MINUTES OF THE
NEW MEXICO STATE BOARD OF FINANCE
SPECIAL MEETING
Santa Fe, New Mexico
February 8, 2017

A Special Meeting of the New Mexico State Board of Finance was called to order on this date at 9:16 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
The Hon. John A. Sanchez, Lt. Governor [left at 10:37 a.m.]
The Hon. Tim Eichernag, State Treasurer [left at 11:05]
Mr. Michael Brasher, Public Member, Secretary
Mr. Robert J. Aragon, Public Member
Mr. Adelmo Archuleta, Public Member
Mr. John Kormanik, Public Member

Members Excused:
None

Staff Present:
Ms. Leila Burrows Kleats, Director, State Board of Finance
Ms. Donna Maestas, Deputy Director, State Board of Finance
Ms. Duffy Rodriguez, Cabinet Secretary, Department of Finance & Administration

Legal Counsel Present:
Ms. Sally Malave, Assistant Attorney General, Attorney General's Office

Others Present:
[See sign-in sheets.]

APPROVAL OF AGENDA: ANNOUNCEMENT: NEXT REGULAR MEETING – TUESDAY, FEBRUARY 21, 2017

Ms. Kleats suggested that item 6 on the agenda be moved to item 5. Therefore, item 5 will become item 6.

Mr. Brasher moved to approve the agenda with the change. Lt. Governor Sanchez seconded the motion, which passed 7-0.
Submitted by Leila Burrows Kleats, Director

3. Approval of Minutes: January 18, 2017 (Regular Meeting)

Mr. Aragon commented that he has not had time to review the minutes as the Board just received them this morning.

Mr. Aragon moved to table the approval of the minutes until the next regular meeting. Lt. Governor Sanchez seconded the motion, which passed 7-0.

EMERGENCY FUND BALANCES


<table>
<thead>
<tr>
<th>Fund</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Reserve Fund</td>
<td>$1,741,421.00</td>
</tr>
<tr>
<td>Emergency Water Fund</td>
<td>$85,000.56</td>
</tr>
<tr>
<td>Emergency Hardship Fund</td>
<td>$978,946.00</td>
</tr>
</tbody>
</table>

Ms. Kleats reported these balances.

Mr. Archuleta asked if there are emergency requests in the upcoming regular meeting. Ms. Kleats replied that Public Education Department will have a request for approximately $124,000 but we do not yet have the details, as they have not yet submitted supporting documentation. And the Public Regulation Commission (PRC) has a request for $85,000. Ms. Maestas mentioned that PRC’s request is for emergency water funds for the Harvest Gold water system. Blanco Mutual Domestic Water Consumers’ Association has forfeited the SBOF emergency grant for the Harvest Gold System.

EMERGENCY FUNDING REQUESTS

Presenters: Judith Nakamura, Supreme Court Justice, Joey Moya, Supreme Court Chief Clerk

5. Administrative Office of the Courts – Requests Approval of Emergency Hardship Funding for the Supreme Court, Fiscal Year 2017 Operating Budget Shortfall (not to exceed $82,614)

Governor Martínez thanked Justice Nakamura for working with the State Board of Finance and providing all the information so we can keep the courts open and operating.

Justice Nakamura stated that the Supreme Court started the fiscal year with a budget shortfall. After salaries, benefits and contractual services the remaining balance in the fund was approximately $90,000 for operating costs. This amount is about half of the historical fiscal year operating costs. Once the 3 percent reduction enacted in the 2016 special session was applied and the mandatory costs for DoIT and the agency audit were deducted, the Supreme Court has an estimated shortfall of $82,614.00. The Supreme Court has cut everything they could. Due to the shortfall they do not have money for payroll, if they do not receive funds, they will have to furlough employees. Their plan is to furlough each employee one day per pay period for a total of nine days. The first furlough day will be March 10, 2017 but per the New Mexico Judicial Branch Personnel Rules they have to give notice to employees on February 25, 2017.

Secretary Rodriguez stated that Department of Finance and Administration (DFA) is comfortable with the numbers that were presented by Justice Nakamura. DFA met with the Justice Nakamura and Mr. Pepin last week and went through the spreadsheets, line by line.

