does not have that amount in this fiscal year’s budget.

Mr. Kormanik asked Ms. Toulouse Oliver what the nature of the emergency was. Ms. Toulouse Oliver responded that her office has been ordered to pay these fees by a
federal court. Given that there is an election underway, the SOS believes it is their responsibility to make a request for these funds at the first opportunity.

Mr. Kormanik asked Ms. Toulouse Oliver if she was saying the emergency is that it would have a detrimental effect on upcoming elections. Ms. Toulouse Oliver responded that it is possible, but a bigger issue is that they have been ordered to pay these fees by a federal court.

Mr. Blair added that the office was able to negotiate a 50 percent reduction in the amount with Congressman Pearce’s attorney because the SOS agreed, as part of a good faith effort, to pay these fees as quickly as possible.

Responding to Mr. Archuleta, Ms. Toulouse Oliver said that the court order stipulates that the attorney fees are to be paid by the State. The total amount of attorney fees is about $130,000, of which $66,516 is the portion to be paid by the SOS.

Mr. Blair added that they are still negotiating with the Attorney General’s Office and the Lea County District Attorney on their portion of the total. He said the $66,516 would represent roughly 50 percent, which the SOS views as a worst-case scenario. They have suggested that the Lea County District Attorney be responsible for 10 percent and that the Attorney General’s Office and the SOS split the remaining 90 percent.

Governor Martinez asked how this could potentially impact the election. Ms. Toulouse Oliver responded that if the SOS were derelict in making this payment, and the opposing attorneys decide that they want to pursue another mechanism for collecting the fees, they could potentially go to the court for additional relief and request actual physical objects that the SOS possesses, such as voting machines. Governor Martinez expressed doubt that voting machines would be confiscated in the middle of a national election for the sake of collecting $66,000. Ms. Toulouse Oliver commented that she really did not know how this could potentially impact the election, but in the interest of having the upcoming election run smoothly, she felt it was her responsibility to appear before the board and request the funds as soon as possible.

Governor Martinez said she could not see how the need to pay attorney fees could be considered an emergency when contrasted with emergency funding requests that the board typically sees. She cited recent fires in Northern New Mexico, outdated community water systems, and flood damage to be expected from heavy rains during monsoon season.

Governor Martinez asked if these fees could be paid from the next fiscal year’s budget. Ms. Toulouse Oliver responded that that they probably will not know until they are through the November election process, and they are planning to request another supplemental budget amount from the Legislature this January because they already know they will not have sufficient funds to carry them through the fiscal year.
Governor Martinez noted that the board submitted a series of questions to the Secretary of State’s Office. In question #2, the SBOF Emergency Funding Policy, Section IV.A.ii was cited: “The nature of the emergency, with priority given to requests that address a public entity’s inability to deliver critical governmental services that affect the public health, safety and welfare of individuals or communities; emergency funding will not be approved for situations that do not severely affect the quality of government services as determined by SBOF.” The question that followed was, “How does the delayed payment of these attorney fees affect the ability of the Secretary of State to deliver critical government services?” Governor Martinez noted that the Secretary of State’s Office responded, “It does not.” She also noted that the response to the third question, which was how the request is related to the public health, safety and welfare of individuals or communities, was, “It is not.”

Governor Martinez also noted that the SOS stated in the questionnaire that they would request a supplemental appropriation during the 2019 legislative process if the SBOF did not approve this request.

Mr. Eichenberg noted that the Operating Reserve Fund, which would be the source of this requested grant request, has a $1.6 million balance right now and would revert back to the general fund in two weeks.

Mr. Aragon disclosed that he once worked with Ms. Albin.

Mr. Aragon commented that he did not see how the SOS would be rendered unable to carry out its constitutional and statutory requirements in the upcoming election if the board did not grant this request.

Responding to Mr. Aragon, Ms. Albin said reimbursements are required for Native American early voting sites, and they have invoices for that and anticipate about $40,000 in reimbursements. They are also obligated to reimburse the counties for conducting the recounts. They have set aside $56,000 for these two items and expect that all of it will be expended by the end of the fiscal year.

Mr. Aragon suggested that the SOS could write a check for $66,000 in the beginning of the next fiscal year to cover these attorney fees, since a request made from the board after that to cover the shortfall could be considered a legitimate emergency under the board rules.

Lt. Governor Sanchez said he could understand the situation faced by the SOS, but could not support this request. He commented that the board has been very disciplined in utilizing emergency fund balances in the past. He said this fire season is one of the most volatile he has ever seen, and in looking at the fiduciary responsibility of the board...
when it pertains to emergencies, he could not consider this an emergency. He cited the possibility that the board could face another emergency request this afternoon.

