MINUTES OF THE

NEW MEXICO STATE BOARD OF FINANCE

REGULAR MEETING

Santa Fe, New Mexico

December 20, 2016

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

1. **ROLL CALL: QUORUM PRESENT**

   **Members Present:**
   The Hon. Susana Martinez, President  [not present between 3:00 and 3:55 p.m.]
   The Hon. John A. Sanchez, Lt. Governor
   The Hon. Tim Eichenberg, State Treasurer  [leaving at 3:25 p.m.]
   Mr. Robert J. Aragon, Public Member
   Mr. Adelmo Archuleta, Public Member
   Mr. Michael Brasher, Public Member, Secretary
   Mr. John Kormanik, Public Member  [leaving at 12:10 p.m.]

   **Members Excused:**
   None.

   **Staff Present:**
   Ms. Duffy Rodriguez, Secretary Designate of Finance and Administration
   Ms. Leila Burrows Kleats, Director, State Board of Finance
   Ms. Donna Maestas, Deputy Director, State Board of Finance

   **Legal Counsel Present:**
   Ms. Sally Malavé, Attorney General’s Office

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

**APPROVAL OF AGENDA**

Ms. Kleats noted the following changes to the agenda:
• Item 16 (emergency funding request from Village of Questa) has been withdrawn.
• Request that items 21 and 22 be moved up on agenda to follow item 12.

Mr. Aragon moved approval of the agenda, as amended. Mr. Brasher seconded the motion, which passed 7-0 by voice vote.

CONSENT AGENDA (Items 3 – 11)

Submitted by: Leila Burrows Kleats, Director
4. Approval of Minutes: November 15, 2016 (Regular Meeting)

Submitted by: Randy Bondow, Chief Financial Officer; R. Daniel Castille, Legal Counsel, Cuddy & McCarthy, LLP
5. Farmington Municipal School District – Requests Approval of Restated and Amended Lease of Real Property Located at 2200 Sunset Avenue in Farmington to GTP Acquisition Partners II, LLC ($18,695.61 per year)

• Contingent upon Director’s receipt and counsel review of revised memorandum of lease that incorporates easement.

Submitted by: Richard A. Perea, Superintendent
6. Santa Rosa Consolidated School District – Requests Approval of Lease of Real Property Located at 116 Camino de Vida in Santa Rosa to Horizon Tower Limited Partnership, LLC ($1,000 per month)

• Contingent upon Director’s receipt and counsel review of (1) school board resolution or approved minutes indicating school board’s approval of revised form of lease, and (2) fully executed revised lease containing staff changes.

Submitted by: Valerie Trujillo, Superintendent; Geno Zamora, Legal Counsel, Ortiz & Zamora, Attorneys at Law, LLC
7. Questa Independent School District – Requests Approval of Donation of Real Property Located at 54 Gallegos Road in Questa to Village of Questa

Submitted by: Jay Czar, Executive Director
8. New Mexico Mortgage Finance Authority – Requests Approval of Extension of Private Activity Bond Allocation for the Pasa Tiempo Multifamily Housing Project ($11,000,000)

Submitted by: Robert Aragon and Michael Brasher, Subcommittee Members; Donna Maestas, Deputy Director, State Board of Finance
9. Private Activity Bond Subcommittee Recommendations and Allocation for 2016 Carryforward
10. Private Activity Bond Subcommittee Recommendations and Allocation of Calendar Year 2017 Private Activity Bond Cap Percentage

11. Approval of 2016 Private Activity Bond Allocation Deposit Refunds

Mr. Aragon moved approval of the Consent Agenda, subject to the contingencies recommended by staff. Lt. Governor Sanchez seconded the motion, which passed 7-0 by voice vote.

ACTION AGENDA

BONDS
Presenters: Kenneth A. Guckenberger, Disclosure Counsel and Noelle Graney, Associate, Kutak Rock, LLP

12. Presentation on Fiscal Year 2016 Annual Financial Information Filing

Mr. Guckenberger and Ms. Graney presented this report, which was on page 332 of the electronic agenda.

Ms. Kleats stated that the numbers in Table 26 (the General Fund Financial Summary) would be finalized upon release of the final audit.

DEPARTMENT OF FINANCE AND ADMINISTRATION
Presenter: Ronald C. Spilman, State Controller and Director, Financial Control Division

21. Financial Control Division – Requests Approval to Transfer Funds from the Operating Reserve to the Appropriation Account of the General Fund to Cover Fiscal Year 2016 Obligations ($485,424,767)

Mr. Spilman presented this report.

Mr. Archuleta complimented Mr. Spilman on an excellent report, and suggested he document the various processes he followed in its preparation as a best practice guide for the future.

Ms. Rodriguez commented that this is the most transparent the state has ever been in terms of tracking its money. She added that the relationship with the State Treasurer’s Office is probably the best it has ever been as far as sharing data and sharing information and making sure everyone is on the same page.

Mr. Spilman stated that appropriations exceeded revenues by slightly under $600 million in FY 2016. To close and balance FY 2016, and based upon the audited financial statements, he was requesting approval of the transfer of $485,424,767 from the operating reserve to the appropriation account of the general fund.
Lt. Governor Sanchez moved for approval. Mr. Brasher seconded the motion, which passed 7-0 by voice vote.

22. **Financial Control Division – Requests Approval of Transfer of Funds from the Tobacco Settlement Permanent Fund to the Appropriation Account of the General Fund to Cover Fiscal Year 2016 Obligations ($109,052,359)**

Mr. Spilman requested approval to transfer $109,052,359 from the Tobacco Settlement Permanent Fund, which would be the final transfer to close out FY 2016.

Mr. Aragon moved for approval. Mr. Kormanik seconded the motion.

