MINUTES OF THE
NEW MEXICO STATE BOARD OF FINANCE

SPECIAL MEETING
Santa Fe, New Mexico

December 5, 2012

A Special Meeting of the New Mexico State Board of Finance ("Board") was called to order by Governor Susana Martinez on this date at 9:12 a.m. in Room 309, State Capitol Building, Santa Fe, New Mexico.

1. **ROLL CALL: QUORUM PRESENT**

**Members Present:**
The Hon. Susana Martinez, President
The Hon. James B. Lewis, State Treasurer
Mr. Michael Brasher, Public Member
Mr. Sam Spencer, Public Member [Telephonically]

**Members Excused:**
The Hon. John Sanchez, Lt. Governor
Mr. Robert J. Aragon, Public Member

**Legal Counsel Present:**
Mr. Zack Shandler, Attorney General’s Office

**Staff Present:**
Dr. Thomas E. Clifford, Secretary of Finance & Administration
Ms. Stephanie Schardin Clarke, Director, State Board of Finance
Mr. Jeff Primm, Deputy Director, State Board of Finance

**Others Present:**
[See sign-in sheets.]

2. **APPROVAL OF AGENDA**

**NEXT REGULAR MEETING: DECEMBER 18, 2012**

Treasurer Lewis moved to approve the agenda as presented. Mr. Spencer seconded the motion, and it passed on a unanimous 4-0 voice vote.
EMERGENCY FUND BALANCES

Presenter: Stephanie Schardin Clarke, Director


Operating Reserve Fund $1,055,579.57
Emergency Water Fund $ 0.00

Ms. Clarke presented the emergency balance in operating reserve fund. The operating reserve fund balance is $175,000 higher than it was at the last meeting as a result of the Regulation and Licensing Department’s notifying staff that it will not need at least $175,000 of the loan that was approved to that department at the beginning of FY13.

EMERGENCY FUNDING REQUEST

Presenter: Chief Judge Raymond Ortiz, CEO Stephen Pacheco, CFO Kathleen Vigil, First Judicial District Court; Arthur Pepin, Director, Administrative Office of the Courts

4. First Judicial District Court – Requests Approval of Emergency Funding to Furnish and Equip the New Courthouse ($250,000)

Chief Judge Ortiz said he was the incoming chief judge of the First Judicial District Court and was here to present this request. With him today were CEO Mr. Stephen Pacheco, DFO Ms. Kathleen Vigil and Mr. Arthur Pepin with the Administrative Office of the Courts.

He said the $250,000 request is part of the funding needed to move into the courthouse. The court would have requested much more, but he understood they were limited to that amount.

Mr. Pepin said additional funding might be available from Santa Fe County. The total amount the court needs in advance of the legislative session is about twice the amount requested from the Board. They had no indication from the county yet.

Judge Ortiz said the courthouse serves three counties and was built using county funds and furnished by the state. Other districts don’t cover the same number of things that the First Judicial District Court covers. The vast majority of wrongful death and malpractice cases had no connection or no relationship with Santa Fe, but the person representing the case usually does, so those cases are often heard in the first district. Many cases of statewide importance also end up on his district’s docket.

Judge Ortiz said he had been a judge for seven years and had been assigned over 18,000 cases. For the first four and a half years he was on family court and then on civil court. Judgments included $220 million in a two and a half month time. The First Judicial District Court handles over 10,000 cases each year distributed to eight judges, so the need
is very high. The court has been in the old courthouse for over 30 years, and every other metropolitan area of the state has had a newer courthouse. The district doesn’t have the money for furnishing or computers. The new courthouse building will be ready by end of this month. He intends to pursue other funding sources including the legislature and the county. However, even if the legislature approves funding during the session, unless the bill has an emergency clause, the funding won’t be available until next spring and it normally takes six to eight weeks to order furniture and have it delivered. The court staff needs to move in during January.

The building is almost completed but has no electronics and the jury boxes have gaps. There are no monitors to run the system. So, it is functionally vacant on the inside and has no computer switches.

The money that is needed for all these furnishings doesn’t even include the attorney conference rooms or furniture for district attorneys or public defenders. So many areas will remain vacant. The new courthouse is approximately twice size of the current courthouse so even if they could move every piece of furniture from the old courthouse, which would be uneconomical, it still wouldn’t fill all the building needs.

