MINUTES OF THE

NEW MEXICO STATE BOARD OF FINANCE

REGULAR MEETING

Santa Fe, New Mexico

October 18, 2011

A Regular Meeting of the New Mexico State Board of Finance was called to order on this date at 9:00 a.m. in the Governor’s Cabinet Room, Fourth Floor, State Capitol Building, Santa Fe, New Mexico.

1. ROLL CALL

A quorum was present:

Members Present:
The Hon. Susana Martinez, President [present from to 11:00 until 11:55 a.m.]
The Hon. John Sanchez, Lt. Governor [leaving at 12:05 p.m.]
The Hon. James B. Lewis, State Treasurer [leaving at 12:00 p.m.]
Mr. Robert J. Aragon, Public Member [arriving at 9:20 a.m.]
Mr. John Gasparich, Public Member, Secretary
Mr. Sam Spencer, Public Member
Mr. Thomas P. Tinnin, Public Member [arriving at 9:05 a.m.]

Members Excused:
None.

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

Staff Present:
Dr. Thomas Clifford, Secretary, Department of Finance & Administration
Ms. Stephanie Schardin Clarke, Director, State Board of Finance

Others Present:
[See sign-in sheets.]
2. **APPROVAL OF AGENDA**  
**NEXT REGULAR MEETING: NOVEMBER 15, 2011**

Ms. Clarke stated that representatives from the North San Isidro Mutual Domestic Water Consumers Association (Item 15) have asked that their issue be postponed until January to allow time to do an internal rate analysis.

The Agenda was reprioritized.

Upon motion by Treasurer Lewis, seconded by Mr. Spencer, the Agenda was approved, as amended, 4-0 by voice vote. [Mr. Tinnin, Mr. Aragon and Governor Martinez were not present for the vote.]

3. **APPROVAL OF MINUTES: October 5, 2011 (Special Meeting)**  

Upon motion by Treasurer Lewis, seconded by Mr. Gasparich, the Minutes of the October 5, 2011 meeting were approved, as submitted, 4-0 by voice vote. [Mr. Tinnin, Mr. Aragon and Governor Martinez were not present for the vote.]

**STATE TREASURER’S OFFICE**  
Presenters: James B. Lewis, State Treasurer; Sheila Duffy, Chief Investment Officer  
4. **State Treasurer’s Investment Reports**  

Treasurer Lewis announced that Ms. Duffy will be leaving STO last this week, and thanked her for her help and dedication.

A. **Monthly Investment Reports for Month Ended August 31, 2011**  

Executive Summary

-- Market turbulence continued in August and September as economic data confirmed the continued economic slowdown.

-- Continued difficulties in Europe clouded prospects for US growth.

-- The Federal Reserve announced “Operation Twist,” a planned investment by the Fed in the longer end of the Treasury market in order to depress longer rates and stimulate the economy. Because STO invests on the shorter end of the curve, there has not been a significant effect in New Mexico.

-- The portfolios all reported gains on a mark-to-market basis.
There were $9.5 million of unrealized gains on a mark-to-market basis in the general fund and 8.9 million in the Bond Proceeds Funds. Unrealized gains in the LGIP and Severance Tax Bonding Fund were not meaningful.

Monthly performance on the portfolios was positive, although several portfolios lagged slightly behind their benchmark indices. The LGIP has continued to outperform its benchmark through STO’s strategy of leveraging local bank relationships. This strategy has made the New Mexico LGIP one of the strongest state investment pools in the nation.

Investment earnings for each of the funds were as follows: General Funds, $1.1 million; Bond Proceeds Funds, $1.18 million; LGIP, $202,000; and Severance Tax Bonding Fund, $69.

During August, STO maintained Average Daily Collected Balances at the Fiscal Agent Bank of approximately $52 million. This balance earned a “soft dollar” credit against processing fees assessed by the bank.

With regard to the yield curve, STO sees opportunities in the longer end of the maturity range; as such, STO’s investment activities have continued to focus on the 5-year area with treasury and agency purchases during the month.

5. **Extension of Approval of State of New Mexico 2011-2012 Tax and Revenue Anticipation Notes, Series 2011**

Ms. Duffy asked for approval of a resolution to extend STO’s ability to issue tax revenue anticipation notes to mid March. This is a tool to help STO manage cash flows. She commented that STO has seen positive trends in general fund balances; however, nothing is guaranteed, and the market continues to be wobbly at best.

Treasurer Lewis said STO has been collaborating with DFA and LFC, as well as working with Ms. Clarke, on this endeavor.

Board legal counsel Zack Shandler read a summary of the parameters resolution, which he said was identical to previous resolution with the exception of the March 15 date. He said the plan of finance for the upcoming sale contemplates the sale of up to $500 million of one-year notes with an interest rate not to exceed 4.00% per annum, and to be issued no later than March 15, 2012. The notes will mature on June 29, 2012; and the true interest cost is anticipated not to exceed 1%.

Mr. Tinnin moved approval based on recommendation of counsel. Mr. Gasparich seconded the motion, which passed 5-0 by voice vote. [Mr. Aragon and Governor Martinez were not present for the vote.]
6. **Approval of Broker/Dealer List**

Ms. Duffy stated that, following the Board’s approval of the broker/dealer list last month, Loop Capital Markets contacted STO to question why they were not approved. Upon investigation, it appears that there was a mix-up in timing; STO pulled the reports shortly before Loop was registered to do business in New Mexico.

Mr. Tinnin moved approval of the new list. Mr. Spencer seconded the motion and it passed 5-0 voice vote. [Mr. Aragon and Governor Martinez were not present for the vote.]

