

NEW MEXICO STATE BOARD OF FINANCE

REGULAR MEETING

VIRTUAL ATTENDANCE AVAILABLE

Santa Fe, New Mexico

December 19, 2023

A regular meeting of the New Mexico State Board of Finance was called to order on this date at 9:00 a.m. in the Governor's Cabinet Room, fourth floor, State Capitol Building, Santa Fe, New Mexico. The meeting was held with a virtual option for those who could not attend in person.

1. ROLL CALL -- QUORUM PRESENT

Members Present:

Mr. Joseph Badal, Public Member [attended virtually, left at 11:45 a.m.]
The Hon. Laura M. Montoya, New Mexico State Treasurer
Mr. Paul Cassidy, Public Member
Mr. Michael S. Sanchez, Secretary, Public Member
Ms. Wendy Trevisani, Public Member

Members Excused:

The Hon. Michelle Lujan Grisham, President
The Hon. Howie Morales, Lt. Governor

Staff Present:

Ms. Ashley Leach, Director
Mr. Marcos B. Trujillo, Deputy Director

Legal Counsel Present:

Ms. Jennifer Salazar
Mr. Blaine N. Moffatt

2. APPROVAL OF AGENDA

The agenda was approved with the following amendment: Agenda item #12 was moved from the consent agenda to the regular agenda to follow agenda item #21

Treasurer Montoya moved approval of the agenda, as published. Member Trevisani seconded the motion, which passed unanimously.

3. **APPROVAL OF MINUTES: November 21, 2023 (Regular Meeting)**

Treasurer Montoya moved approval of the November 21, 2023, minutes, as presented. Member Badal seconded the motion, which passed unanimously.

CONSENT AGENDA (Items 4-11 and 13-21)

Presenter: Ashley Leach, Director, Board of Finance

Submitted by: Gerald Hoehne, Acting Deputy Cabinet Secretary, HED

4. **New Mexico Military Institute—Requests Approval of Capital Expenditures for Roof Replacement of Toles Learning Center, Wilson Hall, and Godfrey Athletic Center (\$3,000,000)**
5. **University of New Mexico Health Sciences Center/Hospital—Requests Approval of Capital Expenditures for Replacement of the CT Scanner at the Outpatient Surgery and Imaging Services (\$700,000)**
6. **University of New Mexico Health Sciences Center/Hospital—Requests Approval of Capital Expenditures for Code Upgrades of Caring Cup Café (\$375,000)**
7. **University of New Mexico Health Sciences Center/Hospital—Requests Approval of Capital Expenditures for Renovation of the Health Sciences Center Library (\$3,050,000)**
8. **University of New Mexico Health Sciences Center/Hospital—Requests Approval of Capital Expenditures for Renovation of Health and Health Sciences Research Facilities (\$2,214,656)**
9. **University of New Mexico—Requests Approval of Capital Expenditures for Roof Replacement of the Coronado Residence Hall (\$885,121)**
10. **University of New Mexico—Requests Approval of Capital Expenditures for Renovations to the Coronado Residence Hall Lobby and Entrance (\$2,802,820)**
11. **University of New Mexico—Requests Approval of Capital Expenditures for Coronado Residence Hall Restroom Renovations (\$4,914,568)**

[Item 12 was removed and voted on separately at Member Sanchez's request.]

Submitted by: Joshua Smith, Joshua Smith Law; Jennifer Horton, Executive Director,

Doña Ana MDWA

13. Doña Ana Mutual Domestic Water Consumers Association—Requests Approval of the Sale of Real Property, Located at 1200 Hope Road in Las Cruces, to Robledo Farms, LLC (\$230,000)

- Contingent upon director’s and counsel’s receipt and review of (1) a revised and fully executed purchase agreement, (2) a fully executed quitclaim deed, and (3) evidence of a survey being performed to confirm the acreage discrepancy.

Submitted by Dan Castille, Attorney, Ortiz-Zamora Attorneys at Law, LLC

14. Farmington Municipal School District—Requests Approval of the Sale of Real Property, Located at 1400A E. 20th Street in Farmington, to 4 S Service LLC (\$595,000)

- Contingent upon director’s and counsel’s receipt and review of (1) a fully executed purchase agreement, and (2) a fully executed quitclaim deed.

