MINUTES OF THE
NEW MEXICO STATE BOARD OF FINANCE

REGULAR MEETING

Santa Fe, New Mexico

April 19, 2011

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

1. **ROLL CALL**

A quorum was present:

**Members Present:**
Governor Susana Martinez, President [arriving at 10:35 a.m.]
Lt. Governor John Sanchez
State Treasurer James Lewis
Mr. Robert J. Aragon, Public Member [leaving at 1:00 p.m.]
Mr. John Gasparich, Secretary
Mr. Sam Spencer, Public Member
Mr. Thomas P. Tinnin, Public Member

**Members Excused:**
None.

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

**Staff Present:**
Mr. Richard E. May, Secretary, Dept. of Finance & Administration
Ms. Stephanie Schardin Clarke, Interim Director, State Board of Finance

**Others Present:**
[See sign-in sheets.]
2. EXAMINATION OF BIDS, GENERAL OBLIGATION BONDS SERIES 2011

Secretary Gasparich read the following statement: "Now is the time and this is the place for publicly examining bids received for the purchase of the State of New Mexico Capital Projects General Obligation Bonds, Series 2011, in the aggregate principal amount of $19,970,000, in accordance with a Notice of Bond Sale that has been published in the Albuquerque Journal, a newspaper of general circulation in the state of New Mexico, and also in The Bond Buyer, a recognized financial journal outside of the state of New Mexico, each week for two consecutive weeks, the last publication having been made at least five days prior to the date of this meeting."

Mr. Paul reported that 14 bids were received this morning on the proposed transaction. He said he would read out all of the bids, go back and verify them, work with the apparent winning bidder to resize the final transaction, and then return later in this meeting with a recommendation for award. He read the bids as follows:

<table>
<thead>
<tr>
<th>Bidder Name</th>
<th>TIC</th>
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<tbody>
<tr>
<td>Southwest Securities, Inc.</td>
<td>2.66</td>
</tr>
<tr>
<td>Jefferies &amp; Company, Inc.</td>
<td>2.53</td>
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<tr>
<td>Vining-Sparks IBG</td>
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<tr>
<td>Wells Fargo Bank</td>
<td>2.50</td>
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<tr>
<td>Morgan Stanley &amp; Co.</td>
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<tr>
<td>J.P. Morgan Securities</td>
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<tr>
<td>Banc of America Merrill Lynch</td>
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<tr>
<td>Hutchinson, Shockey, Erley &amp; Co.</td>
<td>2.48</td>
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<tr>
<td>Guggenheim Securities</td>
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<tr>
<td>BMO Capital Markets</td>
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<tr>
<td>FirstSouthwest</td>
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<tr>
<td>RBC Capital Markets</td>
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<tr>
<td>TD Securities</td>
<td>2.44</td>
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<tr>
<td>Robert W. Baird &amp; Co.</td>
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Upon motion by Mr. Tinnin, seconded by Treasurer Lewis, the Agenda was approved 6-0 by voice vote, as published.

New Mexico State Board of Finance: April 19, 2011
4. **APPROVAL OF MINUTES: March 15, 2011 (Regular Meeting)**

Mr. Tinnin moved for approval of the March 15, 2011 Minutes, as submitted. Mr. Spencer seconded the motion, which passed 6-0 by voice vote.

**STATE TREASURER’S OFFICE**

Presenters: James B. Lewis, State Treasurer; Sheila Duffy, Chief Investment Officer

5. **Monthly Investment Reports for Month-ended March 31, 2011**

**General Fund**

-- The market value of the General Fund Investment Portfolio, net of TRANs, on March 31, 2011, was $1.13 billion. This compares to $1.06 billion at the same point last year and $1.70 billion at the same point two years ago.

-- The market value of the portfolio increased by $14.49 million, or 1.3%, from February 28. This is primarily due to the timing of receipts of income and expenses.

-- During March, there were purchases of $3 million in Certificates of Deposit from New Mexico banks to slightly extend the duration of the portfolio.

-- There were no sales transactions.

-- March earnings were $1.14 million, representing a 3.56% increase from February earnings of $1.10 million. Fiscal year to date earnings total $11.3 million, compared to $11.8 million through the same period last fiscal year.

-- The General Fund outperformed its benchmark with an earned yield of 1.83%.

Addressing strategy, Ms. Duffy said the overriding objectives of managing the General Fund Core and General Fund Liquidity, as well as the other funds, is under the parameters of safety, liquidity and yield, in that priority order. Over the past quarter, due to the poor economic environment and quantitative easing by the Federal Reserve, yields on fixed income securities have remained at historic lows. She said amounts that are determined to not be needed in the next fiscal year have been invested out into a bond ladder in the Core Fund. Despite the low rates, STO is committed to rebuilding a laddered portfolio that should outperform on a relative basis over time.

Ms. Duffy said STO has also allowed the duration of the General Fund to come in slightly shorter with a belief that rates will rise in the third and fourth quarter. This will allow STO to replace maturing securities with securities that have a higher yield than at this time. STO continues to use the yield curve to invest, coincident with this strategy.
Ms. Duffy said STO anticipates that the economy will continue to be anemic for the next two quarters, but that yield rates will trend upward, and that over the next quarter some of the callable securities purchased over the past few quarters will be called, freeing up capital for reinvestment.

Secretary May noted that, when there was the prospect of the Federal Government shutting down about two weeks ago, he and Treasurer Lewis spoke several times during that period, ensuring that the State would have sufficient cash flow if the government were to shut down. He said there was very good cooperation between DFA, STO, and the Executive; and the strategy that Ms. Duffy has just discussed is part and parcel of maintaining the necessary cash flow.

**TRAN Fund Investment Portfolio**

-- During March there were no purchases or sales transactions in the TRAN portfolio.

-- March earnings were $57,363, representing a 49.80% decrease from February earnings of $114,262. Fiscal year to date earnings total $645,959.

**Local Government Investment Pool**

-- March 31 market value of the LGIP portfolio was $751 million, compared to a market value of $834.3 million at the same period last year and $1.2 billion at the same period two years ago.