Mr. Archuleta asked about the effects on court operations of a furlough day and the domino effects.
Responding to Mr. Archuleta, Justice Nakamura mentioned that the court works over 40 hours a week, if they close a day, they just get further behind. Cases that are pending and awaiting decisions would have to move forward, but trials will have to be put on hold. As an example, there is one employee who handles the roll of attorneys. She took a 5 day vacation and there were about 500-700 requests waiting upon her return. They are a very small supreme court.

Mr. Archuleta asked for the details of the mileage reimbursement expenses.

Responding to Mr. Archuleta, Justice Nakamura stated that the court does not have cars. Therefore employees have to take their own vehicles. The court has suspended some committee hearings or they are held via video to save mileage reimbursement costs but that this is not efficient. Many of the employees know the budget problems and they are not submitting their travel reimbursement requests. Joey Mora has told employees to submit requests. They are due the reimbursements. They do not have funds for paper, ink or other office supplies.

Mr. Archuleta asked how they operate without office supplies.

Justice Nakamura stated that the justices have been buying supplies from Staples.

Treasurer Eichenberg asked if the employees were in a union, due to the 2-week notice for the furloughs.

Justice Nakamura replied they were not, but the court policies mandate a 15-day notice.

Lt. Governor Sanchez made a motion to approve the request. Treasurer Eichenberg seconded the motion.

Governor Martinez said she had some questions. When she was practicing law, she bought her own supplies as well. Is there a graduating scale for furloughs?

Responding to the Governor, Justice Nakamura mentioned that the elected officials in the court spoke about starting a gift fund with their personal funds for the employees to offset the financial burden of the furloughs. They contemplated furloughing some employees that make more money, but these people had personal crises going on and really needed their full paychecks.

Governor Martinez stated we do not want to have any furloughs. She understands the burden it would put on families. She has been a state employee for over 30 years. Furloughs are not a permanent fix, unfortunately we are all impacted by the oil and gas crash.

Mr. Aragon thanked the Justice for her great job. Procedurally it is hard to follow the flow of this issue, he was optimistic that the legislature would have acted to appropriate the funds the Supreme Court and the Administrative Office of the Courts (AOC) needs. He stated that Senate inaction to vote on House Bill 261 and the discussions in the press have incited fear that criminals would be out on the streets. Any politician that uses the media to create fear to receive the funds is repugnant. The Senate should have taken action and vetted this request, especially if it is truly emergent. This is an issue of governance. In December Judge Michael Vigil came to the SBOF to avoid furloughs and was granted funds. The Executive has taken the steps to avoid employee furloughs. The SBOF should be the last resort. There is currently a
live piece of legislation that has not yet been resolved. The SBOF has very limited emergency funds. The Legislature should have the opportunity to do its job and appropriate the funds to the court. Mr. Aragon suggested in the event the Senate does pass the bill to fund this request, the Lt. Governor’s motion be amended to approve a loan to the Supreme Court and if the legislature passes the bill, they would pay back the funds to SBOF. If the bill is not passed, then the loan would convert to a grant.

Mr. Archuleta said that he supports that motion. There is a clause in the SBOF emergency fund policy that states entities need to go to the legislature first: “if subject to appropriation and the request cannot reasonably await appropriation at the next regular session of the legislator.” He feels emergency funds should be for true emergencies not funding the courts. He thinks the bill should play out in the legislature and we should provide a loan until there is a decision regarding the bill.

Secretary Brasher thanked the judge for working with the SBOF as the emergency funds are limited.

Treasurer Eichenberg stated he feels the next emergency funding request on the agenda should be a loan and this request should be a grant because it is only $82,000. He believes this amount is just a Band-Aid and will not fix the issue. He believes this is a true emergency. They are paying for their own supplies. Whether the money comes from the SBOF or the legislature it is the same source of funds ultimately.

Mr. Aragon said we need to be protective of the emergency funds. He referenced a prior emergency that occurred in Ruidoso in which $25,000 provided food for families. There may be water emergencies in the state that would need these funds. This motion would solve the immediate problem. A loan will solve the problem.

Lt. Governor Sanchez stated it is the legislature’s responsibility to fund the courts. He wishes to amend his motion to approve a loan to the AOC at a zero percent interest rate, not to exceed $82,614 from the Emergency Hardship Fund. If the legislature does not pass the bill to fund this request and it is not enacted into law, then the loan automatically converts to a grant. Mr. Aragon seconded the amendment to the original motion, which passed 6-1 with Treasurer Eichenberg opposed.

