NEW MEXICO STATE BOARD OF FINANCE

REGULAR MEETING

Santa Fe, New Mexico

July 17, 2018

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

1. ROLL CALL -- QUORUM PRESENT

Members Present:
The Hon. Susana Martinez, President [arriving at 10:20 a.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 – TUES., SEPTEMBER 18, 2018

Ms. Maestas stated that Item #4 (Catron County real property transfer request) has been withdrawn.
Mr. Archuleta moved for approval of the agenda, as amended. Mr. Kormanik seconded the motion, which passed 6-0.

**CONSENT AGENDA** (Items 3-9)
Presenter: Donna Maestas, Acting Director

Submitted by: Donna Maestas, Acting Director
3. **Approval of Minutes: June 19, 2018 (Regular Meeting)**

4. [Withdrawn.]

Submitted by: Shawna Russel, Assistant Superintendent, Clovis Municipal Schools
5. **Clovis Municipal Schools – Requests Approval of the Transfer of Real Property Known as the Ranchvale Elementary School to Ranchvale Center, LLC**

Submitted by: Jennifer Salazar, General Counsel, Department of Cultural Affairs
6. **Department of Cultural Affairs – Requests Approval of the Donation of Real Property of Approximately 12.2105 Acres of Property Known as the Fort Stanton Merchant Marine Cemetery, in Lincoln County, to the General Services Department**

* Contingent upon Director’s receipt and counsel review of fully executed donation agreement.

Submitted by: Connie Clark, Strategic Assets Coordinator, Los Alamos Public Schools
7. **Los Alamos Public Schools – Requests Approval of Amendment of Lease of Real Property Located at 1900 Diamond Drive in Los Alamos to United States of America ($1,128,015 per year)**

* Contingent upon Director’s receipt and counsel review of fully executed Supplemental Lease Agreement.

Submitted by: Gerald Hoehne, Capital Projects Director, New Mexico Higher Education Department; David W. Harris, Executive Vice President for Administration, Chief Operating Officer and Chief Financial Officer; Chris Vallejos, Associate Vice President for Institutional Support Services; Lisa Marbury, Director of Institutional
8. **University of New Mexico, Valencia County – Requests Approval of Campus Wide Upgrades to Electrical and Information Technology System Infrastructure ($1,875,000)**

9. **University of New Mexico, Valencia County – Requests Approval of**
Mr. Aragon requested that Items 8 and 9 be removed from the Consent Agenda.

Lt. Governor Sanchez moved approval of Items 3, 5, 6 and 7, with the contingencies as noted. Mr. Eichenberg seconded the motion, which passed 6-0.

Secretary Rodriguez stated that the reason why Items 8 and 9 were on the Consent Agenda was because one of the projects is 95 percent complete and the other is 100 percent complete. She said they fell through the cracks in the process between the Higher Education Department and the Board of Finance. She commented that this was a “total bureaucratic mistake on everyone’s part,” and on a go-forward basis, UNM agrees that they have to follow both the HED and Board of Finance rules on the dollar thresholds for their projects coming to the board.

Submitted by: Gerald Hoehne, Capital Projects Director, New Mexico Higher Education Department; David W. Harris, Executive Vice President for Administration, Chief Operating Officer and Chief Financial Officer; Chris Vallejos, Associate Vice President for Institutional Support Services; Lisa Marbury, Executive Director

8. University of New Mexico, Valencia County – Requests Approval of Campus Wide Upgrades to Electrical and Information Technology System Infrastructure ($1,875,000)

Mr. Harris stated Secretary Rodriguez’s remarks were “one hundred percent accurate.” In 1988, a case was taken to the Supreme Court to define the term “construction” vis-à-vis the term “maintenance,” and since then, UNM has operated under legal advice that these projects could go forward as maintenance projects. He stated that these two projects were flagged by the Higher Education Department; and after extensive discussion, UNM recognizes that it was in the wrong. He added that three other projects similar to this fell below the threshold for coming to the Board of Finance, and UNM took those projects to HED and those were approved last month.

Secretary Rodriguez said these projects were always in the UNM Five Year Plan as well as in their budget. Mr. Harris added that all of these maintenance projects were identified in their annual budget and were submitted to HED and DFA and were approved, “so we thought we were good to go.”

Mr. Brasher said that he would recuse himself from the vote on this item and Item 9, but asked if he could participate in the discussion. Ms. Malavé responded that she did not think he should participate in the discussion.
Mr. Harris stated that UNM has about 16 million square feet of covered space, and tries to do most of its maintenance in the summer, when students and faculty are away from campus. The agreement they have with HED is to take all of their projects for next summer to them this September.

Responding to Mr. Aragon, Mr. Harris said both of these projects were vetted and approved by the UNM Board of Regents by resolution.

Mr. Archuleta moved for approval. Mr. Kormanik seconded the motion, which passed 5-0. [Recused: Mr. Brasher.]

9. University of New Mexico, Valencia County – Requests Approval of Mechanical-Boiler and Air Handling Unit Replacement Project ($1,698,000)

Mr. Archuleta moved for approval. Mr. Kormanik seconded the motion, which passed 5-0. [Recused: Mr. Brasher.]

**EMERGENCY FUND BALANCES**

Presenter: Donna Maestas, Acting Director

10. Emergency Balances – July 17, 2018

<table>
<thead>
<tr>
<th>Fund</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Reserve Fund</td>
<td>$2,000,000.00</td>
</tr>
<tr>
<td>Emergency Water Fund</td>
<td>$104,800.00</td>
</tr>
</tbody>
</table>

Ms. Maestas reported these balances.

**EMERGENCY FUNDING REQUEST**

Presenter: Damon Terry, Superintendent, Floyd Municipal School District

11. Floyd Municipal School District – Requests Approval of an Emergency Grant for a New School Bus ($58,505)

Mr. Terry stated that, during the 2018 legislative session, they were appropriated $50,000 to purchase an activity bus, and in February they received the paperwork from PED to complete an online questionnaire; however, he completed the wrong paperwork, and the bonds were not sold. On March 22, a fire burned their bus barn with the bus in it, and this immediate need has created this emergency request. He said the bus they would like to purchase with these emergency funds is a used activity bus.