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**SEVERANCE TAX BONDS**

Presenters: Robbie Heyman and Rachel King, Sutin Thayer & Browne, Bond Counsel; David Buchholtz and Jill Sweeney, Brownstein Hyatt Farber Schreck, Disclosure Counsel

7. **Approval of Form of Preliminary Official Statement, Notice of Bond Sale and Bond Resolution, Severance Tax Bond Series 2011A-1 and Severance Tax Bond Refunding Series 2011A-2**

Ms. Clarke stated that the Preliminary Official Statement and Bond Resolution address two pieces: the 2011A-1 Series, which would be a long-term 10-year bond to fund roughly $66 million of capital projects, authorized in the Special Session from Severance Tax Bonds; and the second piece, the Series 2011A-2, is a potential advance refunding because rates have fallen since issuance of the 2008 bonds that are currently outstanding, and it would be attractive to refund them.

Mr. Buchholtz reviewed the Disclosure Memorandum to remind the Board and staff of their responsibilities in regard to the preparation of the document, and urged Board members to contact him and staff if there are any questions or concerns. He stated that the Board will be asked to approve the bond sale on November 15.

[Mr. Aragon joined the proceedings.]

Mr. Gasparich commented that there has been a lot of attention lately focused on retirement funds and pension obligations. Given that retirement funds in New Mexico are controlled by entities independent of state government, and in light of the volatility and uncertainty in the financial markets, he asked how the Board can say with any degree of confidence what the status of its pension obligations are and how they will be met.

Mr. Buchholtz responded that bond counsel, disclosure counsel and the financial advisor, and their staffs, meet regularly with the staff and executives of the PERA and Educational Retirement Board, and most recently met with them to discuss questions raised by the rating agencies. He said they are reviewing the suggestions of the market and the most recent disclosures made by Wisconsin, Michigan and New Jersey with regard to their own plans.
Ms. Clarke stated that discussion of pension funds can be found on page 191 of the electronic agenda.

Mr. Gasparich stated that, as he understood it, the Board has to do its best with the information available, and that fulfills its responsibilities.

Mr. Buchholtz responded that this was largely true; however, it is also up to Board members to call staff’s attention to anything in the materials that raises a question or concern so that the matter can be thoroughly discussed.

Mr. Buchholtz stated that counsel will report to the ERB and PERA that the Board raised these matters and they are important to the Board, and that counsel will research them to the fullest degree possible.

Mr. Heyman added that some Board members have special knowledge based on their areas of expertise and employment, and might hear things that seem markedly inconsistent with what is being presented here. In any such instance, it should be brought to disclosure counsel’s attention.

Treasurer Lewis noted that GASB is looking at unfunded liability of PERA and ERA, and new rules will go into effect in 2012. He asked if counsel has talked with DFA about the GASB rule.

Mr. Buchholtz responded that counsel has taken a general look at the national “lay of the land” but will follow up, based on Treasurer Lewis’s comments, by meeting with the staffs of those boards to make sure those concerns are being accurately reflected. He added that, until GASB comes out with a final rule, it will be premature to anticipate what would be expected; and in fact, the marketplace has an ongoing debate about this topic.

Treasurer Lewis commented that legislators have expressed concern over what kind of liability might be attached to General Obligation bonds; since this could have a very significant impact, it will be important to follow events as they unfold. He added that the result could be an accounting nightmare.

Ms. King discussed tax matters relative to the bond issue. She said the bonds are tax exempt under both state and federal law; however, there is also a standard section in the Preliminary Official Statement pointing out that future legislation might affect the tax exempt status of the bonds, and the trend in the market has been to include reference to Obama’s Jobs Act Proposal, which is that high income earners not be permitted to take a full tax exemption on tax exempt bonds.

Mr. Buchholtz said that occasionally the disclosure of a community tends to overcompensate for things in the news; in the past, counsel has seen reference to Y2K disclosure, for example, in terms of the world coming to an end. More seriously, there has been disclosure about the effect of terrorism on the ability of governments to operate. Now, some of the same kind of reaction is
being seen relative to what is going on in Washington. In order to keep up with these trends, it is very appropriate to make the same kind of disclosure others are making relative to the potential impact.

Mr. Aragon observed that the bonds have received ratings from Moody’s and Standard & Poor’s, and asked how reliable those ratings are given that investors are suing Standard & Poor’s based on what they allege is their inability to give accurate statements, and that this is public knowledge.

Mr. Buchholtz responded that disclosure counsel has not seen -- which doesn’t mean they shouldn’t consider -- disclosure in official statements that have called into question the accuracy of the rating agencies, although they are aware of the lawsuits. He suggested that, in regard to tax-backed special funds like this one, where information has been presented to the rating agencies regarding historic levels of payment into the Severance Tax Fund, and the ability of this program to pay the bonds off from bond proceeds, there has been less criticism of the rating agencies with regard to those kinds of bonds.

Mr. Heyman added that investors tend to attach significance to ratings more so than the state issuing the bonds. He said the opinions of a rating agency can change over time. He said he didn’t know whether it was the Board’s business to talk about what others think of the state’s bonds because bonds have been sold with ratings traditionally, and people expect to see them, but he feels the market is sophisticated enough to make their own determination about the reliability of a bond issue based on several factors. He commented that Mr. Aragon has raised an interesting question, however. He said it may be that people will rely increasingly less on the rating agencies in the future because they are perceived as unreliable.

Mr. Buchholtz added that changing the disclosure section on the rating agencies could put the Board a little bit ahead of the curve and certainly might result in some “difficult discussions” with the rating agencies, with whom the financial advisor and staff have good relations.