Mr. Archuleta said it would seem to make more sense to grant this request now, assuming that the monies would still be available at the end of the month. He stated that he would be a lot more hesitant to grant this request in November, with several months left in the fiscal year.

Mr. Archuleta recalled that the board funded the Department of Education in a very similar situation. In that case, there was a lawsuit with ongoing attorney fees, and then-Secretary Hanna Skandera appeared before the board on two occasions to request emergency funding, which was granted. He asked Ms. Malavé if he recalled this correctly.

Ms. Malavé responded that she believed the board did grant the Department of Education emergency funding and not hardship funding.

Mr. Archuleta said he would be interested in knowing if precedent was set in that situation.

Governor Martinez agreed with Lt. Governor Sanchez that the state was in the midst of a very serious fire season. She pointed out that all of the expenses from recent fires, as well as damage to the watershed, are accumulating on a daily basis and would soon be submitted to the state for payment. She expressed concern that all of the money remaining in the emergency fund could easily be expended before the end of the fiscal year.

Governor Martinez commented, “It concerns me to crack this door where we start paying lawyers’ fees from this fund.”

Mr. Brasher stated that he was also concerned about setting precedent in this instance, especially given the relatively small amount of emergency money the board has to work with on an annual basis.

Responding to Mr. Archuleta’s earlier question about funding granted to the Department of Education, Ms. Maestas and Ms. Malavé stated that the source of the funding was from the Operating Reserve Fund, and went to pay $540,000 in attorney fees.

Mr. Aragon reminded the board that, in the case of the Public Education Department (PED), PED was sued and was defending the Department rather than paying a judgment and they needed money to continue their defense. This is distinguishable from the case of the matter before the board today.
Mr. Aragon said he could not support this request.

Mr. Eichenberg commented that, in his opinion, when a federal judge makes a judgment against any state agency, it becomes an emergency.

Mr. Eichenberg moved to approve the amount of $66,516. Mr. Archuleta seconded the motion.

Mr. Archuleta said he saw no difference in whether it was the Secretary of Education or the Secretary of State trying to do their job to the best of their ability, and representing the public. He stated that there has already been precedent for approving this. He said the board knows this money has to be paid, and it would be better to pay it now rather than in November, when the board might be less inclined to approve it because of the several months left in the fiscal year.

Mr. Aragon asked Mr. Archuleta if that was indeed a second and if so, might he consider amending his motion to reflect his thought process since it deviated from the body of his previous motion.

Mr. Archuleta amended his motion to state that this would be the maximum amount requested, that it would only be to pay direct costs, and that if the amount is less, that the remainder revert back, and it would only be funded if there are no other requests for funding that the State Board of Finance may put ahead of this request before the end of the fiscal year.

Mr. Eichenberg asked Ms. Maestas if there are any other pending emergency requests this fiscal year. Ms. Maestas responded that she has heard from only one possible requestor, which involves a building in Eagle Nest that has fire damage. The funding would come from next fiscal year’s funds, however.

The amendment was accepted as friendly.

Governor Martinez stated her concerns about the purpose of this fund and the dire situations faced by communities around the state in need of emergency funding. She said she did not see it as fiscally responsible “to spend it just because we have it.” She said the Secretary of State’s Office also responded to the board’s questionnaire by stating that this was not an emergency.

Lt. Governor Sanchez asked if it would be more palatable if this were a loan. Governor Martinez responded by reiterating her concerns, and adding that there are other ways and means of getting the same amount of money.

Mr. Archuleta amended his motion to state that the amount is to be capped at the amount requested and that any unexpended portion of that revert back to the board.
Mr. Eichenberg accepted the amendment, as restated.

The motion, as amended, was defeated on a 5-2 vote, with Governor Martinez, Lt. Governor Sanchez, Mr. Aragon, Mr. Brasher and Mr. Kormanik voting against, and Mr. Eichenberg and Mr. Archuleta voting in favor.

[Governor Martinez left the meeting.]

PROPERTY DISPOSITIONS

Submitted by: Vernon Jaramillo, Chancellor, Cariños Del Los Niños Charter Schools; Tomas Campos, County Manager, Rio Arriba County; Adán Trujillo, Attorney, Rio Arriba County; David Gomez, Attorney

14. Cariños Del Los Niños Charter School – Requests Approval for the Sale of Real Property Located at 714 Calle Don Diego in Española to Rio Arriba County ($60,000)

Mr. Gomez stated that Cariños Del Los Niños Charter School is requesting approval of the sale of Cariños Charter School (CCS), in Rio Arriba County, to Rio Arriba County in the amount of $60,000 for various public purposes. The charter school is closing on or about June 30, 2018, and is wrapping up operations now, including disposal of the school site.