-- During the month the portfolio balance of the fund increased 8.1%, from $695 million at February month end to $751 million.

-- There were two Treasury purchases in the LGIP Portfolio during March, chiefly to extend duration.

-- LGIP earnings for March increased to $176,000 from February earnings of $165,000.

-- Fiscal year to date earnings total $1.6 million.

-- The 30-day net yield of the LGIP as of February 21 was 0.28%, outperforming the 30-day net S&P Rated Government Investment Pool (GIP) index of 0.13% by 15 basis points. The 30-day gross yield of the LGIP at February 21 was 0.33%, outperforming the S&P Rated GIP index of 0.13% by 20 basis points.

-- The administrative fee assessed for March was 5 basis points, or $31,430. Year to date fees total $293,247.

Responding to a question from the Board, Ms. Duffy stated that, when Lehman Brothers failed in 2008, the Reserve Primary Fund, which was the oldest AAA-rated money market fund in the country, had 1% of its assets in Lehman Brothers stock, and failed after there was a run on
it. She said STO had a position in the Fund and it has since recovered over 99 cents on the dollar of that position. She noted that virtually all of the local governments have taken out more money than they put in – so while they have perhaps experienced a 1% principal loss, they have earned their way out of it to some extent.

Ms. Duffy stated that, since 2008, the Investment Policy has been rewritten to prohibit investment in prime money market funds. She said the portfolio was dramatically restructured to focus on bank deposits in New Mexico, and about 80% of the fund assets are deposited in local bank accounts, and the balance is invested in targeted securities.

Addressing strategy, Ms. Duffy said the objective to manage LGIP is under the parameters of safety, liquidity and yield. She said the market for short-term fixed income for Q4 2010 has continued to be weak. In order to increase yield, a barbell strategy in maturities has been employed for most of the past year, and STO will continue to follow that strategy, which has allowed a portion of the portfolio to outperform short-term alternatives.

**Tax-Exempt Bond Proceeds Investment Pool**

--- The market value of the Tax-exempt BPIP as of March 31 was $531.95 million, compared to a market value of $827.29 million one year ago and $540.94 million two years ago.

--- During March, the market value of the fund decreased by $77.6 million or 12.7% from February month end due to payments to bondholders.

--- Earnings for the month totaled $579,000, or an 8.5% increase from February earnings of $533,000.

Addressing strategy, Ms. Duffy said STO has continued to match expected withdrawals with a laddered portfolio of investments. This strategy has performed well over the quarter and STO plans to continue this strategy into the next quarter. In March, there was a significant outflow due to the payment of debt service on outstanding bonds, so balances are artificially low. STO has identified securities to liquidate in order to meet draws, but plans to keep maturing investments in cash to meet draws.

**Taxable Bond Proceeds Investment Pool**

--- The market value of the Taxable BPIP as of March 31 was $679.80 million, compared to a market value of $757.67 million one year ago and $830.68 million two years ago. Declines are due to project spending.

--- During March the portfolio balance of the fund decreased by $34 million, or 4.8% from February month end.

--- March earnings totaled $645,000, a 27.97% increase from February earnings of $504,000.
Addressing strategy, Ms. Duffy said STO continues to monitor expected spending and has positioned the portfolio accordingly. Callable securities were called, as expected, and they have been replaced with securities that fit the portfolio laddering and duration. The primary strategy for the fund is to match the duration of the investments with the cash flows of the agencies, while focusing on safety and liquidity.

**PROPERTY DISPOSITIONS**

Presenter: Henry Magallanez, District Engineer

9. **Elephant Butte Irrigation District—Requests Approval to Trade 4.035 Acres of Real Property with Mr. Victor Diaz in Exchange for Easement for Right-of-way Access to Flowage Drain ($79,566.37)**

Mr. Magallanez requested approval to transfer 4.035 acres of real property owned by the District to Victor Diaz in exchange for an easement to a flowage drain that Mr. Diaz will install at his own expense. The land trade, drain and easement will benefit the District by reducing maintenance costs on the land and reducing liability to the District from unauthorized uses.

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

Presenter: Scott Taylor, Project Representative

10. **Taos County—Requests Approval of Lease, as Amended, of Space in the New Taos County Administrative/Judicial Complex to the Administrative Office of the Courts ($391,471 Annual Rent in the First Year and $46,500 for Structural Modifications Paid over First Five Years)**

Mr. Taylor requested approval to enter into an 18-year lease with the Administrative Office of the Courts for 13,499 square feet at the new Taos County Administrative/Judicial Complex. Of that total, 11,660 square feet will be dedicated to the Magistrate Court, with additional square footage shared between the District Court and District Attorney. He said the effective date of the lease would be May 14, 2011.

Mr. Tinnin moved for approval. Treasurer Lewis seconded the motion, which passed 6-0 by voice vote.

Presenter: Arturo Jaramillo, Legal Counsel

11. **Gadsden Independent School District—Requests Approval of Lease, as Amended, with Innovate + Educate New Mexico for Office Space at 4950 McNutt Road, Sunland Park ($3,000 Monthly)**

Mr. Jaramillo appeared before the board with Richard Chavez, Associate Superintendent of Operations, Gadsden Independent School District, and requested approval to enter into a 26-month lease starting May 1, 2011 with Innovate + Educate New Mexico, a nonprofit, for 2,616
square feet of office space at 4950 McNutt Road in Sunland Park. He stated that the nonprofit plans to repair and maintain the premises in the Gadsden Administrative Complex and use it for office space, computer lab and a conference room for the purpose of implementing programs defined under the STEM project within the District.

Mr. Jaramillo stated that, in response to a request of Board staff, an appraisal has been ordered and will be submitted for review to the Property Tax Division.

Board legal counsel Zack Shandler requested that approval be contingent upon Board Director receipt, with review of Board counsel, of 1) current appraisal indicating that the rent of $3,000 per month is at or above fair market value, and 2) report on appraisal from Property Tax Division indicating concurrence.

Mr. Tinnin moved for approval, with those contingencies. Treasurer Lewis seconded the motion, which passed 6-0 by voice vote.