Responding to Lt. Governor Sanchez, Mr. Terry said a new bus would cost $180,000 to $200,000. The bus they want to purchase is a 2007 model.

Mr. Kormanik asked what the nature of the emergency is. Mr. Terry responded that the bus is to transport the children to and from academic field trips, volleyball games,
football games and basketball games. He said the emergency would come from transporting the children in a bus versus in two Chevy Suburbans.

Ms. Malavé stated that the board’s policy for emergency funding addresses effect on the quality of government services. In this case, it could be said that the children’s activities during the school year would be disrupted by not having these services.

Responding to Mr. Aragon, Mr. Terry said the bus that burned was a 2000 model, and they received $7,800 in insurance money.

Ms. Maestas explained that this project was going to be included in the Severance Tax Bonds that were sold in June. These were tax-exempt bonds, so a lot of questions in the questionnaires had to do with IRS regulations on tax-exempt bonds. In the CPMS system, Mr. Terry went to the wrong area. She said Severance Tax Bonds won’t be sold until next June, but they are having a Note sale in December that could include this bus purchase. Because it’s a Note, they could use it to reimburse the emergency fund if the board were to approve this as a loan rather than a grant.

Mr. Aragon moved to authorize a loan of $58,505 to the Floyd Municipal School District for the purchase of a pre-owned bus with the understanding that those proceeds would be paid back from the net proceeds of the December severance tax note sale. Mr. Kormanik seconded the motion, which passed 6-0.

STATE TREASURER’S OFFICE
Presenter: Vikki Hanges, Chief Investment Officer and General Fund Portfolio Manager
12. Monthly Investment Report for Month-Ended May 31, 2018

Mr. Eichenberg said the State Treasurer’s Investment Committee binder was presented to staff, and there were no questions. As Ms. Hanges had not yet arrived, he suggested that this be the informational presentation.

GENERAL SERVICES DEPARTMENT
Presenter: Donna Maestas, Acting Director
13. Capitol Buildings Repair Fund Financial Status Report for Month-Ended June 30, 2018

14. Facilities Management Division – Legislative Capital Projects Financial Status Report for Month-Ended June 30, 2018

Ms. Maestas presented these reports.

TAX INCREMENT DEVELOPMENT DISTRICT
Presenters: Patrick J. Rogers, Attorney, Patrick J. Rogers, LLC; Justin Horwitz,
Attorney, Rodey, Dickason, Sloan, Akin & Robb, P.A.; Clinton Turner, Chief Economist, and Tristen Foley, Economist, Department of Finance and Administration, Economic Analysis Unit; Nate Perez and Jerry Wen, David Taussig & Associates; Matthew Look, Garrett Development Corp.; Vanessa Alarid, Registered Lobbyist for WALH

15. Request for Dedication of a Portion of State Gross Receipts Tax Increment for Lower Petroglyphs Tax Development Increment District

(a) Western Albuquerque Lane Holdings
(b) Economic Analysis Unit

Lt. Governor Sanchez stated that this item is a continuation of the discussion started at the board’s May 15 meeting. As the board will recall, after a lengthy discussion, the board voted to defer discussion on this item and, on Mr. Archuleta’s recommendation, request that (1) representatives of Presbyterian Hospital be invited to attend this meeting; (2) Mr. Rogers provide documentation to support his contention that the economic analysis provided by the DFA Economic Analysis Unit omitted information and was biased; and (3) the applicant provide a brief analysis of its amended terms.

Mr. Look made a presentation about the TIDD development, which encompasses 336 acres and would include an approximate $1 billion investment into the state, and would create about 7,000 jobs and 6,000 one-time construction jobs. He said it is important to note that the development project is part of the 8,500 acre Westland master plan, which was created in the 1960s and has been dormant until recently. Over the last eight years, WAHL has been busy working with the city and county to provide several hundred acres of open space, and there has been construction of a ball field complex, a sports stadium, a K-8 school for APS, and Mirehaven, a master-planned community. All of the growth on the Westside has been predicated on previously constructed public infrastructure paid for by government, and additional investment in public improvements needs to be made in order to continue this momentum. He added that national site selectors look at physical infrastructure as well as social infrastructure, which includes where employees will live, services for them, and availability of recreation and entertainment. A large part of that is healthcare, and there are no nearby major medical care facilities within the area.

Mr. Look said the question is how this infrastructure will be paid for. The Mid-Region Council of Governments (MRCOG) has added some infrastructure, including the 98th and 118th street traffic interchange to their 2040 transportation plan, when funding for it will become available. MRCOG also estimates that it will be another six years, in 2046, before construction is completed. Mr. Look said the TIDD is an incentive for private investment into public infrastructure and accelerates the construction.

Mr. Look said the proposal, as discussed at the May meeting, was as follows: WAHL would advance the cost of the public infrastructure out of its own pocket; the state would
dedicate 65 percent of eligible GRT taxes, not to exceed $69 million; a major medical care facility of at least $100 million would be spent on the site; until the facility is constructed, 100 percent of the annual state GRT would return to the general fund. If the medical care facility is not built, no state dedication would be given to the developer for infrastructure reimbursement.

Mr. Look discussed the downside of not giving TIDD approval. He said site selectors “are looking for any excuse” to remove New Mexico, which is in competition with Colorado, Texas and Arizona, from their shortlist. He said the bottom line is that MRCOG, the state, city and county have no foreseeable plan to fund future public improvements.

Mr. Archuleta asked Mr. Look to describe the medical facility. Mr. Look responded it would be a “Rust type” or “Santa Fe type” facility. He said $90 million would be spent on the first phase, and $93 million on the second phase, and it would be located on a 50-acre site within the TIDD.