Ms. Maestas stated that, as far as staff is concerned, Cariños de Los Niños owns the property in fee simple and they have complied with the statutory requirements to have their closure plan approved by the Public Education Commission. Legally, they can sell the property to Rio Arriba County.

Ms. Malavé said there are a number of statutes in play, and there was some discussion early on about whether or not it was appropriate for this board to even consider this request at this time. She sought confirmation from the Public Education Commission (PEC) that it had considered this request under her reading of the Charter School Act, which requires PEC approval of the pending closure of a charter school property. She noted that Section 22-8B-12.1 relates not only to the decision of closure, but also to the disposition of any property. In this case, the proceeds of the sale would go first to pay the outstanding obligations of the charter school and then the balance would go to the general school fund. Ms. Malavé said a separate statute states that, within statutory and constitutional limits, a charter school may acquire and dispose of property.

Ms. Malavé said the charter school, as long as it complies with the various provisions of the Charter School Act, in this case going before the PEC to get approval of the
closure and plan for disposal, and then appearing before the Board of Finance under Section 13.1, may dispose of its property as contemplated.

Ms. Malavé said one issue is that the purchase agreement states that the property is being sold to Rio Arriba County at well under its appraised value; however, because it is another public entity, the Anti-Donation Clause is not implicated.

From a legal standpoint, Ms. Malavé said she saw no impediment to this going forward.

Lt. Governor Sanchez opened the floor to public comment.

Geno Zamora, Ortiz & Zamora Law Firm, representing the Española Public Schools, introduced Superintendent Bobbie Gutierrez and school board member Gilbert Serrano. He said this property has been owned by a public school entity since 1924. From 1924 to 2016, the property was owned by Española Public Schools, which conveyed it to the CCS knowing it would be used for educational purposes. Today’s conveyance transfers this $690,000 educational asset out of the educational process. He said this asset should remain the asset of a public school entity either through reversion to the Public Education Department or to the Española Public Schools. He said Ms. Malavé was referring to the statute that they rely on, as well, which is §22.88.4(N), which states that “Within constitutional and statutory limits, a charter school may acquire and dispose of property provided that, upon termination of the charter, all assets of the state-chartered charter school shall revert to the state, except that, if any or all of the state-chartered charter school facility is financed with the proceeds of general obligation bonds issued by a local school board, the facility shall revert to the local school board.”

Mr. Zamora stated that the Española Public Schools request that this transfer be denied.

Mr. Kormanik asked how the charter school would pay off the balance of the debt, where $60,000 would be provided to pay off outstanding commitments, under the scenario where the school board receives the building. Mr. Gomez responded that there is also the opportunity for the district to meet the same compensation for this. Because they are a state charter, the school district would not assume their debt and the state may actually be faced with the debt. He added, however, that the school district is willing to provide the same compensation that the county has offered. The compensation would be offered to CCS, which would then pay its own debt.

Ms. Gutierrez stated that, prior to the time that the facility was transferred to CCS, it served a central office facility and warehouse, and the gymnasium as used for its basketball programs and community leagues, and there was a special education classroom there who had been suspended from their regular school program. She said the transfer took place in May or June of 2016.
Mr. Archuleta asked why the property was transferred.

Mr. Zamora responded that, without getting too deeply into settlement negotiations, the property was transferred to resolve a pending lawsuit, and there were multiple discussions on available properties. This was the property that was agreed on as part of a settlement agreement.

Mr. Archuleta asked what the value of the school was at that time or perhaps the settlement at that time. Mr. Zamora responded that they came to the Board of Finance for approval, and at that time, the County Assessor had it valued at $250,000.

Mr. Archuleta commented that what was "glaringly absent" in the transfer document was a statement that it would revert back to the Española Public Schools if it was no longer to be used as a school.

Mr. Archuleta asked if there was an urgent need for this property to stay in the hands of the Española Public Schools. Ms. Gutierrez responded that there was "a need." She said their central administration building is about 11,000 square feet versus the additional space that they had, so some departments are located in other facilities within the city. She added that some of their smaller schools in outlying communities with declining enrollment have space, but they are several miles from town. As far as the schools in town, those are at capacity. She said there are no plans for new construction right now, as the next general obligation bond will be to address existing facilities that need attention.