Presenters: Art Melendres, Legal Counsel; Justin Snyder, Real Estate Director; Susan Fox and Kim Kiel, Legal Counsel, Tierra Encantada Charter High School; Daniel Alsup, Modrall Sperling Law Firm, representing Santa Fe Public Schools

12. Santa Fe Public Schools—Requests Approval of Lease of Real Property as Amended at the Site of the Former Alvord Elementary School to Tierra Encantada Charter High School ($731 Per Student Per Year, Based on Statutory Rate)

Mr. Melendres stated that, several years ago, the Santa Fe School Board began looking at the demographics of the School District and learned that there was a population shift to the southern part of the city, so the number of students that were attending some of the “inner city” schools began to decline. Given the financial condition of the School District and the population issue, the School Board last year decided to consolidate three neighboring schools into one facility. Mr. Melendres stated that, under current law, the School District is required to offer its vacant buildings to charter schools; and following negotiations, Santa Fe Public Schools and the Tierra Encantada Charter High School (TECHS) have reached an agreement to lease the former Alvord Elementary School for the remaining term of TECHS’ existing charter, through June 30, 2015, plus one five-year option to renew. The rental payments will be about $700 per student per year, based on the current statutory reimbursement rate, and rental payments will increase as the reimbursement rate increases. Should the rent reimbursement rate be reduced, rent payments will either remain the same, with TECHS paying the difference, or TECHS will terminate the lease.

Responding to Lt. Governor Sanchez, Ms. Kiel said TECHS has been in existence for six years with grades 9-12, and next year will add grades 7 and 8. She said all students are taught in English and Spanish. She said current enrollment is about 132 and they anticipate adding about 60 students per grade when they expand next year, but will not have more than 60 per grade.

There was no public comment.
Mr. Tinnin moved for approval. Lt. Governor Sanchez seconded the motion, which passed 6-0 by voice vote.

Presenters: Art Melendres, Legal Counsel; Bobbie Gutierrez, Superintendent, Santa Fe Public Schools; Justin Snyder, Real Estate Director; Leonard Katz, Legal Counsel, Desert Academy; Terry Passalacqua, Head of School, Desert Academy; Art Burger, President/Trustee, Desert Academy; Marquita Russel, Treasurer, Desert Academy; Daniel Alsup, Legal Counsel, Santa Fe Public Schools

13. Santa Fe Public Schools—Requests Approval of Sale of Real Property at the Site of the Former Kaune Elementary School to Desert Academy ($4,000,000)

Mr. Melendres stated that the Santa Fe School Board, as with the previous agenda item, determined that Kaune Elementary School was not fully enrolled, and the Board looked for potential occupants of the facility. It was determined that Desert Academy, a private school, was a suitable candidate to use the facility. He stated that there were extended negotiations between the School Board and the Desert Academy regarding whether the property should be leased on a long-term basis, or sold to the Desert Academy, which the Desert Academy wished. He said the reasons presented to the School Board were compelling enough for the Board to decide that the property should be sold. He said Santa Fe Public Schools insisted, and Desert Academy agreed, that there would be a “purchase term” of 60 years, after which the land and facilities on the land would revert back to the Santa Fe Public Schools.

Mr. Melendres stated that, without students in the Kaune School facility, the Santa Fe Public Schools would have been faced with $50,000 to $75,000 in annual maintenance costs. Under this arrangement, the facility will be maintained and upgraded before it is turned back to the Schools.

Mr. Melendres stated that, under the terms of the agreement, there is a negative amortization payment to the Santa Fe Public Schools for the first two years and an above-appraised purchase price. He said the appraisal was $2.5 million, and Desert Academy will pay $4 million. He said the structure was set up this way so that, in the early years, Desert Academy can make improvements to the facilities using cash.

Mr. Burger stated that Desert Academy has continued to experience increased enrollment during these uncertain economic times since its certification as an International Baccalaureate World School in 2007. He said they have outgrown their current facility of 170 students. Two years ago, Desert launched a search for a new campus, and looked at every possible campus or potential campus in the Santa Fe vicinity, and found very quickly that there was very little available that was anywhere near a turnkey opportunity. Toward the end of the search, the Kaune property became available. He said the campus is convenient to public transportation and for existing families, but ‘Desert will have to upgrade the science labs and photo labs, make the bathrooms high school appropriate, improve the parking, and so forth.'
Mr. Burger said Desert Academy is financially strong; they operate on a two-year budget with five-year projections and have a ten-year relationship with Los Alamos National Bank, with an annual $150,000 line of credit. He said they feel that the arrangement made with the Santa Fe Public Schools will ultimately provide a good return on Desert’s investment. He clarified that, with respect to the two years of negative amortization payments, if one were to characterize this in terms of appraisal price, they will reach positive amortization in the 25th month.

Responding to Lt. Governor Sanchez, Mr. Passalacqua stated the Desert Academy is 16 years old. They would like to ultimately expand to 240 students, which is possible with the Kaune facility.

Lt. Governor Sanchez asked if there is precedent for a school district to enter in a transaction like this with a private entity, and Ms. Schardin Clarke responded that she was not aware of a school district entering into an arrangement where there is payment over several years; but in her three years with the Board, there has been at least one transaction where a public body took payment over time. In that case, Santa Fe County granted a mortgage to a film studio, where the developer will make payments over five years.

Superintendent Bobbie Gutierrez clarified that the Kaune facility is about 70 years old.

Given the age of the facility, Lt. Governor Sanchez asked if there has been an environmental study conducted and, if so, is mitigation of hazardous materials such as asbestos factored into the budget. Mr. Snyder responded that the School District addressed remediation of asbestos across the entire district in 1984 or 1986. He said he did not know what remediation steps were taken, if any, on the Kaune site.

Lt. Governor Sanchez suggested that a new updated environmental report would be beneficial to not only the Santa Fe Public Schools, but to Desert Academy as potential purchaser, and Mr. Burger responded that the due diligence process initiated after approval today (if granted) would trigger an environmental review. He added that the District invested quite a bit of money in recent years upgrading the Kaune School infrastructure, so it has a fairly strong integrity rating. Lt. Governor Sanchez commented that a building this old is susceptible to mechanical problems and other potential problems such as mold (and the need for remediation) and a leaking roof, which can be a tremendous financial burden.