Mr. Archuleta commented that he was on the Presbyterian board of directors when Rust was initiated, and he recalled that the initial investment was $200 million, with the second phase planned for later, but then the project was accelerated and $300 million was ultimately spent on the project. He said that, in the TIDD case, the Albuquerque City Council approved “at least” $100 million as the trigger “and indicative of a serious effort.” Mr. Look said that was correct. Mr. Archuleta commented that replicating what was being discussed today in terms of the number of jobs, etc., would be a $300 million investment in today’s dollars. Mr. Look agreed. Mr. Archuleta stated that this was important, because for him to support this, he thought the trigger should be closer to $300 million. He said he did not want to see something constructed that would be insufficient to generate the projected number of jobs or meet the expectations of people on the Westside. He added that he also wanted a guarantee that 85 percent of the total project cost, which he thought should be closer to $250 million or so, would be spent on construction and not on soft costs.

Mr. Eichenberg pointed out that communities from Sunland Park in the south to Questa in the north don’t have any kind of medical facility, and asked why the state would be better off with a major medical facility at this location as opposed to having smaller medical facilities across New Mexico. Mr. Look responded that this is what Presbyterian believes to be the most effective model, and it is also based on demand and growth in a particular area.

Mr. Kormanik said a critical question is the nature of the jobs being projected; that is, are these net new jobs to the state versus net new jobs to Albuquerque as a result of normal growth. On that basis, he said it would appear that the medical facility would have to draw clients from outside of the state the way a Mayo Clinic or a Cleveland Clinic does. He commented that the facility may generate 7,000 jobs, but in all likelihood they would
be the result of normal growth in the state or bringing patients from other facilities within the state.

Mr. Wen responded that there would not only be new jobs created to serve the facility, but there would be an influx of retirees into the surrounding area from out of state, so there would be new employees generated from the retirement community. Mr. Kormanik said he understood Mr. Wen to be saying that the retirement community would generate economic development and bring people from outside the state into the TIDD, and those people would generate the additional demand in the hospital and the additional employees in the hospital.

Mr. Look explained that Mirehaven is the fastest-growing master planned community in Albuquerque and is directly adjacent to the Lower Petroglyph TIDD. The Town Center in the Lower Petroglyph TIDD serves Mirehaven. He said this active adult community was a test model for the state to see the receptiveness of active adults in the state, and it has exceeded projections. He said they are trying to keep up this momentum. There are 850 houses there now, and at least half are from outside of New Mexico. The next phase will include commercial support, retail services, professional services support, and medical support. He said comprehensive medical support nearby is very important to this population, which includes older adults who may not drive.

Responding to Mr. Eichenberg, Mr. Look said WALH is in discussions with Bernalillo County, but it has not been approved by the County Commission at this point, which is why WALH reduced their original request from $95 million to $69 million.

Mr. Eichenberg said he thought the Board of Finance required city as well as county participation before approval.

Ms. Maestas responded that, in the last TIDD that came before the board, which was the Taos Ski Valley, the board required the county to participate.

Mr. Aragon clarified that there isn’t a rule that compels both entities to participate. Ms. Maestas said that was correct.

Mr. Kormanik said the rule requires that the state’s contribution be proportionate to the other governmental entities involved in the project, so if the county did not participate and the state did participate, the county presumably would be receiving benefits from the development, it would appear that the board would be violating the rule.

Mr. Aragon said there is not a definition as to what that means, and it is discretionary for the board to make that determination.

[Governor Martinez arrived at the meeting.]
Mr. Archuleta commented that, since the interchange is in the domain of the state and federal government, and the interchange is "the tail that wags the dog" in this project, it would appear to hold up the whole process if the board didn't approve the TIDD. Mr. Look responded that they would focus on existing infrastructure instead, since that wouldn't require additional investment, so the state's commitment is critical.

Mr. Archuleta stated that, of the $95 million for infrastructure, $51 million addresses the interchange at 118th Street, improvements at 98th Street, and frontage roads that serve the interchange, and this is the only part that applies to the state and federal government. If the board were to support this, he personally would want it limited to the $51 million ($43 million for the interchange and $8 million for the frontage roads) that is in the domain of the state.

Ken Murphy, District 3 engineer for the Department of Transportation, said this project was first put in the 2035 Metropolitan Transportation Plan (MTP) and was listed as privately funded. In the 2040 MTP, it was again listed as privately funded before the TIDD was approved by the City Council. In the Westland master plan, the MRCOG comments that private developers would fund all of the new facilities and most of the reconstructed large ones. In this case, he did not see the DOT trying to allocate federal money to it in 2040. If it is not built because the developer doesn't develop the area or get the demand in combination with the money to build the interchange, he saw the likelihood of it being built by the state as slim, especially since it has been privately funded and allocated that way for at least the last five years.

Governor Martinez asked if the state has ever paid to build an overpass on its own dime without a contribution from any other source or in partnership with another entity. Mr. Murphy responded not to his knowledge.

Mr. Aragon asked if he understood correctly that the $69 million would not include a penny of taxpayer money. Mr. Look responded that this was correct.

Mr. Aragon noted that 85 percent of the residents of the county are city taxpayers, so even though the County Commission has not signed onto this project, the residents of the county have essentially approved this through their city councilors. He asked if he was correct that, if the thresholds delineated within the proposal are not met within the time prescribed, the developer would not be entitled to any reimbursement. Mr. Look responded that was correct. Mr. Aragon asked if it was also true that the developer has already built in a hold harmless to the state regarding the county's lack of participation. Mr. Look said that was correct.

Mr. Brasheir noted that a letter from the head of economic development at the county states that it is their belief the County Commission would look with favor upon this request if the board approved it.
Mr. Eichenberg asked if that is based on bonds being issued by the State of New Mexico, or allowing the developer to just go forward. He said the state requires bonds, but the developer has said they are not going to do that and are proposing to charge the state a 6.5 percent carrying charge for the money they front the state before being reimbursed by the TIDD.

Mr. Archuleta asked if the board could condition its approval on county participation. Ms. Malavé responded yes. She cited §2.61.3.8, which relates to the basis for the dedication, and one of them refers to “the ratio of local government to state government contribution expressed both in terms of absolute dollars contributed toward infrastructure and in terms of the relative percentage of available gross receipts and property tax revenues dedicated to bond repayment.”

Secretary Rodriguez expressed concern about the 6.5 percent carrying costs on the bonds, as normally the interest is 2 to 2.5 percent.

