MINUTES OF THE

NEW MEXICO STATE BOARD OF FINANCE

REGULAR MEETING

Santa Fe, New Mexico

June 21, 2011

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

1. ROLL CALL

A quorum was present:

Members Present:
The Hon. Susana Martinez, President [attending 9:15-11:30 a.m.]
The Hon. John Sanchez, Lt. Governor
The Hon. James B. Lewis, State Treasurer
Mr. John Gasparich, Public Member, Secretary
Mr. Robert J. Aragon, Public Member

Mr. Sam Spencer, Public Member
Mr. Thomas P. Tinnin, Public Member

Members Excused:
None.

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

Staff Present:
Ms. Stephanie Schardin Clarke, Interim Director, State Board of Finance

Others Present:

See sign-in sheets.

2. APPROVAL OF AGENDA

NEw REGULAR MEETING JULY 19, 2011
Upon motion by Mr. Aragon, seconded by Mr. Tinnin, the Agenda was approved 6-0 by voice vote, as amended.

3. **APPROVAL OF MINUTES: May 17, 2011 (Regular Meeting)**

   Upon motion by Mr. Tinnin, seconded by Mr. Aragon, the minutes of the May 17 meeting were approved 6-0 by voice vote, as submitted.

**SEVERANCE TAX BONDS**
Presenter: Rachel King, Sutin Thayer & Browne, Bond Counsel

4. Approval of Resolution Reauthorizing Certain Severance Tax Bond Projects

Ms. King stated that the 2011 Legislature approved reauthorization of Severance Tax Bond proceeds from some projects to other projects, requiring that the Board approve the amended resolution.

Mr. Tinnin moved approval of the resolution. Mr. Gasparich seconded the motion, which passed 6-0 by voice vote.

**STATE TREASURER’S OFFICE**
Presenters: James B. Lewis, State Treasurer; Spencer Wright, Portfolio Manager


   **General Fund**

   -- The market value of the General Fund Investment Portfolio, net of TRANs, on May 31, 2011, was $1.213 billion. This compares to $1.270 billion at the same point last year and $1.629 billion at the same point two years ago.

   -- The portfolio value of the fund decreased by $81 million, essentially unchanged from April 30.

   -- During May, there were purchases of $115 million in securities to slightly extend the duration of the portfolio. $7 million in New Mexico Bank CDs were purchased in the General Fund.

   -- There were no sales transactions.

   -- May earnings were $1.17 million.

   **TRAN Fund Investment Portfolio**
During May there were no purchase transactions in the TRAN portfolio.

Securities in the portfolio are all scheduled to mature in an amount necessary for the retirement of TRAN debt on June 30.

May earnings were $45,811, representing a 12.69% decrease from April earnings.

Total YTD earnings on the TRAN are $744,240.

**Local Government Investment Pool**

The May 31 market value of the LGIP portfolio was $712 million, compared to a market value of $809.1 million at the same period last year and $1 billion at the same period two years ago.

During the month the portfolio balance of the fund increased by 0.8%, from $707 million at April month end to $712 million.

There were no transactions other than bank transactions due to the shallowness of the yield curve. Duration has continued to decrease over time.

LGIP earnings for May increased to $175,000 from April earnings of $170,000.

YTD earnings total $2.0 million.

**Tax-Exempt Bond Proceeds Investment Pool**

The market value of the Tax-exempt BPIP as of May 31 was $523.19 million, compared to a market value of $797.27 million one year ago and $738.59 million two years ago.

During May, the portfolio balance of the fund increased by $3.4 million, or 0.7%, from April due to the sale of General Obligation debt that settled in the month. This new issuance was offset by capital spending.

Earnings for the month totaled $505,000, a 4.9% decrease from April earnings of $531,000.

**Taxable Bond Proceeds Investment Pool**

The market value of the Taxable BPIP as of May 31 was $604.87 million, compared to a market value of $675.07 million one year ago and $791.50 million two years ago. Declines are due to project spending.
-- During May, the portfolio balance of the fund decreased by $3.6 million, or 0.6%, from April balances.

-- STO anticipates that the balance in this account will increase in June due to planned issuance of securities.

-- May earnings totaled $612,000, a 5% decrease from April earnings of $644,000.

Treasurer Lewis moved approval of the May monthly investment report. Mr. Spencer seconded the motion, which passed 6-0 by voice vote.

6. Approval of Proposed Changes to State Treasurer’s Investment Policy

Mr. Wright reported that, on an annual basis, the State Treasurer’s Investment Committee (STIC) reviews the investment policy for the General Fund, Bond Proceeds and Local Government Investment Pools. As a matter of procedure, the State Treasurer’s Investment Committee considers major investment policy changes to an every-other-year schedule, at which time public comment is solicited. This year, which is an alternate year, STIC proposes several minor changes to the STO Investment Policy primarily to clarify procedures as well as to keep consistent with changes to Section 6-10-10- NMSA 1978 as adopted by the State Legislature and signed by the Governor into law earlier this year.

The included changes have been developed by the Investment Division of the State Treasurer’s Office in consultation with Davidson Fixed Income Management, which serves as Investment Manager Adviser to the Treasurer’s Office.