Lt. Governor Sanchez asked if the financial stability of the school has been addressed and what remedies are available in the event of a default.

Ms. Russel responded that they have provided cash flow projections, and have an existing mortgage with Los Alamos National Bank along with a line of credit. She said they have had clean audits for the last ten years, so are in good financial standing and have very good financial planning in place to ensure that some of the issues such as unexpected capital expenditures are built into the budget. She stated that they collect tuition from 171 students, some of whom are out of the country, so they are at 101% of their tuition expectations for the year. Their fundraising is solid in terms of the numbers of families who contribute. She said they will at
some point sell the existing facility, but in the near term are capable of carrying that debt as well as the second debt on the Kaune facility.

Mr. Passalacqua stated that tuition is $15,900, and Desert also gives financial aid to 40% of the families, bringing the average tuition to $12,000 per family.

On the question of remedies in the event of default, Ms. Schardin Clarke said the rent schedule starts out at $7,000 a month and then increases each year. To ensure that the transaction was happening at fair market value, Board staff confirmed that, if Desert Academy were to default on their payments, a monetary liquidated damages formula in the agreement would require that a lump sum payment be made that would bring it up to fair market value. Ms. Schardin Clarke referred to cash flow projections and noted that, if things go worse than planned – tuition doesn’t come in or enrollment doesn’t grow – the backup plan (rather than default) would be to forgo some capital improvements that are planned. She said this gave her some reassurance.

Mr. Burger confirmed that, while Desert Academy needs to expand the gym and refurbish the fields for track and soccer programs, those improvements will not occur in the first period unless Desert Academy either raises special capital funds for that purpose or continues to be financially healthy. He noted that Desert Academy’s calculations are very conservative and are based on a much lower enrollment rate.

Mr. Melendres also clarified that, if Desert Academy were to find themselves in a position to want to sell to another entity prior to the end of the 60-year term, Santa Fe Public Schools has a first option to purchase. Were there a default, the property would revert back to Santa Fe Public Schools on an expedited basis.

Mr. Melendres said Santa Fe Public Schools did enter into one site sale to a private entity; but since the law changed to require them to offer unused sites to charter schools, the Santa Fe Public Schools has made four or five sites available to charter schools, so the opportunity is not there to go to the private sector until the charter schools are placed in public buildings.

Mr. Tinnin asked how much the additional improvements would cost before opening the school, and Ms. Russel responded that the cost would be minimal – less than $10,000. She said the roof was recently redone.

Mr. Tinnin asked if there is any provision for inspecting the facilities over the term of the lease period. Mr. Melendres responded that there is no such provision, but Desert Academy is required to provide property, casualty and liability insurance, and any additions and remodeling have to be code compliant.

Mr. Katz added that this is a 30-year real estate contract. At the end of the 30 years, the $4 million purchase price will be fully paid on, with the interest. He said there is a provision that all of the improvements will be maintained during the 30-year period.
Mr. Aragon noted that New Mexico law requires that, in a real estate contract, the buyer has an equitable position in the contract at any point during its term. In that light, he asked if the Santa Fe Public Schools is prepared to “cut a check” to Desert Academy for whatever amount the court decides is their equitable position in the event of default. If that event were to occur, he asked if that would create an anti-donation problem because a constitutional entity would be writing a check to the Desert Academy.

Mr. Katz responded that New Mexico courts have been very clear that the real estate contract and forfeiture will be enforced; however, in this case, there is a very low down payment, and the payments approximate rent. He said there would not be the situation that Mr. Aragon is concerned about, which is that there might be equity that Desert Academy would have accrued over time. He said everyone was comfortable that the recourse, in the event of default, would be that the School District would regain the property.

Mr. Aragon said he realized title would be forfeited, but he could envision the possibility of a lengthy litigation period on the equitability issue. He suggested that Mr. Melendres tighten up the language in Paragraph 9, Subparagraph F of the real estate contract to allow for a waiver of any equitable positions that may exist.

Responding to Mr. Spencer, Board legal counsel Zack Shandler said he has reviewed the contract and there are no proposed contingencies. He stated that Desert Academy will be providing back a special warranty deed to the Santa Fe Public Schools; and pursuant to its Rule 1-5-23-8(B)(1), the Board can consent to this type of deed if the parties have sufficiently developed a public record of extraordinary circumstances. He said the general rule is that when the government gives away a property, it gives it away in a quitclaim, and when the government takes something back, as a rule it comes back with a general warranty deed. Here, the parties are proposing a special warranty deed, and Board rule allows that to happen if the parties have provided a record of extraordinary circumstances.

Mr. Melendres and Mr. Katz agreed to Mr. Aragon’s suggestion that subparagraph F (Default by Buyer) be tightened up to provide for a waiver of existing case law under the real estate contract.

Lt. Governor Sanchez commented that he loved the idea of this deal, if the details could be worked out, but his concern was that Desert Academy “did not have enough skin in the game” and that the school district should be asking for more. He said his concerns might be addressed if Desert Academy could go back to its investors and ask for additional down payment money. With respect to Mr. Aragon’s concerns about who is responsible for payment in the event of default, he said perhaps some of the additional down payment money could be set aside in a separate account for that sole purpose.

Lt. Governor Sanchez expressed concern about setting precedent here, especially in a very tight economy where different school districts and governmental agencies do not have the ability to maintain their debt service on vacant properties. He said more of these could be coming to the Board in the future. He wanted to be sure the Board was creative enough and flexible enough to
deal with them; however, in this instance, he was not sure all of the T’s had been crossed and I’s had been dotted.

Responding to Mr. Aragon, Mr. Shandler said there are two issues: 1) whether this should be a lease or a real estate purchase; and 2) at the end of the life of the transaction, when it gets reverted back to Santa Fe Public Schools, what kind of legal document should come back. Customarily, Desert Academy would be providing a general warranty deed back to Santa Fe Public Schools. He said the Board rule allows that Desert Academy, at the end of the transaction, could give a special warranty deed (which is what they would like to do), and the rule speaks to extraordinary circumstances. Mr. Shandler added that he was not aware of an exact definition of “extraordinary circumstances.”