Governor Martinez asked the Justice if this loan and potential grant conversion will work for the Supreme Court.

Justice Nakamura agreed it would and thanked the Board.

Treasurer Eichenberg asked what would happen if the legislature approves the bill to fund this request but then the Governor vetoes the bill.

Governor Martinez mentioned that the motion included the language that if the bill was not enacted into law, then the loan converts to a grant. If it is vetoed, it would not be enacted into law.

Lt. Governor Sanchez stated his motion is to approve the $82,614 as a loan, if the legislature approves the bill and it is enacted into law then the loan should be paid back. If the legislature does not approve the bill, then the SBOF loan converts into a grant. Mr. Aragon seconded the motion, which passed 7-0.

Presenters: Judith Nakamura, Supreme Court Justice, Robert Duran, AOC Budget Analyst, Deborah Dugan, Attorney Administrative Assistant to the Chief Justice
6. **Administrative Office of the Courts – Requests Approval of Emergency Funding for the Jury and Witness Fee Fund (not to exceed $600,000)**

Justice Nakamura stated that AOC is requesting $592,121.82 for the Jury and Witness fund to support jury payments from March 1 through April 14 of this fiscal year. The AOC Jury and Witness Fund will run out of money on March 1st and they need to give a 15-day notice to cancel trials. That is why they need a decision today and the request is an emergency. This fund not only pays jurors and witnesses but also interpreters, public defenders ordered by the court, and expert witnesses. The statute obligates the court to administer the program: nine and a half staff members are assigned to jury activity, seven and a half staff are assigned to language interpretation. Of the total expenses from this fund, 88 percent are jury related including hourly jury pay, summons, postage, printing, parking, per diem and lodging for special witnesses. Contractual services, interpreters and trainings consist of 2 percent. Salary and benefits equal about 10 percent. In the past, many of the court services were contracted out which was very expensive. AOC now has staff handling the court services and it has saved money. Implementation of the new management software system will occur in the next few months, this will save money by automating some tasks. AOC needed $7.6 million dollars to get through FY 2017, after the savings of $614,000 from the reductions made to hourly jury fees and mileage reimbursement rates. AOC started FY 2017 by paying $994,500 of FY 2016 juror expenses. The expected expenditures for the FY 2017 were $8,654,000. They are short $1.6 million for FY 2017.

Mr. Aragon asked if Justice Nakamura is familiar with the Odyssey electronic document system that the courts use. The charge to file is $8 to $12 per document. Mr. Aragon estimates that would equate to tens of millions of dollars per year. He asked where the revenue from this system is going. It is a Texas company, is the court receiving any funds from these filings?

Justice Nakamura replied that prior to Odyssey there was a filing fee of $132. She assumes the Odyssey fees pay for the software.

Mr. Aragon commented that millions of pages of documents are generated through Odyssey. That must be millions of dollars in recurring revenue. Maybe it is time to renegotiate the contract with Odyssey if the court is not receiving any revenues. Where are these funds accounted for in AOC’s budget?

Justice Nakamura responded that she does not have this information, but she just sent someone to make a call about the Odyssey contract. Right now, the AOC has $1.2 million in cash as of yesterday, $414,500 is encumbered, and $341,000 is the amount needed for staffing until the end of the year. They are left with $456,904, and they run a month behind in jury payments. On average, it costs $98,000 per week for jury costs. The $592,121.82 they are requesting only takes them through April 15th.

Secretary Brasher asked why this year is different from last year. The AOC stopped paying jurors last year and had a shortfall.

Justice Nakamura replied that since it was a 30-day session, they knew very quickly that funds were being appropriated to the AOC. Not paying the jurors was not a good thing. Jurors were complaining that their landlords won’t wait to be paid. If trials are cancelled they may be in violation of the speedy trial laws.

Secretary Brasher heard criminals will get let out on the streets if the AOC does not receive these funds. Using fear as a tactic to get funding is not professional. He has no confidence in the leadership at
AOC. The leadership from AOC has been to the SBOF on many occasions and the story always changes. He is suspicious of the validity of the documentation that AOC submits to the Board.

