

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill No:** \*CS/SB 79

**49th Legislature, 1st Session, 2009**

**Short Title:** Fund Transfers & Appropriation Cuts

**Sponsor(s):** Senator John Arthur Smith and Others

**Analyst:** Peter B. van Moorsel

**Date:** January 29, 2009

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**SENATE FINANCE COMMITTEE SUBSTITUTE  
FOR SENATE BILL 79**

**Bill Summary:**

CS/SB 79, with emergency clause, reduces appropriations and transfer fund balances as follows (by section):

- **Section 1** – Makes the following reductions to FY 09 appropriations for the legislative branch:
  - **3.2 percent** – Legislative Council Service (LCS) and the Legislative Information System; and
  - **2.5 percent** – Legislative Finance Committee (LFC);
  - After the above reductions, the appropriations to LCS, LFC, the Legislative Education Study Committee, the House Chief Clerk, and the Senate Chief Clerk are reduced by an amount equal to **2.5 percent of the compensation appropriation to each respective agency** made in section 8 of the *General Appropriation Act of 2008*.
  - LCS is further authorized to reduce the General Fund appropriations for 2008 session expenses by up to **2.5 percent**.
- **Section 2** – Reduces by **7.3 percent** the balances of the General Fund appropriations made in Laws 2008, Chapter 6 (SB 165), commonly referred to as “HB 2 Junior,” that were unexpended on the effective date of CS/SB 79.
- **Section 3** – Authorizes the Department of Finance and Administration (DFA), in the event that a General Fund appropriation or budget is reduced and funds exceeding the amount of the reduced appropriation or budget have already been allotted to the agency receiving the appropriation, to reduce any other General Fund allotment to the agency to recoup the overallotment of the reduced appropriation or budget.
- **Section 4** – Transfers approximately \$105.1 million to the General Fund, including:
  - approximately \$40.2 million from 15 statutorily created funds;
  - \$1.0 million of the unexpended balance of funds allocated from the Water Project Fund to the Administrative Office of the Courts for water rights adjudication;
  - \$58.4 million from the Public School Capital Outlay Fund; and
  - \$5.5 million from the Public School Capital Improvements Fund.

- **Section 5** – For FY 09 and FY 10, distributes 100 percent of the annual distribution from participating tobacco manufacturers to the Tobacco Settlement Permanent Fund to the Tobacco Settlement Program Fund.
- **Section 6** – Freezes the distribution schedule of the Fire Protection Fund at the FY 08 level (13.4 percent) for FY 09 and FY 10.
- **Section 7** – Reduces appropriations made in the 2008 special session from the General Fund to the Human Services Department (HSD) for Medicaid programs.
- **Section 8** – Appropriates federal Temporary Assistance for Needy Families (TANF) funds to HSD for transfer to the Tax Administration Suspense Fund for payment of the Working Families Tax Credit.
- **Section 9** – Appropriates funds from the Tobacco Settlement Program Fund to HSD for expenditure in FY 09 for the Medical Assistance Program<sup>1</sup>.
- **Section 10** – Appropriates funds from the “Education Lock Box,” a separate account of the Appropriation Contingency Fund for the purpose of implementing and maintaining education reforms, to the State Equalization Guarantee (SEG) distribution to supplement the General Fund appropriation to the SEG distribution for FY 09.
- **Section 11** – Transfers \$55.7 million from the Tax Stabilization Reserve to the FY 09 Appropriation Account of the General Fund.

The transfer would require passage by a two-thirds majority vote in each chamber, and is contingent on a message from the Executive stating that FY 09 General Fund revenues are projected to be insufficient to meet FY 09 appropriations.

- **Section 12** – Repeals a section of law enacted in 2008 which appropriated any funds in excess of projected revenues to the Tobacco Settlement Program Fund.
- **Section 13** – Provides that sections 8 and 9 are contingent on the enactment of legislation<sup>2</sup> that reduces the General Fund appropriations in the *General Appropriation Act of 2008*.
- **Section 14** – Contains the emergency clause.

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<sup>1</sup> \*CS/HB 10, *Appropriation Reduction & Budget Adjustment* is a companion bill to \*CS/SB 79 that reduces the General Fund appropriation to the Medical Assistance Program of HSD by approximately 24.6 million.

<sup>2</sup> \*CS/HB 10, *Appropriation Reduction & Budget Adjustment* or similar legislation.

**Fiscal Impact:**

Below follows a section-by-section review of the fiscal impact of CS/SB 79.

**Section 1** – According to the LFC Fiscal Impact Report (FIR), the reductions to FY 09 appropriations for the legislative branch are approximately \$371,300.

**Section 2** – This section provides for a 2.5 percent reduction of the \$20,376,400.00 appropriation in Laws 2008, Chapter 6 (SB 165), commonly referred to as “HB 2 Junior,” as follows:

$$\mathbf{\$20,376,400.00 \times 0.025 = \$509,400}$$

**Section 3** – According to LFC, appropriations made in SB 165 for FY 09 were allotted on July 1, 2008, and DFA will reduce the allotments of other appropriations to an agency receiving an SB 165 appropriation.