Ms. Schardin Clarke suggested that counsel from Desert Academy or the school district explain why the transfer back is through a special warranty deed. She added that it is the Board’s purview to decide whether the reasoning for that qualifies as an extraordinary circumstance.

In light of Lt. Governor Sanchez’s concern about establishing precedent, Mr. Aragon suggested that the Board take the extra step of making a finding on the extraordinary circumstance before moving forward with approval.

Mr. Tinnin moved for approval subject to Board Director receipt, with review by Board counsel, of a revised real estate contract with a waiver of the equities provision in Paragraph F.

Mr. Tinnin moved to table this item to allow time for Desert Academy to return with an explanation of why there is an extraordinary circumstance. Mr. Spencer seconded the motion, which failed to pass by voice vote, with three votes in the affirmative and no dissenting votes.

Mr. Aragon, who had voted in the affirmative, moved to reconsider the motion. Treasurer Lewis seconded the motion, which passed 5-1 by voice vote, with Mr. Tinnin voting against the motion.

Mr. Aragon moved that the Board find that extraordinary circumstances exist, those being the ongoing financial burden placed on the Santa Fe School District to continue maintaining a vacant building that is not used; and that the extraordinary circumstance necessitates this request.

Lt. Governor Sanchez seconded the motion.

Mr. Melendres explained that the special warranty deed, rather than a general warranty deed, was the subject of intense negotiation. The rationale from the Santa Fe School Board was that Santa Fe Public Schools have been owners of this property for “virtually forever,” and will transfer title to Desert Academy and theoretically the only user will be Desert Academy. He said the special warranty deed would fit that circumstance as opposed to a general warranty deed.
Mr. Katz added that there is confusion because this is an unusual situation. He said title remains with the Santa Fe Public Schools during the real estate contract, and only in the case of a default would a special warranty deed, eliminating any equitable title that Desert Academy has, come into effect. For the first 30 years until the real estate contract is paid, legal title still remains in the school. After it is paid off and the deed is given, no further deed is necessary at the end of 60 years.

Mr. Katz said the issue of the deeds, and requiring extraordinary circumstances, is really not applicable in this case.

Mr. Shandler responded that his memory of the transaction is that the term came up; however, if the parties are establishing a sufficient public record for Mr. Aragon’s finding, that is fine with him; and if that is how the parties understand the transaction, then that will be the public record.

Mr. Aragon stated that the extraordinary circumstance is that maintaining the building is extraordinarily onerous to the school district and it may be difficult, if not impossible, for them to come up with the annual cost of doing so.

**The motion passed 6-0 by voice vote.**

[Governor Martinez joined the proceedings.]

In discussion on the motion for approval, Ms. Schardin Clarke asked Mr. Melendres if amending subparagraph F of the real estate contract would require going back to the School Board for approval.

Mr. Melendres responded that they would ask the School Board to reaffirm the approved documents by the Board of Finance.

**Mr. Tinnin moved for approval, contingent upon Board director receipt, with review by Board counsel, of: 1) revised real estate contract with waiver of equities provision in subparagraph F; and 2) minutes or resolution of the Santa Fe School Board evidencing approval of the revised real estate contract.**

**Mr. Aragon seconded the motion.**

Secretary Gasparich asked Mr. Katz to discuss the restrictive covenant on use of the property, and Mr. Katz said the covenant restricts the property to either residential lots, or “for school purposes, including a public school thereon.” He said the language does not restrict the use to solely a public school, and he believes a plain reading of the covenant allows a school such as Desert Academy. He said the next sentence prohibits a business purpose, and Desert Academy is a not-for-public school. He said the covenant can clearly apply to a public school, parochial school or a nonprofit secular school.
Secretary Gasparich said he was struck by the last sentence of Mr. Katz’s analysis, which states that the Board of Finance should not rely on it.

Mr. Katz responded that the Board needs to rely on its own counsel, and his analysis was an attempt to be helpful to all of the parties. He said Desert is comfortable that its use does not violate the covenant, and he thinks Board legal counsel feels the same way.

Responding to Secretary Gasparich, Mr. Shandler stated that legal counsel believes there is a legally sufficient argument. He said they spent a lot of time with the parties ensuring that they had ownership of this issue, and that they are well aware that, even though one attorney may think it is legally sufficient, there could be other parties wishing to challenge it. In the meetings, both parties recognized the potential risk to this particular language. He commented, “I see they’re nodding in agreement, so I think you can take that as a verbal cue that there is a basis of a bargain between the parties on this, and the recognition of this provision.”

Secretary Gasparich opened the floor to public comment with a three-minute limit per speaker.

Peter McCarthy, 1421 Monterey Drive, Santa Fe, addressed the Board. He stated that he represents 25-30 neighbors in a loosely organized ad-hoc group called “Save Casa Linda.” He asked the Attorney General in January to investigate this sale because of its suspect nature. He has submitted a letter to the Board raising 20 concerns. The site plan, with 146 parking spaces, is devastating to the neighborhood. Desert Academy does not belong in the neighborhood. The argument that Kaune School needed to be closed because it had too few students was specious. It is a great school, so why is it being given away?

Julianne Serrano, a resident of the Casa Linda neighborhood, addressed the Board. She stated that Desert Academy does not belong in the neighborhood. It will increase traffic flow. The quality of life of the neighborhood will be gone. Desert Academy will take “every square inch” of the property for parking. The property used to be a neighborhood playground, and now it will be taken away. The Board should table this until health and safety issues are addressed.

There were no more speakers from the floor.

The motion passed 6-1 by voice vote, with Secretary Gasparich voting against the motion.

**BONDS**

Presenters: Robbie Heyman, Bond Counsel, Sutin, Thayer & Browne; David Paul, Financial Advisor, Fiscal Strategies Group; Jill Sweeney, Disclosure Counsel, Brownstein Hyatt Farber Schreck

6. **Acceptance of Bids and Adoption of Bond Resolution, Including Form of Official Statement, General Obligation Bond Series 2011**
Mr. Paul reported that the winning bid has been verified as Robert W. Baird and Company, and the transaction has been resized downward to $18,645,000.