Mr. Kormanik asked how many of the new jobs would be in retail. Mr. Perez responded that, while they believe they are a critical part of the overall project, they didn't include them in feasibility analysis and cost benefit analysis for the state.

Mr. Wen said they do plan to capture the retail for the state increment portion.

Mr. Kormanik commented that he has been reading about major retail entities going bankrupt and asked how they could include retail as a net job increase to the state given the trends that are being seen across the U.S.

Governor Martinez said it seems like some of the big box stores are adapting to the e-commerce trend, and she thought the retail sector would be able to meet new challenges with innovative changes and stay in business.

Mr. Look stated that spending on retail is up; what has changed is how consumers spend their money, and retail is now more service oriented. He said more small businesses are opening than ever before, and the big box trend is largely over.

Lt. Governor Sanchez noted that the board's action at the May 15 meeting included a condition that “Mr. Rogers provide documentation to support his contention that the economic analysis provided by the DFA Economic Analysis Unit omitted information and was biased.” He asked Mr. Rogers if he was prepared to address that now.

Mr. Rogers responded that he did not think that discussion would enlighten the board, and he did not think it was relevant.
Mr. Aragon asked Mr. Look if reducing the carrying cost from 6.5 percent to 2.5 percent would be acceptable if that were the only way this project could proceed in terms of the board approving it. Mr. Look responded yes, although it would have an impact. He said the cost would be borne by the developer.

Mr. Archuleta discussed conditions he thought should be part of any approval by the board.

Mr. Archuleta said he felt approval should be contingent on county participation.

Mr. Archuleta asked if reducing the request from $69 million to $51 million for the frontage road and interchange would be problematic; in other words, is there anything that he should be aware of before making this a condition. Mr. Look responded that he could definitely see the justification for it. Mr. Archuleta said he personally would want the state’s scope limited only to what the state would normally participate in.

Addressing Mr. Archuleta’s first suggested condition, Mr. Aragon said the developer has indicated that there is a save harmless clause in the documents with respect to county participation, which almost makes the county irrelevant to the state. Mr. Archuleta said the board could certainly debate this and make a decision about it, but he was just suggesting that it would feel a lot better if everybody was participating.

Mr. Brasher commented that one of Bernalillo County’s difficulties is that they rely on taxes that have been allocated for specific purposes, and a little flexibility would be helpful.

Mr. Kormanik pointed out that there presumably would be increased economic benefit to the county, so the idea they will be straining their revenues is contrary to the notion that the county, city and state will get economic benefits from these proposals.

Mr. Archuleta said he would also suggest that, since the economic analysis was based on a project that is comparable to Rust, which was a $300-$350 million project several years ago, he would like to see the $100 million “trigger” be increased to at least $250 million.

Mr. Archuleta said his last suggestion for a condition of approval would be that no more than 15 percent be spent on soft costs for the medical facility.

Mr. Look said the condition requiring county participation was a concern because it was predicated on approval by the County Commission. Without that, the project would collapse and they would have to start at ground zero.
Governor Martinez commented that it wasn’t clear to her from any of the discussion today whether or not a proposal had been made to Bernalillo County about its participation in this TIDD.

Chief Economist Clinton Turner and Tristen Foley from the Economic Analysis Unit (EAU) made a presentation to the board.

Mr. Turner stated that the EAU has evaluated all of the additional correspondence received from the applicant since the May 15 Board of Finance meeting, “and the ultimate conclusion expressed in that May 15 meeting remains current; that this application has not met the criteria required to show that the requested dedication of state general fund revenue is in the best interest of the state, that it will create jobs and economic activities that would not occur but for the state’s participation.”

Mr. Turner said he would focus on two areas where the application failed to meet the required criteria. First, that the project fails the “but for” test that the project can go forward without, or with, the dedication; and second, that the requested dedication of state GRT fails to create net new jobs, or net new economic opportunities, for the State of New Mexico. The “net new” refers to economic activity that would not have occurred anyway, and is meant to separate legitimately new economic development from economic activity that merely shifts into the TIDD at the expense of an area outside of the TIDD.

Mr. Turner discussed why the project failed the “but for” test: “The applicant has clearly indicated that this project can in fact go forward without the state general fund dedication. The project timeline may merely decelerate in the absence of statewide general fund dedication, but it can go forward. While the applicant has claimed some kind of delay will occur, the applicant has not substantiated or explained that claim. The applicant stipulated to the City of Albuquerque that if the city participates in the infrastructure, then the project, including the medical center, will be delivered to this site. The application made no indication to the city how any state participation or lack thereof would accelerate or delay the project timeline. They did indicate to the city, however, that the state funding would essentially alleviate the city’s participation in the dedication of the increment. At this time, the city has dedicated an equivalent of $65 million of infrastructure dollars in 2017 dollars, and more in today’s dollars. That amount is equivalent to all of the requested I-40 interchange infrastructure and I-40 frontage road and I-40 improvements, along with some additional roads, flood control, landscaping and sewers for the site. In the application, assuming both city and state TIDD funding, but without county, federal, severance tax or bond or private funding, the application indicated that their plan is to complete the I-40 interchange in the first quarter of 2041. In comparison, without the requested state participation and before the city TIDD dedication was adopted, DOT indicated on their MTP that it would likely be completed towards 2040. In short, this project is capable of moving forward in substantially the same manner in the absence of the state’s participation.”
Mr. Turner discussed why the project failed to create net new jobs: "It has not been shown that dedicating state GRT from the general fund to this TIDD would create net new jobs or economic opportunities that would not otherwise occur somewhere in the state. I can't overemphasize how important the net new test is, because it is at the heart of all new economic development efforts. Economic tools are only successful if they grow the entire pie for the area, not just rearrange the slices. Growing the pie requires that we export new products or services outside the area, reduce imports to the area, and retain more dollars inside the area... This concept of net new is in sharp contrast to economic activity that shifts where dollars are spent from one place inside the same jurisdiction. That said, the type and nature of the jobs located in this TIDD are not net new jobs. They will not grow the pie for the state of New Mexico. These jobs would occur naturally somewhere in New Mexico based on natural population demand with or without the state participation in the TIDD. The jobs expected to be captured in the TIDD are simply being shifted into the TIDD from the surrounding areas, which those surrounding areas will experience a loss of jobs. While the shift may be meaningful for the city, the number of jobs in the entire state won't be increased. With this key economic development concept in mind, the TIDD Act requires that any dedication of state revenue must create net new jobs for the state of New Mexico. The applicant's proposal shows how jobs may be captured at the location inside the TIDD, but moving jobs and businesses from the greater Albuquerque area into the TIDD doesn't provide a net new benefit to the state."