Mr. Heyman reviewed the resolution, which approves the two types of bond issues. He said the first (A1) is for projects authorized in the Special Session, amounting to about $81 million in capital projects. Based on a very preliminary analysis, $15 million of the $81 million is designed to support the state’s obligation to the federal government under the Indian water rights settlement case, and is not tax exempt, and so the final amount of the bond issue is a maximum amount of $66 million. He said the $15 million will be funded through the sale of a taxable Severance Tax note to the State Treasurer, and there may be other projects that will be included in the taxable note, thus reducing the $66 million further.

Mr. Heyman stated that the other piece (A2) is to advance refund bonds that were issued by the state in 2008. Those bonds will not be optionally callable until July 1, 2013; so if the state issues bonds now to pay those off, it cannot pay them of until July 2013. In what is called an advance refunding, he said the money from the sale of the new refunding bonds is put into escrow, which is invested so there is enough money to pay the bonds in July 2013 as well as the interest payments due prior to that time. The effect of an advance refunding in this lower-rate
market scenario is that the state cannot invest the escrow at a rate equal to the interest payable on the old bonds; rather, the state has to issue more refunding bonds than the principal amount of the refunded bonds. He said the extra amount the state has to pay is more than made up by the savings from the new bonds.

Mr. Heyman said $82 million is the maximum size of the refunding portion, is based on the older bonds that are candidates to be refunded. As the sale date nears, the financial advisor, working with staff, will determine whether the savings from all or some of those maturities make this economically feasible. After the economic analysis is done, and after the bids are received, in November the Board will be asked to authorize the final amount and sale.

Ms. King stated that bond counsel has sent questionnaires to all of the agencies on the project list asking them to state whether or not their projects are ready to proceed in a timely way. By the Board’s November meeting, bond counsel will have the final list ready for review.

Responding to Mr. Gasparich, Mr. Heyman said there will be an estimated $4.4 million in net savings (net of the loss in the escrow) from the advance refunding.

Mr. Tinnin moved to approve the bond resolution and sale resolution. Mr. Spencer seconded the motion and it passed 6-0 by voice vote. [Governor Martinez was not present for the 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 August 1 of $16,586,962. After cash receipts and cash disbursements, the ending balance at August 31 was $16,948,372. Subtracting encumbrances, the uncommitted cash balance as of August 31 was $1,123,503. Year to date revenues total $948,451.

Mr. Gara said there was one emergency declaration in August in the amount of $9,953, to address a plumbing sewer repair at the Wendell Chino Building.

PROPERTY DISPOSITIONS
Presenter: Amy Haas, Attorney, Office of the State Engineer; Greg Lewis, Pecos Bureau Chief
9. New Mexico Interstate Stream Commission – Requests Approval for Sale of 164 Acres of Land in Eddy County ($85,444)

Mr. Lewis requested approval of the sale of 164 acres of land to Rustler Hills II in Eddy County. The land was acquired by the Interstate Stream Commission (ISC) to increase flow of
the Pecos River at the New Mexico-Texas state line in accordance with the Pecos River Company and the 1988 U.S. Supreme Court Amended Decree. The ISC now wishes to sell the land but retain the water rights associated with it.

Ms. Haas stated that the property was appraised at $8,200 in August 2010; because the appraisal is now more than a year old, it was recently updated (October 10) confirming that market conditions have not changed. In accordance with a right of first refusal clause and a purchase and sale agreement with the original owner, the ISC first offered the sale to IMC Potash, the original owner, at the appraised value. IMC declined to purchase the property. She said ISC advertised the sale at the appraised value and awarded it to the highest bidder, Rustler Hills II, which offered $85,444 for the land.

Board legal counsel Zack Shandler stated that, pursuant to §1-5-23-11(c) NMAC, “the Board may waive a provision that the appraisal must occur within the last 12 months, provided that the requesting party can demonstrate that other documents have been provided that satisfy the rationale for submitting the item and the state’s interest still will be sufficiently protected. Legal staff advises that the most recent letter from the appraiser is legally sufficient to waive this provision.”

Upon motion by Mr. Aragon and second by Mr. Tinnin, the sale of land was approved 6-0 by voice vote. [Governor Martinez was not present for the vote.]

**HIGHER EDUCATION DEPARTMENT**
Presenter: Dr. José Garcia, Cabinet Secretary; Glenn Walters, Deputy Secretary
10. Presentation of Higher Education Department Map and Report on Statewide Campus Facilities

In response to a request of the Governor at the last Board of Finance meeting, Dr. Garcia said HED has prepared a map of state-funded colleges, universities, satellite sites, branches and special schools in New Mexico, including tribal colleges. He reviewed the map as well as details on each of the public institutions, including year established, location, whether it is in a community college taxing district or community college geographic service area, building gross square feet, enrollment, and undergraduate and graduate FTE.

Mr. Tinnin observed that there are 70 or so locations on the map, which seems like a lot for New Mexico’s population. He said he understands HED is now looking at the bigger picture in terms of how it can increase efficiencies.

Dr. Garcia responded that, in the past 30 to 40 years, New Mexico has had a policy of increasing access for students. That made a lot of sense starting back in the 1960s, when projections were being made about the demand on educational institutions created by the population of Baby Boomers and the need to get them advanced degrees. He said the demographics have changed in the last decade, and the demographic for the school age population is flat or declining slightly. He said HED is now examining those assumptions that
were embedded in the policies towards higher education, and has concluded – as did Governor Martinez during her campaign – that there is a need for better control.