Submitted by: Julie Morgas-Baca, County Manager, Bernalillo County

15. Bernalillo County—Requests Approval of Carryforward of the Private Activity Bond Volume Cap Allocation for Encino Senior Gardens Apartments in Albuquerque (\$24,000,000)

Submitted by: Angie Ferguson, Executive Vice President, Thomas Development Company

16. Doña Ana County— Requests Approval of Carryforward of the Private Activity Bond Volume Cap Allocation for the Pedrena Apartments Project in Las Cruces (\$16,000,000)

Submitted by: Wayne Johnson, County Manager, Sandoval County

17. Sandoval County— Requests Approval of Carryforward of the Private Activity Bond Volume Cap Allocation for the Sandoval Flats Project in Rio Rancho (\$7,000,000)

Submitted by: Alex Lundy, Finance Manager, New Mexico Finance Authority

18. New Mexico Mortgage Finance Authority— Requests Approval of Carryforward of the Private Activity Bond Volume Cap Allocation for Single-Family Program (\$70,345,000)

Submitted by: Marcos B. Trujillo, Deputy Director, Board of Finance

19. Private Activity Bond Allocation of 2023 Carryforward

Program Category	Amount
Single Family	\$70,345,000
Multi Family	\$47,000,000

20. Private Activity Bond 2023 Deposit Refunds

21. Allocation of Calendar Year 2024 Private Activity Bond Volume Cap (\$378,230,000)

Program Category	Amount
Single Family	\$151,300,000
Multi Family	\$222,930,000
Education	\$2,000,000
Other	\$2,000,000

Treasurer Montoya moved for approval of the Consent Agenda, as presented. Member Trevisani seconded the motion, which passed unanimously.

Submitted by: Lissa Lowe, Court Executive Officer, Bernalillo County Metropolitan Court

12. Bernalillo County Metropolitan Court—Requests Approval of the Lease of Real Property, Located at 801 4th Street NW in Albuquerque in The Shops @ Metro Park, to Café con Fe, LLC (\$15,525/year)

Member Sanchez stated that he would recuse himself from the vote as his son, Joshua Sanchez, is now the Chief Judge of the Metropolitan Court.

Ms. Lowe requested approval of the lease of 1,242 square feet of space located in The Shops@Metro to Café con Fe, LLC, which will operate a retail restaurant café in the space. The term of the lease is for about three and a half years, with a 5 percent increase each year. The rent is at market value, and the space has been vacant since April 2023.

Judge Sanchez thanked the board for considering this request.

Treasurer Montoya moved for approval. Member Cassidy seconded the motion, which passed unanimously. [Recused: Member Sanchez.]

INFORMATIONAL ITEMS

Presenter: Ashley Leach, Director, State Board of Finance

22. Capital Buildings Repair Fund Financial Status Report for Month-Ended November 30, 2023

[Informational.]

23. Legislative Capital Projects Financial Status Report for Month-Ended November 30, 2023

[Informational.]

24. State Treasurer's Office Investment Report for Month-Ended October 31, 2023

[Informational.]

25. Emergency Balances – December 19, 2023

	<u>Balance</u>	<u>Appropriation</u>
Operating Reserve Fund	\$2,136,692.61	\$4,000,000.00
Emergency Water Fund	\$ 49,600.00	\$ 109,900.00

Ms. Leach reported these balances.

26. Fiscal Agent and Custodial Bank Fees Report

[Informational.]

27. Joint Powers Agreements for Month-Ended November 30, 2023

[Informational,]

28. Discussion of Legislative Initiatives

Ms. Leach stated that the Board of Finance staff has been working with the Legislative Finance Committee (LFC) staff and board financial advisor David Paul to look at the board's debt ratios. With the very large revenue influx over the last couple of years with projections that this will continue, the board's debt capacity limits allow for larger long-term issuances of Severance Tax Bonds. That said, with those larger issuances, if the board issues to those maximum amounts, it will see the debt per capita and as a percentage of personal income significantly increase. She said these are two data points that the rate agencies closely track and consider. When Mr. Paul presented on the Debt Affordability Study, he had mentioned the board might want to consider keeping those ratios at a more even level as opposed to have them increase. Staff has discussed with LFC staff that, even if the board's capacity allows, it may want to issue at a lower amount to keep the ratios in line with national averages. She said she anticipates potential legislation to memorialize that.

Ms. Leach said the second issue is the statute requiring counties, public school districts, and other small entities to come to the board for leases and property sales. In the last session, statutory changes were made that had counties no longer required to come to the board for approval of their leases and sale; however, that was vetoed by the Governor. The board discussed increasing the threshold, which has been \$25,000 since at least the late eighties. She said staff is recommending taking a tiered approach to this, first by increasing the threshold, and then later incorporating municipalities into the statute. In the interim, staff would look into partnering with the Association of Counties and municipalities.

Ms. Leach said that, given that this year's session is 30 days, staff is recommending that the threshold increase be deferred to the next 60-day session.