Mr. Turner discussed the kinds of jobs expected to be captured in the TIDD and why they would not bring new economic activity into the state. He said these included a grocery store and neighborhood retail to be developed by 2018; senior multifamily housing and a movie theater by 2030: a few big box retail, strip retail and restaurants by 2033; and multifamily housing, medical center and hotel, by 2036.

Mr. Turner said an additional grocery store in Albuquerque wouldn't create more demand for groceries in Albuquerque, Bernalillo County or New Mexico; instead, an additional grocery store would shift where the groceries are supplied. He said the new grocery store is unlikely to capture any new grocery demand into New Mexico from outside the state. Out-of-state residents would not be spending their grocery dollars in New Mexico as a result of the TIDD. He said a grocery store at that location would have employees at that location, but using general fund money for landscaping and flood control around the grocery store would not be the trigger to create new grocery sales in New Mexico. Changing where New Mexicans buy groceries does not create additional GRT or jobs for the state.

With respect to the movie theater, Mr. Turner said an additional movie theater in Albuquerque won't create additional demand for movies in Albuquerque, Bernalillo County or New Mexico; rather, it would shift where movies are supplied in Albuquerque; and while the change in the supply may capture a few more movie tickets in Albuquerque,
the movie theater is not expected to capture any additional entertainment spending into the state of New Mexico from outside of New Mexico.

With respect to the hotel, Mr. Turner said the hotel is not planned as a destination hotel that would offer unique amenities not otherwise at other hotels elsewhere in Albuquerque or in the state. Following the same discussion regarding the grocery store and movie theater, an additional hotel will not create more demand for hotels in Albuquerque, Bernalillo County or New Mexico and would not create new jobs for the state.

With respect to the medical center, Mr. Turner said it is not intended to be a destination medical center like the Mayo Clinic or Cleveland Clinic, and it is not envisioned that out-of-state residents would travel great distances to receive care at this facility. He said another medical center in Albuquerque would not change the demand for medical services for New Mexico, and would shift where medical services are supplied in Albuquerque and the surrounding area. The change may capture some medical services demand into Albuquerque from Bernalillo County that would otherwise occur in the surrounding area, but the medical center would not increase demand for medical services in New Mexico.

Mr. Turner said the same analysis applies to the retail, housing and restaurants within the TIDD, in that they would not grow the state’s economic pie and would not create net new economic activity in New Mexico.

Mr. Turner stated that, to approve the dedication of state GRT to the TIDD, the board must make a finding that this project cannot happen without state participation. At best, the board can find that the state’s participation will lessen the burden on the City of Albuquerque. Further, the board must make a finding that using the state general fund money on this project is in the best interest of the state.

In conclusion, Mr. Turner stated that the bar for using city revenue for a local project is high, the bar for using county revenue for a project is even higher, but the bar for using state general fund revenue for a local project is always the highest of those three, as a diversion of state revenue must be tied to a net new benefit for the state of New Mexico. He said, “Using the state general fund revenue for this local project may benefit a subset of Albuquerque, but the benefit would come at a clear opportunity cost. It would come at a cost to the other 105 municipalities in the state and at a cost to the other 32 counties in the state, and it would come at a cost to general fund growth, which funds public schools, public safety, healthcare, and all the other critical needs of 2.1 million New Mexicans.”

Mr. Archuleta said Presbyterian is careful about tracking data and gathering statistical information. When they can no longer meet demand, they will build another facility and hire more doctors, build more operating rooms, etc., to get their metrics back in line. He
didn’t agree that there would be a shift, as stated by Mr. Turner. He said that it could easily be that people leave the state to get treatment in places like Denver, Austin or Lubbock because they can’t get their surgery in New Mexico.

Lt. Governor Sanchez said he appreciated Mr. Turner’s report, but he thought his assumptions, which implied that there was zero population growth, were wrong and that this project was just recycling movie theaters, grocery stores and so forth. He said the state has had very small population growth, but he thought it was on the curve of a bigger increase. He said he wasn’t suggesting that he disagreed with the analysis and that this TIDD was proper, however.

Mr. Turner stated that he thought there was a misunderstanding of assumptions. The general fund forecast assumes retail growth and medical growth and that medical services will be needed in New Mexico, and his analysis states that doing them here rather than somewhere else isn’t what causes them to grow. The question is whether the state dedication triggers that medical growth, retail growth and so on.

Lt. Governor Sanchez said he was saying that the state dedication could “assist” in it.

Mr. Archuleta commented that he wasn’t arguing in favor of this request, but “you have to help yourself get lucky.” He cited Los Lunas as an example of a town that invested dollars in infrastructure in a bid for Facebook against other locations and won. He said the idea is that down the road, this project would pay its own way.

Lt. Governor Sanchez agreed that there is clearly an element of risk here, but “we have to think about how calculated is that risk. We have to think about the potential.” He said he didn’t know if this was the right trigger for it, but the highest probability of growth in central New Mexico is in the city of Albuquerque, and the only place to grow is the Westside.

Mr. Turner agreed that the state needs to be visionary in terms of allocating funding for road projects and the like, but that is a separate issue and not what the TIDD Act addresses. He said the Act makes a clear distinction between creating something that is new and assisting something that is going to happen anyway.

Governor Martinez said the overpass concerns her, as does the 6.5 percent carrying charge, which is a big difference from 2.5 percent in terms of dollars.