Treasurer Lewis discussed the upcoming stakeholder meeting, when FDIC representatives would be present to discuss issues. He encouraged Board members to attend. He said U.S. Treasurer Rosie Rios spoke at last year’s meeting.

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

GENERAL SERVICES DEPARTMENT
Presenters: Charles Gara, Director, Property Control Division; Larry Miller, Deputy Director, Property Control Division


Mr. Gara stated that Deputy Director Larry Miller would be retiring at the end of the month. He said Mr. Miller was a vital part of the Property Control Division for many years, and thanked him for sharing his extensive knowledge with him during the transition.
Mr. Gara reported financials for the CBRF Fund, with a beginning balance as of April 1 of $16,595,105. After cash receipts and disbursements, the ending balance at April 30 was $17,158,171. Subtracting cash commitments to Legislative Council Service and approved projects, the uncommitted cash balance as of April 30 was $2,008,301. Year to date revenues total $5,157,814.

There were no emergency declarations for the month of April.

[Governor Martinez joined the proceedings.]

8. General Services Department, Property Control Division—Requests Approval to Adopt July-December 2011 Schedule of Repairs for Buildings in Santa Fe ($4,393,241)

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

Responding to Mr. Gasparich, Mr. Miller stated that the Project Nothing Drops report is in the process of being reformatted and updated.

PROPERTY DISPOSITIONS

9. WITHDRAWN.

Presenter: Jerry Maestas, Project Manager

10. West Las Vegas School District – Requests Approval of Sale of Real Property at 105 Bridge Street to Historic Kiva Theater ($56,502)

Mr. Maestas requested approval to sell .23± acres of real property at the site of the former Maloof building to the Historic Kiva Theater. He said the property, which was donated to the District about 10 years ago and is seriously dilapidated, is no longer needed.

Board legal counsel Zack Shandler requested that approval of this request be contingent upon the Director’s receipt of a signed sale agreement.

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

Presenter: David Edington, District Manager

11. Alto Lakes Water & Sanitation District – Requests Approval of Sale of Real Property to Mr. Frank James ($100,002)
Mr. Edington requested approval to sell three lots, which are of no use as possible infrastructure for the District. A special assessment district was formed in the subdivision where the lots are located, which will incur a paving assessment. He does not want to pass the assessment on to the ratepayers, and therefore wants to sell the lots.

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

Presenters: Thomas Figart, Legal Counsel; Victor Torres, Executive Director, Camino Real Regional Utility Authority; Sue Padilla, Asst. County Manager

12. **Doña Ana County—Requests Approval of Donation of Water and Wastewater Facilities, Improvements, Real Property and Easements to the Camino Real Regional Utility Authority**

Mr. Figart stated that Doña Ana County and the City of Sunland Park have created the Camino Real Regional Utility Authority (CRRUA) to replace the county and the city as the water and wastewater service providers in the Santa Teresa-Border Region by integrating their respective water and wastewater systems. He said the JPA was approved by the two entities, as well as DFA, in February 2009. CRRUA is an independent body with the status of a local government division. By merging the utilities, economies of scale were achieved to better serve Doña Ana County and City of Sunland Park residents.

Mr. Figart stated that approval by the Board of Finance today would be the final approval for the County. He said the City of Sunland Park has been on a parallel path with the County and has one final approval, now under consideration, from USDA Rural Development.

Responding to Mr. Tinnin, Mr. Figart said CRRUA has a seven-member board with two county commissioners, two city council members, and two state legislators. These six members choose a citizen/professional as the seventh board member.

Board legal counsel Zack Shandler stated that approval should be contingent upon the Director’s receipt of: 1) the signed master transfer document identified as Exhibit D-3; 2) documentation of approval of the State Engineer of transfer of water rights, if applicable; and 3) documentation showing approval granted to Sunland Park from USDA.

Mr. Tinnin moved for approval, with the three contingencies. Mr. Aragon seconded the motion, which passed 7-0 by voice vote.

13. **WITHDRAWN.**

**HIGHER EDUCATION DEPARTMENT**

Presenters: Barrett Gogue, Program Coordinator; Robert Doran, UNM Architect; Vahid Staples, UNM Budget Officer

New Mexico State Board of Finance: June 21, 2011
Mr. Gogue stated that UNM is requesting Board approval today of four projects. In the opinion of HED’s Capital Review Committee, all four projects comply with the building moratorium as these projects are renovations occurring within existing State-owned buildings. He said the Chemistry Department renovations are in UNM’s five year plan; however, the three Tri-Services projects, while in UNM’s master plan, are not in UNM’s five year plan because they do not include funding requests from the State and are funded only with federal grants, internal funds or UNM bond dollars.

14. University of New Mexico—Requests Approval of Chemistry Department Renovations ($2,500,000)

Mr. Staples requested approval to upgrade approximately 9,653 net square feet of laboratories, offices and mechanical spaces in Clark Hall and the Reibsomer Chemistry Addition. Within the project will be renovation of heating, ventilation and air conditioning system controls as well as the chemical exhaust system. He said the building has fallen into severe disrepair and much of the present space is uninhabitable for teaching or research purposes. He said this project is a stopgap measure to maintain the quality of education and research in the Chemistry Department.