Treasurer Montoya said there has been some discussion about raising the threshold to \$100,000. She agreed that this should wait until the 60-day session to allow time to partner with municipalities and counties, and in the interest of transparency.

Member Cassidy concurred with Treasurer Montoya. On the other matter, he said the Administration has done a great job to pump up the state reserves. He said it seems like the debt capacity discussion is the next thing the board should focus on.

Ms. Leach commented that, based on feedback staff has received, along with today's discussion, the consensus seems to be to defer this to the 60-day session and to do the interim work to partner on the lease and sale statutory recommended changes, while continuing conversations with the LFC on the capping of the long-term debt.

Member Badal said he supported raising the threshold to \$100,000 but wondered what the threshold would be today based on inflation. Ms. Leach responded that she did that calculation and determined it would be \$70,000 to \$80,000. She suggested removing the threshold from statute in the interim and allowing the board to periodically adjust that number for inflation in the future.

Ms. Leach called attention to the Governor's announcement on strategic water reserve, with some of the funding to develop the reserve coming from the Severance Tax Note program. She said she would provide a briefing in the January meeting.

BONDING PROGRAMS

Presenters: Ashley Leach, Director, Board of Finance; Kenneth Guckenberger, Partner, Kutak Rock; Noelle Graney, Partner, Kutak Rock

29. Presentation and Consideration of the 2024 Annual Financial Information Filing Report

Mr. Guckenberger and Ms. Graney made this presentation.

Treasurer Montoya moved for approval. Member Trevisani seconded the motion, which passed unanimously.

Presenters: Ashley Leach, Director, Board of Finance; David Buchholtz, Principal, Rodey Dickason, Sloan, Akin & Robb, P.A.; Luis Carrasco, Bond Counsel, Rodey, Dickason, Sloan, Akin & Robb, P.A.

30. Amending Resolution for State of New Mexico Severance Tax Note, Series 2023S-C, Maximum Principal Amount of \$15,725,750

Mr. Carrasco stated that the due diligence process has been completed on all of the projects that were eligible for funding. He said 23 projects are being funded for a total amount is \$6,335,357, which represents about half of the projects that were anticipated to be funded. There were a variety of reasons why the remaining projects were not approved for funding. The note will be issued on December 28 and paid in full on the next day.

Ms. Leach said it is anticipated that the transfer from the Severance Tax Permanent Fund will be between \$560,000,000 and \$570,000,000.

Member Cassidy moved for approval. Treasurer Montoya seconded the motion, which passed unanimously.

GENERAL SERVICES DEPARTMENT

Presenter: Anna Silva, Deputy Cabinet Secretary, General Services Department

31. Schedule of Repairs for January 1, 2024, through June 30, 2024

Ms. Silva presented this report.

Member Trevisani moved for approval. Member Badal seconded the motion, which passed unanimously.

32. Inventory of Buildings Report, Including an Approved Checklist of Conditions

Ms. Silva presented this report.

Member Badal asked Ms. Silva how the rise in construction costs has impacted her budget.

Ms. Silva responded that she met with some representatives of the Architects Association yesterday on this topic, and has asked for the Association's help in controlling costs. Facilities Management Division (FMD) has changed its contracting mechanisms to hold costs for construction. They start at the very beginning by making known to contractors that when they are awarded on their first day, the expectation is that they are in a position to purchase long lead items or items that could escalate in cost over the life of the project. FMD states this in their pre-proposal conferences before contracts are awarded, and contractors understand what the requirement is before they accept the award. FMD been successful on some projects, such as with the New Mexico State Veterans Home in T or C, which was a \$60 million project that was completed on time and within budget.

STATE TREASURER'S OFFICE

Presenter: Vikki Hanges, Portfolio Manager, State Treasurer's Office; Anna Murphy, Senior Portfolio Manager, State Treasurer's Office

33. Request for Approval of Revisions to the State Treasurer's Office Local

Government Investment Pool (LGIP) Investment Policy

Ms. Murphy stated that the most substantial amendment is adding a Medium-Term Fund to the LGIP solely for the SIC. Earlier in the fiscal year, the SIC approached STO with an interest in having STO manage a short-term cash equivalent and/or a short-term fixed income investment. She said the SIC is now managing quite a substantial amount in cash equivalents and short-term investments because of robust revenues. By having STO manage it, it met the objective of having the money stay in New Mexico and be managed in state by the resources here. In addition, the management fee of 5 basis points currently in the LGIP is both low and is money that stays within the state. In addition, it creates an inaugural fund that has been discussed by STO for some time. Instead of having just one offering, it could have multiple offerings for short-term investments. Although this is specifically for the SIC, at a future time it could include additional participants in New Mexico through another amendment.