Mr. Aragon said he found Mr. Turner’s report “nothing more than a house of cards and conjecture rather than empirical fact,” and it was “picking and choosing” what to exclude and include from the Act. He read, “The purpose of the Tax Increment Development Act is to create a mechanism for providing gross receipts tax financing and property tax financing for public infrastructure for the purpose of supporting economic development and job creation.” He said this reflected legislative intent.
Secretary Rodriguez responded that Mr. Turner’s presentation was not authored solely by him “and was the work of a whole team of employees at DFA, and wasn’t based on conjecture.” She said Mr. Turner “made it very clear that the bar for dedication of a tax increment at the city level is high, at the county level is higher, and at the utmost highest level is when we look to using state general fund and the use of that money impacts 2.1 million people versus a particular section of land in a particular city in our state. And that is empirical, and you can’t get much more empirical than that.” On the legal analysis side, she said it was not just the legal staff from the Attorney General’s Office, but also the legal staff from the Department of Finance & Administration that stands behind the analysis, as well.

Mr. Brasher said the interchange is a critical piece of this project and it would benefit the entire state. In terms of moving jobs from one facility to another, he said he doubted Presbyterian would gut other facilities and move their personnel to this new facility. He said Presbyterian might offer special services that will bring patients, doctors and people to the community, which could include older citizens with special needs. He urged the board to take a broader look at this and consider the benefit to the entire state.

Mr. Eichenberg stated that the only growth area in Albuquerque and Bernalillo County is west, but it concerned him that a hospital wouldn’t be built until 2037. With the changing needs of the Westside in future years, perhaps the hospital would not materialize in the form being envisioned today.

Mr. Kormanik commented that, with respect to the idea of conjecture, “I think you also need to include in conjecture the presentation made by the proposers.” He said 7,000 new jobs to the state as a result of a hospital is conjecture. He said positions could move around within the state, and that doesn’t meet the criteria required by the statute. He said one conjecture is that Bernalillo County would approve the TIDD, but for some reason that hasn’t been discussed today as conjecture.

Mr. Archuleta asked representatives for the developer to clarify whether these were new jobs or not.

Mr. Look responded that these are new jobs. He stated that, when prospects come to New Mexico, he’s the person that economic development departments call. He meets with national homebuilders in the field, who ask him questions such as where the nearest medical facility is. He said whether or not the TIDD is in place will impact the decision of out-of-state builders, and reminded the board that New Mexico is in competition with Arizona, Texas and Colorado.

Governor Martinez read Presbyterian Healthcare Services President & CEO Dale Maxwell’s responses to the following questions asked by board staff relating to the TIDD application:
• Does PHS have current formal or informal plans to build a medical facility of any type at any location within the proposed TIDD area, or within the municipal boundaries of Albuquerque? Presbyterian has no formal or informal plans or timeline to build a medical facility within the proposed TIDD area. Presbyterian has recently broken ground on a 35,000 square-foot clinic in the South Valley of Albuquerque at Coors and Rio Bravo. Additionally, as recently announced, Presbyterian has plans to build three to four emergency care and urgent care clinics in Albuquerque, none of the sites being considered is in the TIDD area.

• Are there any contractual obligations of any type to build a medical facility of any type which trigger upon approval of this TIDD application? There are no contractual obligations between Presbyterian and WALH associated with the State TIDD application.

• Does the approval of this TIDD application impact, in any way, PHS’s plans or discussions concerning the construction of a medical facility of any type within the proposed TIDD area, or within the municipal boundaries of Albuquerque? The potential for off-site infrastructure development is always a positive consideration for Presbyterian. Future plans, however, will depend on future demographics and healthcare needs of the community.

• If plans to build a medical facility of any type at any location within the proposed TIDD area or within the municipal boundaries of Albuquerque materialize, will they do so independent of consultation with WALH? As described above, the execution of a land swap within the TIDD would require Presbyterian to consult and reach an agreement with WALH. Precluding the land swap, at this time, all decisions related to long-term planning and growth for Presbyterian occur independent of consultation with WALH.

Governor Martinez asked Mr. Look if he had met with the county; and if so, how many times. Mr. Look responded that he had discussed the TIDD issue with their economic development staff about four times, which was part of the process he was directed to follow. He said there hadn’t been any presentation before the County Commission “but the commissioners are aware of what is going on.”

Regarding the Presbyterian letter, Mr. Rogers said that, while at one time it was important to understand what Presbyterian’s plans were, “I think given the present structure of the proposal before the Board of Finance, it’s completely irrelevant.” If Presbyterian does not build, the state would get free infrastructure.

Mr. Kormanik said he understood the letter from Presbyterian to say their decision to build a medical facility was not contingent on the TIDD. He said this would seem to violate the “but for” provision in statute, which says the increment cannot be dedicated if it will not result in a decision on the part of the hospital to build there.

Lt. Governor Sanchez asked Mr. Turner for closing comments.
Mr. Turner said the hospital is one of the things that are the crux of the analysis, i.e., whether Presbyterian’s decision is being triggered by the board’s action, or is it not being triggered by the board’s action. In addition, whether this has that safeguard or not doesn’t fundamentally make this funding mechanism okay, although it makes it marginally better. He added, “I think it fundamentally changes any of their cost flow application, and I can’t see how they can’t fundamentally change their cost flow.” He added that, as an economist who has been reviewing TIDDs for the last 11 years, “When somebody tells you there’s a free lunch, your alarm bells start ringing.”

In discussion on communications received from the Legislative Finance Committee, and the LFC’s most recent follow up letter received by board staff on July 13 and disseminated yesterday, Mr. Kormanik said it would be helpful to hear from an LFC representative present today to comment.

LFC Chief Economist Jon Clark said his first submittal to the board regarding this issue was in mid-April for the April meeting, and the applicant received a copy of the letter. When the applicant withdrew from that meeting, the LFC resubmitted essentially the same letter for the May meeting. Based on the board discussion at the May meeting and follow-up documents provided by the applicant, he provided an additional four-page follow-up memo on July 13. He noted that, in the follow-up documents provided by the applicant, and in the changes requested by the board for the proposed dedication, none of that changes any of the fundamental underlying analysis that the LFC submitted in April and May. He said additional points were made in the most recent letter, many of which were similar to the points made by Mr. Turner. Based on the discussion at the last board meeting, there was a desire to not look at what other areas have done, but to look at what New Mexico has done. For that reason, he chose to look at what New Mexico has done to incentivize economic base jobs, and cited examples of LEDA, excluding every one of these jobs, because these are not the jobs that New Mexico has chosen to incentivize because these are the sort of jobs that happen with natural growth. He said these are not the sort of jobs that will draw people from outside the state or prevent people from spending outside of the state.