Responding to Mr. Gasparich, Mr. Staples said this project was included in the general obligation bond issue that went to the voters in November, of which $10 million would go toward completion of the project and which ultimately will cost $15 million to complete.

Mr. Tinunin stated that it would be helpful for the Board to hear a presentation and/or see a report outlining the details of all of HED’s “pockets of money” – exactly what institution the money is designated for, what project is involved, what the schedule is, etc.

Governor Martinez said she would like additional details on the source of the revenues involved and the limitations for the use of the revenues. She asked staff to schedule presentations from each of the institutions over the next few months.

Governor Martinez said she would like the information made available to Board members as soon as possible, however, in advance of any presentations.

At Mr. Gasparich's request, Mr. Gogue also agreed to include information on unrestricted fund balances.

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

15. University of New Mexico—Requests Approval of Tri-Services Center for Molecular Discovery ($9,586,673)
Mr. Staples requested approval to renovate 14,386 gross square feet of space in building 289 on the Health Sciences Center Campus. This project is one of three within the former State Tri-Services Building and will occupy the second floor. He said the renovation includes modifications to the core facility, building's mechanical systems, fire protection, alarm systems, plumbing, IT and security, and upgrades to meet code. He said new casework and scientific equipment are also incorporated as part of this NIH-funded project. The project is an opportunity to centralize the Center for Molecular Discovery; currently, the programs are scattered throughout the Health Sciences Center and this will bring them into one location.

Mr. Staples stated that the entire $9,586,673 project budget is funded from ARRA program funds.

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

16. University of New Mexico—Requests Approval of Tri-Services Center Emergency Medicine ($4,623,316)

Mr. Staples requested approval to renovate space for the Department of Emergency Medicine staff and faculty and accommodate the Emergency Medicine Services Academy, Medicine Bow and the Center for Disaster Medicine. This project is one of three within the former State Tri-Services building and will occupy the first floor, which formerly housed the Office of the Medical Examiner and the Department of Veterinary Diagnostic Services. Major revisions to the space and infrastructure will focus on conversion of the existing labs and the autopsy and necropsy suites in order to meet the new program requirements for offices and training. He said upgrades to mechanical, electrical, plumbing, sprinklers, IT and fire alarm systems will be done as well.

Mr. Staples said the Department of Emergency Medicine is currently located in several areas of the Health Sciences Center, and this project will consolidate all of them.

Mr. Staples stated that, of the $4,623,316 project cost, $1.8 million is funded from UNM bond dollars, $2.2 million from the School of Medicine, and $556,000 is from F&A administrative cost recovery.

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

17. University of New Mexico—Requests Approval of Tri-Services Center 3rd Floor Lab Renovation ($2,187,105)

Mr. Staples requested approval to renovate 14,352 gross square feet of space on the third floor of building 289 on the Health Sciences Center Campus. The project will house research
labs for the Department of Internal Medicine and Pathology, associated with initiatives within the Center for Molecular Discovery. The project will utilize many of the existing lab spaces, which will be reconfigured to meet program requirements. Internal medicine will have five labs, two tissue culture rooms and five faculty offices. Pathology will have two labs, one pre-polymerase chain reaction room, one tissue culture room and two faculty offices. Shared spaces to be renovated include a freezer room, post doctoral/graduate student office area, lab, and new telecom distribution room.

Mr. Staples said the project budget of $2,187,105 includes $600,000 in funding from F&A cost recovery, and $1,587,105 from the Department of Internal Medicine Pathology balances.

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

Mr. Tinnin asked Governor Martinez if any efforts are being made to analyze programs throughout the higher educational system to avoid duplication of programs, which has been a longstanding concern.

Governor Martinez responded that a prime goal of the Secretary of Higher Education is to look at all of the curricula being provided from all of the universities to not only avoid duplication of programs but to make programs more robust, and also to create a 20-year plan that looks at employer needs in given areas and how to prepare students to meet those needs.

EMERGENCY FUND BALANCES
Presenter: Stephanie Schardin Clarke, Interim Director

18. Emergency Balances — June 2011

<table>
<thead>
<tr>
<th>Fund Type</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Reserve Fund (Laws 2010)</td>
<td>$1,221,200.00</td>
</tr>
<tr>
<td>Operating Reserve Fund (Laws 2011)</td>
<td>$ 750,000.00</td>
</tr>
<tr>
<td>Emergency Water Fund</td>
<td>$ 88,800.00</td>
</tr>
</tbody>
</table>

Ms. Schardin Clarke reported these balances, which will be available through the fiscal year ending June 30, 2011.

EMERGENCY FUNDING REQUESTS
Presenter: Arthur W. Pepin, Director; Oscar Arevalo, Judiciary CIO

19. Administrative Office of the Courts—Requests Approval of Conversion of Loans to Grants or Payment Extension for Six Emergency Loans (Total of $1,478,000)
Mr. Pepin requested that the Board consider approving the conversion of outstanding loans in the amount of $1,478,000 to grants; or, in the alternative, delaying repayment of these loans until July 1, 2012. He said funds were requested to repay the loans from the 2011 Legislature, but no appropriation was granted.