Ms. Murphy also stated that the current LGIP by statute must be rated by Standard & Poor's. Currently, it is being managed to an AAA rating and by statute is required to be AA. This is defined in the policy. This is important point because by establishing a Medium Term Fund by statute, it doesn't have the same rating requirement, so this would not be a rated pool. Another difference is that the duration would be slightly longer. STO is proposing a 0-3 year benchmark. The taxable pool is managed to the same benchmark.

Ms. Murphy said other amendments incorporate the Government Investment Officers Association suggestions for best practices and further delineates the S&P alignment with the policy.

Member Cassidy moved for approval. Member Badal seconded the motion, which passed unanimously.

HIGHER EDUCATION

CAPITAL EXPENDITURES

Presenters: Gerald Hoehne, Acting Deputy Cabinet Secretary, HED; Raghu Raghvan, Associate Vice President, NMSU; Jose Loera, Interim Executive Director NMSU; Dr. Patricia Trujillo, Secretary, HED; Dr. Shanna Ivey, Professor, College of Agricultural, Consumer, and Environmental Sciences; Regent Debbie Romero

34. New Mexico State University-Requests Approval of Capital Expenditures for Construction of New Student Learning Center for the College of Agricultural, Consumer, and Environmental Sciences (\$11,310,000)

Mr. Hoehne presented this report. NMSU is requesting approval of capital expenditures totaling \$11,310,000 to construct a new 37,662 square-foot Student Learning Center for the College of Agricultural, Consumer, and Environmental Sciences (ACES). The building will be a

pre-engineered metal building with an engineered dirt floor and a 23-seat classroom. It will be used by undergraduate and graduate students for animal handling and will include bleacher seating for 180 students. This project is part of the larger Agricultural Modernization and Educational Facilities efforts, which encompass various projects across ACES facilities. Mr. Hoehne said NMSU is using \$9,140,000 in 2021 State General Obligation Bond proceeds and \$1,900,000 in NMSU institutional funding.

Mr. Raghvan made a slide presentation.

Dr. Ivey said she has been with the college since 2004. Since that time, their enrollment numbers have grown from 180 students in animal range sciences to about 500. She said this space is desperately needed and allows for hands-on experiential learning. They are one of the last campuses to continually house their animals on campus.

Responding to Member Cassidy, Mr. Loera said they have seen an increase to \$753 per square foot, and a 15 percent increase in initial planning. The project will go out to bid in mid January with construction expected to start in March.

Responding to Acting Chair Sanchez, Secretary Trujillo said studies have shown that New Mexico doesn't have the population for a veterinary school. She said professional schools in Texas allow 10 percent of their seats to go to out-of-seat residents, and the Texas Tech vet school has given all of their out-of-state seats to New Mexico residents. The first graduating class will be in 2024. She said Washington State and Texas Tech are the two schools most often chosen by New Mexico students. She said 80 percent of vet students do return to New Mexico.

Member Trevisani moved for approval. Member Cassidy seconded, and the motion, passed unanimously.

ACQUISITIONS

Presenters: Gerald Hoehne, Acting Deputy Cabinet Secretary, HED; Garnett Stokes, President, UNM; Teresa Costantinidis, Executive Vice President Finance and Administration, UNM; Thomas Neale, Real Estate Manager, UNM

35. University of New Mexico—Requests Approval of Capital Expenditures for the Acquisition of Real Property, Located at 1801 Lomas in Albuquerque (\$460,000)

President Stokes stated that this acquisition is a strategic one for UNM. It is along one of the major entrances to the Albuquerque campus. The regents have endorsed a longstanding policy of acquiring property in this area when it becomes available because it helps to stabilize the neighborhood and provides for institutional uses on the edge of the central campus.

Mr. Neale stated that this is a former residence that is currently vacant and was used for a campus ministry building. It was built in the 1920s and contains about 2,952 square feet on 7,800 square feet of land. This is a parcel that is on one of the gateways into the university, but UNM doesn't control the real estate on either side of the entrance. Mr. Neale stated that, given the age of the building and the high cost of renovation, UNM would rather raze the building and bank the site for future use.

Member Cassidy said UNM has had a long-term land banking program for about 40 years. He said it would be interesting to see a proposal where there is blanket authority to acquire lots in those critical areas where the campus needs to be expanded.

Responding to Treasurer Montoya, Mr. Neale said this site will likely be a surface lot. Given the proximity to Dane Smith Hall, it would likely be an hourly paid lot because students will be parking there to attend classes. He said it would be hard to know what the specific revenue stream would be for this, but the money from the parking would go to support their parking and transportation operation.