Mr. Kormanik asked what the general fund balance would be at the end of FY 2016 after these transfers. Mr. Spilman responded that it would $147,729,274, which would represent 2.3 percent.

Mr. Aragon expressed concern about the decrease in funds between FY 2015 and FY 2016 in gross receipts taxes, income taxes and severance tax income. He noted that severance tax income was down $147 million, and said he found it paradoxical that legislators are at war on fossil fuels yet want to keep spending more money. He said the population has remained fairly stable since the late 1970s, but government is three times bigger.

The motion passed 7-0 by voice vote.

**EMERGENCY FUND BALANCES**

Presenter: Ms. Leila Burrows Kleats, Director

13. **Emergency Balances – December 2016**

- Operating Reserve Fund $1,850,000.00
- Emergency Water Fund $106,421.56
- Emergency Hardship Fund $1,000,000.00

Ms. Kleats reported these balances.

14. **APPROVAL OF STATE BOARD OF FINANCE EMERGENCY HARDSHIP FUNDING POLICY 16-03**

Ms. Kleats reviewed criteria from staff's recommended policy on disbursement of monies from the Emergency Hardship Fund.

Ms. Kleats said some entities on today’s agenda have requested emergency funding from the Emergency Hardship Fund; however, since this policy was not in place, the board cannot strictly hold them to these criteria. She did inform them that the board would be considering this policy at today’s meeting.
Mr. Aragon moved for approval. Mr. Brasher seconded the motion, which passed 7-0 by voice vote.

**EMERGENCY FUNDING REQUESTS**

Presenters: Lloyd Ayliffe, General Manager; Stephanie Stringer, Drinking Water Bureau Chief, New Mexico Environment Department; Cydney Beadles, Legal Division, Public Regulation Commission

15. **Blanco Mutual Domestic Water Consumers & Mutual Sewage Works Association, Incorporated — Requests Approval of Emergency Water Funding for the Harvest Gold Subdivision ($85,000)**

Mr. Ayliffe stated that the Harvest Gold water system has 140 active members and they have been on a Boil Water Advisory since June 2016, and it has been a struggle for them for several years. He said the system is 40 years old and in very bad shape. He said Blanco Mutual Domestic Water Consumers has been approached to take over this system. While they are willing to do that, Blanco’s concern is that it would put the Blanco water system, which has about 500 members, in financial jeopardy. He requested emergency funding of $85,000 to allow this to occur.

Responding to Lt. Governor Sanchez on what the $85,000 would cover, Mr. Ayliffe said Blanco proposed to get a bulk water sale from the City of Bloomfield, which has written up a purchase water agreement. About 1,000 feet of 6-inch water line and a 5 horsepower pump station would be installed. Water would be pumped to the Harvest Gold alternate tank (the one that hasn’t been condemned). When the second part of the system is installed later, this system would serve as backup.

Mr. Archuleta asked if there are any concerns from the New Mexico Public Regulation Commission (PRC) about this transfer in terms of assets and liabilities.

Cydney Beadles, director of the Legal Division of the PRC, clarified that AV Water has already filed an application requesting approval from the PRC for the transfer of the Harvest Gold system to the Blanco system. They are in the process of negotiating the terms, and she understands that AV Water is not expecting compensation or demanding compensation at this point, and they have made that clear to the PRC. She said she therefore sees no issues that would hold back ultimate PRC approval.

Mr. Archuleta said he would like any motion for approval to include the stipulation that all of the $85,000 would be spent on the infrastructure that has been discussed; and if that does not happen, that the money would revert back.

Mr. Ayliffe described plans for the second phase, which they hope can be funded with Community Development Block Grant monies.
Responding to Mr. Kormanik, Mr. Ayliffe said that, after the second phase, the 140+ members incorporated into the Blanco system would pay the same water rate as the other members, and that revenue would be used to pay for the bulk water sale from the City of Bloomfield and ongoing operations and maintenance. He said they have prepared revenue estimates, and gross revenue from the subdivision would be between $70,000 and $80,000. They would have enough net revenue left after the negotiated sale to maintain and operate the system.

Mr. Aragon asked if they would be able to set enough money aside from the fees to cover unforeseen circumstances, e.g., the breakdown of a pump. Mr. Ayliffe responded that they have been doing this for the last four or five years. They have expanded by about 200 families in the last few years and have about $80,000 in the bank for emergencies, etc., and try to set aside 15-20 percent of the net revenues each month for that purpose. He said they have also applied for grant funding.

Mr. Brasher asked Ms. Beadles if the PRC looked at right of way issues and related matters as part of its application review. Ms. Beadles responded yes, generally speaking; however, when the PRC originally issued AV Water a Certificate of Public Convenience and Necessity, it considered whether they had legal rights-of-way and easements, so she would expect that those rights and interests would transfer with the rest of the assets. Because conditions have changed since then, she said the PRC would “take a fresh look” at this.

Ms. Stringer discussed the role of the Drinking Water Bureau. She said that, when the transfer of ownership occurred in February 2016, they felt water quality standards were being met based on data that was provided to them. Following reports of numerous customer complaints in May 2016, they conducted site inspections and took various enforcement actions to try to get the water system owners to comply. She said this situation is an emergency based on the lack of action from AV Water. If the water system had been properly maintained, she felt this situation could have been avoided. She said the current state of the water poses a health threat to the users. She noted that AV Water has been fined about $700,000, to no avail.

Ms. Stringer said her office learned late yesterday that the Community Development Block Grant funding application had been denied because the water system would be going through San Juan County and therefore would not qualify. She said she would talk to Community Development Block Grant staff to see if they would reconsider this application or offer alternatives.

Mr. Aragon commented that this is one of the best-vetted projects he has seen in his five years on the board.