Dr. Garcia said the two-year moratorium on new construction, now underway, was the first step. He said the second component is a funding formula for higher education, since the last one, which was completed in 1978, stressed the need for more access and more students, and had rewards and incentives for student credit hours and new buildings.

Dr. Garcia said HED has looked at the state’s future and found several things wanting: For the first time in New Mexico history, people 55 to 64 are better educated than the younger generation, and that in itself should be a cause for concern. Secondly, HED realized that the at-risk population is exploding and is 60+% of the school age population right now, and there is a huge achievement gap that has not been closing for the last few decades. Without addressing that, New Mexico cannot possibly end up in a globally competitive position in the next 30 years.

Dr. Garcia said HED has tried to project the desired workforce of the future by consulting the best experts it can find; and then developed a profile of what it would like to have in the future, from which they have built a new funding formula to give incentives to universities to move in that direction and help close the gap. He said HED delivered the new funding formula to the Governor and Legislature last week.

Dr. Garcia said the new funding formula includes an incentive for total number of degrees granted, an incentive for closing the achievement gap, and an incentive in terms of the projected workforce. He stated that experts consulted by HED from around the country have stressed the need to incentivize the production of STEHM (Science, Technology, Engineering, Health and Math) degrees. He said a number of different input characteristics that used to be part of the formula have been eliminated, e.g., square feet.

Mr. Tinnin commented Dr. Garcia and HED, as well as the Governor, for doing this – it was something that should have happened a long time ago.

Dr. Garcia stated that, in accordance with the Governor’s directive that HED come in with a flat budget, HED’s recommendation to the Legislature for FY 2013 will be in the same amount as the previous year.

Treasurer Lewis recalled hearing at the Department of Energy that 20% of the science workforce was coming from India and Asia and that there was a projected shortfall of engineers and scientists for the state’s oil & gas industry. He questioned how the state’s public schools would be able to offer the right courses and thus provide enough high school graduates able to continue on to higher education in order to earn these degrees.

Dr. Garcia responded that the funding formula will have important implications for public education as HED develops better metrics and projections in the future. Since HED is rewarding STEHM degrees, there should be implications for public education in terms of advising students about future opportunities regardless of their grade level. He noted that Education Secretary
Skandera has placed emphasis on third grade reading ability, since if students cannot read at that point they will have a difficult time in the future. He said higher education and public education will have to form strong partnerships to get students into a pipeline that will get them from high school into college.

Dr. Garcia stated that there are a number of controversial issues with respect to the new funding formula, and there needs to be a conversation among the entire higher education community for the next year or two on issues such as dual credit, remediation, what kinds of certificates there should be for 2-year colleges, and other policy issues.

Responding to Lt. Governor Sanchez, Dr. Garcia stated that, in New Mexico, a bachelor’s degree costs the taxpayers $53,000, and in Arizona the same degree costs the taxpayers $39,000. In New Mexico, 14% of the budget is spent on higher education, and in Arizona it has dropped precipitously in recent years to 9%. He said HED spent a lot of time consulting with other states on their funding formulas, and got a lot of advice about how fast to go, how much to put in during the first year, and how to proceed.

UNM Director of Government and Community Relations Marc Saavedra noted that universities around the country have increased tuition fees to offset higher education cuts. He added that NMSU and UNM charge more per student, based on a study done last year with the LFC, which allows them to hold tuition fees down. While Arizona has increased tuition fees by 20%, UNM’s increase was only 5%.

Mr. Saavedra also stated that tuition credits are creating a negative impact on the New Mexico State Lottery to the extent that it is projected to become insolvent in 2014. He said tuition credits should be eliminated to avoid this “scary” prospect.

Dr. Garcia stated that the tuition credit has been removed from the funding formula this year.

11. WITHDRAWN.

Presenters: Robert Watson, Director of Planning, Assessment and Evaluation, Higher Education Department; Andrew Cullen, UNM Assistant Vice President of Planning, Budget and Analysis; Chris Vallejos, UNM Assistant Vice President for Institutional Support Services; Vahid Staples, Budget Officer, Office of Planning, Budget & Analysis

12. University of New Mexico – Requests Approval of Facility for Advanced Cell Engineering ($2,400,000)

Lisa Martinez, HED Capital Projects Coordinator, stated that this project has been reviewed and approved by the Capital Projects Committee and is in compliance with the Governor’s moratorium on new construction.

Ms. Martinez stated that UNM requests approval of this project to renovate 5,575 square feet of ground floor space formerly dedicated to the gross anatomy lab in the basic medical sciences
building. The renovated facility will provide for laboratories, tissue culture rooms, a centrifuge/autoclave facility, a confocal darkroom and areas for freezers, storage and offices. She said the project will include the removal of existing walls, ceilings and flooring, and formaldehyde will be neutralized, and a new air handler and exhaust fan will replace units installed in 1967. She stated that the natural gas generator from the former Tri-Services Building will be reused.

Ms. Martinez said UNM reports that, without this project, it cannot move forward in this new area of research, clinical study, and drug development and therapies. The funding source is UNM system revenue bonds and the cost per square foot is $242.

**Mr. Spencer moved for approval. Mr. Tinnin seconded the motion, which passed 6-0 by voice vote. [Governor Martinez was not present for the vote.]**

Presenters: Andrew Cullen, UNM Assistant Vice President of Planning, budget and Analysis; George Williford, Financial Advisor, First Southwest Company; Duane Brown, Bond Counsel, Medrall, Sperling, Roehl, Harris and Sisk, P.A.

13. **University of New Mexico – Requests Approval of Subordinate Lien System Refunding Revenue Bonds, Refunding Series 2011 (not to exceed $46,500,000)**

Lisa Martinez, HED Capital Projects Coordinator, requested approval of the Series 2011 refunding, which will refund $43.37 million of its outstanding 2002A bonds, which will be callable on June 1, 2012.