Member Sanchez commented that it would be nice to have some free parking for students around the university once in a while. He said he would like President Stokes to propose this to the Board of Regents. President Stokes said she would definitely bring this back to the board.

Ms. Leach stated that approval would be contingent upon director's and counsel's receipt and review of (1) a fully executed warranty deed and (2) a revised and fully executed purchase agreement.

Member Cassidy moved for approval. Member Sanchez seconded the motion, which passed unanimously.

GRADUATE PROGRAMS

Presenters: Dr. Melissa Moyer, Assistant Professor of Social Work/Director of Social Work, ENMU; Mark Chisholm, Director Academic Affairs and Policy, HED; Jamie Laurenz, Provost and Vice President for Academic Affairs, ENMU

36. Eastern New Mexico University-Requests Approval of Master of Social Work Degree Program

Mr. Laurenz noted that there is a critical shortage of social workers in New Mexico, particularly those with advanced degrees. ENMU wants to put together a program with graduates that serve the eastern side of the state, where the shortage is especially critical.

Dr. Moyer made a slide presentation.

Member Cassidy observed that not only does this address the critical needs of the community, but also its military partners. He sits on the New Mexico Military Base Planning Commission, which continues to hear about the need for this, especially at Cannon Air Force Base, but also for doctors. He said families have to drive all the way to Lubbock to receive medical care.

Member Badal commented that this is a terrific program. He suggested that the board receive an update on the success of the program as well as other programs that the board has approved in the past, and asked Mr. Hoehne and staff to coordinate update presentations down the road.

Treasurer Montoya moved for approval. Member Badal seconded the motion, which passed unanimously.

Presenters: Brandon Kempner, Dean of College of Arts and Sciences, NMHU; Mark Chisholm, Director of Academic Affairs and Policy, HED; Dr. Roxanne Gonzales, Provost and Vice President of Academic Affairs

37. New Mexico Highlands University—Requests Approval of a Doctor of Nursing Practice Degree Program

Secretary Trujillo noted that enrollment in undergraduate programs across the state has increased by 7+ percent because of tuition-free scholarship programs. What she would like to offer in terms of both presentations today, is that there is a critical need to also allow for those students going through the undergraduate schools to be able to see themselves in their own communities serving in a professional capacity. She would like to see the state's regional comprehensive institutions support the workforce that is critically needed in the rural, tribal and frontier communities of New Mexico.

Dr. Gonzales said NMHU is very excited about this degree because it is the first terminal degree to come to the state from a regional institution. She said rural New Mexico, particularly Northern New Mexico, is a major challenge and this program is intended to fill the healthcare desert gap that exists here.

Dr. Kempner made a presentation.

Referring to the five-year budget projections for this program, Member Trevisani said she was trying to reconcile the enrollment with the cost. In year 1, the average cost for tuition is much higher than in subsequent years, and asked why. She asked if there were any plans for tuition increases.

Dr. Kempner responded that only half the total number of students would be in the first year with the number gradually ramping up in the following two years. He said specific tuition increases are not built into the numbers.

Member Trevisani said she was questioning the \$222,000 in tuition revenue for eight students in the first year. Dr. Kempner responded that this is because people would be filtering in and out, with some part time. Once someone is near the tail end of the program, they may be taking fewer credits while working on their dissertation.

Treasurer Montoya noted that the first year's tuition is \$27,750, which is still expensive. Given the income threshold in San Miguel County, she asked NMHU to return to the state and consult with the HED Secretary and others in government if this program does not succeed, because there is a dire need for it. She said that her mother was just in the hospital in Las Vegas and that there are not enough doctors. She feels that this program is a way to help fill that gap.

Member Badal commended NMHU staff on a very thorough presentation.

Member Sanchez said another very important consideration is to provide students with some education on how to run a business, such as how to open and operate a medical clinic.

Member Cassidy moved for approval. Treasurer Montoya seconded the motion, which passed unanimously.

[Member Badal left the meeting.]

REAL PROPERTY LEASES

Presenter: Dan Castille, Attorney, Ortiz & Zamora Attorneys at Law, LLC; Jeff Bowman, Board President; Darian Jaramillo, Superintendent

38. Artesia Public School District—Requests Approval of the Lease of Its Oil, Gas and Mineral Interest, Located in Artesia, to Spur Permian Holding Corporation (25 percent royalties and \$1,500 per mineral acre bonus)

Mr. Castille requested approval of this deal for the district on its own merits, if possible, and as written. The alternative is a forced pooling procedure, which is a statutory procedure that essentially makes mineral interest owners involuntary investors, which has a parade of undesirable effects. They learned today that a forced pooling hearing is scheduled on January 4.