Responding to Mr. Archuleta, Mr. Trujillo said the county intends to use the property for their RACSTOP program, which offers a suite of services to the general public, including substance abuse counseling, family counseling, GED classes and drug courts. They have outgrown their current space and would like to continue offering those services.

Mr. Aragon said he was trying to reconcile the applicable statutory language in 22-8B.4(N), cited earlier, with the quitclaim deed. He said the section in statute states that the property would revert back to the Public Education Department or to the district, but the quitclaim contains no reversionary clauses. He asked how the state would be able to do this without violating due process rights of CCS, since this would be tantamount to a taking.

Mr. Zamora said CCS is a public entity and therefore does not have individual due process rights, and the government, through the legislature, has the authority to set limitations on ownership. When a governmental entity wants to purchase or sell, they must go to the Board of Finance.
Regarding the language, “within constitutional and statutory limits,” Mr. Zamora said that phrase applies throughout the entire paragraph, but applies first to placing the limits on a charter school’s ability as a governmental entity to acquire and dispose of a property. Later on, at the bottom of the paragraph, it states “if this entity goes defunct without transferring its property... then it will revert.” If he dies, his heirs get his property. By statute, if the charter school dies, the heirs (NMPED or the local school district) will inherit the property.

Mr. Zamora said he wanted to make clear that the Española Public Schools are not contesting Ms. Malavé’s legal analysis and do not contest that the deed is fee simple and does not have a reversionary clause. The statutory reversion, however, shows how this would stay within public education inventory.

Mr. Aragon said he was assuming that the property was acquired back in the 1920s utilizing public funds. He read the last part of the statutory section in question, which states, “if all or any portion of the state chartered school facility is financed with the proceeds of a general obligation bond issued by a local school board, the facility shall revert to the local school board.” Based on his assumption that it was at some point acquired by state funds, he asked if the last sentence would by implication create a reversionary provision in the deed.

Mr. Gomez said the obligation for a reverter ceased when the Española schools no longer owned the property, and at that point CCS owned the property free and clear and didn’t have to comply with the provision regarding general obligation bond-funded property reverting back to the state. He pointed out that the statute is silent with respect to what happens when a charter school owns its own property, and he suspected there were other charter schools in the same situation that could be faced with having to buy out, for example, the Albuquerque Public Schools or the Taos Public Schools in order to dispose of their property because they were defunct.

Mr. Gomez added that there is also the question of whether the letter of June 15, 2018, is the official position of the Española Public Schools. They had a meeting scheduled for June 6 that was canceled on June 5, and on June 7 they received a letter from the Española Public Schools’ counsel in which their only concern was that this proposed sale go to the Board of Finance. On June 15, they got the letter from counsel for the school district stating the opposition of his client, but according to the online notice of meetings and agendas for the Española Public Schools, there doesn’t appear there was a meeting in which they were able to take official action on that position. He said the June 18 meeting agenda listed a possible legal action on the CCS sale, but that obviously occurred after the June 15 letter.

Mr. Zamora responded that the Española Public Schools Board of Education has met in executive session, with their lawyers, regarding this issue on several occasions over the last few months. The most recent meeting was yesterday, and prior to that, they
met on May 23. Each time, direction was received on how to proceed with various legal issues, which sometimes applied to the next day, and other times in coming weeks. He said threatened or pending litigation discussion in executive session can apply to a legal matter several months down the road, and falls under exceptions to the Open Meetings Act. In addition, the board president or superintendent, by direction, can aid counsel. Also, boards are authorized to designate one or two members for counsel to coordinate with constantly and continue to take actions without having to call a board meeting every few days.

Mr. Zamora said this would be considered a taking if this were a private school and not a public entity. In 22-88.4, the Charter School Act contemplates two separate types of charter facilities. The first, under Paragraph F, is that lease scenario in which a local school district is required to lease vacant facilities to charter schools, and it dictates the terms of the lease. Also, the Board of Finance statutes exempt those leases from consideration. In Paragraph N, it specifically contemplates a charter school, a public entity and not a private entity, acquiring and disposing of property.

Mr. Aragon asked Mr. Zamora if the quitclaim deed therefore shouldn’t have indicated at some point that it was subject to the terms delineated in 22-.88, as it’s moot with respect to any reversionary clause and/or statutory limitations.

Mr. Zamora responded that a quitclaim deed by statute simply conveys whatever rights the owner has, and that’s what they did, no more and no less. Mr. Aragon asked, “And that deed contemplated subject to the statute?” Mr. Zamora responded yes, because the statute is in place and governs educational entities.