Responding to Mr. Aragon’s concerns about the $106,000 balance in the Emergency Water Fund, Ms. Maestas said the $85,000 could come from the Operating Reserve Fund.
Mr. Aragon noted that the board has $1.96 million in emergency balances and is only halfway through the fiscal year. He said May and June are generally difficult months because of fires that can cost up to $1 million in emergency funding.

Mr. Aragon asked Mr. Ayliffe if he has thought about approaching the legislature for an emergency allocation. Mr. Ayliffe responded that he has considered that option. In their area, their representatives had a $3 million project for a wastewater main that could not be put together, so there could be available funds from that for the second phase. He said they are requesting these emergency monies today because the people on the system have gone without clean water for so long.

Ms. Stringer said the water quality of the Harvest Gold plant is very poor, but she wanted to be clear that, while the City of Bloomfield water is not threatening to public health, they are facing some minor water quality issues. She said she did not want this to "sneak up on anyone after the fact." She said the water is not 100 percent compliant, but the city is very much on top of this and is addressing this.

Mr. Archuleta asked if there is any chance that the New Mexico Environment Department could recover any of the $700,000 in fines levied on the owner of AV Water that could be applied to the situation with Blanco and perhaps be applied toward the second phase, for instance. Ms. Stringer responded that they may not have the legal ability to use recovered monies in that way.

Ms. Beadles said the PRC has also imposed a fine, and has asked the current owners to show cause why they and their affiliate corporations should not be held jointly and severally liable for the violations and fines imposed by the PRC.

Ms. Maestas stated that the resolution calls for emergency funding of up to $85,000, but Blanco will produce bids for the work, and the amount of the grant will depend on the successful bids.

Mr. Aragon moved for approval of emergency funding up to $85,000. Mr. Brasher seconded the motion.

Mr. Archuleta moved a contingency that the amount of up to $85,000 be only for use for building the infrastructure that has been requested, and for no other use, including having anything to do with payment of legal fees, etc.

Ms. Malavé said the resolution refers to designing and constructing a meter connection between the Harvest Gold water system and the City of Bloomfield water system. She said she would add limiting language to that effect.

The amendment was accepted as friendly.
The motion, as amended, passed 7-0 by voice vote.

16. WITHDRAWN.

Presenters: Arthur “Artie” W. Pepin, Director; Oscar Arevalo, Director, Fiscal Services; Daniel Garcia, Manager, Jury Statewide Program; Paula Couselo, Manager, Language Accessing Program; Josh Kahawai, Administrative Assistant

17. Administrative Office of the Courts – Requests Approval of Emergency Funding for the Jury and Witness Fee Fund ($825,254)

Mr. Pepin requested approval of emergency funding for the Jury and Witness Fee Fund in the amount of $825,254 to pay for unanticipated and extraordinary expenses. The Administrative Office of the Courts (AOC) is projecting a funding shortfall beginning in March 2017 until the General Appropriation Act is signed into law in approximately mid April. He said the AOC has requested deficiency and supplementary funding for FY 2017 in the 2017 legislative session.

Mr. Pepin noted that the AOC has requested funding for the Jury and Witness Fee Fund every year since FY 2011. With one tiny exception, they have received less than they have requested. He said they request the funding based on projections based on the previous year’s experience.

Mr. Pepin stated that, for FY 2017, the AOC requested about $600,000 more than they have in general fund monies appropriated to this fund. For FY 2018, their request is $1.2 million more than they have in FY 2017. He noted that their FY 2017 request was not completely funded. During FY 2016, they had an increase in juror payments of 9.9 percent, which is extraordinary in a fund that spends $8 million a year.

Mr. Pepin explained that some jury service carries over from one fiscal year to the next. In FY 2011, for instance, they paid $309,000 to jurors from the prior fiscal year.

Governor Martinez questioned why they don’t encumber monies for the fiscal year to avoid this, and Mr. Arevalo responded that they do not have any money left to encumber. Rather than run a budget deficit, they hold off making those payments until the following fiscal year, which they are able to do through provisions allowed in statute.

Mr. Pepin said the problem is that the amount is increasing every year. Last year, it was $570,400, and they got a deficiency appropriation from the legislature for that amount in order to pay FY 2015 jurors in FY 2016. This year, they are requesting $994,500 in deficiency funding from the legislature because they paid more than $1 million to FY 2016 jurors with FY 2017 monies. He commented that this is not sustainable.

Mr. Pepin noted that the Supreme Court has taken actions to reduce costs in this fund during FY 2017, including about $200,000 in jury pay. He said statute requires that jurors be
paid $7.50 per hour, but this has been reduced to $6.25 through authorization from the General Appropriations Act, resulting in a savings of $500,000. In addition, in September, the Supreme Court reduced mileage reimbursement for all government officers in the Judicial branch, because the statute that requires the AOC to pay mileage to jurors from their home to the door of the courthouse and back, says they have to be paid the amount paid to state government officers. In the Judicial branch, that is 29 cents per mile. He said that has reduced costs in the fund by $400,000, for a grand total of $900,000 in savings.

Mr. Pepin said he feels they have done everything they can to reduce costs in the fund. He therefore requested approval of this emergency funding.

Mr. Brasher commented that it appears that the budget request does not take into account the results of the case management study, which would increase the need for jurors and additional funds. Mr. Pepin responded that they anticipated a lot more trial activity, but couldn't predict how many of those would be jury trials. Under the case management order (CMO) issued before Bernalillo County, there was a backlog of 3,000 cases that were at least 18 months old, and now there are only a few hundred left. He said he was surprised at how quickly the initial backlog was processed, adding that he thought it would take at least three years for the four judges to work through them, but it took half that time. He said juries have increased in the county by 40 percent, however, and that pace continues.