Mr. Pepin stated that the Administrative Office of the Courts (AOC) received loans from the Board in fiscal years 2008, 2009 and 2010. He said the AOC has about $150,000 left in the current fiscal year, which will cover expenses for approximately a day and a half, after which they will have to pay jurors in the last week of June from FY12 funds.

Mr. Pepin said steps have been taken since FY08 to reduce costs in the Jury & Witness Fund; however, statute requires the AOC to pay jurors the prevailing highest minimum wage, which is currently $7.50 per hour. He said the AOC requested funding from the Legislature to meet the higher cost but did not receive any. He noted that 75% of the budget goes to pay jurors, and the ongoing shortfall continues to build. Although the number of jurors has increased over the last three or four fiscal years, the cost per juror has gone down through the AOC’s cost-cutting measures. He said they have been successful in FY11 managing within budget partly because they received a $100,000 supplemental appropriation, the Supreme Court slightly increased the jury demand fee for civil cases, and there is a new $5 jury fee.

Mr. Pepin stated that, over the last four fiscal years, the general fund appropriation to the fund has gone down by $1+ million, and the AOC does not have $1,478,000 to repay the Board before July 1, 2011.

Governor Martinez asked Mr. Pepin if steps have been taken to reduce the minimum wage to match that of the State only.

Mr. Pepin responded that HB2 provided the Supreme Court the authority to reduce jury pay on an emergency basis for FY12 only to $6.25 an hour. He noted that no state pays jurors by the hour, though, and in this case jurors will be paid $50 a day. He said very few states pay anything close to that.

Governor Martinez asked if there are efforts underway to pay jurors only New Mexico minimum wage rates, and Mr. Pepin responded that he was unaware of any permanent plan, and his past experience has been that legislators are unwilling to lower juror pay. The AOC has not asked the NM Supreme Court for support in the 2012 Legislative Session to lower juror pay on a permanent basis.

Governor Martinez commented that some food for thought is whether to extend this loan for another year so there is an opportunity for the Supreme Court to seek long-term cost savings versus “just a forgiveness and then we go back up to the highest minimum wage that exists.”
Mr. Pepin noted that, as a result of other efforts by the AOC to reduce costs, the NM Supreme Court issued an order about two years ago keeping the per mile reimbursement rate at $0.32 for AOC employees as well as jurors, which represents a savings of $600,000 a year.

Responding to Mr. Aragon, Mr. Pepin said the AOC did advise the Legislature of the $1.5 million obligation to the Board of Finance, and the reason for it, and requested a special appropriation to make the repayment. Neither the LFC nor DFA recommended funding for this request.

Mr. Aragon said he did not feel the Board should summarily forgive loans simply because certain entities choose to ignore the problem, and he thought the loan should be extended for a year.

Mr. Tinnin suggested the Board extend this loan for a period of time so it can develop a “firm and fast” internal policy on how to address loans in general. He feels the Board has been used as a “soft touch” over the years – people think they are just going to come back at some point and get it converted to a grant. By developing this policy, he said the Legislature and others will be sent the message that if people come to the Board for a loan, they have to pay it back and if not, it will not be converted to a grant. He added that the policy can allow for certain modifications if there is a true emergency.

Governor Martinez commented that, when she was a prosecutor, cases were not heard after April because there was no money left in the fiscal year budget to pay jurors. She said it became a process of “forcing the system to fit the budget,” and they were constantly reminded of how the budget was going to control their constitutional responsibilities, which was very frustrating. She commented that the jail would be full of people who couldn’t be processed because there was no jury and no ability pay expert witnesses or interpreters.

Governor Martinez said that, while she understood the situation being faced by the AOC, she did not think there had been a sufficient scrub of the various courts’ budgets for savings over the years. She commented that the AOC has been coming back to the Board year after year without even making a partial payment on past loans. She understood the need to pay jurors, but she did not think the pay should be as high as it is. She noted that the mileage had been reduced from $0.50 to $0.32, and juror pay from $7.50 to $6.25 an hour just for this year, but she did not really see any long-term fix.

Governor Martinez said she was glad the AOC wasn’t asking for a loan this time around. She added that the AOC could not keep coming back for loans when they hadn’t taken care of the previous ones. She said the AOC should not ask for another loan from the Board without having done the following: explain how they plan to pay back the previous loans, and if they are unable to do that, to clearly spell out why; clearly demonstrate that the courts’ budgets have been thoroughly scrubbed, since from her own experience she knew there was “padding” in some courts’ budgets; and present a report on the extent of the AOC’s various efforts to get legislative funding and how they have been turned down.
Mr. Aragon commented that he was a bit taken aback that the Legislature would take it upon itself to determine fees paid to jurors, since the judiciary is a separate but equal branch of government. He said the courts can unilaterally set the jury fees, and suggested that Mr. Pepin take this message back to the courts. He added that most states pay jurors $25 a day.

Ms. Schardin Clarke stated that she and Secretary May have talked about this issue in combination with Agenda Item #21 (Secretary of State’s request), which has similar policy considerations, and she wanted to clarify two matters:

-- If either the AOC or Secretary of State (both general-funded agencies) were to repay the Board at this point, which is not in the same fiscal year that any of the loans were made, the repayment would come from the general fund and go to the general fund – so ultimately there is no real money at stake; and for the Board, this is really an issue of setting precedent and of accounting cleanup.