Mr. Gomez said this presentation began with an explanation from board counsel that there was no impediment to this being before the Board of Finance, and Mr. Zamora has also stated that they do not object with the board counsel’s legal opinion that this is properly before the board. He said Mr. Zamora then proceeded to state that the statute prevents this from being before the Board of Finance because it properly must revert to the local school board. He commented that this was a glaring contradiction. He said this raises the question of what the competing public policies are over the use of these facilities.

Governor Martinez commented to Mr. Zamora that she could not understand why the Española Public Schools did not lease the property to CCS rather than handing it over to them in a quitclaim deed. Mr. Zamora responded, “If I could look back two years at the mistake, we did not anticipate that Cariños was going to fold in two years.” Governor Martinez responded, “That doesn’t give you any greater legal argument that can be used to convince anybody that you have a greater right to it.” Mr. Zamora said that was why their argument today is a policy argument and not a legal argument. Governor Martinez commented that the Board of Finance does not make policy, and this is not its role.
Responding to Mr. Eichenberg on how the $60,000 being transferred from the county to CCS would be expended in terms of debt that CCS has, Mr. Gomez said the amount of debt CCS has when it closes its books is only an estimate. Mr. Trujillo said there are costs associated with the closing, e.g., payroll, audits, and so on, and any of the remainder would revert to the state. He also noted that no litigation can take place unless and until the Board of Finance acts, which raises the question of who will pay the legal fees when this goes to court.

Mr. Trujillo responded that he felt comfortable in stating that if this were challenged in court, he would be selected as in-house counsel to represent the county’s interest.

Addressing a procedural matter, Mr. Aragon stated that, if the board does not approve this transfer, the assets of the charter school would revert to the state. If the board approves this, the transfer is consummated and it would be up to the Española School Board to decide whether to challenge the transaction or not. He asked if this was correct. Ms. Malave responded that the board would treat this like any other property disposition that comes before it; if it is in the state’s best interest, the parties have agreed, and there’s no reason to step in, then the board takes action and that concludes the matter with respect to the Board of Finance.

Mr. Kormanik noted that the property is valued at over $600,000. If the county had planned on paying the market value for the property, most of it would go back to the state; so in effect, approving the transaction as proposed is essentially a donation of that money to Rio Arriba County. If the board does not approve the transaction, the property would revert back to the state and potentially to the district.

Mr. Aragon moved approval of the transfer of the sale of the property in question. Mr. Eichenberg seconded and passed 7-0.

[Board recessed from 12:35 to 12:45 p.m.]

Presenters: Dr. Ann Lynn McIlroy, Superintendent, Loving Municipal School No. 10; Sam Minner, Attorney, Cuddy & McCarthy; Nelson Spear, Attorney; Lee White, Incoming Superintendent; Dan Castillo, Cuddy & McCarthy

15. Loving Municipal School District No. 10 – Requests Approval of the Lease of Gas, Oil and Mineral Rights in the Village of Loving to BC Operating, Inc. and Acceptance of Alternative Evidence of Fair Market Value ($10,100 per net mineral acre payment and 25% of royalties for oil, sales, and other liquid hydrocarbons, and gas)

Dr. McIlroy stated that the Loving Municipal School District No. 10 (LMSD) is requesting approval of a lease of 5.9633 net mineral acres of real property located in the Village of Loving to BC Operating, Inc., and acceptance of alternative evidence of fair
market value. No surface rights to the property will be conveyed to BC Operating, and the lessee will pay to LMSD 25 percent of the royalties for oil sales, other liquid hydrocarbons, and gas produced and conserved from the property. She said this is an incredible opportunity, because Loving is in one of the top oil-producing regions of the state.

Ms. Maestas stated that approval is contingent upon Director’s receipt and counsel review of the fully executed lease agreement.

Mr. Archuleta moved for approval, with the contingency. Mr. Eichenberg seconded the motion, which passed 7-0.

**FISCAL AGENT BANK**
Presenter: Janet Mendenhall, Vice President and Government Segment Manager; Patty White, Senior Account Manager & Government Specialist, Wells Fargo Merchant Services; Mark Jensen, SVP & Regional Manager, Government and Institutional Banking; Charmaine Cook, Cash Manager, State Treasurer’s Office

25. **Approval of Amendment of Fiscal Agent Agreement**

Ms. Mendenhall stated that Wells Fargo has learned that some of the volume they are processing for the Board of Finance will be moving to another provider, so they have a revised pricing schedule for the board to consider.

