Minutes of the New Jersey Health Care Facilities Financing Authority meeting held on March 26, 2009 on the fourth floor of Building #4, Station Plaza, 22 South Clinton Avenue, Trenton, New Jersey.

The following **Authority Members** were in attendance:
Gus Escher, Public Member (chairing the meeting); Ulysses Lee, Public Member (via telephone); Maryann Kralik, Designee of the Commissioner of Banking and Insurance; William Conroy, Designee of the Commissioner of Health and Senior Services; and, Eileen Stokley, Designee of the Commissioner of Human Services (via telephone).

The following **Authority staff members** were in attendance:
Mark Hopkins, Dennis Hancock, Steve Fillebrown, Suzanne Walton, Lou George, Carole Conover, Barbara Shinn, Michael Ittleson, Bill McLaughlin, and Stephanie Bilovsky.

The following **representatives from State offices and/or the public** were in attendance:
Randy Nelson, Ernst & Young; Jim Fearon, Gluck Walrath; and Clifford T. Rones, Office of the Attorney General.

CALL TO ORDER

Gus Escher called the meeting to order at 10:03 a.m. and announced that this was a regular meeting of the Authority, held in accordance with the schedule adopted at the May 22, 2008 Authority meeting. Complying with the Open Public Meetings Act and the Authority's By-laws, notice of this meeting was delivered to all newspapers with mailboxes at the Statehouse, including *The Star-Ledger* and the *Courier Post,* enough in advance to permit the publication of an announcement at least 48 hours before the meeting.

APPROVAL OF MINUTES

February 26, 2009 Authority Meeting

Minutes from the Authority's February 26, 2009 meeting were presented for approval. Mr. Conroy made a motion to approve the minutes; Ms. Kralik seconded. Mr. Escher voted yes, Mr. Lee voted yes, Ms. Kralik voted yes, Mr. Conroy voted yes, and Ms. Stokley voted yes. The minutes were approved.

AUDIT COMMITTEE REPORT

Authority's 2008 Audit

Bill Conroy reported that Randy Nelson, Executive Director at Ernst &Young, presented the Authority's 2008 Audit to the Audit Committee on March 10th, 2009. In a follow up meeting on March 16th, the Committee voted to approve the audit. Further, the Committee recommends the Authority's approval of the 2008 Audit, as well as its submission to the Governor, members of the Legislature, the Secretary of State, and the Comptroller of the Treasury by March 31st, as is required by the Authority's enabling legislation.

Mr. Conroy then highlighted a few key aspects of the 2008 audit. He stated that he was pleased to report that Ernst & Young found no problems with the Authority's internal controls. In fact, Mr. Nelson had commended the Authority's high regard for internal controls, which is a result of knowledgeable Authority staff supported by firm Authority policies and procedures. Because of these strong internal controls, Ernst & Young felt no need to prepare a Letter to Management with this audit since there were no areas of concern that required identification for improvement.

Further, Ernst & Young's audit of the 2008 financials found:

- No unusual Authority transactions,
- No unrecorded audit differences,
- No fraudulent or illegal acts,
- No material weaknesses,
- No internal controls concern, and
- No difficulties with management.

One of the major differences between the Authority's 2008 financials and 2007 financials is a large transfer of funds from investments put into cash and cash equivalents, primarily due to the Authority's funding of the Other Post-Employment Benefits ("OPEB") Trust in 2008.

Also, Operating Income increased from $91,000 in 2007 to $250,000 in 2008, largely due to the reduction of fees paid to Navigant Consulting in 2007 for the *Commission on Rationalizing New Jersey's Health Care Resources*. The Authority's Net Assets also continue to show gradual consistent increases year to year, which Mr. Nelson had noted is particularly impressive in this tough financial environment.

Mr. Conroy then commended the Authority's Division of Operations and Finance for another year of outstanding work.

Mr. Escher asked if it is uncommon to have an audit without a letter to management, and Mr. Nelson replied that his team has performed several such audits, especially among smaller agencies with low turnover and uncomplicated systems like this Authority. He added that a letter to management is often the result of new accounting standards taking effect. However, when there are new accounting standards, Mr. Nelson proactively calls Jim Van Wart or Mike Ittleson during the year to prepare the Authority for these standards. Also, on several occasions, Mr. Ittleson has called Mr. Nelson's team with questions. As a result, many of these adjustments are handled throughout the year rather than at the time of the audit.

Mr. Conroy and Mr. Escher congratulated the Authority's Operations and Finance Division once again for the good audit. Then, Mr. Conroy made a motion to authorize the 2008 Audit's approval and submission to the Governor, members of the Legislature, the Secretary of State, and the Comptroller of the Treasury by March 31st, as is required by the Authority's enabling legislation. Mr. Escher seconded. The vote was unanimous and the motion carried.