-- A policy issue she discussed with Secretary May and DFA legal counsel Greg Shaffer goes to loans in the first place for general-funded state agencies and their effect in distorting the appropriation process. If a general-funded state agency with no taxing authority takes on a loan, in effect it is potentially committing a future Legislature. If a loan is requested by a general-funded state agency, it may be misleading to call it a loan in the first place rather than a grant.

Ms. Schardin Clarke commented that the latter issue goes to Mr. Tinnin’s point about the need to develop a policy; and perhaps part of that policy should be how to address general-funded state agencies whose only ability to repay a loan is through a legislative appropriation.

Mr. Gasparich commented that the deficiency in the Jury & Witness Fund is less than 0.5% of the total resources associated with the judiciary, and the problem seems to be the way it is structured – in a sense, it is “nobody’s child” and not something judges and others focus on when seeking legislative funding. The other problem is that the AOC and Legislature have been following this pattern for decades. Were this cost embedded in the judiciary rather than being a separate appropriation, he thought it would be much easier for the AOC to absorb the cost because it would be like any other recurring expenditure in the AOC budget.

Mr. Pepin responded that this has been an ongoing topic of discussion in the judiciary – are there structural ways of managing the deficit to make it more effective and efficient in managing jurors. One idea is that money should be appropriated for each of the districts, metropolitan courts and magistrate courts, with a certain amount of money allotted for jurors. According to Paula Hannaford-Agor, director at the National Center for State Courts, that does not work very well, and what works is centralized management of these funds, requiring the courts to operate in certain ways.

**Mr. Tinnin moved to extend this loan to June 30, 2012. Mr. Aragon seconded the motion, which passed 7-0 by voice vote.**
Mr. Tinnin requested that staff work with the Executive and the Board, in whatever fashion the Governor deems appropriate, to establish a policy addressing all of the issues brought up in today’s discussion.

Ms. Schardin Clarke stated that she and Mr. Shandler would work on drafting a written policy over the next month or so to send to the Board for comment, after which it can be adopted as an action item at a subsequent meeting.

Presenter: J. Dee Dennis, Superintendent; Mary Kay Root, Deputy Superintendent

20. Regulation and Licensing Department — Requests Approval of Emergency Funding to Automate Tracking of Recycled Metal Dealer Reporting ($257,210)

Mr. Dennis requested an emergency loan in the amount of $257,210, to be repaid over a 5-year period, with the first payment due on July 1, 2012.

Mr. Dennis stated that, in 2008, the Legislature passed a bill for metal recycling programs. The task inside the bill was to track the activities of the metal recyclers on a monthly basis and report them to the public and to law enforcement; however, the $100,000 appropriation attached to the statute was never funded.

Mr. Dennis stated that this situation has taken on emergency status because of the high value of scrap metal, particularly over the past two years, and burgeoning illegal activity associated with it. He said the only way law enforcement can track down these thefts is to get documentation on recyclers from the Regulation and Licensing Department (RLD), but there are an estimated 2,300 metal recyclers in New Mexico who are making 500-800 transactions a day, and at the current time only 50 recyclers are actually reporting to RLD. In some months, RLD gets as many as 13,000 records of transactions from these 50 recyclers, all of which have to be entered manually on a spreadsheet. He said one staff member has been assigned to this task in addition to their other regular duties.

Mr. Dennis stated that the emergency loan would allow the purchase of software to track the recycled metal dealers and sales of recycled metal. He said RLD has identified a website (LeadsOnline) where dealers can report points of sale and transmit them to RLD at no cost to the dealers. RLD can sustain the program by fining dealers for failure to report, and also imposing a minimal license fee.

Mr. Dennis stated that a 1928 statute (junk dealers statute) requires all recycled metal dealers to register with the local authority, which then has to track the identity, amount, and types of material involved on a daily basis for each transaction. He noted that certain dealers are conducting as much as $10,000 in total cash transactions daily and are not reporting it, which means RLD is unable to assist law enforcement when metal thefts are reported.
Mr. Dennis said RLD plans to ask the 2012 Legislature for funding that is attached to the 2008 bill so it can repay the emergency loan to the Board. He said RLD would also ask for additional authority in order to deal with individuals who are not complying with the law.

Responding to Mr. Tinnin, Mr. Dennis said there are five national companies that gather reporting from scrap dealers and send it out. He said RLD will be gathering data from different sources and in different formats, and the software program will then warehouse the data. He said the LeadsOnline program, for instance, snaps a photo of people driving into the parking lot to conduct a transaction, and when they receive payment. He said there is also the ability to store fingerprints.

Mr. Tinnin asked how many additional employees will be required to run this program, and Mr. Dennis responded that the requested loan amount includes one employee.

Mr. Spencer questioned whether the requested loan amount was enough to sustain the program beyond simply getting it up and running.

Mr. Dennis explained that it would be somebody else’s job to get the program going. He said the initial funding will be to establish what RLD is required to do, which is to collect the data. He stated that virtually every law enforcement agency in the state is very interested in being able to use this program to help them, since RLD will never get all 2,300 people to sign up on their own.