Mr. Cullen stated that UNM has been performing an ongoing evaluation of these bonds over the last several years, but has been unable to act on them because of the bonds have not been callable. He said this is no longer the case, however, and UNM is moving ahead with the refunding at this time.

Mr. Cullen noted that, as of yesterday, the present value savings rate was 6.74%, and the present value savings cash flow is $2.9 million, or about $290,000 per year for the remaining 20 years of this bond issue. He said they plan on going into the market within the next three to four weeks, lock in the rates, and seek approval from the Board of Regents.

Board legal counsel Zack Shandler read the parameters resolution: “This is Regents of the University of New Mexico Subordinate Lien System Refunding Revenue Bonds, Series 2011, with a principal not to exceed $46,500,000. The proceeds will be used to refund outstanding Subordinate Lien System Refunding and Improvement Revenue Series 2002A Bond. The final maturity date is July 1, 2032, with a net effective interest rate not to exceed 5% per annum.”

**Mr. Tinnin moved for approval. Mr. Aragon seconded the motion, which passed by 6-0 voice vote. [Governor Martinez was not present for the vote.]**
EMERGENCY FUND BALANCES
Presenter: Stephanie Schardin Clarke, Interim Director


<table>
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<tr>
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<tr>
<td>Emergency Water Fund</td>
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Ms. Clarke reported these balances.

STAFF ITEMS

19. Adoption of Emergency Funding Policy

Ms. Clarke reported as follows: “As requested at the Board’s June meeting, staff drafted a proposed written policy on emergency funding requests. An informational presentation was made to the Board in September. The version of the policy starting on page 681 of the electronic file shows tracked changes from what the Board reviewed in July. The changes are the result of discussions with Mr. Shaffer, comments provided by Board members, a review of the New Mexico Finance Authority’s loan policies, and a number of cleanups.”

Mr. Tinnin thanked Ms. Clarke, staff and Board members for their work on this document.

Mr. Tinnin moved for approval. Mr. Gasparich seconded the motion, which passed 6-0 by voice vote. [Governor Martinez was not present for the vote.]

EMERGENCY FUNDING REQUESTS

15. [Postponed to November meeting.]

Presenter: Arthur W. Pepin, Director; Patrick Simpson, Deputy Director, AOC

16. Administrative Office of the Courts – Requests Emergency Funding for Judge Pro Tempore to Handle Redistricting (up to $50,000)

[Governor Martinez joined the proceedings.]

Governor Martinez and Lt. Governor Sanchez stated that they would participate in the discussion, but would recuse themselves from the vote.

Mr. Pepin requested emergency funding of up to $50,000 to pay for a pro tempore judge (a retired judge appointed by the NM Supreme Court) to handle the redistricting legislation
necessitated by the veto of the redistricting legislation that passed in the special session, and the absence of a bill on redistricting.

Mr. Pepin said he submitted written materials explaining this issue further. He said this type of litigation requires tightly compressed time schedules because the elective districts must be established in time to allow potential candidates to know their districts so that petitions can be produced before the February deadline for declaring candidacy. The AOC has a budget for pro tempore judges, which is spent at the discretion of the chief justice, who makes pro tem appointments. He stated that about 60 to 90 days of full time work will be necessary for a judge. He said the Court assigned the pro tem judge last week, and a scheduling conference took place yesterday with all of the parties. He said the trial should take approximately one month, and there are about 25 parties and attorneys involved.

Mr. Pepin said the general fund appropriation for the Judge Pro Tempore Fund administered by the AOC is $30,000 for FY 2012, and the balance currently is slightly over $22,000 but will shortly be reduced to about $20,000.

Mr. Pepin said he could not say with any certainty that $50,000 would be enough to cover the cost of the pro tem judge in this litigation, but he thought it a fair estimate based on litigation that took place in 2001 in connection with redistricting.

Mr. Pepin stated that one repayment option would be to ask the Legislature for the funds, but the AOC already has $1,478 million in emergency loans made by the previous Board of Finance for the Jury & Witness Fund. He said the AOC has asked the Legislature to help pay back these loans for the last two fiscal years, but without success.

Mr. Pepin said the other repayment option is to use money from the FY 2013 Judge Pro Tem Fund. He stressed that he does not have the authority to expend those funds, however, without direction from the chief justice.

Mr. Pepin asked the Board to consider making this a grant rather than a loan, given that he was uncertain how he would repay a loan.

Ms. Clarke said the State Budget Division has reviewed this request and recommends funding it as a grant rather than a loan, reflecting that the AOC is a general-funded state agency and that the emergency situation is not a recurring under-funded expense.

Responding to Mr. Aragon, Ms. Clarke stated that there is not an operating reserve built into the AOC’s budget.

Mr. Aragon asked why a retired judge was needed for this responsibility, as he recalled that the Court assigned a sitting judge (Frank Allen) in the 2001 redistricting litigation.
Mr. Pepin responded that, at that time, Judge Allen had managed his docket in such a way that he could take the two months that were required; further, the parties agreed on Judge Allen before it came to the court.

Mr. Pepin said the study paid for by the Legislature of the judicial system reflects that it is 28 judges short of what the current workload calls for. Because district judges are overburdened with work, it would be very difficult to find a judge able to clear their docket for two months and take on this litigation. He said this was the reason behind the selection of a retired judge.

Mr. Aragon said he could understand the need for a judge pro tem, but was taken aback that $1 million was spent in the last 30-day session and yet the Legislature did not extend the courtesy of providing funding for this.

