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## FISCAL IMPACT REPORT

**SPONSOR** Hall/DM Gallegos/ **ORIGINAL DATE** 9/30/2016  
Rehm **LAST UPDATED** 10/5/2016 **HB** 8/aHAFC

**SHORT TITLE** Transfer & Distribute Tobacco Settlement Fund **SB** \_\_\_\_\_

**ANALYST** Armstrong

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		
(\$131,000.0)	(\$88,400.0)		Nonrecurring	Tobacco Settlement Permanent Fund
	(\$58,269.8)		Nonrecurring	Other State Funds
	(\$14,500.0)		Nonrecurring	N.M. Finance Authority Public Project Revolving Fund
	(\$10,000.0)		Nonrecurring	Legislative Retirement Fund
	(\$16,100.0)		Nonrecurring	Prior MOE Appropriations to PED
\$131,000.0	\$187,269.8		Nonrecurring	General Fund Appropriation Account

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to SB2

### SOURCES OF INFORMATION

LFC Files

**SUMMARY**

Synopsis of HAFC Amendment

The House Appropriations and Finance Committee amendment to House Bill 8 increased transfers to the general fund by \$21.3 million, including \$9.8 million from various other state funds, a \$1.5 million increase in transfers from the New Mexico Finance Authority (NMFA), and \$10 million from the legislative retirement fund.

Synopsis of Original Bill

House Bill 8 restores general fund operating reserve balances and supports spending for FY16 and FY17 through transferring cash balances from other state funds, including the tobacco settlement permanent fund, to the general fund.

**FISCAL IMPLICATIONS**

The bill transfers the following amounts to the general fund appropriations account:

- \$58.3 million from various accounts in the treasury (see below)
- \$219.4 million from the tobacco settlement permanent fund, including an estimated \$131 million to restore the FY16 appropriations account and transferring the remaining amount to the FY17 appropriation account to cover appropriations
- \$16.1 million from unspent prior appropriations for possible maintenance of effort requirements by the Public Education Department
- \$14.5 million in residual balances from the public project revolving fund after the New Mexico Finance Authority satisfies all bond payment requirements
- \$10 million from the legislative retirement fund

**Table 1. Transfers from Other State Funds  
(in thousands of dollars)**

Agency Name	Fund Name	HB8	HAFC Amend
Legislature	General - Legislative Cash Balances	\$1,000.0	\$2,000.0
Administrative Office of the Courts	Municipal Court Automation Fund	\$100.0	\$100.0
Administrative Office of the Courts	Special Water Rights Adjudication Fund	\$100.0	\$100.0
Department of Finance and Administration	Local DWI Grant Fund	\$3,645.0	\$3,645.0
Department of Finance and Administration	911 Enhancement	\$6,000.0	\$6,000.0
Department of Finance and Administration	Capital Projects Fund	\$632.6	\$632.6
Public School Insurance Authority	Risk Fund	\$5,000.0	\$5,000.0
General Services Department	Various Funds	\$9,100.0	\$12,100.0
Regulation and Licensing Department	Various Funds	\$6,082.7	\$6,082.7
Regulation and Licensing Department	Board of Dental Care Fund	\$598.8	\$598.8
Regulation and Licensing Department	Board of Pharmacy Fund	\$1,465.9	\$1,465.9

Agency Name	Fund Name	HB8	H AFC Amend
Medical Board	New Mexico Medical Board Fund	\$500.0	\$500.0
Board of Licensure for Professional Engineers and Professional Surveyors	Prof. Engineer's and Surveyor's Fund	\$2,944.8	\$2,944.8
Department of Cultural Affairs	Art in Public Places Balances Pre-2005	\$-	\$2,500.0
Livestock Board	Livestock Inspection Fund	\$500.0	\$500.0
Workers Compensation Administration	Workers Compensation Administration Fund		\$1,000.0
Department of Game and Fish	Trail Safety Fund		\$300.0
Department of Health	Trauma System Fund	\$800.0	\$800.0
Environment Department	Various Funds	\$4,000.0	\$4,000.0
Higher Education Department	College Affordability Funds	\$3,000.0	\$5,000.0
Higher Education Department	Post-Secondary Education Institution Fund	\$3,000.0	\$3,000.0
<b>Total</b>		<b>\$48,469.8</b>	<b>\$58,269.8</b>

**Table 2. Transfers From Board and Commission Funds**

Board	Amount (in thousands)
Accountancy Board	\$648.1
Acupuncture Board	\$249.5
Athletic Commission Board	\$172.7
Athletic Trainers Board	\$32.5
Barber & Cosmetology Board	\$935.7
Body Art Safe Practices Act	\$249.5
Chiropractors Board	\$181.5
Counselors & Therapy Board	\$563.2
Landscape Architect Board	\$18.9
Massage Therapy Board	\$327.1
Nursing Home Admin. Board	\$56.3
Nutrition & Dietetics Board	\$60.5
Occupational Therapy Board	\$161.5
Optometry Board	\$35.8
Osteopath Examiner Board	\$57.2
Physical Therapy Board	\$329.7
Psychology Board	\$157.8
Real Estate Appraisers	\$417.6
Real Estate Commission Board	\$621.4
Respiratory Care Board	\$114.5
Social Worker's Board	\$304.0
Speech/Lang/Hearing Board	\$283.4
Thanatopractice Board	\$104.1
Professional Engineers and Surveyors Board	\$2,944.8
Pharmacy Board	\$1,465.9