Lt. Governor Sanchez asked Ms. Malavé to comment.

Ms. Malavé said her comments today were not much different from what she has said to the board since this matter came before the board a few months ago, which is that the TIDD and the board’s rules “contemplate that any dedication of the state’s gross receipts tax increment will be used for the purpose of securing state gross receipts tax increment bonds and not for any other purpose.” She said she has reviewed the TIDD Act and the board rules a number of times since this came up, and even before then, when the board looked at the rule last year, “and each time I come away with the understanding that the Act and the rule make clear that the project that you have in front of you is not eligible
for a dedication of gross receipts tax increment because it makes no commitment to using the increment for securing state gross receipts tax bonds.”

Ms. Malavé stated that every other TIDD project that the board has approved has come before the board with a commitment to use the increment to secure bonds in order to push the financing forward, and this project is very different from those because it makes no commitment to bonding, “and that’s what’s missing in this entire discussion.”

Ms. Malavé said she would therefore recommend that the board not approve the increment. She continued, “If you’re inclined to approve the increment based on the other discussion that you’ve had in terms of promoting the economic development, then I would suggest that, in order for you to comply with the Act, you condition any approval of the increment on the basis that it be used only for securing state gross receipts tax bonds, and only becoming effective after the developer has secured legislative approval for those bonds. That’s at a minimum, in order to balance the discussion of the economic development on the one hand, and compliance with the Act on the other. If you don’t like what the Act requires you to do right now, then that’s a discussion that everyone is free to have with the legislature in terms of amending the Act. But as it exists right now, the state gross receipts tax increment may only be used for bonding. If you approve this project as it is right now, then you face the threat of litigation...For you to approve it without that condition would be at this point an abuse of the discretion that the legislature has vested in you as the Board of Finance to safeguard this particular revenue.”

Mr. Kormanik noted that, under the developer’s previous proposals, which included bonding, the increment went away after the bonds had been retired, or within 25 years. He asked when the increment would expire under this proposal.

Ms. Malavé responded that the rule states, “Dedications which require legislative approval of bonds and bonds requiring DFA approval must be approved within four years of the board’s approval of the dedication unless the district requests and receives approval of an extension of time from the board prior to the expiration of the four-year period.” If the board is inclined to approve this, she said it could impose a condition that it expire within four years. The developer could request an extension of time prior to the expiration date.

Mr. Horwitz responded that to conclude that state increment can only be used for bond debt service ignores a number of provisions in the statute. He said the statute clearly anticipates districts using increment revenues for purposes other than satisfying debt service on bonds. At the Board of Finance’s May meeting, he cited section 5.15(B), and there is a comparable provision in section 5.15(C), which lists the types of increment that may be used to pay indebtedness in connection with bonds, loans or advances, or any other indebtedness incurred by the district, and included in the list is the state’s gross receipts tax. He said there are other provisions throughout the statute that “double down” on that concept. Section 16(B) says a district may pledge any or all of gross receipts
tax increments received by a district for the payment of interest and principal of gross receipts tax bonds.

Mr. Kormanik asked how the clawback process would work in terms of the medical facility. Mr. Horwitz responded that the district has not met yet, but their intention is to have a segregated lockbox account, and they expect that the board would instruct the district board to cause the reimbursement to the general fund as soon as possible. He said presumably that could occur monthly following the distribution. He said the TIDD would take no revenues whatsoever until the applicable amount for the medical center is achieved.

Mr. Horwitz stated that, if the Board of Finance acts favorably on the resolution, the final step is sending notice of the dedication to the Tax & Revenue Department, and the money then starts to flow back.

Governor Martinez suggested there could be a letter of commitment once the cap is fulfilled by the city, and then it picks up the money once the cap has been met. This would be less disruptive to the continuous operation of the general fund.

Mr. Horwitz responded that his reading of statute is that the final step, the notice, is required. Governor Martinez asked if it would be waived. Mr. Horwitz responded that he did not think the provision could be waived.

Governor Martinez said it would be much easier to just have the amount put on the books. Mr. Horwitz said Governor Martinez was essentially suggesting an escrow of the notice that would be signed pending delivery. Governor Martinez concurred, adding that the circular exercise “of rotating the same nickel is kind of weird,” with books being kept on both sides. She said a contingency would be that the county would have to step up, as well.

Mr. Horwitz said they would be amenable to eliminating that administrative step and could work with the State Treasurer to accomplish that.

Ms. Malavé said that, according to Taxation & Revenue, once they are notified of the dedication, they create the special fund and the special fund is disbursed monthly. After that, Taxation & Revenue has no role whatsoever with the funds, and at that point it is all on the TIDD in terms of what happens with the money. There is no accounting from the Taxation & Revenue perspective, even if the board were to put conditions on it.

Mr. Archuleta asked Ms. Malavé to address Mr. Horwitz’s citation of section 5.15(B). Ms. Malavé responded that she had spoken about this at the May board meeting when it came up, because (B) relates to the municipality and C to the county, and when it discusses the different types of funding mechanisms, it refers to the indebtedness
incurred by the authority, that is “the district” and does not relate to the indebtedness incurred by the developer.

16. REQUEST FOR DEDICATION OF A PORTION OF STATE GROSS RECEIPTS TAX INCREMENT FOR LOWER PETROGLYPHS TAX DEVELOPMENT INCREMENT DISTRICT

Mr. Aragon moved approval of the request for dedication of a portion of state gross receipts tax increment for Lower Petroglyphs Tax Development Increment District with the contingency of the carryover being limited to 2.5 percent.

Mr. Aragon asked Mr. Archuleta to detail his suggested contingencies.

Mr. Archuleta stated that he wanted the limit of funding set at $51 million rather than $69 million; that it be tied to the interchange and the frontage roads, and that the trigger for Presbyterian’s investment be $250 million with 85 percent of that tied to actual construction costs, or, in other words, a limitation of 15 percent on soft costs.