Dr. Clifford asked Mr. Pepin if he had any discussions with DFA or the LFC about the need for this funding in advance, and Mr. Pepin responded that he did not. He said it would have meant anticipating that the Legislature would fail in its redistricting efforts during the February session.

Dr. Clifford said it might have made sense to ask for the funding anyway with the stipulation that the monies would revert back if they weren’t needed. He suggested taking this approach the next time there is a redistricting.

Governor Martinez said the Legislature has about $2 million that does not revert, and since it did not even propose a congressional map, she asked why the Board of Finance should be paying for this rather than the Legislature.

Mr. Pepin responded that this was a fair question; however, he would not be able to ask the Legislature for the funding until the January session. He recalled that the cost of the litigation last time, even with a sitting judge handling the case, was $3.5 million.

Governor Martinez said she understood Mr. Pepin to say that Judge Allen was appointed after the various parties excused, recused and/or agreed to him. Mr. Pepin responded that there were several parties that kept excusing judges, and eventually the Court said either the parties would have to agree on someone, or else the Court would pick someone, and so they agreed on someone.

Governor Martinez asked if this process was followed in the appointment of Judge Hall, and Mr. Pepin responded that he did not believe it was; in the interest of expediting matters, they selected him after deciding that he met all of the necessary requirements. He added that they were operating as a body of four, rather than five, because the Chief Justice had recused himself from the matter, so circumstances were slightly different in that regard.

Governor Martinez commented that apparently New Mexico Rule of Civil Procedure 1088 (designation of judge) was not followed, and the expense of appointing a pro tem judge was
taken on without the opportunity for “a Judge Allen type to be able to step in, already getting paid, with the excusal/recusal process taking place.”

Mr. Pepin said he couldn’t say that occurred, because he hadn’t gone through all of the documents, and would have to assume they followed all of the appropriate rules.

Governor Martinez said there was not total agreement on Judge Hall, however, and Mr. Pepin said that was correct; in reviewing the documents, he had observed “multiple people made multiple requests that were all in conflict with each other.”

Governor Martinez said the time limits haven’t run for the ten-day excusal process, because not enough time has passed for all of the parties to exercise their rights.

Governor Martinez asked Mr. Pepin what statute was followed to allow for the designation of a pro tem without allowing for that process, and Mr. Pepin responded that he believed it was Article 6 of the NM Constitution, Section 15, Subpart C, which states, “If any district judge is disqualified from hearing any cause or is unable to expeditiously dispose of any cause in the district, the chief justice of the supreme court may designate any retired New Mexico district judge, court of appeals judge or supreme court justice, with said designees’ consent, to hear and determine the cause and to act as district judge pro tempore for such cause.”

Mr. Pepin said he believed the disqualification of the ten days was by rule, and the rule contained an exception for pro tem judges.

Board legal counsel Zack Shandler noted that the emergency funding policy adopted by the Board earlier in this meeting states, “Whether emergency funding is requested in the form of a loan or a grant, with priority given to requests for loans, except in the case of general-funded state agencies, where the SBOF may make a finding that an extraordinary circumstance exists, and thus consider the fact that emergency funding is disbursed from and repaid to general fund balances and may approve emergency funding in the form of a grant.”

Ms. Clarke stated that staff has approved two versions of the resolution, one for a grant and one for a loan, which she would be happy to review.

Mr. Gasparich, Board Secretary, was asked to chair this portion of the meeting.

Mr. Aragon moved to approve a loan of up to $50,000.

The motion died for lack of a second.

Mr. Spencer moved to approve a grant up to $50,000. Mr. Gasparich seconded the motion for discussion.

Mr. Aragon questioned whether the Board would be able to make a finding that an emergency exists in this case, given the possibility, based on Mr. Pepin’s response to the
Governor, that the process of approaching every district judge in the state may not have been exhausted.

Mr. Shandler noted that the policy also speaks to a finding of “extraordinary circumstance.”

Mr. Aragon responded that, to make that finding, all internal administrative remedies would have been exhausted beforehand, and that hasn’t been established because it is unknown whether Chief Justice Daniels made that inquiry.

Mr. Aragon said he would urge the Board to vote no on the motion.

Governor Martinez said that, in her 25 years of practice, the rules were always followed, and excusals and recusals took place. She added, however, that she understood the significance of moving this along and the need for the AOC to receive funding either through a loan or a grant.

Ms. Clarke reviewed the resolution approving an emergency grant in an amount up to $50,000 contingent on actual expenses of a pro tem judge for redistricting. She said it may be helpful to know that the excusal/recusal matter is a side issue and that the Board’s approval is independent of that, i.e., if the Board approves emergency funding for a pro tem, and it is then found that the process was not followed, then there may be no expenses for a pro tem.

Treasurer Lewis said he shared some of the Governor’s sentiments but also agreed that the Board needs to move forward on this request. He commented that the State of Nevada failed to move on redistricting and the matter went to the courts for resolution.

Ms. Clarke read the resolution:

“RESOLVED, the State Board of Finance (the ‘Board’) 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 grant to the AOC from the FY 12 General Fund Operating Reserve in the amount of up to fifty thousand dollars ($50,000) for salary, travel and other expenses of a Judge Pro Tempore assigned to redistricting cases. Release of this emergency funding shall be limited to actual expenses incurred for a Judge Pro Tempore related to redistricting cases.”

Mr. Spencer added the following sentence:

“The urgency of the redistricting creates an extraordinary circumstance and that the AOC is a general-funded state agency requesting general fund emergency fund grant.”