Judge Ortiz continued that if they took down all modular furniture and moved and reassembled it, it would cost more than buying new modular furniture.

Judge Ortiz reviewed bids they had received totaling $771,400.

Governor Martinez asked where the money came from for those other districts’ courthouses.

Chief Judge Ortiz said it came from legislative appropriations and went directly to the court where they would spend it for furnishings and computer equipment.

Mr. Pepin clarified that they were capital appropriations up until the 2012 session, when funding for this court was vetoed in the capital bill, and now the courts were trying to get them in special general fund appropriations.

Governor Martinez reasoned it would be out of capital outlay and not general fund.

Mr. Pepin agreed.

Governor Martinez asked about last year’s request.

Mr. Pepin said $1.3 million was appropriated last year as a capital appropriation. It was vetoed with a message that such funding needed to be from special appropriations. So, the court was coming back this year for a special one-time appropriation.

Governor Martinez discussed with Dr. Clifford inclusion of funding for courthouse
furniture through a general fund special appropriation.

Governor Martinez asked when the court would have the certificate of occupancy.

Chief Judge Ortiz said they anticipated it sometime between December 20 and December 30. The third floor is basically complete but has no furniture, servers, monitors or computers. Contractors are working from the top down. If there is a change in that schedule, he would let the Board know.

Governor Martinez recalled that AOC had received the largest budget increase of any agency last year. Theirs was 4 percent and the rest were 3 percent.

Mr. Pepin said they were grateful for that increase. The funds appropriated to AOC included some specific allocations. There are no unrestricted funds for furniture. There could be some IT purchases made from funds available to the AOC if the AOC sacrificed and delayed other projects, but there was no way legally to use any of that AOC’s money for furniture.

Governor Martinez asked how much AOC had for IT.

Mr. Pepin said they were scheduled to run to about a zero balance by the end of the fiscal year. If the furniture is provided from elsewhere he thought he could get the IT funds.

Governor Martinez asked what the state was to provide.

Mr. Pepin said the state was to provide furniture and equipment.

Governor Martinez asked about the county bond funds that had been issued for the courthouse.

Mr. Pepin said the word “furnishings” was used in the county bond approval but he knew the county had not intended to supplant the state’s obligation. The county told him they didn’t have money for tables and chairs in the original bond.

Chief Judge Ortiz said the county has provided a certain amount of built in furniture on the third floor - anything that can be fitted in and attached to the building such as bookcases.

Governor Martinez asked if there was any indication the county could provide money for furniture.

Chief Judge Ortiz said they asked the county for furniture funding.

Mr. Pepin said the county position is that they are not supposed to be buying any
furniture at all. If the Board were to provide $700,000, the court could move into the new courthouse. If only $250,000 is approved, the court would order those furnishings with the longest delivery lead time. He advocated strongly that the county should provide the funding, but furnishings for all other courthouses statewide were purchased with state funds, not county funds.

Chief Judge Ortiz added that the First Judicial District Court was unfortunately caught in the cross fire. If the Board gave $250,000 they would still need twice that amount from the county. Without it, they couldn’t move in until after the session.

Governor Martinez asked about Section 10-40-24 NMSA.

Mr. Pepin agreed that was the statute he had referenced regarding State responsibility to furnish courthouses.

Governor Martinez read part of the statute aloud. She asked if there were line items in the budget for some of these operational costs, since the statute references funds of each judicial district.

Mr. Pepin agreed there were appropriations within the unified budget for court operations. The rest of the money is divided among those who make the request. But no judicial district has ever requested funding for one-time expenses in their unified budget.

Chief Judge Ortiz said 99 percent of the money that comes from state is for salaries, benefits, and contractual services. They didn’t get any of that for capital outlay.

Governor Martinez was bothered by this because the Board’s funding was necessary for emergencies like fires, floods, water sheds, etc. where people could not pay for the disaster. She knew this courthouse was built on a site that was not recommended. Then it had to be cleaned up at a great cost to the taxpayers. She couldn’t imagine acquiring a piece of land where you had to do that.

She understood the need, but the decision was made to put it in a non-recommended place, which resulted in millions in clean up costs.