Mr. Aragon stated that, if the legislative funding being requested by the AOC is carried in an emergency clause and pre-introduced, the AOC could have its requested funding within the first 15 days of the session. Assuming this were signed into law after 30 days, he asked how much the AOC would need from the Board of Finance to cover its needs. Mr. Arevalo responded that they would not need money from the board. Mr. Aragon noted that, if the AOC is somehow not successful in getting those legislative funds through the emergency clause, the board could address their request at the February meeting.

Mr. Aragon said his concern was the small size of emergency fund and the demands on it that the board can probably anticipate in the near future as fire season approaches.

Governor Martinez noted that federal juror compensation for each state ranges from zero on the first day of service all the way up to $54 for an eight hour day, and that is New Mexico, which is the highest in the U.S. Mr. Pepin said that was correct.

Mr. Pepin commented that, the lower juror pay is, which is now $6.25 an hour, the more incentive there is for people to find reasons for not doing jury service. He said this is particularly true for people who are making $8 an hour, because their employers by statute do not have to pay them while they are on jury duty. In addition, with mileage being reduced from 46 cents to 29 cents a mile in a large state like New Mexico, jurors who have to drive great distances to serve on a jury are not going to have as much incentive. He said this will potentially skew juries from a jury of peers to a jury of people who are retired or who have a higher income.
Governor Martinez cited other states, such as Arizona, which pays $12 a day. She commented that this is what happens “when you’re trying to solve other problems of who’s at poverty level and who is not, et cetera, when first and foremost it’s the responsibility for us to have a balanced budget.” She said she supported a significant reduction in jury pay and not paying mileage for trips under a certain distance.

Governor Martinez noted that 99 percent of fines in felonies are dismissed. Mr. Pepin agreed. He said the collection rate on those fines is very poor because there is no mechanism for it, as opposed to fines ordered by the courts for misdemeanors. He said the program in magistrate court is run by a fee that is imposed on warrants that are issued for people who fail to appear or pay. He said he did not want to start another fee funding program to collect fines that the Adult Probation & Parole Department apparently finds uncollectable.

Lt. Governor Sanchez expressed support for Mr. Aragon’s suggestion. He agreed that the burden should be on the legislature in finding the emergency funding for this request, and that the AOC could return to the board at its February meeting should this request somehow not be successful.

Lt. Governor Sanchez moved to postpone and allow the legislature to act on this, with the understanding that the AOC will be back at the Board of Finance in February if they do not act. Mr. Aragon seconded the motion.

Mr. Aragon commented that this request did not meet the board’s criteria for emergent at this point in time based on the statement by the AOC that there is a two-month window during which the AOC can go to the legislature for this funding. He said he therefore supported the motion.

The motion passed 7-0 by voice vote.

[Mr. Kormanik left the meeting.]

Presenters: Arthur “Artie” W. Pepin, Director; Joey Moya, Chief Clerk
18. Administrative Office of the Courts, Supreme Court – Requests Approval of Hardship Emergency Funding as a Result of the Reductions in Fiscal Year 2017 Appropriations ($80,000)

Mr. Pepin requested approval of an $80,000 appropriation from the Hardship Emergency Fund. He said the Supreme Court, which has about 94 percent of its budget in personnel services and benefits, had its budget reduced by 3 percent under Senate Bill 9. He said the court faces employee furloughs, and he feels that sending people home without pay would thus pose a hardship and meet the criteria of the hardship fund.

Responding to Governor Martinez, Mr. Pepin said the Supreme Court is operating on a budget of $156 million, an increase of $2 million from FY 2009. He said the total general fund
allocation to the judiciary in FY 2012 was $135 million. While the allocation has increased by $21 million in five years, fee funding has dramatically declined. He commented, “If you’re adding water to the top of the bucket but you’re taking water out of the bottom, it’s hard to see that the volumes haven’t changed very much although we’re using more of the state’s water.” He said the fee funding has been replaced with general fund money.

Governor Martinez said she vetoed the judicial salary increase, and that ended up in court. Mr. Pepin agreed. He said the Governor vetoed the increase in judicial salaries, and the ultimate determination was part of the veto was effective and part of it was not. He said that amounted to 3 percent, or about $800,000 for judicial pay. He added that these judges are the lowest paid in the U.S.

Governor Martinez commented that the judges might be the lowest paid in the country, but New Mexico is one of the poorest states in the country. She said she was totally against furloughing hardworking staff members, but she was also against people taking care of themselves at the expense of those workers. She said there should have been better planning.

Responding to Mr. Brasher, Mr. Pepin said there are two supplemental funding requests going to legislature to avoid furloughing, and this is one of them. He commented that the prospects for funding “are not great,” but they would know for sure in March or April. If they do not get this funding from the legislature, they would have a very short time (two months) to make up the $80,000 through furloughs. He said it would be preferable to give unpaid vacations, etc., over a period of six months instead.

Responding to Mr. Eichenberg, Mr. Moya said they are estimating that about nine days of furloughs would be necessary to make up the $80,000 shortfall.

Governor Martinez reviewed a list of salaries for positions in the Supreme Court. She noted that an Attorney Senior receives $83,000. She said the Supreme Court operating budget for this year is $3,329,200. Mr. Pepin clarified that it was reduced by $100,000 in Senate Bill 9. Governor Martinez noted that the Judicial Branch received a 3 percent cut while most of the Executive Branch received a 5.5 percent cut.

Mr. Aragon asked Mr. Moya if furloughing would begin on Monday if they did not receive funding. Mr. Moya responded that the final furlough plan has not been submitted for approval to the court or AOC. They are asking for supplemental funding through the legislative session. Because of their small staff, furloughing would be a significant hit to the Supreme Court.

Mr. Aragon stated that, based on Mr. Moya’s response, this situation may not be emergent. He said there is a window to address this issue before it becomes emergent.