Mr. Gasparich asked why RLD chose this particular vendor (CSW Enterprises), and Mr. Dennis responded that this vendor is currently doing a data warehouse for Construction Industries Division and are building a model for data collection for energy codes. He said RLD approached this vendor and asked for a quote. He said there is no single system that will accept all of the reporting sources that are out there, so RLD will have to create its own data warehouse in order to accept the reporting sources.

Mr. Dennis stated that, once things begin moving forward, RLD will issue a “best value RFP” for the customized software necessary.

Mr. Gasparich said he hesitates to support this proposal because it will create a recurring expense, and the monies have not been appropriated by the Legislature. He said he would feel better if it were included in RLD’s ongoing budget.

Lt. Governor Sanchez stated that, if the Board approves this loan, he would encourage Mr. Dennis to seek the support of metal scrap dealers and others in the industry because this is in their best interest. He said legitimate dealers who pay their taxes and abide by the law will be encouraged to partner with each other and RLD when they see efforts to create a level playing field for everyone, as opposed to feeling that they have another hoop to jump through in order to stay in business.
Board legal counsel Zack Shandler stated that approval of this request would adopt the following resolution:

RESOLVED: The State Board of Finance determines, pursuant to Section 6-1-2 NMSA 1978 as amended, that a critical emergency exists that cannot be addressed by disaster declaration or other emergency or contingency funds, and THEREFORE approves a loan to the Regulation and Licensing Department in the amount of two hundred fifty seven thousand two hundred ten dollars ($257,210) for costs associated with automating the tracking of recycled metal dealer reporting, which will include costs of developing software and hiring a temporary clerk position for one year from the Board’s FY11 General Fund Operating Reserve. This loan shall bear no interest and shall be repaid in annual payments of fifty one thousand four hundred forty two dollars ($51,442) due on June 1, 2012 and each June 1 thereafter until fully repaid. The Regulation and Licensing Department agrees to provide quarterly reports on a form prescribed by the Board each April 15, June 15, October 15 and January 15 until the loan is repaid in full.

Responding to Governor Martinez, Mr. Dennis said there would be an initial $50 fee and annual renewals at $25.

Mr. Aragon asked what rules and regulations would govern the implementation of this plan, and Mr. Dennis responded that there are no rules and regulations; there is only a reporting requirement.

Mr. Aragon commented that the Board is being asked to “fund a program where rules have not been promulgated, with software that has not been written, with a contractor that has not been selected and an RFP that has not been drafted.”

**Mr. Aragon moved to table this request. Mr. Gasparich seconded the motion, which passed 7-0 by voice vote.**

Presenters: Dianna Duran, Secretary of State; Ken Ortiz, Chief of Staff; Ellie Ortiz, CFO; General Counsel Tom Dow

21. **Secretary of State’s Office – Requests Approval of Conversion of Loans to Grants or Payment Extension for Six Emergency Loans (Total of $636,378.08)**

[Governor Martinez left the proceedings during the course of discussion on this item.]

Secretary Duran reported that, between March 2008 and June 2010, the prior administration for the Secretary of State received six separate loans totaling $1,186,378.08 with payment due dates between June 2009 and June 2010. According to information provided by the Board of Finance, and verified by her staff, the office of the previous Secretary of State initiated repayment of $111,676.67 to the Board on October 1, 2010, but for unknown reasons the transaction was never completed. She said DFA staff also discovered that $550,105, the amount of the first loan (April 2008) had never been expended, also for unknown reasons.
Secretary Duran stated that her office initiated an operating transfer of the unexpended amount back to the Board of Finance, which was posted June 14, 2011; therefore, the amount being requested has been reduced to $636,273.08 [sic], which she would ask that the Board consider converting to a grant.

Secretary Duran stated that her CFO has identified areas where the previous Secretary of State’s Office could have saved money in order to avoid asking the Board for the loans.

In describing the reasons why she feels these loans should be converted into a grant, Secretary Duran said her department is a state agency rather than being a separate branch of government like the Administrative Office of the Courts. She said she understands the Secretary of State’s Office is in default, for one thing; furthermore, they do not have the ability to generate revenue, unlike the Administrative Office of the Courts, in order to pay back the loans.

Secretary Duran stated that her office would practice austerity to reduce if not eliminate the need to rely on the Board of Finance for loans in the future; however, at the current time, she knew of no way to pay back these loans. She asked for the Board’s help in “clearing the deck” and getting the Secretary of State’s Office back to where it should be.

Mr. Gasparich observed that the amount in default exceeds 10% of the Secretary of State’s $5.8 million budget, which is a considerable chunk of her resources. He contrasted this with the estimated 0.5% deficiency in the AOC’s budget.

Mr. Tinnin suggested that, if the Board agrees this essentially mirrors the AOC request under Item 19, these loans should also be extended to allow time for the Board to develop a policy in the interim.

Ms. Schardin Clarke agreed that the two issues are very similar from a policy perspective. She understands the point raised by Secretary Duran about being an elected official in the Executive Branch versus the courts, which are a separate branch of government; but from Mr. Tinnin’s standpoint, it does hinge on waiting until there is a written policy in place.