In describing his background, Mr. Bowman stated that he is an oil and gas attorney with 43 years of experience and has represented many of the major oil and gas companies in various transactions, as well as mid-majors and mineral interest owners.

Mr. Bowman said this is a lease covering 1.75 mineral acres under a 1.75 acre tract. The school district does not own any of the surface. He said they received a letter in early September from SEP Permian, commonly known as Spur, stating that they propose to drill several wells on a proration unit, with all of the wells dedicated to the same proration unit.

They offered three options: 1) the district could lease the mineral interests to Spur; 2) the district could participate as a working interest owner with the mineral interests in the drilling of the wells; or 3) fail to reach an agreement in either one, in which case the district would be subject to compulsory pooling proceedings before the NM Oil Conservation Division, causing the district to suffer some consequences. He said the district does not want to become a working interest owner in the well for many reasons. It would assume certain liabilities, obligations, and expenses without knowing how the wells will turn out.

Mr. Bowman said Spur also stated that they would lease to the district. They were willing to give a 20 percent royalty and pay \$1,000 per acre for the bonus. Upon receipt of the lease, Mr. Bowman said he made several changes to it and also proposed to Spur that the district wanted \$2,000 an acre for bonus and 25 percent royalty. Over the three months of negotiation, the district spent most of the time waiting and begging Spur to send back proposals. He said the district is not in a great bargaining position because it is very small, and Spur could always force-pool them if they didn't come up with a lease Spur would agree to. Mr. Bowman said Spur finally acquiesced to the 25 percent royalty and \$1,500 an acre for the bonus. He feels they are very good provisions and the maximum possible.

Ms. Leach stated that approval would be contingent upon director's and counsel's receipt and review of a fully executed lease agreement.

Mr. Cassidy moved for approval. Treasurer Montoya seconded the motion, which passed unanimously.

CAPITAL PROJECTS & PROCEED FUNDING

Presenter: Jennifer Salazar, New Mexico Attorney General's Office, Board Counsel

39. Update and determination, or alternative action, on request for Release of Bond Proceeds for Natural Gas Pipeline Project

Ms. Salazar stated that she shared a confidential attorney-client privileged memorandum summarizing the relevant facts and her recommendations on this issue. As discussed in the memorandum, she believes there are certain risks moving forward with this proposed transaction. She understands the importance of the project and the amount of work done to get it to this point, and assured the board that she took it very seriously and asked outside counsel to weigh in, as well. The opinion, which expressed concerns similar to those of her office, is included in the packet.

Secretary of Transportation Ricky Serna said the Department of Transportation deals very lightly in gas lines and worked with the County of Taos to take on the responsibility of utilizing the bond sale proceeds of \$17.5 million to get this gas line built, as they felt as though they didn't have the capacity to do that. The DOT has minimal experience with a virtually identical project between the Chama Valley School District and New Mexico Gas Company. The district is utilizing capital outlay to build a gas line to the schools and they have an agreement where the gas company will own, operate and maintain that asset.

NMDOT prepared a copy-paste contract between NMDOT and New Mexico Gas and are leveraging the precedent set to move forward with this project. NMDOT is responding to emergencies that have been declared in that community when the weather becomes so treacherous that residents can go for days without any heat because propane companies cannot deliver it to them. There are 240 homes that are now occupied and all would be able to access service once the gas line is complete. The primary public entity that stands to benefit from this project will be Peñasco School District. Because the arrangement for construction of the line will be done with public funds the cost of the service will be minimal to the residents.