Mr. Brasher recalled when former Chief Judge Barbara Vigil was here she talked about the metropolitan courthouse in Albuquerque and that the money automatically flowed. He recalled that there were delays and a lot of discussion about the county’s obligation to construct a new courthouse. That metro courthouse was in dispute at the state and the county. He asked Mr. Pepin what the issue was in that instance.

Mr. Pepin said he wasn’t privy to that discussion because he wasn’t at AOC at that time. There were several bond issues done piecemeal. There was a dispute whether the county was responsible structurally. But bond proceeds built the courthouse in Albuquerque.
Mr. Brasher said it might have been the county disputing their obligation to provide infrastructure. It was the same situation in Bernalillo County. If they didn’t get the money, then the building would not be built, but if built they couldn’t occupy it. So, reasonable people have had differing opinions on it.

Mr. Brasher asked Chief Judge Ortiz if the court was going to have to go to the county for money. Mr. Brasher said the county would soon come up with their list of funding requests to the legislature, and Mr. Brasher hoped the county would add that to their legislative package request.

Chief Judge Ortiz agreed it had been part of the discussions. He was not negotiating with the county because it was not his role. The county was not going to try to spend any more on this building. The court just needed to come up with $600,000 to move in.

Dr. Clifford said there was a set of criteria to evaluate and compare local capital outlay priorities, and this project did meet at least two of them: there was a significant amount of local match and the funds would allow for completion of a project allowing move in to take place. Those were important reasons for making the request.

Governor Martinez noted on page two of the court’s March 15 letter to the Board that the court addressed IT needs, and she understood that to mean the IT needs could be provided from elsewhere. Mr. Pepin agreed.

Ms. Clarke added that, as with all emergency requests by state agencies, the state budget division’s analyst was approached and confirmed that there were no funds in the court’s budget to cover at least $250,000 for furnishings.

Governor Martinez asked if there was something specifically in the executive’s capital outlay list for the First Judicial District Court.

Dr. Clifford said that recommendation was still being crafted, but he agreed they had it in their supplemental appropriations request.

Treasurer Lewis commended the new Chief Judge for coming here. He said this is a precarious predicament. Chief Judge Ortiz said they were hoping to move in before the legislative session, but even if the Board could award them $250,000 he was concerned what they would do if they didn’t find the rest of the money. The timeline would be tight for getting computers operational and other services ready.

Chief Judge Ortiz said they could use the $250,000 for furnishings. If the court didn’t get any money from the county, then they wouldn’t get to move in until after the legislative session, and the new building would remain vacant for probably six months. That was his argument to the County.
Mr. Brasher moved to approve the request. Treasurer Lewis seconded the motion.

Ms. Clarke asked for clarification about whether the motion was to fund the request as a loan or a grant. There is a mixed precedent from the recent past.

Dr. Clifford said the practice in the past had been to request an appropriation from the legislature to repay the Board. DFA hoped to enhance this fund in future fiscal years. There were many requests last year. So rather than having to forgive a loan later the Board needed to have a sufficient funding to start with.

Governor Martinez asked Mr. Brasher if he wanted to amend his motion.

Mr. Brasher suggested that if legislative funds come through it could be a loan.

Governor Martinez recalled in the last year they forgave the loan to AOC because the AOC had no money for juror’s fees. Sometimes it just uses up the fund balance for a while. She mentioned the emergency need of the Secretary of State that the Board could not fund due to lack of emergency funding. She thought the Board could just make it a grant at this time.

Mr. Brasher amended his motion to have the $250,000 award as a grant. Treasurer Lewis agreed.

Governor Martinez summarized the action is a $250,000 grant to the First Judicial District Court for furnishings and equipment at its new courthouse. She agreed with the decision in light of the security issues at the courthouse so they needed to have that covered.

Ms. Clarke asked for direction on one aspect. The Court had requested $250,000 for furniture, fixtures and equipment, but she thought the Board should probably restrict the funds to furniture. She didn’t think that would be a problem from the Court’s perspective. She read the resolution, “Whereas the First Judicial District Court has requested emergency funding of $250,000 to pay the costs for furniture, fixtures and related items to the new judicial complex in Santa Fe, RESOLVED the State Board of Finance determines pursuant to Section 6-1-2 NMSA 1978 as amended, a critical emergency exists that cannot be addressed by disaster declaration or other emergency contingency funds and therefore approves a grant to the First Judicial District Court from the FY 13 General Operating Reserves in the amount of $250,000 for Priority 1 furniture as identified in the First Judicial District Court’s request to the Board for the new judicial complex in Santa Fe.”