AB RESOLUTION NO. II-65

NOW, THEREFORE, BE IT RESOLVED, that the Authority hereby approves the 2008 Audit and authorizes its submission to the Governor, members of the Legislature, the Secretary of State, and the Comptroller of the Treasury by March 31st, as is required by the Authority's enabling legislation.

MODIFICATIONS TO THE AUTHORITY'S QUALIFIED BANKERS LIST

Mr. Escher stated that on the table are two recommendations from staff, noted in two memos from Dennis Hancock, for modifications to the Authority's Qualified Bankers list.

The first recommendation relates to a request from Doley Securities, LLC to be included as a co-manager on the Authority's list of approved bankers. Mr. Escher stated that, according to staff, the information submitted by Doley Securities indicates that the firm is qualified under the Authority's standards to serve as co-manager. However, while the firm has been in existence for over 25 years and is the nation's oldest African American owned and operated investment banking firm, Doley's total assets are just over a million dollars, so their underwriting capabilities are limited. Therefore, staff recommends that, in approving Doley's addition as co-manager, the Authority's Executive Director be authorized to limit Doley's participation to an amount appropriate for the firm's capital structure, which will change over time.

The second recommendation from staff is to remove Butler Wick & Co. from its approved list of Qualified Bankers since the major members of Butler Wick's public finance team left the company following Butler Wick's acquisition by Stifel, Nicolaus & Co.

Ms. Kralik asked for clarification of the limitation on Doley's participation, to which Mr. Hopkins stated that staff would consider the firm's total assets at the time of their appointment to a transaction and then determine with the senior manager how much exposure would be allocated to Doley as a co-manager.

Mr. Lee asked if this type of limitation had been approved in the past by the Authority. Mr. Hancock replied that it is the Authority's practice to evaluate the asset levels of smaller-sized co-managers when determining their participation in a transaction; however, it may not have been formally stated in past resolutions. Mr. Lee asked if the level of participation would be re-evaluated allowing for a change in the firm's asset levels. Mr. Hancock stated that, whenever the firm is newly appointed to a transaction, staff would inquire about their total assets in order to ensure that their participation levels are appropriate for their current asset level at that time. This will ensure that the Authority does not give more liability than a given firm can reasonably handle.

Mr. Hopkins added that, in selecting the co-managers, the Executive Director and the Director of Project Management work together to find appropriately-sized transactions for the co-managers. Mr. Escher added that, in this highly fluid, highly managed industry, the staff at Doley will also be working to ensure that their liability levels are appropriate; therefore, this is added protection.

Mr. Lee made a motion to modify the Authority's Qualified Bankers list as recommended by staff, to add Doley Securities, LLC as co-manager (with the limitation caveat) and remove Butler Wick & Co. Mr. Escher seconded. The vote was unanimous and the motion carried.

AB RESOLUTION NO. II-66

NOW, THEREFORE, BE IT RESOLVED, that the Authority hereby adds Doley Securities, LLC to the Authority's Qualified Bankers List to serve as co-manager for Authority transactions, adding that the Authority's Executive Director be authorized to limit their participation to an amount appropriate for the firm's capital structure, which will change over time; and,

BE IT FURTHER RESOLVED, that, the Authority removes Butler Wick & Co. from its approved list of Qualified Bankers following its acquisition by Stifel, Nicolaus & Co.

AUTHORITY EXPENSES

Mr. Conroy made a motion to approve the referenced summary of Authority expenses and invoices; Mr. Escher seconded. The vote was unanimous and the motion carried.

AB RESOLUTION NO. II-67

> **WHEREAS,** the Authority has reviewed memoranda dated March 19, 2009, summarizing all expenses incurred by the Authority in connection with FHA Mortgage Servicing, Trustee/Escrow Agent/Paying Agent fees, and general operating expenses in the amounts of $196,380.04, $38,926.25 and $21,616.48 respectively, and has found such expenses to be appropriate;
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> **NOW, THEREFORE, BE IT RESOLVED,** that the Authority hereby approves all expenses as submitted and authorizes the execution of checks representing the payment thereof.