**Section 4** – This section transfers cash balances from various state funds, including the Public School Capital Outlay Fund and the Public School Capital Improvements Fund, to the General Fund, as follows:

<b>Fund Name</b>	<b>Transfer to General Fund</b>
<b>State Funds</b>	
College Affordability Endowment Fund	\$14,500,000
Public Election Fund	\$1,750,000
Public Pre-Kindergarten Fund	\$800,000
Juvenile Continuum Grant Fund	\$500,000
Day-Care Fund	\$1,500,000
Telecommunications Access Fund	\$8,000,000
Corrections Department Intensive Supervision Fund	\$1,000,000
Workers' Compensation Administration Fund	\$5,000,000
Juvenile Community Corrections Grant Fund	\$3,000,000
New Mexico Youth Conservation Corps Fund	\$500,000
Board of Nursing Fund	\$1,000,000
Higher Education Endowment Fund	\$600,000
Electronic Voting System Revolving Fund	\$1,500,000
Insurance Fraud Fund	\$400,000
Motorboat Fuel Tax Fund	\$100,000
<b>Subtotal State Funds</b>	<b>\$40,150,000</b>
Water Rights Adjudication (Administrative Office of the Courts)	<b>\$1,000,000</b>
<b>Public School Capital Outlay Fund (PSCOF)</b>	
Local Match Advance Repayment Estimate	\$100,000
DCP Program Reversions	\$10,300,000
High Energy Efficiency Reversions	\$1,600,000
Project Reversions	\$39,500,000
Project Reversions 2009	\$6,900,000
<b>Subtotal PSCOF</b>	<b>\$58,400,000</b>
<b>Public School Capital Improvements Fund</b>	<b>\$5,500,000</b>
<b>TOTAL</b>	<b>\$105,050,000</b>

**Section 5** – According to the LFC FIR, the participating tobacco manufacturers’ payment to the Tobacco Settlement Permanent Fund is projected to be \$44.9 million in FY 09 and FY 10. Section 4 would require that this entire amount be transferred to the Tobacco Settlement Program Fund for those fiscal years.

**Section 6** – Current law requires that at the end of each fiscal year the remaining balance in the Fire Protection Fund revert to the General Fund. Statute further provides that, between 2007 and 2021, the General Fund reversion be phased out by increasing by 6.7 percent annually the percentage of the fund balance that is transferred to the Fire Protection Fund until no money reverts to the General Fund.

CS/SB 79 proposes freezing the distribution schedule of the Fire Protection Fund at the FY 08 level (13.4 percent) for FY 09 and FY 10, resulting in higher reversions to the General Fund for those fiscal years. According to the LFC FIR, this change would result in an additional reversion to the General Fund of approximately \$1.65 million for FY 09 and approximately \$3.3 million for FY 10.

**Section 7** – Makes a \$27.0 million reduction (\$5.5 million from \$32.5 million) to General Fund appropriations made in the 2008 special session to HSD for Medicaid programs, as follows:

<b>Purpose of Appropriation to Human Services Department:</b>	<b>Original Appropriation</b>	<b>Reduced Appropriation</b>	<b>Δ General Fund</b>
Developmental Disabilities Medicaid Waiver Program	\$10,000,000	\$4,000,000	(\$6,000,000)
Provide healthcare for children in Medicaid or state childrens' health insurance programs	\$20,000,000	\$0	(\$20,000,000)
Behavioral health services for children enrolled in Medicaid or state childrens' health insurance programs	\$2,500,000	\$1,500,000	(\$1,000,000)
<b>Total</b>	<b>\$32,500,000</b>	<b>\$5,500,000</b>	<b>(\$27,000,000)</b>

**Section 8** – Appropriates \$22.1 million in federal TANF funds to HSD for transfer to the Tax Administration Suspense Fund for payment of the Working Families Tax Credit. According to the LFC FIR, The Tax Administration Suspense Fund reverts monthly to the General Fund; and as a result this transfer would represent an increase to General Fund revenues.

**Section 9** – Appropriates approximately \$24.6 million from the Tobacco Settlement Program Fund to HSD for Medicaid.

This appropriation restores the HSD funding for this purpose that was reduced in *\*CS/HB 10 Appropriation Reduction & Budget Adjustment*.

**Section 10** – Appropriates approximately \$35.8 million from the “Education Lock Box” to the SEG distribution.

*\*CS/HB 10, Appropriation Reduction & Budget Adjustment*, is a companion bill to CS/SB 79 that reduces the General Fund appropriation for Public School Support by 2.5 percent, and further reduces the public school transportation distribution by \$4.0 million.

According to the LFC, the appropriation from the “Education Lock Box” to the SEG will result in a net 1.0 percent reduction to the SEG distribution. The General Fund Financial Summary presented by the LFC in January 2009 reports that the “Education Lock Box” currently has a balance of approximately \$67.4 million. The \$35.8 million transfer would result in a balance of approximately \$31.6 million.