Responding to Mr. Kormanik, Ms. Malavé said the contract term ends in April 2020.

Ms. Mendenhall said Wells Fargo is a volume-based business, so in this case has created a tiered pricing schedule that will take effect once the volume leaves, but will continue to reduce pricing if volume continues to increase. They have seen an increase in the number of agencies that want to expand their services in the last few months, so they want the board to benefit from that.

Responding to Mr. Aragon, Ms. Mendenhall stated that the new threshold is $42.9 million, which the board has easily met in the past. She said the current threshold is $122 million. She said the current rate is 4.5 cents per transaction. She stated that Wells Fargo has not established a threshold below the $42.9 million because the tenets of their relationship is being the board’s exclusive provider until April 2020, and they do not expect it to decrease.

Responding to Mr. Archuleta, Ms. Cook stated that the Taxation & Revenue Department (TRD) has not been paying fees because their current model is convenience fee, so that the cardholder is paying those fees. That has been going through Wells Fargo, and will have the same setup with the new vendor, where TRD will not pay the fees and the cardholders will pay a convenience fee to cover those costs.
Mr. Archuleta observed that the board’s fees are now going to be doubled for one-third the amount of volume.

Ms. Maestas explained that TRD was using Wells Fargo previously. There are two parts of a payment card transaction, front end processing and the back end processing, which is the acquirer’s bank. She said the board has a merchant services agreement with the fiscal agent agreement, and the intention of the agreement was to be exclusive so that Wells Fargo would do the back end piece for all the state agencies. Apparently, there was some language in the agreement that left a loophole that TRD was able to use to enter into a contract with another acquirer bank. The agreement before the board would close the loophole so the board doesn’t have other state agencies going to other acquirer banks. In addition, the board is trying to have everyone be PCI compliant, and wants to control that process without so many banking relationships with the state agencies. Because TRD is leaving and they are the bulk of the volume, the board’s original agreement was based on that volume, and there was nothing saying what happened when the volume dropped. She added that there was also a moratorium in place, where new state agencies couldn’t use payment card services, but that has been lifted and now other state agencies are wanting to use payment card services and can come to the board.

Secretary Rodriguez stressed the importance of being PCI compliant. Right now, the board is paying a fine of $5,000 a month, but that could increase to $50,000 a month.

Mr. Archuleta moved for approval. Mr. Kormanik seconded the motion, which passed 7-0.

4.07

**STATE PERSONNEL OFFICE**

Presenter: Justin Najaka, Director, State Personnel Office

16. State Personnel Office – Requests Approval of a Temporary Transfer of 52 Human Resources Employees and 15 Vacant Positions to the State Personnel Office from 16 Executive Branch Agencies (Pursuant to NMSA 1978, §10-7-1)

Mr. Najaka stated that he appeared before the board on January 17, 2018 to make this same request for the duration of FY 2018, which was unanimously approved. Today, he was making the same request to reauthorize the same approval for FY 2019.

Mr. Najaka noted that, on February 22, 2017, Governor Martinez issued Executive Order #2017-002 to centralize and consolidate the state’s human resource functions under the State Personnel Office (SPO) for classified employees. The first phase has been implemented. At the core of this initiative is the transformation of human
resources from a transactional function to being a strategic partner working with agency leaders to identify solutions to human capital management. Among the benefits are consistent application of rules, regulations, policies and procedures and collective bargaining agreements, to reduce the duplication of efforts and resources, to streamline HR processes by removing unnecessary steps and to provide employees with consistent information at the time they need it.

Mr. Najaka said that this consolidation and centralization effort has resulted in lower operating costs and increased efficiency and effectiveness in serving employees. Through the actions performed by SPO, agencies have eliminated the need for more than 100 positions left vacant through attrition, with an annual cost savings of over $5 million.

Mr. Kormanik asked if the operating budgets coming into effect on July 1 reflect these positions. Mr. Najaka responded that they do not, as the legislature did not take action on SPO’s request. He said there was not enough time to get it through the session.

Secretary Rodriguez explained that the budgets will stay within the state agencies; for example, DFA has three HR positions, and those were transferred to SPO through the previous board approval. DFA still pays their salaries and buys their supplies. The legislation proposed during the recent session would have allowed them to bill the agencies.

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

Governor Martinez noted that, previously, there were 478 HR people in executive positions, or 1 HR employee for every 37 employees, while the national average is 1 for every 100. Mr. Najaka said there are now 226 HR employees.