Mr. Aragon moved to postpone action on this request until or if the court comes back in February or at a later date. Mr. Brasher seconded the motion.
Mr. Archuleta commented that this furlough would amount to a hit of about $2,500 to $3,000 for each of the 29 employees. Mr. Moya said that was correct.

Mr. Archuleta said he would vote in favor of the motion, because it would send a message to the legislature that this is theirs to fund.

Governor Martinez responded that it is theirs to fund or fix, because every agency has to deal with the shortage of income. She said this is solely the result of an oil and gas crash and everyone has to do what the AOC is trying to do.

Mr. Eichenberg said he could not support the motion, because he feels this would be an appropriate use of the hardship fund.

The motion passed 5-1 by voice vote, with Mr. Eichenberg voting against the motion.

Presenters: Arthur “Artie” W. Pepin, Director; Chief Judge Michael Vigil; Mark Reynolds, Attorney

19. Administrative Office of the Courts, Court of Appeals – Requests Approval of Hardship Emergency Funding as a Result of the Reductions in Fiscal Year 2017 Appropriations ($70,000)

Mr. Pepin stated that this request has been reduced as a result of the election, and a judge and staff left earlier than anticipated. There were unexpected savings that occurred this month, and the furlough plan, which has been approved by the AOC, is at $21,054.

Chief Judge Vigil said there has long been a culture of frugality, efficiency and productivity in the Court of Appeals. He said 49.5 employees will have to be furloughed beginning next week if this request is not approved. He said his immediate predecessor requested a flat budget in FY 2015, which meant there would be a cut in the budget in the next fiscal year. When he came in, they were dealing with an already-tight budget. In the 2016 legislative session, they were cut another 1.8 percent, and another 3 percent in the special session. They have made further reductions since submitting this request to the board, recognizing that they were in serious trouble.

Chief Judge Vigil said those employees making the highest salaries would receive the biggest cuts through this furlough plan. He said the lowest paid employees (clerks and administrative assistants) would be furloughed two hours.

Responding to Mr. Archuleta on how this would impact their ability to process their workload, Chief Judge Vigil said that their clearance rate was negatively impacted when they held other attorney positions open for long periods of time and relied on vacancy savings to meet the budget. He said the court has been 95 percent historically, but last year, it dropped to 87 percent because they did not have the resources to perform as they had in the past. He said
three attorney positions were recently filled. He said these attorneys would each be furloughed for one and a half days under the furlough plan.

Responding to Governor Martinez, Chief Judge Vigil said the vacancy savings have reduced this request to $21,054. He said two positions are being held open.

Chief Judge Vigil said they are one of two courts in the state that own their own building, and they are "barely making it" operating it.

Mr. Aragon commented that, given what the board has heard, he feels this situation is emergent and qualifies for funding from the hardship fund, unlike the other two requests they heard.

Mr. Aragon moved to grant the request of $21,054 from the Hardship Emergency Fund. Mr. Eichenberg seconded the motion, which passed 6-0 by voice vote.

**PROPERTY DISPOSITION**

Presenters: Paula Garcia, Chair, County Commission; Paul Cassidy, County Financial Advisor, RBC Capital Markets; Daniel Alsup, County Bond Counsel, Modrall Sperling; Luis Campos, Facilities Manager, Administrative Office of the Courts; Judge John Sanchez

20. Mora County – Requests Approval of Lease of Real Property Located at 10 Courtyard Drive in Mora to the Administrative Office of the Courts (annual amount of 100% of debt service due on the loan for financing the construction of the facility and reimbursement for certain operations and maintenance costs, lease revenue $291,034 per year)

Ms. Garcia stated that Mora County has made tremendous progress on the partial completion of the Mora County Complex, which will include the magistrate court. She said Mora County and the AOC have worked in partnership to achieve a common goal of providing a safe and secure facility for the judicial system and basic functions of county government. Their long-term mission is to also stimulate local economic development and to serve as a regional hub for services. She thanked Governor Martinez and the Administration for the support they have provided in the past two years to move this project forward, and they have received good guidance on how to move this project forward, which they inherited. She said it is now back on track to completion.

Ms. Garcia said the County has contracted with a contractor and architect, and their timeline for completion of all phases is May 2018. There is a substantial investment in the shell, which was completed in 2010. She said recent milestones were completion of the architectural program in November 2015, as well as the drawings for the structural corrections.

Ms. Garcia said that, at the suggestion of the Governor’s Office, the capital outlay received by Mora County for the project had a contingency that the project be in collaboration with the
AOC. That funding was received in 2013. They were advised by the Department of Finance and Administration (DFA) to complete an engineering assessment, which determined that build-out was feasible. Third, they were advised to design a fully functional phase based on funding that is available to the County; therefore, they have developed a plan for partial build-out driven by availability of funds. Their three sources of revenue are local revenue generated from the County tax base; lease revenue from the AOC; and capital outlay money.

Ms. Garcia said the County realizes that this project has a troubled history; but through careful planning and collaboration, they have gotten this project back on track. She said it is imperative that they have a facility that can house their court and county government, adding that their current facilities consist of temporary modular trailers that are rapidly deteriorating. Because of the urgent need, completion of the complex is a top priority of the County.

Mr. Alsup reviewed the lease term. He said the proposed term would be 30 years, and rent would commence on completion of the space. The actual rent payable would be tied directly to the financing that the County plans to undertake to complete the space.

Mr. Campos said courts around the state are in renovated car washes, old buildings, and renovated apartments. He commented that it is difficult for citizens to respect a court of law when facilities are in substandard facilities that lack numerous security and safety issues. He said office spaces are being used to hold prisoners awaiting a court appearance, for example. He said the AOC has been working on providing safe and adequate facilities. He said Mora County’s magistrate court is being housed in a trailer.

