# NEW MEXICO STATE BOARD OF FINANCE

## SPECIAL MEETING

## Santa Fe, New Mexico

**August 18, 2025**

A regular meeting of the New Mexico State Board of Finance was called to order on this date at 10:00 a.m. in the Governor's Small Cabinet Room, fourth floor, State Capitol Building, Santa Fe, New Mexico.

### 1. ROLL CALL -- QUORUM PRESENT

**Members Present:**
The Hon. Laura M. Montoya, New Mexico State Treasurer
Mr. Michael S. Sanchez, Secretary, Public Member, Secretary
Mr. Paul Cassidy, Public Member
Mr. Joseph Lujan, Public Member
Ms. Wendy Trevisani, Public Member [virtual] [signed off at 10:40 a.m.]

**Members Excused:**
The Hon. Michelle Lujan Grisham, President
The Hon. Howie Morales, Lt. Governor

**Staff Present:**
Ms. Ashley Leach, Director
Mr. Marcos B. Trujillo, Deputy Director
Mr. Blaine Moffatt, Board Counsel
Mr. Roberto Vasquez, Board Administrator

### 2. APPROVAL OF AGENDA

**Treasurer Montoya moved approval of the agenda. Member Cassidy seconded the motion, which passed unanimously.**

3. **APPROVAL OF MINUTES: July 15, 2025, Regular Meeting**

**Member Cassidy moved approval of the July 15, 2025, minutes. Member Lujan seconded the motion, which passed unanimously.**

**EMERGENCY FUNDING**

Presenters: Bernardine Martin, District Attorney, 11th Judicial District; Johanna Cox, Contract Attorney, 11th Judicial District

4. **11th Judicial District Attorney—Requests Approval of an Emergency Operating Grant for FY26 Budget Shortfalls ($3,800,000)**

Ms. Cox reported that, since the last State Board of Finance Meeting, the parties participated in a mediation process. An intergovernmental agency MOU has been circulated to address things through the end of September. While the overall challenges have not yet been rectified, it allows for funding of all staff positions and part of the contract attorney position and expenses through September 26. There is no resolution to address the finances for Division 1 and Division 2 after that date.

Ms. Cox stated that, after September 26, the salaries for the employees and the expenses not covered by the MOU transfer will remain outstanding. She said Division 1 District Attorney Fortner, who is present, can address whether there is a way to get that portion of the budget covered with the appropriation that was given to Division 1. What hasn't been resolved is how the contract attorneys will function between the two offices.

Mr. Fortner said the way the funding was originally intended was that all employees of Division 2 would become employees of Division 1 so that they would not lose their seniority or have to go back on probation. He said his office has made arrangements to take on those cases. Mr. Fortner said he and members of his staff met with Ms. Martin in Gallup to discuss the transition; at that time, Ms. Martin had filed a writ of mandamus with the New Mexico Supreme Court, which was denied. The following day, Ms. Martin filed a complaint in the Santa Fe District Court asking for certain relief. Mr. Fortner commented that, in his opinion, no court has the authority or ability to re-legislative funds.

Mr. Fortner said he and Ms. Martin, with mediator Denise Torres reached a tentative agreement that was signed by Ms. Martin that provides funding until the end of September. He noted that Governor Lujan Grisham has asked the Attorney General to remove Ms. Martin if she does not cooperate.

Mr. Fortner said he met with the city attorney and police chief of Gallup, who gave him a list of about 70 cases that they asked him to start handling right away. He said he could not take those cases with Ms. Martin's cooperation. He said the head of the juvenile probation office oversees San Juan and McKinley counties, and there are 48 cases they have asked him to file that Ms. Martin failed to file. He said the statute has since expired on some of them. In addition, on July 3 there were seven cases that were dismissed from the magistrate court for failure to appear.

Mr. Fortner stated that, despite not having the funding, Ms. Martin has continued to assign cases to Ms. Cox to prosecute. His office is receiving the bills for that, but since Ms. Cox has not submitted an RFP to his office, his office has not been able to pay them. He said he believed this was in violation of the Procurement Code. He noted that about 20-30 cases on the invoice happened after July 1.