Steve Hamilton, attorney with NMDOT, said the real issue here is whether or not what NMDOT proposes to do violates the Anti-Donation clause, which basically says that the state government and municipal governments and county governments cannot make donations to private individuals or to corporations. Most legislation that provides funding one way or the other provides a benefit to private individuals and to corporations, so a donation only occurs when the public benefit or the benefit to the state is overwhelmed by the benefit to particular individual or corporation. NMDOT believes the primary purpose and effect of the statute is to provide a benefit to the Peñasco School District and to a number of potential customers of NM Gas who would be provided gas services that they would not otherwise receive, because it would not be economical for NM Gas to provide pipelines to these underserved areas without some kind of a payment plan such as NMDOT is proposing in this case. He said the legislation itself directs the NMDOT to create the pipeline, which doesn't know anything about gas lines. What it put together was something executed in the past with the Chama School District, which is to essentially contract with NM Gas to build the pipeline. In doing so, the bond proceeds of \$17.5 million plus another \$900,000 from a prior appropriation would be available to reimburse NM Gas for the cost of constructing the pipeline and buying the land that would be necessary to establish the pipeline. He said this amount of money isn't going to benefit NM Gas, which is building the pipeline. At the end of the day NM Gas will own the pipeline and the land, but it can't do anything except provide natural gas service to this underserved area. It is a necessary benefit for this area because these places are fairly remote and depend on truck-borne shipments of their fuel to heat their homes and businesses. It is not reliable, and it is much more expensive than natural gas, so it is a big benefit to the residents of these areas, including some rural areas near Rancho de Taos. In terms of whether that benefit would outweigh whatever benefit goes to NM Gas, he said, NM Gas would get to bill the customers for the gas they provide. NM Gas is a public utility and is under the control of the PRC, which only allows public utilities to receive a return on their investment, and the investment is the rate base, which is what their fees are based on. One of the provisions of the NMDOT contract is that expenditures for the line cannot be included in the rate base, so the expenditure of \$18 million doesn't benefit NM Gas to increase its rate base in order to increase the amounts it charges its customers. He said NMDOT feels this is an incidental benefit to the gas company and not a benefit of \$18 million dollars, as has been characterized by DFA staff.

Mr. Hamilton said people should understand that they are dealing with a public utility, which is not the same thing as a private individual. NM Statute § 62-3-1 recognizes that public utilities like NM Gas Company are affected with the public interest and that the development and extension of public utilities business directly affects the development, growth and expansion of the general welfare, business, and industry of the state. The statutes give public utilities such as NM Gas the right to exercise eminent domain, and that is only allowed under the NM Constitution and laws to entities who are acquiring property for public use. He also stated that § 67-8-15 gives public utilities the right to use NMDOT right-of-way, so part of this would be built on NMDOT right-of-way. That has never been considered as against the Anti-Donation clause. It states that the development and expansion of utilities directly affects the development, growth, and expansion of the general welfare, business, and industry of the state.

Mr. Hamilton said that, a year ago, on November 8, 2022, the constitution was amended to establish an exception the Anti-Donation Clause. Section H of article 9, Section 14, states that “nothing in this section prohibits the state from expending state funds or resources for the purpose of providing essential services primarily for residential purposes if the assistance is granted pursuant to general implementing legislation approved by a majority vote to those elected to each house of the legislature.” He said the statute goes on to say that “essential services means infrastructure that allows internet, energy, water, wastewater, or other similar services as provided by law.” He said the proposed transaction is an exception to the Anti-Donation Clause and involves a public utility that is recognized as providing a benefit to the public. He said the proposed agreement would require that NM Gas give lot credits to all of the lots that it would be serving and that if the final cost of doing this project doesn’t exceed \$18.4 million, the surplus would be refunded to NMDOT. He stressed that the agreement provides that any payments made by NMDOT of the \$18 million would not be part of the rate base.

Member Cassidy asked Secretary Serna what NMDOT’s future plans are in providing for other rural New Mexico communities, or whether this is a one-off approval.

Secretary Serna responded that NMDOT does not have an appetite for taking on the responsibility of building out the state’s natural gas distribution, and they don’t think they have the capacity to take on the proposed project because they don’t have the expertise. They would issue an RFP to identify a contractor to build the gas line, and leverage their internal experience to ensure the work was done to NM Gas Company specifications. By providing the funding to NM Gas and stipulating that they own and maintain it minimizes the liability. He said they need to meet with the Governor to discuss who would take responsibility for buildout of natural gas along corridors where it doesn’t exist.

Mr. Cassidy asked if the enabling legislation to enact the constitutional amendment is expected to be enacted in this year’s session.

Ms. Salazar clarified that the constitutional amendment was passed by voters in November 2022, but the amendment requires implementing legislation to create parameters for this constitutional provision.

Ms. Salazar also stated that if a project was included in Senate Bill 212 in the 2022 legislative session and the project was included in Severance Tax Note 2023S-A, then board staff and bond counsel would have reviewed it for readiness and placed any necessary conditions before allowing the funds to be released.

Member Sanchez said he was assuming that the allocation of funds would go through the legislative committees and the issues that may have been raised by Ms. Salazar, bond counsel, etc., would be reviewed at that time. Ms. Salazar responded that it wasn't clear on its face, given the appropriation language, that the asset and money would go to NM Gas Company, because the appropriation is to NMDOT. She said they didn't realize that NM Gas Company would benefit from the appropriation until the bond questionnaire came up. As they started asking more questions, they learned about the proposed arrangement with NM Gas Company. To Mr. Sanchez's point, Ms. Salazar explained that the plain language of the appropriation states that the appropriation goes to NMDOT.