**STATE TREASURER’S OFFICE**

Presenter: Vikki Hanges, Chief Investment Officer and General Fund Portfolio Manager

17. Monthly Investment Report for Month-Ended April 30, 2018

Ms. Hanges reported that STO managed $4.2 billion in assets at April 30, with income earned of about $5 million. Due to higher interest rates, the portfolios experienced an unrealized loss of $3.8 million.

**GENERAL SERVICES DEPARTMENT**

Presenters: Ned Fuller, Acting Cabinet Secretary, General Services Department; Monique Jacobson, Cabinet Secretary, Children, Youth and Families Department
18. Request for Approval of the Acquisition of Real Property known as the Pinetree Corporate Center, Located at 4501, 4665, 4725, 4775, and 4801 Indian School Road in Albuquerque for the Children, Youth and Families Department, and Approval of the Design-Build Contract For Renovations at said Location.

19. Request for Approval of the Acquisition of Real Property known as the Pinetree Corporate Center, Located at 4501, 4665, 4725, 4775, and 4801 Indian School Road in Albuquerque for the Children, Youth and Families Department, and Approval of the Design-Build Contract For Renovations at said Location.

(a) Approval of the Acquisition of Real Property ($7,725,000)
(b) Approval of Design-Build Contract for Renovations ($10,400,000)

Secretary Jacobson stated that, at the current time, there are 2,611 kids in custody in foster care in New Mexico. About 1,000 of them are in Bernalillo County. She said they want to create a “trauma-informed space” for the kids when they are first transferred out of an abusive situation. She said there would be spaces to decompress, relax and take their minds off of what they are going through, with books, movies and things they can focus on rather than the tragedy that is occurring around them. She said the space also needs to be appropriate and secure for staff, who have to deal with horrific stories every day.

Acting Secretary Fuller said that the legislature passed Senate Bill 193 in 2018, authorizing the New Mexico Finance Authority to issue and sell $20 million of state office building tax revenue bonds for the planning, designing, acquiring, constructing, renovating, equipping and furnishing buildings and land in Bernalillo County to be used by CYFD. Currently, CYFD has seven separate leases in Albuquerque, the majority of them at the Bank of the West complex, and these leases, which are not renewable, terminate in January 2019. In March, CYFD put out an RFP to get the best options on the table, with the Pinetree Corporate Center selected. He said the scheduled closing is on June 28, and the purchase price for the property is $7,725,000. He stated that the next step was to issue an RFP to renovate the building, with HB Construction selected from the two finalists.

Acting Secretary Fuller stated that about $11.3 million is available for the renovation and build-out. Construction is expected to begin no later than August 1, with completion scheduled by December 10, 2018.

Secretary Rodriguez commented that Governor Martinez has been the driving force behind this project; without that, the board would not be looking at these contracts today.
Ms. Maestas requested that approval of the acquisition be contingent upon Director's receipt and counsel review of the fully executed purchase agreement, and fully executed early termination agreements between Pine Tree Corp. and certain existing tenants.

Ms. Malavé stated that the property comes with a number of leases that are currently in place, some of which may continue, while others would terminate at closing. To the extent that any leases are assumed, the property would include those leases.

Mr. Vigil noted that at least one tenant, TriCore, possibly more, will not vacate. He said that those leases have provisions in them that the board normally would not approve if it were considering those leases on a standalone basis.

Mr. Aragon moved for approval of Item 19a, with the contingencies as noted. Mr. Brasher seconded the motion.

Lt. Governor Sanchez asked if CYFD had any problem with the lease or leases that would be initially acquired with the property. Acting Secretary Fuller said there was no problem. He stressed the importance of having an error-free process as this moves forward, as the board has previously had to deal with serious problems after the fact because of mismanagement or lack of oversight on projects.

Governor Martinez commended Secretary Jacobson and her team for an amazing job.

The motion passed 7-0.

Ms. Maestas requested that approval of Item 19b be contingent upon Director's receipt and counsel review of the fully executed Design-Build agreement.

Ms. Malavé said the cost proposal in the packet, which has been incorporated into the agreement, contains different figures than those cited by Acting Secretary Fuller during the discussion today, when he said the construction contingency was 6 percent. The cost proposal, however, states that the construction contingency was at 3 percent. In terms of the liquidated damages, there is a provision stating that it is $1,000 per day and not $2,500 per day. She said there seem to be moving pieces; and given the late date that the board received the materials, she would defer to GSD and their counsel with respect to the accuracy of the agreement.