Member Sanchez reminded Mr. Fortner that the board was here to determine whether or not there is an emergency.

Mr. Fortner said there is not a need for emergency funding, since his office is transferring money to Ms. Martin so she can pay her employees and overhead expenses to the end of September. If funding is needed for the attorneys, he and Ms. Martin only need to agree on how that is to be done. There is not a lack of funding; there is a lack of cooperation.

Ms. Leach stated that the summary of the MOU provides for funding through the end of September for 20 support staff and expenses, but not for contract attorneys.

Treasurer Montoya said the big issue for her is that this is an elected office that didn't get their funding in order to fulfill their required duties as approved by the voters. She said whether the district attorney is impeached or not is irrelevant, since the office is required to fulfill the job duties for the people they serve. She said she found it "disgusting" that one county has oversight over another county that is mostly Navajo, with one being very red and the other very blue. She said the legislature overstepped their authority. She asked the Board to fund them at least until January, when the legislature can meet and provide the rest of the year's funding. She said she saw this as an emergency because cases involving abused and raped children are not being addressed in the meantime.

Member Cassidy said he wanted to remind everybody that the Board is given $4 million to address legitimate emergency cases around the state for an entire fiscal year, which has only just begun. He stated that this is not an emergency because the money is already available. He commented that this request has been thrown in the Board's lap when it shouldn't have been. If the Board decides to grant this request, it would be re-appropriating money that has already been appropriated by the legislature.

Responding to Member Lujan, Ms. Martin and Mr. Fortner indicated that they would be willing to continue the mediation process.

Responding to Treasurer Montoya, Ms. Cox said they have a Code of Ethics, which means she is not allowed to withdraw from any of the cases assigned to her prior to July 1. She has not been paid for that. She also has a contract with Ms. Martin's office that was from an RFP from a previous year, and she cannot withdraw from that. Because the money is there and hasn't been released to be paid to contract attorneys, she is contractually and ethically bound to continue to prosecute cases.

Member Cassidy asked whether nonpayment to the contract attorneys for this fiscal year and the prior fiscal year can be resolved through mediation. Mr. Fortner responded yes. He said significant progress has already been made by agreeing to make certain payments through the first quarter of the fiscal year. The agreement includes paying the contract attorneys for work before July 1, and that will continue. Regarding cases after July 1, those would have to be done through an RFP. Since Ms. Martin gave those cases to Ms. Cox without consulting his office, he believed that was in violation of the Procurement Code. He said his office would have to figure out with DFA how those can be paid.

Ms. Cox said that, because of the way the appropriation was done in March, there are some challenges with RFPs from one agency being issued for another. She said one executive agency cannot issue an RFP for another executive agency. The challenge is making sure that the RFP is properly issued.

Regarding comments by Treasurer Montoya regarding the voters, Ms. Cox said that, in 1993, the State of New Mexico reached a settlement agreement with voters in San Juan County and McKinley County that addressed the separate elections of the district attorneys, court judges and magistrates. The settlement set up the separate district attorneys' offices and allowed them to be accountable to their counties. Some of these legal issues are now potentially in violation of that settlement agreement.

Member Sanchez stated that, to him, the emergency has kind of been resolved and it is now a situation where both parties seem to be working toward an ultimate solution to this problem without a need for the Board to decide. He said his position had not changed, which is that the Board should not be involved in this issue because it would set a bad precedent.

**Member Cassidy moved to deny this request. Member Lujan seconded the motion, which passed, with Treasurer voting against. [Ms. Trevisani was not present.]**

Member Cassidy said that the money has already been appropriated by the legislature, and the Board does not have the funding to grant this request.

Treasurer Montoya said she has been on this Board for three years, and in that time the Board has never declined an emergency request because of the fear of not having enough money for other emergencies. While the funding is available somewhere, it is not in that elected office, and for that reason it is an emergency for the victims, employees, and the precedent being set for not allowing any funding at all to get them through the mediation process.

**ADJOURNMENT: 10:55 a.m.**

Michelle Lujan Grisham

Michelle Lujan Grisham, President

9-17-25

Date

Michael S. Sanchez

Michael S. Sanchez, Secretary

Sept. 17, 2025

Date