Governor Martinez asked Dr. Clifford in reference to the bond for the building if the language in the bond “for furniture” would help the District with the county.
Dr. Clifford said it was the standard bond language for furniture, fixtures and equipment for the facility.

Governor Martinez thought that might help the Court with their request to the County. She encouraged them to use that document.

The motion passed on a unanimous 4-0 voice vote.

Chief Judge Ortiz thanked the Board for their approval.

**STAFF ITEMS**

Presenter: Stephanie Scharadin Clarke, Director

5. Approval of First Amendment to Disclosure Counsel Contract with Brownstein Hyatt Farber Schreck for Certain Authorized Bond Counsel Services and Limiting Hourly Fees That May Be Charged for Those Services

Ms. Clarke said the amendment is in the Board’s packet adding a new paragraph (1) M. She explained the current contract has a provision that this firm could step in as bond counsel when needed on an hourly basis when the Board’s bond counsel was unable to perform. This amendment specifies that the maximum billing is $35,000 for the December 2012 severance tax notes and $51,000 for the general obligation bonds the Board will issue in the spring.

Mr. Brasher moved approval of the amendment. Treasurer Lewis and Mr. Spencer seconded the motion.

Treasurer Lewis for clarification asked if there was a ceiling on what could be paid without issuing an RFP.

Ms. Clarke said she reviewed this approach with Board Counsel, Mr. Shandler, and with DFA General Counsel and staff of DFA’s Contracts Review Bureau, and they all agreed that this approach was allowed under the procurement vehicle already in place.

The RFP and original disclosure counsel contract said the disclosure counsel contractor could provide bond counsel services at hourly rates and this continues to be structured at hourly rates. The amendment mimics a fixed flat fee structure by limiting maximum hourly charges.

Treasurer Lewis said Lt. Governor Sanchez had asked at the last meeting what the current status of the bond counsel contract was because nothing has come before the Board. He asked if the contract was intact or if there was any clarification on it.

Ms. Clarke said as of the last meeting the bond counsel contract with Sutin Thayer
Brown was intact, but since that date she received a letter from Sutin Thayer Brown that they would terminate the contract as of today with a waiver of the 30-day termination notice. She clarified that if the Board didn’t approve this item she could always refuse to waive the 30-day notice. Sutin’s termination letter allows the bond counsel contract to terminate without action by the Board.

The motion to approve the contract amendment passed by unanimous 4-0 voice vote.

6. A. Approval of Directing Staff to Issue Request for Proposals for Bond Counsel Services

Ms. Clarke said based on the direction of the Board at the November meeting and item 5 on this agenda, item 6A is an action item to have the Board direct her to issue an RFP. She thought staff could issue an RFP as early as December 20 and have a resulting contract in place by April. The Board would likely sell severance tax bonds in the spring of 2013 following the legislative session and see if they had time for the bond counsel contract to be in place for that issuance.

Treasurer Lewis moved approval to direct staff to issue the Request for Proposals for Bond Counsel Services. Mr. Brasher seconded the motion, and it passed by unanimous 4-0 voice vote.

B. Appointment of Request for Proposals Subcommittee for Bond Counsel Services

Ms. Clarke explained this is a newer practice the Board of Finance has implemented in this past year for RFPs to have board members more actively involved in the process. Last time the Board issued RFPs, Governor Martinez appointed two Board members to comment on the RFP. At this point, the Board might want to consider whether the subcommittee should also participate on the evaluation committee, which has typically been comprised of only staff in the past.

Dr. Clifford thought that was a good suggestion and that it would be helpful.

Treasurer Lewis recommended that Board Member Robert Aragon to be on the subcommittee.

Dr. Clifford supported that recommendation. Dr. Clifford would be glad to participate also.

Governor Martinez appointed Mr. Aragon and Dr. Clifford to work with staff on the subcommittee.
Having completed their business, the Board of Finance meeting was adjourned at 10:20 p.m. on a motion by Treasurer Lewis.

Susana Martinez, President

12-18-12

Date

Michael Brasher, Secretary

12-18-12

Date