Mr. Paul commented that 14 bids was the most ever received on a State of New Mexico general obligation bond issuance and that the difference between the winning bid and cover bid was approximately a half of a basis point, so the bids were very competitive; however, the spread between the low bid and high bid was 26 basis points, which is a significant spread given that the yield was about 2.4%, which is more than 10% of the interest cost and percentage of the winning bid. So while the bidding was aggressive and attractive, this gives a sense of the different perceptions people have of where yields are in the municipal market today.

Mr. Heyman reviewed in detail the forms of resolution.

Ms. Sweeney stated that, at the March meeting of the Board, she and Mr. Buchholtz went through in some detail the Preliminary Official Statement as well as the Disclosure Responsibility Memorandum. She said they will next turn the Preliminary Official Statement into an Official Statement, including the information reviewed by Mr. Heyman and the bid information, so it reflects the final pricing of the bonds and updates all other pertinent information. She asked Board members to inform Disclosure Counsel immediately if anything comes to their attention that appears to be inaccurate or misleading or missing from the document. She said the document will be posted in seven business days from today.

Secretary May noted that, with the passage, signing and vetoing of various provisions in HB 2, DFA now has an updated financial summary sheet that will show that State reserves are back up over 5%, which is in accordance with the fundamental goals of the budget process of preserving revenues at 5% or more.

Mr. Tinnin moved for adoption of the two resolutions. Mr. Aragon seconded the motion, which passed 7-0 by voice vote.

7. WITHDRAWN.

Presenter: David Paul, Fiscal Strategies Group

8. Overview of Factors Affecting New Mexico Bond Ratings and Update on Municipal Bond Market

Board members received written materials on this presentation that included the following highlights:

-- Municipal bond issuance as credits of sub-sovereign governmental entities in the U.S. is a unique phenomenon not found in other countries of the world. It requires most countries to do what they don't like to do, which is to push power over financial decision-making down to the lower levels of government.
--- When investors are asked what a bond rating is, they answer that it is a measure of the likelihood of default. Ratings of government, however, are more of a “report card” on how a government is doing than purely a risk assessment.

--- There is probably no more well secured rating in the country than a State of New Mexico general obligation bond: it has a debt limit of 1% of the assessed value; it has a separate fund for collecting and depositing taxes; there is about 1.5 years of debt service on deposit in that fund at any given point in time; and the maximum maturity is 10 years.

--- The underlying asset pledged to the bonds is the land that taxpayers have agreed to be taxed on to an unlimited extent to pay off the bonds. If the par amount limitation is 1%, it tends to be a half percent of that value, which means about 200 times coverage of the assets being financed. The average life of the State’s bonds is a little under six years. The chance that there is not sufficient financial resources to pay almost can’t be calculated.

--- When rating agencies look at states, they look at four things: economics and demographics; financial structure and performance; debt burden and structure; and management.

--- New and ongoing challenges are restoring fiscal equilibrium; disclosure; pensions and OPEB; and crossover markets. In the wake of the 2007-08 recession, disclosure has become an increasingly salient issue in the municipal markets.

--- A study conducted by Moody’s found that the 30-year incidence of default on municipal issues was less than 1/20th the rate on comparable corporate issues. As a result of the study, Moody’s stated that they expected that nearly all performing municipal general obligation and essential service revenue bonds would be in the AA category.

--- Of New Mexico’s bond ratings, which are strong and in the highest two credit categories, Moody’s stated last week: “The [Aaa] rating reflects the state’s history of well-managed fiscal operations, the volatility of energy sector-related revenues and its impact on the general fund, expenditure pressures associated with the state’s low-income population, and the state’s historic focus on maintaining reserves at healthy levels.”

--- While New Mexico’s fund balances are now at the 5% threshold, the State’s cash position is substantially worse than it was a number of years ago. Five years ago the State changed its revenue recognition rules to recognize income and gross receipts tax payments a month earlier, getting closer to the point at which they were earned by the State. This is a month farther away from when it arrived in the tax and administration suspense account as a cash asset of the State. One month of revenues at the time was just under $300 million; and at that time, 5% reserves was around $300 million. When the rule changed, it meant the cash resources at a 5% level under the old rules were the same as a 10% balance under the new rules because 5% is accrued income that can’t be spent.

--- New Mexico’s reserve policy has always been the cornerstone of the state, and the levels of reserve are more critical now than they have been historically. New Mexico’s political
culture has evolved to the extent that people in the Legislature and LFC understand the importance of these reserves more than they did ten years ago. The question of whether the State will take action to formalize those targets in statute, how the new Executive will formalize that in terms of Executive level policy, is something for consideration.

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Statewide capital planning has always been an issue in New Mexico, probably more than in most states, rules of allocating capital. The importance of capital has argued over the years for using more formalized processes that tend to be used by highly rated states.

Secretary Gasparich commented that the State has not gotten credit for some of the things it has done right, including the Public School Capital Outlay system.

Governor Martinez asked if the State’s bond rating would be positive affected if it had a statewide capital infrastructure plan or comprehensive plan of priorities, and Mr. Paul responded yes.

To Secretary Gasparich’s point, Mr. Paul said there has been a fair amount of credit given, because it shows up in the equity contributions of capital that are frequently referenced, and the use of the supplemental Severance Tax bond program that effectively is cash funding for capital needs. He said the change in public school funding from being legislatively driven to being driven by the Public School Capital Outlay Council has been important. He commented, though, that these have not all been put together in a single group so it is obvious that so much goes for schools, so much goes for senior citizen programs, etc.

Secretary May noted that DFA, with the Governor’s leadership, is using the model of the Public School Capital Outlay Council to begin making prioritizations in planning. While it is only in the early stages at this point, DFA is trying to look at all projects as part of a comprehensive review and evaluation process.