Judge John Sanchez described the working conditions of the existing facility, which is a hazard to the public and people who work there.

Mr. Cassidy discussed the financing. He said the county has imposed 1/2 percent of new gross receipts taxes for the financing, and the New Mexico Finance Authority will provide a fixed rate 20-year loan for the county’s portion of the facility. With the Board of Finance’s approval of the lease, they will be able to secure bank funding for the AOC portion, which should generate about $4.7 million for construction. He said the bank was hired through a Request for Proposals (RFP) process using a placement agent. The interest rate originally was 2.9 percent, but is now at 3.37 percent. The amortization has been stretched out to 30 years, and the bank will finance it for 10 years, and then it will be refinanced with them at that point.

Mr. Campos reviewed a site development plan.

Mr. Campos said the magistrate court would share space with the district court, which is in San Miguel County at the current time.

Responding to Governor Martinez, Ms. Garcia said the county has an understanding with the Fourth Judicial District that they can use the court in Mora. She said people from Mora are now traveling to Las Vegas to attend district court, which is 30 miles. Judge Vigil said jurors
would have to travel from around the county, which can be 90 miles one way. Mr. Campos said statute requires that a district court be in every county, so this is an opportunity for the two courts to share space. He said there would be 12 chairs in the jury box.

Mr. Archuleta commended the county for doing this. He said this would be “a win-win all around for Mora,” and he liked the idea that all of the offices would be combined in one place. He said the problem he has is that the cost of $280,000 a year seems inordinately high. He added that, in his experience as an engineer, things cost more in Mora because there is no concrete supply, a lack of contractors to bid on things, etc., so whatever is considered an average number should be multiplied by 30 percent by virtue of location.

Addressing Mr. Cassidy, Mr. Archuleta said it appears that the rent is being justified based on what the bank has to be paid for a loan, versus the market value of 10,000 feet of space inside of a 40,000 square foot building.

Responding to Mr. Archuleta about the cost of the shell, Mr. Cassidy said the cost was about $5.6 million for the former contractor and architect. He said the architect was apparently asked to redesign it several times.

Mr. Archuleta asked what items were left out of the shell that are normally included. Mr. Campos responded that all of the mechanical, plumbing and electrical was not included, since that was going to be part of the tenant development. He said there is a transformer on the property, but electricity hasn’t been brought to the shell. He said there are parts of the concrete floor that have not been poured.

Mr. Cassidy said the AOC piece is $4.7 million, and $2.4 million is for the county offices. Both of those cover parts of the parking lot and some site work. He noted that, had they done an 18-year financing instead of a 30-year financing, the cost would have been $320,000 a year instead of $273,000.

Mr. Aragon commented that the problem he sees in this case is that “the taxpayers are being asked to pony up for what appears to be gross malfeasance on the part of the original either architect or engineer and contractor.” He asked what actions have been taken by Mora County against the original contractor/engineer/architect.

Ms. Garcia responded that the County Commission, once it had the phase 2 study completed and could identify malfeasance issues, it retained the law firm of Sawtell, Wirth & Biedscheid, and action taken thus far was to notify the contractor of their right to cure, giving them a deadline of November 15, 2016. She said the legal firm is in discussion with the contractor, Franken Construction. She said she did not know the size of the bond, but that is being looked into.

Mr. Aragon commented that people get away with this kind of thing far too often in New Mexico, and then the taxpayers end up covering the costs for someone else’s wrongdoing. He
said he was taken aback that “nothing has happened” six years after construction of the shell and that the bonding company hasn’t even been notified at this point. He said the statute of limitations on a contract is six years, so the time is about up. He said, “I want that money, and the taxpayers deserve that money.” He commented to Ms. Garcia that Mora County “is asking us to condone the theft of $1.4 million from the taxpayers of Mora County. Although I am all in in this, I am not all in to offset someone else’s either malfeasance or worse.”

Ms. Garcia discussed the history of the project. She said the structural analysis was begun in 2013, using the county’s general fund money, and was broken down into two phases because of funding issues. After the first phase was completed, the engineers said they felt there were issues with the lateral bracing, but they needed more time. She said the county did not have capital outlay money for another year, and in August 2015, they worked with AOC to do a request for quote for a phase two report, which was completed this year. She commented, “that was the smoking gun,” because the lateral bracing was identified as a problem after the insulation was removed to expose it.

Ms. Garcia went on to say that there were problems with the Construction Industries Division, as they were unable to obtain plans and documents from that agency, and that took additional time because the engineers had to create a model of the facility. Shortly after that, Franken was put on notice that they had to fix the problem or else pay for it. In retrospect, they realize they should have put the bonding company on notice, “but it’s not like we did nothing.” She said the county has taken action in the past, and collected several hundred thousand dollars from the bonding company on their transfer station because of a mistake by the contractor and architect. She said it took longer in this courthouse case because they needed to get the phase 2 study completed in order to collect hard evidence.

Mr. Brasher said it appears that there isn’t enough money to cover the costs of all the AOC leases. Governor Martinez noted that there is a revised budget of $6,233,000 for FY 2017, and leases (including Mora) is $7,655,680. Mr. Pepin said this shortfall is in the AOC’s supplemental funding request to go before the legislature in January. He said the AOC does not begin lease payments in Mora County until the building is occupied. The full lease impact would be in FY 2019, and the AOC has made the appropriate funding request to cover the cost.

Mr. Archuleta said the question of the $1.4 million continues to be a concern, because the public would be paying twice to fix the problem.

Mr. Archuleta asked Mr. Cassidy if the $1.4 million is in the 30-year financing. Mr. Cassidy responded that the remediation could be paid for through a variety of sources.