The motion passed 3-2 by voice vote with Mr. Aragon and Mr. Tinnin voting against and Governor Martinez and Lt. Governor Sanchez recusing themselves.
STAFF ITEMS

17. Approval of Appointment of Stephanie Schardin Clarke as State Board of Finance Director

Dr. Clifford stated that he has known Ms. Clarke since she began work for the state, but never worked with her in the same office until now. He commented that he was aware of the work she did both at DFA and LFC, and then working on the FIR process for LFC. He said those are very difficult jobs and require a great deal of interest in the state’s economy and knowledge in a wide variety of issues. In addition, one has to be technically proficient. He said Ms. Clarke met all of those criteria, and has always brought a thoroughness to her work that is really exceptional, in his experience, and she has always been highly responsible and willing to take on additional responsibilities as needed, as well as being highly professional in her interactions with people in other agencies as well as her own.

Dr. Clifford said what sets Ms. Clarke apart is that she has a quality that he would call “judgment,” the most important attribute in a professional public servant – she always has the State of New Mexico in mind, and has that very rare ability to look beyond the issues where there is disagreement and see the issues that need to be agreed upon to further the state’s interest. He said he was delighted that Ms. Clarke has agreed to accept an exempt position as Director of the Board of Finance, and she will strengthen the management team at DFA.

Treasurer Lewis thanked Ms. Clarke for her professionalism and expertise, which is second to none. He said he worked with her on the legislative side, when she was working with then-Director Olivia Padilla-Jackson, and when she was on the State Treasurer’s Investment Committee. He commended her for the continuity she has brought to this Board in dealing with a number of very complicated issues, and for her willingness to speak up and advise Board members.

Mr. Tinnin stated that he has served on the Board of Finance for a total of 16 years, and finds Ms. Clarke to be “a real pro.” He said she responds quickly and honestly, and he appreciates that very much as a Board member.

Mr. Aragon thanked Ms. Clarke for her patience and professionalism, and congratulated her on this appointment.

Mr. Gasparich said he has known Ms. Clarke for a number of years. He served with her on the transition team at DFA, and Ms. Clarke stood out in that process in terms of answering all of the questions and addressing all of the information that was requested. He said he was pleased that she was willing to accept an exempt position.

Governor Martinez said she has been on many boards, and especially appreciates the briefings she receives from Ms. Clarke, which are very informative.
Ms. Clarke thanked Board members for their comments and for entrusting her with this role as Director. She thanked staff members Suzanne Romero, Crystal Lujan and Sharon Romero, who are invaluable and do an amazing job.

**Mr. Tinnin moved to approve the appointment of Ms. Clarke as Director of the Board of Finance. Mr. Spencer seconded the motion and it passed 7-0 by voice vote.**

**Presenter: Stephanie Schardin Clarke, Director**

**18. Approval of Seventh Amendment to Fiscal Agent Agreement with Wells Fargo to Incorporate Special Billing Procedures for Department of Health Lockbox Services**

Ms. Clarke said the Department of Health has requested this contract amendment to allow for DOH to receive lockbox services from Wells Fargo at the department’s expense. Currently, DOH employees manually process deposits received from insurance companies and from individuals making requests to the Vital Records Bureau. The current process is inefficient and prone to employee embezzlement. The department will replace the manual process with two lockboxes, which will allow Wells Fargo to process the deposits more efficiently and securely.

Ms. Clarke stated that the lockbox services are expected to cost about $44,000 per year, but DOH expects to save about $79,000 per year in salaries and other costs for a net savings of $35,000 per year. The contract amendment simply clarifies that Wells Fargo will bill the department of health directly for these lockbox services.

**Mr. Tinnin moved to approve the amendment. Mr. Spencer seconded the motion, which passed 7-0 by voice vote.**

**Presenter: Pamela Laucks, Fiscal Strategies Group**

**20. Presentation of Annual Debt Affordability Study**

[Governor Martinez, Lt. Governor Sanchez and Treasurer Lewis left the proceedings in the course of this presentation.]

Ms. Laucks made this presentation, with the following highlights:

-- Over the last five years, total capital funding of over $4.3 billion was derived largely from the core state bonding programs, which include General Obligation Bonds, Severance Tax Bonds, Supplemental Severance Tax Bonds and Transportation Revenue Bonds.

-- The General Obligation bonds are rated Aaa by Moody’s and AA+ by Standard & Poor’s and are issued biennially and are subject to voter approval. Capacity is limited to 1% of assessed property value.
-- Severance Tax bonds are allocated over a 10-year window, and there is $1.9 billion of long-term capacity and $2.1 billion of short-term capacity, so less than half the program comprises long-term debt.

-- Over a five-year period of the core bonding programs, there is $2.9 billion of new money.

Dr. Clifford noted a chart reflecting the impact of the recession on the state’s general fund revenue, and asked if anyone has looked at how New Mexico compares with other states in that regard. He said other states did not experience the same effects as New Mexico did in 2008-2010, which suggests that New Mexico’s funding stream is diverse but also somewhat more volatile than many other states. He said this is helpful in informing the state’s reserve strategy.

Ms. Laucks said she would be happy to come back with that study in November. She commented that mineral revenues from the state do have a countercyclical effect; and as a result, the state has responded to the dip in the recession more quickly than other states have, and the management of the state’s reserve funds has been quite impressive.

-- Debt ratios are stable, though high compared to peer states relative to both population and personal income, reflecting both the large size of the state relative to population, as well as per capital income.

Dr. Clifford asked if this infers that New Mexico residents have among the highest amounts of debt as a percentage of personal income, and Ms. Laucks said that was correct.

Ms. Laucks said the state has retired its debt rapidly and reserves have been handled prudently.