Justice Nakamura responded that she personally reviewed all the numbers she just presented to the Board. Her reputation is on the line. These numbers are good numbers. If the Board has suggestions of how AOC can run things better, please let her know.

Secretary Brasher suggested that AOC should scrutinize their contracts. He doesn’t understand why AOC encumbers funds right away. There appears to always be a shortfall.

Justice Nakamura replied that AOC is not able to separate out interpreter costs. Interpreters are used for other matters in addition to jury trials. They should be able to refine these costs with the new staff management system.

Secretary Brasher asked about the lawsuit for judges to get a raise. What was the total amount of the raise?

Justice Nakamura stated she did not know. She just received information regarding the Odyssey software revenues. She introduced Ms. Debra Dungan the Attorney Administrative Assistant to the Chief Justice.

Ms. Dungan said that she spoke with Oscar Arevelo, and the IT Director. The filing and serve fees through Odyssey were $1.4 million for 2016. The contract has a cap, anything above a specific amount goes to the courts. Tyler Technology operates the system. $184,000 was transferred to the courts and earmarked for judiciary IT needs. A fee increase was implemented in January, they don’t have projections of the revenues.

Lt. Governor Sanchez excused himself from the meeting.

Treasurer Eichenberg asked how the deficiency was reported, did it appear on the audit report.

Secretary Rodriguez replied that there was a finding in AOC’s audit, stating they used current appropriations to pay prior fiscal year obligations.

Treasurer Eichenberg asked why AOC did not come to SBOF for the shortfall last year.

Justice Nakamura said they knew they had the appropriation and it was a matter of timing as the last session was 30 days.

Treasurer Eichenberg asked if AOC knew they were in arrears at the beginning of the fiscal year, why did they wait so long to come to SBOF for funds.

Mr. Duran replied the deficit last fiscal year was about $697,110 but they knew the appropriation bill was signed. Right now they don’t have an appropriation bill signed and they will run out of funds in March.

Treasurer Eichenberg indicated AOC started the last two fiscal years in the red, they are obviously underfunded. Why is the request only for $600,000?
Justice Nakamura answered that they thought they could work out the deficit through supplemental and deficiency funding from the legislature. They believed they would have the deficiency funding by this point in time.

Governor Martinez stated that you would think this could have already been taken care of in the session.

Mr. Archuleta mentioned when the AOC came to the Board in December, for this deficiency, the Board referred them to the legislature because SBOF’s emergency policy states “an emergency means an unforeseen occurrence severely affecting government services and requiring funds that a) is not within the available resources of the entity and b) if subject to appropriation, cannot await appropriation by the next legislature.” SBOF should not take the place of the legislature. The emergency funds should be used for emergencies when legislature is not in session. When is the drop date that the funds are needed to avoid cancelling juries?

Justice Nakamura replied that juries are already scheduled. In order to cancel a hearing they must give a 2-week notice. They would need to fill in dockets with non-jury trials. The drop dead date is really today. If they wait, they will waste money because some witnesses have purchased plane tickets. There is a courtesy aspect regarding cancellation notices as well.

Mr. Kormanik asked if the Justice could assure the Board that all expenditures from the Jury and Witness fund are legal.

Justice Nakamura said the same question came up yesterday, they were asked why some staff are being paid from the Jury and Witness fund. The AOC is tasked with administrating by statute. She believes these staff payments are legal.

Mr. Kormanik asked Secretary Rodriguez if a legal analysis is being completed.

Secretary Rodriguez confirmed a legal analysis on this issue is currently underway.

Justice Nakamura stated interpreters used to be paid from the fund as contractors. These interpreters are now staff members, which is more cost effective.

Governor Martinez asked Mr. Kormanik for clarification, is he talking about staff or interpreters?

Mr. Kormanik responded that he did not know the specifics but heard there were allegations that some of the fees paid from this fund were potentially illegal.

Justice Nakamura replied that interpreters are a legal expense by Statute. If someone knows otherwise, they need to let AOC know.

Governor Martinez reviewed the list of expenses paid from the fund and agreed they appear correct.