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While things have improved somewhat since the collapse in 2008, municipal bonds have suffered again as credit spreads from municipal securities widen. They have widened over concerns over bankruptcy, both reflected in Wall Street analyst Meredith Whitney’s comments predicting bankruptcies, and Newt Gingrich’s comments suggesting that bankruptcies should be encouraged.

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In terms of where things go from here: from the standpoint of the State Board of Finance, the most important takeaways are in the credit area in terms of what the State should be paying attention to, in terms of ensuring that disclosure in financial reporting is timely, in terms of cultivating and having communications through the disclosure process with the leading investors in the marketplace. Downgrades will be punished in the marketplace because they will create ongoing uncertainties around the value of securities that people buy.

Secretary May asked Mr. Paul how various issues, including the negative report issued by Standard and Poor’s yesterday on the federal government, the ongoing budget struggles in Washington, and the impact of continued high deficits, affect New Mexico’s bonds.
Mr. Paul responded that, of all of those issues, he feels that the debt ceiling is largely symbolic. If the way the country comes to grips with its fiscal mess is deciding not to raise the debt ceiling, it will be tragic for the State and country simply because “we need to work out of this in an orderly way and we need the various political factions to reach some kind of agreement.... If the budget issue is not addressed in a way that allows for an orderly exit from the mess we’re in before it undermines our credibility and role as a reserve currency, the cost of exiting the mess will be enormous. Our economy is still incredibly fragile and people have totally lost sight of the fact that 18 months ago we were on the brink of a depression, and I don’t think things get fixed that quickly.”

**DEPARTMENT OF FINANCE AND ADMINISTRATION**
Presenter: Steve Gonzales, Acting Director, Financial Control Division
14. **Financial Control Division—Requests Approval to Transfer Funds from the Tax Stabilization Reserve Fund to the State Appropriation Account ($172,646,600)**

Mr. Gonzales stated that the proposed transfer was authorized by the Legislature, subject to Board approval, to balance the budget for FY 2010. That fiscal year’s audit has been completed and the Financial Control Division reports that this transfer is necessary.

**Mr. Aragon moved for approval. Treasurer Lewis seconded the motion.**

Secretary May distributed and reviewed a general fund summary sheet, reflecting the need for this transfer.

**The motion passed 7-0 by voice vote.**

**HIGHER EDUCATION DEPARTMENT**
Presenters: David Hadwiger, Director of Institutional Finance; Dr. Ronald Stern, Superintendent, New Mexico School for the Deaf; Richard Gorman, Project Manager
15. **New Mexico School for the Deaf—Requests Approval of Roofing Restoration Project ($182,000)**

Ms. Schardin Clarke stated that Board action would not be necessary on this request. She explained that initially the project was to be funded entirely from the school’s fund balances, but on Friday the Public School Capital Outlay Council approved funding for this project. Because this project is now being partially funded by State capital outlay legislation, per the Board rule, it would only need Board of Finance approval if the amount exceeded $500,000.

**EMERGENCY FUND BALANCES**
Presenter: Stephanie Schardin Clarke, Interim Director
16. **Emergency Balances — April 2011**
Operating Reserve Fund (Laws 2010) $ 975,907.13
Operating Reserve Fund (Laws 2011) $ 750,000.00
Emergency Water Fund $ 126,800.00

Ms. Schardin Clarke reported these balances. She noted that an additional $750,000 that was appropriated in HB 2 in Laws 2011, and signed recently by the Governor, is supplemental funding for emergency loans the Board might make this fiscal year. The legislation stipulates that priority should be given to requests from public school districts and State Police for fuel costs.

EMERGENCY FUNDING REQUESTS
Presenter: Joseph P. Zebrowski, President

17. El Creston Mutual Domestic Water Consumers Association—Requests
Consideration of Relief of Emergency Loan Obligation through
Conversion to Grant or Revision of Repayment Schedule ($20,000)

Mr. Zebrowski reported that, based on discussion at the March Board of Finance meeting, El Creston Mutual Domestic Water Consumers Association (MDWCA) has adjusted their request to include the option to defer the first payment on the loan to next year. He said this option would take a lot of financial pressure off the MDWCA, and they would be able to reduce rates by about $15 a load. Giving a deferment of up to a year would allow a year of full service and would provide the revenue to pay the first installment without dipping into the funds remaining on the loan.

Mr. Tinnin thanked Mr. Zebrowski for taking this important step and for working with Board staff. He asked what policies are in place to monitor the MDWCA's ability to pay off the entire loan.

Ms. Schardin Clarke stated that, as directed by the Board, El Creston MDWCA, Board of Finance staff and staff from the Local Government Division worked together to come up with this recommendation, which would shift back the loan's repayment schedule by one year so that the first $4,000 payment would not be due until February 16, 2012.

Responding to Mr. Tinnin's question, Ms. Schardin Clarke said she and Mr. Tinnin discussed offline the idea that the Board could require quarterly reports to be submitted to staff for emergency loans. She said she thought quarterly reports in a standardized format from all entities receiving new loans would be useful.

Mr. Tinnin moved for approval to shift back the loan's payment schedule by one year and that El Creston MDWCA provide quarterly reporting to Board staff 15 days after the end of each calendar quarter. Mr. Aragon seconded the motion, which passed 7-0 by voice vote.
GENERAL SERVICES DEPARTMENT

Presenter: Charles Gara, Director, Property Control Division


Mr. Gara reported financials for the CBRF Fund, with a beginning balance as of February 1 of $16,842,803. After cash receipts and cash disbursements, the ending balance at February 28 is $16,563,950. Subtracting cash commitments to Legislative Council Service and approved projects, the uncommitted cash balance February 28 is $1,693,819. Year to date revenues total $3,613,985

There were no emergency declarations for the month of February.

Mr. Gara referred to the February Project Nothing Drops report in the Board packet.

19. Property Control Division—Requests Approval of Contract with Fox Builders to Renovate New Skills Training Center at the New Mexico Commission for the Blind (NMCFB) Training Center ($587,501.40)

20. Property Control Division—Requests Approval of Contract with ESA Construction for Manuel Lujan Sr. Building Renovation ($1,532,007.50)

Item 19

Mr. Gara requested approval to enter into a contract with Fox Builders of Los Lunas to renovate space for the New Skills Training Center at the NMCFB building in Albuquerque. It has been determined that the Albuquerque area needs a local day center where the visually impaired can be taught independent living skills. The project will renovate 6,805 square feet to add classrooms, offices and a small lecture room.