Acting Secretary Fuller said his understanding was that there was a 6.5 percent contingency, which the maximum amount is allowed by statute, and that damages are at $2,500 per day.
Ms. Maestas said that is not what board staff received for review, so what the board would be approving today would be the cost proposal on page 1,926.

It was clarified that a design-build contractor will typically build in a contingency, which is what is in the proposal, and that the budget allows for a 6.5 percent contingency.

Ms. Maestas said the board would be approving liquidated damages at $1,000 per day.

Mr. Archuleta clarified that the 3 percent is the contractor's bid for general soft costs, including payment and performance bonds, quality control, surveying, and incidentals. This is separate from their budget, which is outside the construction contract. He said contingencies are not in a construction contract; rather, they are in the owner's budget.

Acting Secretary Fuller said the executed contract under Article 3 refers to damages of $2,500 per consecutive calendar day (page 1,886). Ms. Malavé said this does not conflict with her information.

Mr. Aragon moved for approval, with the contingency as noted. Mr. Brasher seconded the motion, which passed 7-0.

[Governor Martinez left the meeting.]

Presenter: Jimmy Rodriguez, Bureau Chief, General Services Department, Facilities Management Division

20. Facilities Management Division – Requests Approval to Adopt July 2018-December 2018 Schedule of Repairs

Mr. Rodriguez presented this report, and requested approval.

Lt. Governor Sanchez directed the Facilities Management Division to do a study on what savings the state would realize if it were not required to meet the requirements of the Davis-Bacon Act on these projects.

Mr. Eichenberg asked that they also look into where these contractors and their employees would live, given the high cost of housing in the Santa Fe area, if they were not paid a fair wage.

Mr. Aragon commented that a further analysis might include what the wages are for people who don’t work on state projects.

Mr. Aragon moved for approval. Mr. Eichenberg seconded the motion, which passed 6-0.
21. Capitol Buildings Repair Fund Financial Status Report for Month-Ended May 31, 2018

Mr. Rodriguez presented this report.

22. Facilities Management Division – Legislative Capital Projects Financial Status Report for Month-Ended May 31, 2018

Mr. Rodriguez presented this report.

23. Facilities Management Division – Requests Approval of the Inventory of Buildings Report Including an Approved Checklist of Conditions

Mr. Rodriguez presented this report.

TAX INCREMENT DEVELOPMENT DISTRICT
Donna Maestas, Acting Director

24. Pursuant to 5-15-2(A) NMSA 1978 and 2.61.3.10 NMAC, the Board’s Rule on dedication of a portion of the state’s gross receipts tax increment for tax increment development districts, districts that have received a dedication of a portion of the State’s gross receipts tax increment are required to provide employment reports, as available, setting forth in reasonable detail the numbers and types of jobs created within the district on a full time equivalent basis during the preceding 12 months period and the availability of workforce housing, to the Board every June

a. DevCo
b. Las Cruces Downtown
c. Mesa del Sol
d. Taos Ski Valley
e. [Removed under Approval of Agenda]
f. Winrock Town Center

Ms. Maestas reported that DevCo and Mesa del Sol do not have outstanding bonds, so are not required to report. Las Cruces Downtown and Taos Ski Valley did not submit reports, although the board requested them. She said Winrock Taos Center did submit a report, which was in the board packet, and Las Cruces Downtown said they were not aware that they had to submit a June report. Although the rule was clarified for them, staff did not receive a report.

STAFF ITEMS
Presenter: Donna Maestas, Acting Director

26. Approval of Final Award for Arbitrage Consulting and Compliance
Service Contract, and Submission to the Department of Finance and Administration Contracts Review Bureau for Approval

Ms. Maestas stated that the board has been in the RFP process for arbitrage consulting since April. At last month's meeting, staff was authorized to finalize contract negotiations. At this time, staff requests approval of the award of contract to the final offeror and to submit the contract to the Contracts Review Bureau.

Mr. Aragon moved for approval. Mr. Brasher seconded the motion, which passed 6-0.

27. Approval of Staff to Issue Request for Proposals for Financial Advisor Services

Ms. Maestas said the current financial advisor's contract expires on December 31, 2018, and staff is requesting approval to move forward with an RFP.

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

28. Fiscal Agent/Custodial Bank Fees

Ms. Maestas reported that the amounts reported are consistent with historical fees.

29. Joint Powers Agreements for Month-Ended May 31, 2018

Ms. Maestas reported that there were six new joint powers agreements for the month of May 2018.

ADJOURNMENT

The meeting was adjourned at 2:45 p.m.

Susana Martinez, President

7/17/18

Date