Mr. Archuleta suggested that any recovered monies could be used to reduce the debt structure payment, which in turn could be used to mitigate the monthly payments. If they were to resolve this before construction, then the price of construction could go down. He said that should go to the benefit of the AOC.
Mr. Cassidy responded that they have allocated the respective portion of AOC’s square footage to the remediation cost, which is about $450,000. He said there could be a carve-out with the proportionate payments for debt service reduced as a result of the remediation.

Responding to Governor Martinez, Mr. Cassidy said the $291,034 annual payment is for just the AOC’s shell and all of the tenant improvements for AOC. Payments would begin in FY 2019.

Mr. Aragon asked if the Board of Finance has the constitutional authority to bind future legislatures for 30 years. Ms. Malavé responded that there is a provision that lets them get out in the event there is no money to make the payment.

Responding to Governor Martinez, Ms. Garcia said heating units have been installed, but they are not connected. The mechanical room is empty. She said the structural engineers have indicated that it would be more efficient to purchase smaller units, as they would be more efficient in covering the area that would be occupied at this point.

Mr. Aragon said he has recently been in courtrooms in Artesia, Cuba, Moriarty, and Raton. He said they each have about 4,000 square feet of courtroom space with approximately the same caseload as Mora County has. In consulting with Mr. Archuleta, he has learned that it would cost $400 to $500 per square foot to build an entirely new facility of that size. At the high end, that would cost $2 million. He commented that this sounded like a far better deal for the taxpayers.

Mr. Campos spoke to the efficiencies that occur when agencies partner with each other. He said having the Sheriff’s Department next to them is one such efficiency, because the court does not have armed security staff. By having a relationship where they can work together, it brings a sense of security that the other courts cited by Mr. Aragon do not have.

Governor Martinez commented, “Whoever approved a 46,000 square foot two-story building for a community of 4,800 people – my prosecutor flag started to go way up.”

Mr. Eichenberg said he had to support what Mr. Pepin thought was right for the court, and felt that was what the board should be looking at. He said he liked the fact that they were bringing in the other county offices, where everyone could gather in one place. He agreed that the second floor was problematic, and perhaps that could be addressed as part of the redesign.

Governor Martinez commented that the AOC has received a lot of money from the Board of Finance in the recent past. Most recently, the 3 percent reduction to the AOC budget for juries, interpreters, etc., removed $818,000 from the line item for magistrate court leases throughout the state.

Mr. Archuleta said the $273,000 in annual lease payments would not cover soft costs such as electricity, water, janitorial, etc. Over 30 years, with 5 percent interest, in present day costs, that annuity amounts to $18 million, which would be $2,000 per square foot for a 9,000 square
foot building. Even if he were off by a factor of 100 percent, that would still be $1,000 per square foot.

Mr. Cassidy responded that the principal is paid once a year and interest twice a year. He said they could approach the bank to ask about monthly payments, which could cut the cost down somewhat.

Mr. Archuleta said he had no idea how someone came up with the idea of building something of this size, but he tended to agree with Mr. Eichenberg’s comments that the building is there, and is this a good deal or not. He commented that if the county were to go out and build something else, it could take a few years, versus being able to house the magistrate court in a year or two by completing this project.

Mr. Pepin stated that, if this project does not proceed, the AOC would have to find funding in Mora County with state money “one way or the other.” He said the AOC has worked very hard, and the county has done everything it can possibly do, to make this work. He said the current County Commission had nothing to do with the decision to build this 47,000 square foot building, and “I think it’s a better deal for the people of New Mexico and the people of Mora County to use the building that I grant you was a bad idea.”

Mr. Brasher moved to deny this request. Mr. Aragon seconded the motion.

Lt. Governor Sanchez asked Mr. Pepin what the next step would be should the motion pass. Mr. Pepin responded that the AOC would immediately issue an RFP to build a facility in Mora County. The timeframe would be 24 months or so. The landlord would be a private landlord with higher financing rates than the New Mexico Finance Authority. He said the county would not have the option of being landlord. He added that, had this project not started to move again in 2012 at the direction of the legislature, they would have accomplished this already.

Governor Martinez urged the county to go after the people behind the construction of this project “in a very aggressive way.”

Mr. Archuleta said he really wanted to vote for this, “but it’s too far a jump after we just spent six hours here with the AOC denying emergency money for a budget that the legislature is not funding, and we’re sitting here looking at our emergency fund trying to figure out a way to give them some money, and then we’re talking about something that’s going to cost two or three times market value for the AOC.... The financing is just out of proportion.”

The motion passed 5-1 by voice vote, with Mr. Eichenberg voting against the motion.

[Governor Martinez stepped away from the meeting.]
DEPARTMENT OF FINANCE AND ADMINISTRATION
Presenter: Ronald C. Spillman, State controller and Director, Financial Control Division
23. Financial Control Division – Update on Payment Card Industry-Data Security Standards Compliance

Mr. Spillman made this presentation. [Presentation begins on page 733 in the electronic agenda.]

STATE TREASURER’S OFFICE
Presenters: Vikki Hanges, General Fund Investment Pool Portfolio Manager; Sam Collins, Deputy State Treasurer

Mr. Collins distributed a list of the balance in the general fund each month for the past several months, with projections for FY 2017. He noted an average monthly decline since November 30, 2015 of $56 million. Since June 30, 2016, the average monthly decline has climbed to $75 million.

Mr. Collins noted that, in November, the low point mid month was $1.596 billion. At December 15, the low point was $858 million, almost half of that, because of a $110 million decline. He said, “I can’t state it strongly enough. We’ve dropped $451 million just in this fiscal year alone. We’re concerned.”

Ms. Rodriguez said DFA is watching this on a daily basis and sharing it with STO.

[Mr. Eichenberg left the meeting.]

GENERAL SERVICES DEPARTMENT
Presenter: Jimmy Rodriguez, Business Operations Bureau Chief

Mr. Rodriguez presented this report.