Member Sanchez asked Secretary Serna if the issues were brought to Senate Finance and House Finance committees. Secretary Serna responded that the appropriation was originally expected to go through Taos County, but the county explained they didn't have the capacity to manage the project. NMDOT therefore didn't participate in the appropriation process. To Ms. Salazar's point, they provided the contract on October 19, and made the requested revisions and sent the agreement to staff on October 23.

Member Cassidy said they don't have the enabling legislation that enacts the constitutional change that the voters approved in 2022, and it is not in effect until the legislation is adopted, so they can't rely on this. He said they have to rely on an economic analysis of the benefit to New Mexico residents. He saw no attempt to provide such an analysis. If they were to quantify the fact the NM Gas Company will be paying property taxes on this, and that there is a benefit to natural gas versus propane, it would all be positive.

Responding to Treasurer Montoya, Secretary Serna said that if NM Gas were to use its own money to put its line in Peñasco, it would recoup the cost by charging the residents. The estimated annual savings on residents using propane versus natural gas is \$1,800. He said the cost is the primary driver for the Peñasco School District. The added benefit of the reliability of distribution addresses emergency issues that have occurred in previous winters.

Treasurer Montoya asked if this could wait until the legislature fixes the language so it complies with the constitutional amendment. Secretary Serna responded that there is exposure with regard to the residents in the reliability of propane delivery to them. He said

this would kick the can down the road and add to the cost of the project so it would substantially exceed the \$18 million.

Responding to Treasurer Montoya, Ms. Salazar said some alternatives were offered: a lease or operation agreement, where NM Gas would lease the pipeline from NMDOT, but the pipeline would stay in NMDOT's ownership; an outright purchase of the pipeline by NM Gas, either through a traditional purchase or a lease purchase arrangement; an agreement which would allow the state to receive some considerations back, e.g., a discount of natural gas services to state-owned entities for the state's substantial public investment in this pipeline; and a more tailored project that would build the pipeline to state government entities only. While the Peñasco schools were discussed, there is also the intent to serve not only the schools, but also the larger community. This distinguishes this case from the Chama school case, which she understands only serves the Chama Public Schools and not the surrounding community.

Secretary Serna said they did look at some of the options. The idea of purchasing the agreement raised the question that if they had the money to purchase it from NMDOT after they paid to get it built, why wouldn't they do it themselves. He said the lease option creates a lot of liability, so they raised questions on how this protected the state and how that would add cost, and they didn't know if NMDOT was allowed to spend its own resources on that. He said NM Gas Company is a publicly regulated utility and doesn't have the discretion to waive costs. If they are required to recoup the cost to provide the service to their customers, it means that in terms of any benefit they provide to NMDOT outside of what has been approved by PRC, the cost of those benefits are then transferred to other customers.

Commenting on the projected annual savings of \$1,800 per household for switching to natural gas from propane, Member Trevisani said gas prices do fluctuate and there are a lot of arguments about one versus the other.

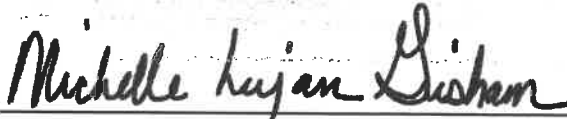
Member Trevisani asked how disruptive the construction of the pipeline will be to residents and businesses, and is there a way to frontload the propane supply. Secretary Serna said the alignment of the line would mostly follow established roads, and they would aim to have minimal disruptions to the roadway users and those with access to and from the road. He said the state does not play a role in maintaining a propane supply for the purposes of sale by any for-profit company.

Member Sanchez stated that one of the things he is looking at is the definition of "consideration," which in this case would be the benefit to the school and to the public. This has to be taken into consideration when looking at the Anti-Donation clause. If the case law is correct, if there is consideration, the courts don't generally want to go into whether it is 10, 20, 30 or 50 percent. He said he feels the consideration has been met, and that puts the board in the position of approving it, and he thinks this should move forward this year. He said this is a very compelling issue. When he was in the legislature, there were always issues

every year about the lack of propane and the high cost of propane, especially for people in the rural communities.

Member Sanchez moved for approval subject to receipt of a financial analysis demonstrating a positive net present value benefit to the general public, including and taking into account property tax and gross receipts tax benefits to benefit the communities provided by DOT. Member Cassidy seconded the motion, which passed unanimously.

ADJOURNMENT: 1:15 p.m.



Michelle Lujan Grisham, President

1-23-24

Date



Michael S. Sanchez, Secretary

1/23/24

Date