Mr. Aragon asked Secretary Duran or her staff to specify how the operation of the agency would be compromised if the Board does not eventually convert this debt into a grant.

Ms. Ortiz responded that the agency’s budget projections for 2012 reflect a $200,000 shortfall, which would be even bigger if the agency had to start finding money to pay back the debt.

Mr. Aragon noted that the Secretary of State’s Office has indicated that, if the loans cannot be converted into a grant, they will lose six people and therefore will not be able to do a canvass.

Secretary Duran added that the process for preparing for the 2012 Presidential Election begins in October 2011 and she will need “every single penny” in her budget in anticipation of
that. She expressed concern that she would have less success asking the Legislature for the $636,000 plus the $200,000 shortfall than she would in asking only for the $200,000.

Mr. Aragon asked Secretary Duran if it was her position that, if the Board were unable to establish a policy allowing the conversion of these loans into a grant, she may not be able to conduct an efficient election process for 2012.

Secretary Duran responded yes.

Mr. Aragon said he was trying to establish the level of the urgency and emergency of this request, and thought Secretary Duran’s response would suffice. He said he thought this would be what the Board would be looking for as a standard when developing a policy regarding loan forgiveness.

Mr. Spencer said he believed the loan should be extended, since this is clearly an emergency, but that the Board should have a policy in place by the July meeting. He expressed concern that delaying the policy in any way could have a negative impact on the election process.

Responding to Lt. Governor Sanchez, Secretary Duran stated that her plan has been to ask the Legislature to fund the $200,000 shortfall in the September special legislative session.

Ms. Schardin Clarke noted that, if the Board were to extend the loan repayment date through June 30, 2012, that would allow time to also get through the regular legislative session in January 2012. She said she wanted to make sure the Board and staff would have sufficient time to do the due diligence on the policy and “not have the cart lead the horse.”

Secretary Duran noted that it may be necessary for her to approach the Legislature in September to request additional funding to cover the June primary, since her budget is extremely tight.

**Mr. Tinnin moved to extend the loans, totaling $636,378.08, to June 30, 2012. Mr. Spencer seconded the motion.**

Ms. Schardin Clarke said the correct number of loans is five, not six, because the $550,000 loan in March 2008 was not expended.

Ms. Schardin Clarke confirmed for Mr. Gasparrich that the Secretary of State would no longer be in default with the adoption of this motion.

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

22. **Secretary of State’s Office—Requests Approval of Emergency Funding for Past Due Maintenance and Support Due to Election Systems and Software (up to $575,000)**
Secretary Duran requested approval of emergency funding for past due maintenance and support owed to Election Systems & Software (ES&S) on the statewide Voter Registration Election Management System (VREMS). Under contracts negotiated by the previous Secretary of State between 2008 and 2010 for a total of $1.15 million, almost half the payments were to be made by the counties on a pro rata basis. The counties objected to being obligated to make those payments, as they were not parties to the contracts.

Secretary Duran noted that NM State Statute requires the Secretary of State to provide for the establishment and maintenance of a central database for all voter registration information. She said eight counties made partial payments totaling $36,030 of the $575,000 due before they jointly made a decision that the state was the responsible party for the support and maintenance of VREMS.

Secretary Duran said that left an amount owed to ES&S of $538,970 when the contract expired in November 2010. When she assumed office in January, the State of New Mexico was without a support and maintenance contract, leaving the VREMS database – which contains 1.16 million registered voters – vulnerable. She said a support and maintenance contract has since been negotiated with ES&S, but they have notified her office that if a payment plan is not in place for the amount owed by July 1, 2011, they will terminate the new agreement effective in 30 days.

Secretary Duran said she believes the Secretary of State is responsible for the past due amount and not the individual counties. She is working with staff in negotiating the past due amount with ES&S, which now is asking for $466,166.44, representing a 12.66% discount plus waived interest.

Secretary Duran asked the Board to either approve this emergency as a loan or a grant. She said her team has worked on projecting future agreements with ES&S and she is confident that they will be able to live with the budget going forward in this area.

Mr. Tinnin asked what the principal amount of the agreement is, and Mr. Ortiz responded $538,000.

Mr. Tinnin asked Secretary Duran if she was satisfied with the services ES&S has been providing, and Secretary Duran responded that they have been working very closely with the 33 county clerks, and there have been some concerns. She said her office is working very closely with ES&S top management to have those concerns addressed; and while she is not totally satisfied, her office in the long term is looking at best practices in other states.

Mr. Ortiz stated that the new contract negotiated with ES&S expires December 31, 2011, and they intend to execute a one-year contract for 2012 to cover the primary and General Election.
Secretary Duran added that she and the 33 county clerks feel that, given the upcoming elections, this is not the appropriate time to go through what is an extended RFP process to find a new vendor. She said her office is anticipating changes in January 2013, however.

Mr. Tinnin suggested that Secretary Duran keep the door open and be flexible in looking for other vendors that might do a more satisfactory job.

Ms. Schardin Clarke noted that the Secretary of State anticipates having a small balance of about $14,000 left over at the end of FY11 that can be applied to offset the amount due on this loan. She suggested that the new loan be “up to” the $466,146.44 requested and that the loan amount be diminished to the extent balances are available.