26. Facilities Management Division – Requests Approval to Adopt January-June 2017 Schedule of Repairs

Mr. Rodriguez reviewed the schedule of repairs, and requested approval.

Mr. Aragon moved for approval. Mr. Brasher seconded the motion, which passed 4-0 by voice vote.
TAX INCREMENT DEVELOPMENT DISTRICTS
Presenters: Phillip Skinner, Mayor; Mario Juarez-Infante, Village and GSA Engineer, Wilson & Company; Chris Muirhead, TIDD Counsel, Modrall Sperling; Rick Martinez, Apricot Consultants
27. Village of Columbus, Land Port of Entry

A. Presentation Concerning Request for Dedication of a Portion of the State’s Gross Receipts Tax Increment

Mr. Skinner said he has been in office as mayor for about three years, and since then, they have been “climbing out of a hole.” They were behind on their audit several years, had no budget, and did not qualify for any grants. He has just had an exit conference with the auditors, and they have gone from 30 findings to 3. He stated that about $5 million worth of grants have also come into the village since he has been in office.

[Governor Martinez returned to the meeting.]

Mr. Muirhead presented background on this TIDD request. They are trying to develop flood control, water/wastewater and other improvements around the port of entry as an initial step to make the area, which has been undevelopable previously, into land that can be used for economic growth. Under the TIDD, the village could reach out to the county and the state as participants, keeping the funds within the community, and they would be an economic development engine for the community. He said this TIDD is unique in the sense that they are not using a private developer.

Mr. Juarez-Infante said this plan has been in the making for many years, and it is a good plan. The State Economic Development Department, in cooperation with the Border Authority, funded a $100,000 economic infrastructure study last year. He said there was lots of public outreach; through that, they identified several financing mechanisms, including the TIDD. He said an economist out of Chicago looked at some of the potential economic drivers, such as a bovine permit, and there is the potential for agricultural processing with vegetables in particular. He stated that, between 2010 and today, this is the third-largest port of entry between Mexico and the U.S.

Responding to Mr. Aragon, Mr. Skinner said the TIDD was formed to incorporate the whole village. The money for the infrastructure would come from federal funds.

Mr. Muirhead said that, as the federal government constructs the port of entry, $70 million would be coming in; and as those tax revenues are generated for the district from the port of entry construction, they would sponge up the bonds and use revenues for the infrastructure improvements. With those improvements in place, the area would be opened up for development that would allow trade back and forth between the border. He agreed that this is innovative for a TIDD and is unique.
Mr. Archuleta said the concern for him is that a private developer "has skin in the game." In this case, it's a roll of the dice in terms of the state giving up its revenues. Mr. Juarez-Infante responded that the state is on the TIDD board, though, and is very engaged in this process.

Mr. Skinner said he has been living in the village for 30 years, and has always done a very poor job of marketing its port of entry. He said people thought that the port of entry built 25 years ago would automatically create growth, but it did not. He said they have to strategically make this happen. He stated that the model is already in place, with maquillas on one side and warehouses and logistics on the American side. He said the Mexican government will be building a $30 million port of entry on their side to mirror the port on the American side.

Mr. Archuleta asked what might happen if the North American Free Trade Agreement (NAFTA) is scuttled. Mr. Skinner responded that he was there before NAFTA, and it never made any difference. He said the maquila program is a Mexican program, and they are the ones who allow goods to come in duty free, so NAFTA would not affect maquiladoras in Mexico.

B. Request for Approval of Waiver of 2.61.3.9(B) NMAC, Timeline and Submittal Requirements

Ms. Kleats said the board has approved a request for waiver like this in the past, specifically for the Taos Ski Valley project. Part of the reason for the six-month timeline is that the economist at DFA is tasked with reviewing the application and the financial analysis, as well as the economic analysis of taxes, jobs to be created, etc. As chief economist at the time of the Taos Ski Valley application, she can say from experience that the scramble to get the information prepared during the legislative session and with limited time for review was extremely stressful. She said the new chief economist has just finished working on a very stressful revenue estimate and will have to revisit the revenues at mid-session, as well as providing bill analysis for all of the legislation that will be introduced, and her concern is taxing his time with yet another project at this time.

Mr. Muirhead said he completely understood Ms. Kleats' points. He said his only defense was that this was a much smaller project than the Taos Ski Valley project.

Mr. Aragon recommended that the board not approve this time waiver, as staff needs time to exercise the necessary due diligence in assessing TIDD requests.

Mr. Aragon moved to not approve the time waiver. Mr. Brasher seconded the motion, which passed 5-0 by voice vote.

STAFF ITEMS
Presenter: Leila Burrows Kleats, Director

28. Services in Lieu of Cash Rent Tutorial
Ms. Kleats made this presentation. [Page 881 of electronic agenda.]

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

Ms. Kleats noted that, at last month's meeting, the board approved a resolution for a sponge note up to $10 million; however, since then, staff has looked at projections and revenues and receipts through November, and it appears that there is no balance for a sponge note. The statute requires that the set-aside in the Severance Tax Bonding Fund be enough to cover the next two debt service payments, and any remaining balance after the sponge note would go to the permanent fund. There is not enough money for the set-aside at the current time, but staff has no concerns about meeting the debt payment.

Ms. Kleats reported that fiscal agent and custodial bank billings were in line with historical averages.

30. **Joint Powers Agreements for Month-Ended November 2016**

Ms. Kleats read the Joint Powers Agreements into the record.

**ADJOURNMENT**

Its business completed, the State Board of Finance adjourned the meeting at 4:30 p.m.

[Signature]

Susana Martinez, President

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Date: 1-24-17

[Signature]

Michael Brasher, Secretary

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Date: 1/18/17