Mr. Aragon suggested “administrative costs” instead of “soft costs.” Mr. Archuleta agreed.

Mr. Archuleta added a contingency that it be built within 20 years, the same as the city of Albuquerque’s date, to expire in 2037.

Mr. Aragon said he would make his motion to incorporate those additional provisions.

Mr. Archuleta said he did not want to go against the legal advice received by the board, which was that there should be bonding.

Mr. Aragon said that condition could be incorporated later, if that was the wish of the board. He said his motion stood as stated.

Mr. Brasher seconded the motion.

Mr. Look said he would prefer language stating that the bonding be pursuant to the TIDD statute, and to tie that to 2037 so they are both connected.

Mr. Archuleta added an amendment that the board follow the advice of legal staff that the state’s dedication be only for securing bonds in accordance with the Act.

Mr. Aragon accepted the amendment as friendly.
Ms. Malavé noted that some of the contingencies stated by Mr. Archuleta were already incorporated in a list of contingencies proposed by staff.

Ms. Maestas stated that staff does not recommend approval based on the Economic Analysis Unit’s evaluation. She distributed a list of contingencies and requested that the board consider them, however, should the board move forward with an approval.

Mr. Aragon said he was personally concerned that the contingencies proposed by staff "almost may gut the intent."

Mr. Archuleta noted the proposed contingency, “Shall expire four years from the date of SBOF approval, unless the district requests and receives approval of an extension of time from the board prior to the expiration of the four-year period.” He said another contingency, “Shall be used only for the purpose of securing state gross receipts tax increment bonds and for no other purpose” would cancel the need for the four-year limit.

Ms. Malavé said the idea was that it would force the developer to go to the legislature sooner rather than later to get approval.

Mr. Aragon said the motion already incorporates the bonding, so there would be no need for the contingency. If the developer does nothing within the next four years, then this expires.

Ms. Malavé read the rule: “Dedications which require legislative approval of bonds and bonds requiring DFA approval must be approved within four years of the board’s approval of the dedication unless the district requests and receives approval of an extension of time from the board prior to that four year period.” If the board imposes that contingency, then the developer could come back to the board and request an extension of time.

Ms. Malavé asked if she understood correctly that, with respect to the contingency on bonding, it’s that the state gross receipts tax increment may only be used to secure state gross receipts tax bonds. Mr. Aragon and Mr. Archuleta said that was correct.

The amendment adding the bonding requirement passed 7-0.

Mr. Eichenberg moved an amendment to include the county’s participation in the TIDD. Mr. Kormanik seconded the amendment.

Mr. Brasher spoke against the amendment. He expressed concern that delays by the county could kill the project. Because the county’s gross receipts taxes are dedicated to a number of categories, including the jail, this requirement could be challenging for the county to meet.
Mr. Kormanik pointed out that the entire proposal was predicated on increased economic development that would be shared between the state, the city and the county, and the county should be able to participate with an increment because they’re going to get an increase in economic development.

Mr. Aragon said the board has addressed this issue through the save harmless clause. He commented that this amendment would be gutting the project incrementally by adding another layer as an impediment. He added, “Let’s sort of stop playing games. The county’s paying for it because the county is the taxpayer and 85 percent of the county is in the city and therefore they’re paying for it. Let’s not gut a project and put more layers of bureaucracy for these folks.”

The amendment passed 5-2, with Mr. Aragon and Mr. Brasher voting against it.

In discussion on the motion and amendments that had passed, Mr. Archuleta requested that “administrative costs” be amended to say “at least 85 percent is strictly for construction.”

Mr. Archuleta said he was not in favor of the state paying for any administrative costs in the next 20 years.

Ms. Maestas asked if the $250 million was to be in 2018 dollars or adjusted by an index. Mr. Archuleta responded that he meant it to be in 2018 dollars.

Ms. Malavé asked if the state’s dedication was to become effective on January 1, 2019, or upon legislative approval of the bonding. She noted that making it effective upon legislative approval would eliminate the “going back and forth” in terms of making deposits in the TIDD and then coming back to the state until the $250 million threshold was met.

Mr. Aragon said adding more verbiage over and above what was already in statute was redundant and overly burdensome.

Ms. Alarid expressed concern that if they wait for legislative approval, it was possible they wouldn’t get it in the 2019 session and might have to wait another year. She said it took them two years to get city approval and another year for the state, and it could take a year or two years for them to get through the county’s process.

Ms. Malavé said making it effective in January meant the money would begin to accrue and go into a special account.

Mr. Aragon moved, and Mr. Archuleta seconded, that it should become effective on January 1, 2019.
Responding to Mr. Archuleta, Ms. Maestas said the rule states that they would have to bond within four years or come back to the board in four years for an extension, and then once they bond, there is a 25-year limit.

Ms. Alarid asked the board to waive that so it would mirror what the city of Albuquerque did, which was 20 years.

Ms. Alarid pointed out that she has worked with several TIDDs and all of them have started immediately and haven’t waited for legislative bonding.

Mr. Look said it was highly likely that legislative approval would not occur within four years, which was why he was proposing a 20-year window to allow them time to go to the legislature.

Board members agreed by unanimous consent that the start date was January 1, 2019.

Mr. Aragon moved an amendment to waive the rule for the four-year requirement to 2037. Mr. Archuleta seconded. The amendment passed 6-1, with Mr. Aragon voting against.

The main motion, with the amendments, passed 5-2, with Governor Martinez, Lt. Governor Sanchez, Mr. Aragon, Mr. Archuleta and Mr. Brasher voting for, and Mr. Eichenberg and Mr. Kormanik voting against.

**STAFF ITEMS**
Presenter: Donna Maestas, Acting Director

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

Ms. Maestas reported that the amounts reported were lower than historical monthly amounts.

18. **Joint Powers Agreements for Month-Ended June 30, 2018**

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

**ADJOURNMENT**

The meeting was adjourned at 2:05 p.m.
Susana Martinez, President

9/26/2018

Date

Michael Brasher, Secretary

October 2, 2018

Date