Ms. Schardin Clarke read the following resolution:

RESOLVED: The State Board of Finance determines, pursuant to Section 6-1-2 NMSA 1978 as amended, that a critical emergency exists that cannot be addressed by disaster declaration or other emergency or contingency funds, and THEREFORE approves a loan to the Office of the Secretary of State in the amount of up to four hundred sixty six thousand one hundred forty six and forty four cents ($466,146.44), subject to reduction by the amount of any remaining balances of the Office of the Secretary of State at the end of Fiscal Year 2011 that may reduce the need for emergency funding, for invoices due to Election Systems & Software for voter registration and election management software products and services from the Board’s FY11 General Fund Operating Reserve upon transfer to the Emergency Fund by the Secretary of the Department of Finance and Administration to meet this emergency. This loan shall bear no interest and shall be repaid by June 30, 2012. The Office of the Secretary of State agrees to provide quarterly reports on a form prescribed by the Board each April 15, June 15, October 15 and January 15 until the loan is repaid in full.

Mr. Spencer said he thought this loan should be converted to a grant so it does not have to be revisited by the Board, since this is an emergency.

Mr. Tinnin moved to approve the resolution outlined by staff. Mr. Gasparich seconded the motion, which passed 5-1 by voice vote, with Mr. Aragon voting against the motion.

SECRETARY OF STATE’S OFFICE
Presenters: Dianna Duran, Secretary of State; Ken Ortiz, Chief of Staff; Ellie Ortiz, CFO
23. Secretary of State’s Office – Requests Approval for Purchase of Tabulator and Support Equipment for Bernalillo County ($4,295)

Secretary Duran stated that the Bernalillo County Clerk has requested the assistance of her office in replacing a damaged M-100 voting tabulator. She said an insurance company has made
payment to cover the cost of the equipment; however, the newly-amended statute is unclear in whether acquisition of machines required by the Election Code still requires approval by the Board of Finance, or whether now statute only requires Board approval to acquire machines in addition to the number required by the Election Code. She said her general counsel has been working with Board staff to determine what process is to be followed.

Secretary of State general counsel Tom Dow stated that the Secretary of State has the authority to purchase hardware systems out of the Voting System Revolving Fund, but statute also says the Board must approve purchases made by counties. In an abundance of caution, the Secretary of State feels it prudent to ask for Board approval. He said the Secretary of State’s intention is to arrange an agreement with Bernalillo County where the Secretary would initiate the purchase through the revolving fund in exchange for Bernalillo County depositing the insurance proceeds into the fund.

Board legal counsel Zack Shandler stated that, for the record, “the Secretary of State submitted a June 20, 2011 letter recommending review and vote on this matter out of an abundance of caution. One could make the argument that the 2010 legislature changed State Laws 1-9-7 and 1-9-17 to limit the Board of Finance review and vote over only county acquisition of ‘additional’ voting systems. This is because the legislature repeatedly added the modifier ‘additional’ in front of ‘voting systems’ in these state laws. However, one could also make the more cautious and prudent argument that the 2010 legislature still maintained the Board of Finance review and vote and over the acquisition of voting systems because (a) the Secretary of State has to pay for voting systems through the Board of Finance’s Voting System Revolving Fund or because (b) State Law 1-9-7 does not use the modifier ‘additional’ voting system in every part of the statute. Therefore, staff concurs with the Secretary of State’s June 20, 2011 letter regarding a vote on this matter.”

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

**STAFF ITEMS**

**24. WITHDRAWN.**

Presenter: Member Aragon

**25. Discussion of Board of Finance Contracts**

Mr. Aragon stated that he brought this matter up at the last Board meeting because he was not sure when some Board contracts were going to be extinguished and what the Administration’s position was relative to some of the providers. He said he feels an incoming administration should be able to exercise the prerogative of choosing a new team; and if that is the wish of the administration, then the Board should review contracts and direct issuance of RFPs where necessary.
Ms. Schardin Clarke stated that staff would add the relevant contracts to the agenda at the Board’s direction.

Presenter: Stephanie Schardin Clarke, Interim Director

26. Fiscal Agent/Custodial Bank Fees

Ms. Schardin Clarke stated that the current status of charges from the fiscal agent bank, Wells Fargo, and the custody bank, JP Morgan, are detailed on page 962 of the electronic agenda. She said it appears that the appropriation for the year to pay the fees is rather tight at the current time, but will suffice.

27. Joint Powers Agreement

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

Responding to Mr. Aragon, Ms. Schardin Clarke stated that there have been no requests thus far this calendar year for private activity bond cap, although she anticipates the Mortgage Finance Authority will request the single-family cap in September.

Ms. Schardin Clarke stated that she will be meeting with Economic Development Department staff later this week to offer guidance on the PAB program, and will report back to the two members of the PAB Committee, Mr. Aragon and Mr. Tinnin, following the meeting.

ADJOURNMENT

Its business completed, the State Board of Finance adjourned the meeting at approximately 12:05 p.m.

Susana Martinez, President

Date 7-19-11

John Gasparich, Secretary

Date 7/19/11