STAFF REPORTS

Mr. Escher thanked staff for their preparation of staff reports, including the Project Development Summary, Cash Flow Statement, and Legislative Advisory. Mr. Hopkins then offered the following items in his Executive Director's Report:

1. Authority Members and Senior Staff are required to file Financial Disclosure Statements with the State Ethics Commission by no later than May 15, 2009. Filings must be made electronically through the State Ethics Commission website. Late filers will be subject to a fine of up to $50 per day. Staff will provide each Authority Member with a link to the website by e-mail. Authority Members are only required to file the somewhat less onerous disclosure for Public Officers. The Designees are not required to file this disclosure, and the commissioners should have fulfilled this disclosure requirement by filing as a Public Employee.
2. The Governor delivered his budget address on March 10th. The State's disclosure for official statements is expected to be ready shortly. This will clear the way for the Authority to market the Hospital Asset Transformation Bonds for Solaris Health System as soon as Solaris and the Underwriter are ready.
3. On March 23rd, Governor Corzine signed legislation amending the original Codey Law restrictions on ambulatory surgery centers. The bill requires all existing ambulatory surgery centers to register with the Department of Health and Senior Services within one year and requires all facilities opened after the effective date to obtain a license and register with the Department. As a condition of registration, ambulatory surgery centers must obtain certification from the Centers for Medicare and Medicaid Services or an accredited body recognized by CMS. Registered ambulatory surgery centers will be required to report certain information to the Department including staffing levels, patient volumes, and the number of Medicaid-eligible or indigent served.

They will also be required to comply with corresponding Department regulations. New licenses for ambulatory surgery centers will be strictly limited to one of several circumstances, including those that are jointly owned by a hospital or medical school, transfers of ownership and limited relocations. The law changes the limitations on physician referrals to ambulatory surgery centers in which the physician or his or her immediate family hold a beneficial interest.

Mr. Hopkins clarified that this essentially means it is unlikely the State will approve new ambulatory surgery centers unless they are affiliated with hospitals or medical schools. This change developed because a large number of privately-owned ambulatory centers have been providing services to paying customers without providing their share of charity care or Medicaid services. This, in turn, hurts the hospitals financially. There are as many as 100 of these centers in New Jersey. While they are taxed and those funds go towards charity care reimbursement, the tax was only recently established and is small and capped.

4. Ed Tetelman, Public Guardian and long-serving former designee to the Authority under both the Commissioners of Human Services and Health & Senior Services, retires this month. Mr. Hopkins, Mr. Fillebrown, Mr. Escher and Ms. Stokley will be attending his retirement dinner.
5. In hospital news, St. Mary's Hospital filed for Chapter 11 bankruptcy on March 9th, 2009. Authority staff and the Attorney General's office are actively involved in the proceeding, which will be discussed in further detail during executive session.
6. In Authority news, Barbara Shinn has been engaged from J & J Staffing to serve as the temporary administrative assistant in the Project Management Division. Among her employment experiences are over 28 years as a legal secretary at the Philadelphia law firms of Ballard Spahr Andrews & Ingersoll and Schnader Harrison Segal & Lewis.

   Staff has also advertised on Craig's List for a Compliance Manager for a one year assignment to fill some of the responsibilities normally handled by Susan Tonry. Some qualified resumes have been received, but staff decided to expand the advertising to Career Builder at a listing cost of $419. Staff hopes to hire someone by mid to late April. In the meantime, Suzanne Walton and Taryn Jauss have been handling some of Ms. Tonry's duties, with others being handled by Senior Staff.

This concluded the Executive Director's report.

EXECUTIVE SESSION

Mr. Escher asked the Members to meet in Executive Session, as permitted by the Open Public Meetings Act and the Authority's By-Laws, to discuss litigation, receive advice from the Attorney General's office, and discuss matters related to personnel. Mr. Lee offered a motion to meet in Executive Session; Ms. Stokley seconded the motion. The vote was unanimous and the motion carried. Mr. Escher noted that the results of this discussion will be made public when the need for confidentiality no longer exists.

AB RESOLUTION NO. II-68

NOW, THEREFORE, BE IT RESOLVED, that, as permitted by the Open Public Meetings Act and the Authority's By-Laws, the Authority meet in Executive Session to discuss litigation, receive advice from the Attorney General's office, and discuss matters related to personnel;

BE IT FURTHER RESOLVED, that the results of discussions may be made known at such time as the need for confidentiality no longer exists.

Public session reconvened. Mr. Escher stated that, in Executive Session, Members discussed a proposed Donated Leave Program. Ms. Kralik offered a motion to adopt the Donated Leave Program as outlined in the Executive Director's memo that had been provided to the Members in the mailing for the meeting. Ms. Stokley seconded the motion. The vote was unanimous and the motion carried.

AB RESOLUTION NO. II-69

NOW, THEREFORE, BE IT RESOLVED, that, the Authority hereby adopts a Donated Leave Program (*details attached*), which is consistent with the New Jersey Administrative Code Title 4A:6-1.22, effective immediately.