The table below illustrates the effects of the reductions made in \*CS/HB 10 and CS/SB 79, and the appropriation from the “Education Lock Box” in Section 10 on the FY 09 appropriations for Public School Support and related recurring appropriations:

(dollars in thousands)	Initial Appropriation	Adjusted Appropriation	Reduction (\$)	Reduction (%)
<b>Public School Support (Reduction made in HB 10)</b>	<b>\$2,551,011.5</b>	<b>\$2,483,236.2 *</b>	<b>(\$67,775.3)</b>	<b>-2.7%</b>
<b>Related Appropriations: Recurring</b>				
PED Budget (HB 10)	\$17,135.0	\$16,483.9	(\$651.1)	-3.8%
PED Compensation (2009 GAA, Section 8) (HB 10)	\$309.3	\$301.6	(\$7.7)	-2.5%
Other Related Appropriations (HB 10)	\$37,708.4	\$36,765.7	(\$942.7)	-2.5%
SB 165 (HB 2 Jr.) (SB 79)	\$1,900.0	\$1,852.5	(\$47.5)	-2.5%
<b>Subtotal Related Appropriations: Recurring</b>	<b>\$57,052.7</b>	<b>\$55,403.6</b>	<b>(\$1,649.1)</b>	<b>-2.9%</b>
<b>TOTAL</b>	<b>\$2,608,064.2</b>	<b>\$2,538,639.8</b>	<b>(\$69,424.4)</b>	<b>-2.7%</b>
Education Lock Box Appropriation			\$35,753.6	
<b>TOTAL ADJUSTED EDUCATION-RELATED APPROPRIATIONS</b>	<b>\$2,608,064.2</b>	<b>\$2,574,393.4</b>	<b>(\$33,670.8)</b>	<b>-1.3%</b>

\* The adjusted appropriation for Public School Support includes a further \$4.0 million reduction to the Transportation Distribution in the amount appropriated during the 2008 Special Session for school transportation fuel costs.

**Section 11** – Transfers \$55.7 million from the Tax Stabilization Reserve to the FY 09 Appropriation Account of the General Fund. (See Bill Summary regarding contingency.)

The LFC FIR reports that after the transfer the balance in the Tax Stabilization Reserve would be \$198.7 million.

**Section 12** – Repeals Laws 2008, Chapter 50 (HB 546), which appropriated any amount in excess of the projected revenue to the Tobacco Settlement Program Fund. The excess amount estimated (approximately \$24.6 million) is appropriated to Medicaid in Section 8.

**Section 13** – Provides that the appropriations from the Tobacco Settlement Program Fund and the “Education Lock Box” (for Medicaid and the SEG distribution, respectively) are contingent on the enactment of legislation that reduces the General Fund appropriations in the *General Appropriation Act of 2008*.

**Issues:**

***FY 09 Solvency Plan***

Due in part to the current economic recession and reduced oil and natural gas revenues, the December 2008 consensus revenue estimate projected a \$454.0 million deficit for FY 09.

\*CS/HB 10 is part of a three-pronged solvency plan proposed by the LFC to address the projected revenue shortfall. The solvency plan comprises four bills – in addition to \*CS/HB 10, the LFC solvency plan includes the following legislation:

- \*HB 9, *Capital Outlay Cuts & Reauthorizations*: Among its provisions, proposes to void certain General Fund projects appropriated in previous years totaling \$104.9 million and to revert these dollars to the General Fund; void certain severance tax bond projects authorized in previous years totaling approximately \$26.6 million and to revert the dollars to severance tax bond capacity; and reauthorizes nearly all of the severance tax bond dollars to continue viable General Fund projects.
- \*CS/HB 10, *Appropriation Reduction & Budget Adjustment*: Reduces General Fund appropriations in Laws 2008, Chapter 3 (*General Appropriation Act of 2008*) in Section 4 by various amounts, including \$4.0 million for public school transportation related to supplemental funding provided in the 2008 special session for fuel costs; reduces General Fund compensation and other distributions contained in Section 8; provides authority for the Department of Finance and Administration (DFA) to reduce other appropriations, including other state funds, internal service/interagency transfers and federal funds, as necessary; provides for additional budget adjustment authority in FY 09; and reduces a special appropriation to DFA in Section 5.
- \*SB 80a, *Corporate Income Tax Reporting Dates*: Amends the *Corporate Income and Franchise Tax Act* to require four (rather than three) payments of estimated corporate income tax. The emergency clause makes the corporate income tax payment change effective in tax year 2009.

**Related Bills:**

- \*SB 80a *Corporate Income Tax Reporting Dates*
- \*HB 8 *Estimated Tax Payments & Withholding*
- \*HB 9 *Capital Outlay Cuts & Reauthorizations*
- \*CS/HB 10 *Appropriation Reduction & Budget Adjustment*