Board	Amount (in thousands)
Medical Board	\$500.0
Board of Dental Care Fund	\$598.8
<b>Total</b>	<b>\$11,592.2</b>

## SIGNIFICANT ISSUES

The August consensus revenue estimate found FY16 revenues were \$223 million below estimates in February and reduced FY17 revenue projections by \$431 million. This reduced revenue requires transfers to cover the FY16 shortfall, to meet FY17 expenditures including adjustments proposed during the special session, and to provide some general fund reserve. House Bill 8 addresses solvency issues to ensure the general fund has sufficient money to cover spending in FY16 and FY17.

State Auditor’s Office (SAO) analysis of House Bill 311 (2016 regular session), which also transferred fund balances to the general fund, included a statement of best practices for managing fund balances. According to the analysis, standard financial operations typically require certain amounts of dollars to be held as fund balances to be used to offset funding gaps between fund expenditure and fund reimbursement, similar to the way a business would utilize “working capital.” Funds are also commonly used to store dollars for purposes of future spending, contingency spending, and future debt repayment similar to how a business would use various types of savings and investment accounts. However, just as with a business, agencies have a responsibility to control and minimize fund balances to put those dollars toward their intended purpose.

While part of the general fund reserves, the tobacco settlement permanent fund requires additional legislative action to access. Section 1 of this bill amends the statute governing the fund to allow the transfers included in Section 2.

House Bill 8 de-earmarks three prior appropriations, totaling \$16.1 million, to the Public Education Department (PED) which provided special education maintenance of effort (MOE) funding if other funding mechanisms were not accepted by the federal Department of Education (USDE). The state and USDE are working on a settlement to this issue.

In addition to fund sweeps, this bill transfers governmental gross receipts tax revenue that is not needed to satisfy New Mexico Finance Authority (NMFA) bond payments.

The House Appropriations and Finance Committee amendment added \$10 million from the legislative retirement fund. According to the CAFR, the public employees retirement fund is a cost-sharing, multiple employer defined benefit pension plan. This fund has six divisions of members, including State General, State Police/Adult Correction Officers, Municipal General, Municipal Police/Detention Officers, Municipal Fire, and State Legislative Divisions. The New Mexico Constitution, relating to public employee retirement system trust funds, provides that all assets accumulated may be used to pay benefits, including refunds of member contributions, to any of the plan members or beneficiaries. Therefore, since the legislative retirement fund is part of the total public employees retirement fund, there may be issues with diverting balances in the fund. While the legislative retirement fund appears to be 138 percent funded as of June 30, 2015,

the total public employee retirement fund is only about 75 percent funded and the funding period to pay off its liabilities is 41 years, longer than the desired 30 years.

According to the Public Employees Retirement Association (PERA):

The proposed “sweeping” of funds from the legislative retirement fund violates NM Const., Art. XX, Section 22, which states in pertinent part:

“All funds, proceeds, income, contributions, gifts and payments from any source whatsoever paid into or held by a public employees retirement system or an educational retirement system created by the laws of this state shall be held by the respective retirement system in a trust fund to be administered and invested by each respective system for the sole and exclusive benefit of the members, retirees and other beneficiaries of that system. Expenditures from a system trust fund shall only be for the benefit of the trust beneficiaries and for expenses of administering the system. A system trust fund shall never be used, diverted, loaned, assigned, pledged, invested, encumbered or appropriated for any other purpose.”

The proposed “sweeping” of funds from the legislative retirement fund violates NMSA 1978, Section 10-11-132, which states:

“All funds created by the state retirement acts are trust funds of which the retirement board is trustee....

All trust assets, including the legislative retirement fund, are held in trust at PERA’s custody bank, Bank of New York Mellon. These funds, while segregated for accounting purposes, are commingled with PERA’s total funds of \$14 billion.

However, the legislative retirement fund was created in 2003, after adoption of the 1998 constitutional amendment quoted above, and may not be covered by the constitutional provision regarding public employee and educational retirement systems. The Public Employees Retirement Act (Chapter 10, Article 11 NMSA 1978), defines “state legislator members” separately from other members (10-11-2.2 NMSA 1978) and establishes the legislative retirement fund as a non-reverting fund (10-11-129.1 NMSA 1978). Although included in the Public Employees Retirement Act these sections of statute could be interpreted as intent to keep the legislative retirement fund separate from and independent of other PERA funds that make up the “public employees retirement system or educational retirement system” referred to in the constitution.

## **ADMINISTRATIVE IMPLICATIONS**

Department of Finance and Administration and LFC staff worked to identify fund balances that are not budgeted and thus will not have an impact on agency operations.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The general fund will have a negative balance and will not have enough money to cover any necessary transfers should revenues not materialize in FY17. There would be no funding in the

appropriation account or operating reserve to cover legislative, special, supplemental, or information technology nonrecurring expenses and state would not have sufficient revenue to cover appropriations and would not be a balanced budget as required by the New Mexico Constitution. Finally, the general fund operating reserve will continue to have a deficit for FY16.

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