Under new business, Mr. Conroy noted that AtlantiCare has contracted to operate a satellite facility at the site of the former William B. Kessler Memorial Hospital in Hammonton. He asked if the Authority is aware of any involvement between AtlantiCare and Kessler, to which staff replied that they were unaware of any involvement. It was discussed that the Kessler facility is small in size and had emerged from bankruptcy a few years ago and, following ownership interests from various doctors that have since fallen through, the facility appears to be heading towards bankruptcy once again. It was noted that Hammonton's Kessler is not affiliated with the Kessler rehabilitation facilities of East Orange.

Ms. Stokley exited the meeting. As there was no further business to be addressed, Mr. Escher moved to adjourn the meeting, Mr. Lee seconded. The remaining members voted unanimously to adjourn the meeting, following a motion by Mr. Escher and a second by Mr. Lee, at 11:15 a.m.

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY OF MINUTES OF THE NEW JERSEY HEALTH CARE FACILITIES FINANCING AUTHORITY MEETING HELD ON MARCH 26, 2009.

Dennis Hancock
Assistant Secretary

See AB RESOLUTION NO. II-69

Proposed Donated Leave Program

For the NJ Health Care Facilities Financing Authority

Authority employees shall be eligible to receive donated sick or vacation leave if the employee:

1. Has completed at least one year of continuous Authority service;
2. Has exhausted all accrued sick, vacation and administrative leave, and all compensatory time**;**
3. Has not, in the two-year period immediately preceding the employee's need for donated leave, been disciplined for chronic or excessive absenteeism, chronic or excessive lateness or abuse of leave; and
4. Either:

- Suffers from a catastrophic health condition or injury
- Is needed to provide care to a member of the employee's immediate family who is suffering from a catastrophic health condition or injury; or

For purposes of this section, a "catastrophic health condition or injury" shall be defined as follows:

1. With respect to an employee, a "catastrophic health condition or injury" is either:

- A life-threatening condition or combination of conditions; or
- A period of disability required by his or her mental or physical health or the health of the employee's fetus which requires the care of a physician who provides a medical verification of the need for the employee's absence from work for 60 or more work days.

2. With respect to an employee's immediate family member, a "catastrophic health condition or injury" is either:

- A life-threatening condition or combination of conditions; or
- A period of disability required by his or her mental or physical health which requires the care of a physician who provides a medical verification of the need for the family member's care by the employee for 60 or more work days.

For purposes of this section, an "immediate family member" shall be defined as follows:

1. An employee’s spouse, domestic partner, child, legal ward, grandchild, foster child, father, mother legal guardian, grandfather, grandmother, brother, sister, father-in-law, mother-in-law, and other relatives residing in the employee’s household.

Employees may request that the Authority approve his or her participation in the program, as a leave recipient or leave donor. The employee's supervisor may make such a request on behalf of the employee for his or her participation in the program as a leave recipient.

1. The employee or supervisor requesting the employee's acceptance as a leave recipient shall submit to the Authority medical verification from a physician or other licensed health care provider concerning the nature and anticipated duration of the disability resulting from either the catastrophic health condition or injury, as the case may be.

2. When the Authority has approved an employee as a leave recipient, the Authority shall, with the employee's consent, post or circulate the employee's name along with those of other eligible employees in a conspicuous manner to encourage the donation of leave time.

   - If the employee is unable to consent to this posting or circulation, the employee's family may consent on his or her behalf.

A leave donor shall donate only whole sick days or whole vacation days and may not donate more than 10 such days to any one recipient.

1. A leave recipient shall receive no more than 180 sick days or vacation days, and shall not receive any such days on a retroactive basis.

2. A leave donor shall have remaining at least 20 days of accrued sick leave if donating sick leave and at least 12 days of accrued vacation leave if donating vacation leave.

3. A leave donor shall not revoke the leave donation.

While using donated leave time, the leave recipient shall accrue sick leave and vacation leave and be entitled to retain such leave upon his or her return to work.

1. Any unused, donated leave shall be returned to the leave donors on a prorated basis upon the leave recipient's return to work, except that if the proration of leave days results in less than one day per donor to be returned, that leave time shall not be returned.

2. Upon retirement, the leave recipient shall not be granted supplemental compensation on retirement for any unused sick days which he or she had received through the leave donation program.

The employee shall be prohibited from threatening or coercing or attempting to threaten or coerce another employee for the purpose of interfering with rights involving donating, receiving or using donated leave time. Such prohibited acts shall include, but not be limited to, promising to confer or conferring a benefit such as an appointment or promotion or making a threat to engage in, or engaging in, an act of retaliation against an employee.

The Authority may suspend or terminate the donated leave program at any time upon 30 days written notice of such suspension or termination to the Commissioner and all affected employees.