Dr. Clifford said it is important to recognize that the only reason New Mexico is maintaining reserves at this level is because it was able to make substantial financial rearrangements, i.e., it had to cancel hundreds of millions of dollars in appropriations in order to keep reserves at the level they are. He said he believes New Mexico is not really a “5% reserve state” and should be targeting 10% as a reserve to address revenue volatility.

Ms. Laucks reviewed a chart of projected debt ratios going forward, reflecting that the debt is affordable and will come down in time. She clarified that the decline is the result of more conservative investments.

Ms. Clarke also clarified that the spike in 2007 and 2009 had to do with the issuance of GRIP bonds at the same time the Board was issuing its biennial general obligation bond debt. These two things combined created a ratio spike.

Dr. Clifford said the charts also seem to be saying that the capital funding available relative to the size of the state’s economy is declining over time, which seems like a serious policy consideration.
Ms. Clarke responded that one could argue that there should be more leveraging.

Dr. Clifford commented to Ms. Laucks that the severance tax bond program is designed around a projected decline in the revenue stream because mineral production is expected to decline over time. He said there is the open question of what will happen with energy prices, and people tend to assume that the prices will remain stable, but that is not necessarily a widely held view. He asked Ms. Laucks to comment on what she hears from other credit-issuing entities that are issuing bonds against these kinds of revenue streams.

Ms. Laucks said she would gather this information and provide it later.

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The planned issuance of $3.08 billion of new general obligation and severance tax secured debt over the next 10 years is not projected to adversely impact the key debt ratios of the state. As noted in the report, the debt ratios are projected to trend downward from their 2009 peak after taking into account future planned debt issuance.

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The study recommends the continued utilization of an annual debt affordability study and that the state continue to work toward the adoption of a statewide capital improvement program and the development of five-year expenditure forecasts in parallel with the current long-term revenue forecasts.

Dr. Clifford asked how transportation bonds, which are included in the report, affect the conclusions drawn. He said the Department of Transportation is having trouble with the structure of the debt and probably need to refinance a substantial amount of it. He asked if the Board should expand the scope of its study to encompass the transportation programs.

Ms. Clarke responded that the study does include Board of Finance bonds as well as transportation bonds, plus a small amount of appropriation debt; however, it doesn’t include the debt issued by the Mortgage Finance Authority, other programs of the New Mexico Finance Authority, and the Regional Housing Authority. She said the study does include obligations of the state, which includes the DOT.

Dr. Clifford said he would appreciate advice from Fiscal Strategies Group about possibly including those as well as local government and public school debt. He stated that there is also the question of whether the state’s capital programs are adequate, but there are local government obligations being taken out, such as through the NMFA, for which gross receipts taxes are pledged. He said he is concerned about the impact of that on the state’s ability to properly manage gross receipts tax policy from a tax policy standpoint.
21. **Board of Finance Dashboard Report**

Dr. Clifford said DFA did provide revised revenue projections, not yet reflected in the dashboard report. He said that, although FY 2011 ended up with higher revenues than expected, the forecasters have had to reduce growth rates going forward. He said the good news is that the reserve, even with a substantial payment owed to the federal government for Medicaid, will be about 8.5% at the end of the fiscal year.

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

Ms. Clarke reported that, for July and August, the fiscal agent fees were slightly below average, reflecting the relatively small amount of activity that takes place during those months.

23. **Joint Powers Agreement**

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

24. **Approval of Letter to New Mexico Congressional Delegation Regarding Proposals to Limit Tax Exemption for Municipal Bonds**

Acting Chair Gasparich noted that all of the Board members have read the letter and some have submitted comments and suggestions.

Mr. Aragon commended staff for summarizing the issues very well in the letter.

**Mr. Aragon moved approval of the letter, as presented. Mr. Spencer seconded the motion, which passed 4-0 by voice vote.**

**OTHER BUSINESS**

Mr. Aragon asked when it would be appropriate to bring up the matter of issuing RFPs for a financial advisor, bond counsel, disclosure counsel, fiscal agent and other contracts.

Ms. Clarke responded that staff typically brings these matters to the Board on individual contracts ahead of each termination date to find out whether the Board wants to issue an RFP or extend the current contract. She noted that all of the contracts have termination clauses so that they can be terminated earlier.

Mr. Aragon said he was asking that each contract be brought up as an action item so the Board can vote to either keep the contract or issue an RFP.
Mr. Tinnin stated that, before the Board decides to even consider this, it needs to have information on the status of each contract, the level of satisfaction with the services being provided, and the cost of issuing an RFP and seeking a new contractor. He commented that if there is a problem with a particular contractor, then that needs to be addressed, but otherwise he thought it "absurd to bid for bidding’s sake," because it is a very expensive and time-consuming process.

Ms. Clarke noted that the contracts for bond counsel, disclosure counsel and arbitrage counsel will be going out for RFPs early next year because they have reached the four-year maximum, and staff would normally be reporting on this in December as an informational item. She said staff will put each of the other contracts on the November agenda as action items – those would be for the fiscal agent, custody bank and financial advisor.

Ms. Clarke said the financial advisor contract was renewed on January 1, 2011, and is a two-year contract with options to extend for two more years. The fiscal agent contract was entered into May 1, 2010, and has been extended for one year, so has three more years left on it. The custody bank contract is almost on the same time line, having been entered into on July 1, 2011.

**ADJOURNMENT**

Its business completed, the State Board of Finance adjourned the meeting at approximately 12:25 p.m.

_Susana Martinez, President

11/15/11

_Date

_John Gasparich, Secretary

11/15/11

_Date