Item 20

Mr. Gara requested approval to enter into a contract with ESA Construction, Inc. of Albuquerque for renovation of the Manuel Lujan Sr. Building in Santa Fe. PCD has determined that the HVAC systems at the Manuel Lujan Sr. Building are past their useful life expectancy. The scope of work includes demolition of the existing boiler and chiller and related components with replacement of new high efficiency energy-saving boiler and chiller and related components, including a new chiller building.

Mr. Aragon moved for approval of Items 19 and 20. Mr. Tinnin seconded the motion, which passed 7-0 by voice vote.

Presenter: Ed Burckle, Cabinet Secretary, Jay Hone, General Counsel and Risk Management Division Director

21. Risk Management Division—Requests Approval to Transfer Funds from
the Public Liability Fund to the State Government Unemployment Compensation Reserve Fund ($5,000,000)

Secretary Burckle said this question, which was before the Board last month, was tabled following the Board’s direction for a legal opinion on the consequences of not granting this request.

Mr. Hone stated that the problem is that the Department of Workforce Solutions (DWS), which administers for the State of New Mexico in conjunction with the U.S. Department of Labor, works not just at the discretion of the Governor, and she is bound by State Statute and Department of Labor regulations. He said DWS must pay all claims that it finds legitimate whether or not the State is paying into the fund. The Governor must do this until she exhausts all funds at her disposal in paying all legitimate claims. At that point, all of the employers who are not current in their payments are assessed various penalties. He said the labor secretary can execute warrants of levy and start taking personal property and auctioning it off through the sheriff.

Mr. Aragon said his concern in asking for this legal opinion related to the separation of state and federal powers and the federal government’s “power grab” and “carrot and stick” approach. He said he thought this was intended to be an insurance policy that is paid by employees and employers.

Mr. Hone clarified that the State opted long ago to be on a reimbursable plan, so it does not pay insurance. Risk Management charges a premium to have a pool from which it reimburses DWS for claims made by former employees of the State.

Secretary May said one of the fastest growing items in the State budget involves unemployment claims filed by former State employees. He said the current administration inherited a contractor who did not challenge claims it was presented with. A new in-house system will be instituted on July 1 where claims will be challenged when warranted.

Secretary Burckle said it is believed that 25% of the claims can be fairly challenged and the expectation is that about $5.4 million in savings may be realized in FY 2012. In FY 2010, about $9 million was paid out in claims with a $5.8 million budget. He said that Risk Management plans to request a $4 million BAR from DFA from remaining cash balances; with the $9 million (including $5 million from today’s request), they will have $14.8 million in the unemployment fund. He said they expect to expend the entire balance by June 30. He stated that that they plan to repay the $5 million loan in 12 months using money realized from higher premiums.

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

[Mr. Aragon excused himself from the proceedings.]
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
Presenter: Tommy Mutz, State Parks Director; Charles Ulm, Business Enterprise Coordinator

22. **Energy, Minerals, and Natural Resources Department—Requests**
    Approval of Concessions Contract with Sims Marina, Inc. at Navajo Lake State Park (6 percent of net receipts for the first two years and then 8 percent for the remainder of the contract; 1.5 cents per gallon of fuel)

Mr. Mutz requested approval of a concession contract with Sims Marina, Inc. for operation of the marina facility at the Sims Mesa area of Navajo Lake State Park. The current contract expires on June 30, 2011. Mr. Mutz said State Parks issued an RFP for this concessions contract, and received one bid, which was from the current contractor. He said the new contract has been negotiated and will be effective for 10 years with two five-year options to extend. The marina will include 50 or more boat slips and mooring lines for rental, gas service, boat repairs, boat storage, boat holding tank pump-out service and a store with boating and camping accessories. The contractor will pay 6 percent of net receipts from sales and services for the first two years and then 8 percent per year thereafter; for fuel sales, the contractor will pay 1.5 cents per gallon sold. He explained that expenses borne in replacing the gas lines and storage tanks, because of Environmental Department concerns, will be offset with the higher percentage.

Mr. Tinnin asked what other capital improvements will be put in during the term of the lease, and Mr. Mutz responded that the contractor intends to add some slips and buoy lines, as well as improve walkways and improve the overhead on the slip storage areas.

Mr. Tinnin asked if these improvements are included in the new agreement, and Mr. Mutz responded that they are not. Mr. Tinnin said it would be helpful for Mr. Mutz to work with Board staff in describing specific improvements to the new contract.

Mr. Tinnin moved for approval with the contingency that State Parks work with Board staff to specify improvements that the concessionaire will make during the course of the lease. Treasurer Lewis seconded the motion, which passed 6-0 by voice vote.

**STAFF ITEMS**
Presenter: Stephanie Schardin Clarke, Interim Director

23. **Board of Finance Dashboard Report**

Ms. Schardin Clarke referred to the Dashboard Report. She said staff would be pleased to add any items or make changes in response to suggestions from Board members.
24. Fiscal Agent/Custodial Bank Fees

Ms. Schardin Clarke referred to a preliminary fiscal agent report in the packet. She reported that staff continues to work with Wells Fargo on fiscal agent costs and there is some difference in their interpretation of warrant costs, which is being addressed. In general, it appears that the cost of the new fiscal agent has gone up somewhat from what the fees were with the previous contractor, Bank of America. Ms. Schardin Clarke added that from what she has heard, the major user agencies are much happier with the service they are receiving from the new fiscal agent.

Ms. Schardin Clarke said custody bank fees as presented reflect the correct balances.

25. Joint Powers Agreement

Ms. Schardin Clarke read the Joint Powers Agreement into the record.

ADJOURNMENT

Its business completed, the State Board of Finance adjourned the meeting at approximately 1:05 p.m.

Susana Martinez, President

Date

John Gasparich, Secretary

Date