Mr. Aragon stated that AOC’s problem is systemic. This is not a judge or justice issue. The first year he was on the Board, AOC requested emergency funds and stated it was the legislature’s fault they were underfunded. In 2009 and 2010, the AOC requested emergency funds from the SBOF. It really is not an emergency if this is a recurring problem. How has AOC under shot their budget requests every year for
over eight years? It is not emergent if it happens every year. It has been the same problem with the same AOC staff but has transcended Governors. Why hasn't the person running AOC gone to the legislature to address these recurring issues? Other state agencies that have had budget issues go to the legislature to fix the problem. Mr. Aragon asked Governor Martinez how many times AOC has requested emergency funds from the SBOF since 2009?

Responding to Mr. Aragon’s question, Governor Martinez said AOC came to the SBOF for emergency funds multiple times: in June of 2009, $160,000 was approved; in April of 2010, the Board approved $250,000 for the Jury and Witness fund, they requested $450,000; in June of 2011, AOC requested an extension to the term of an existing loan in the amount of $1.478 million; in July of 2012, AOC requested that the $1.478 million loan be converted into a grant, (this loan consisted of 6 prior emergency requests); in July of 2013, the Board approved $2,600 for a judge pro tem; in May of 2014, $463,942 was approved for the Jury and Witness fund; in May of 2015, a $750,000 request for Magistrate Court leases was denied; in December of 2016, the Board approved $21,054 for the Court of Appeals to avoid furloughs.

Mr. Aragon suggested AOC needs to make changes. He did the math of the 180,000 Odyssey filings and it does not make sense. The auditor should double check the number of filings. He would suggest a complete audit of all AOC. About the parking structure in Albuquerque, the taxpayers paid for the structure. Is the court paying to park elsewhere?

Treasurer Eichenberg left the meeting.

Secretary Brasher stated that at the December meeting Mr. Pepin mentioned the speedy trial requirements under the Case Management Order have increased expenses. This is an issue that needs to be addressed. With regards to the Albuquerque parking structure at the Metro Court, what is happening with that revenue?

Justice Nakamura replied the parking structure is owned by the Metro Court and a private partner. The revenue is shared so everyone pays for parking. The Metro court gets a discount. The AOC paid $114,682 for jury parking so far in this fiscal year, July to December.

Secretary Brasher asked how Metro Court uses the parking revenues.

Justice Nakamura answered that the parking revenues are used to pay bonds. Jury members are required to park in court approved areas or they are not reimbursed. She told the Board that AOC will prepare a report of the Odyssey software and revenues.

Secretary Brasher thanked Justice Nakamura and said it was a pleasure working with her, and she has made a significant contribution to the court system.

Mr. Archuleta stated he appreciates the Justice’s service to the State. It is the duty of the Board to follow the statute and the SBOF policies. SBOF has limited emergency funds, there are water and fire emergencies that seek these funds. The legislature is responsible for funding the courts. He encourages the AOC to familiarize themselves with all their funds and the shortfalls, then work with the legislature to get wholly funded for the entire year. Underfunding the agency and continuing to ask SBOF for emergency funds every year is not the way to move forward. Let's give the legislature an opportunity to do their job. He is prepared to make a motion.
Governor Martinez mentioned that when the AOC Director requested funds in December, he requested funds for the 12th Judicial District as well, what happened to this request?

Justice Nakamura responded that the issue with the 12th Judicial District is not limited to that district. They are closing some courts half of the day. Not just the 12th District. The staff is working the full day but they are closed to the public for half the day, to give staff an opportunity to catch up on the work. She noted that if funding were provided to the 12th District, other Districts would need funding as well. They decided to withdraw the request.

Mr. Aragon mentioned there is a House Bill sponsored by Representative Nate Gentry that contemplates funding the courts at 3 percent of the total general fund appropriation. Would that work?

Justice Nakamura replied that the judiciary currently receives 2.58 percent of the general fund and they are underfunded. At 3 percent, that would be $35 million to $40 million, which would definitely solve the problem.

Mr. Archuleta made a motion to approve a loan not to exceed $600,000 to the AOC for the Jury and Witness Fund at a zero percent interest rate. If legislation is not enacted into law to appropriate the funds for this request, then the loan will automatically convert into a grant.

Secretary Brasher added to the motion that DFA will continue to work with the AOC to review their budgeting processes and procedures. Mr. Aragon seconded the motion, which passed 5-0.

ADJOURNMENT

Its business completed, the State Board of Finance adjourned the meeting at 11:27 a.m.

Susana Martinez, President

Date

Michael Brasher, Secretary

Date