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## FISCAL IMPACT REPORT

|                                                                   |                      |          |           |                                 |
|-------------------------------------------------------------------|----------------------|----------|-----------|---------------------------------|
|                                                                   | <b>ORIGINAL DATE</b> | 10/22/09 |           | 17 & 33/HAFCS<br>/aSFI#1/aSFI#2 |
| <b>SPONSOR</b> <u>HAFC</u>                                        | <b>LAST UPDATED</b>  | 10/26/09 | <b>HB</b> | <u>/aSFI#3/aSFI#4</u>           |
| <b>SHORT TITLE</b> <u>Reduce 2009 General Fund Appropriations</u> |                      |          | <b>SB</b> | <u>Fernandez/Aguilar</u>        |
|                                                                   | <b>ANALYST</b>       |          |           | <u>/Abbey</u>                   |

### APPROPRIATION (dollars in thousands)

| Appropriation |             | Recurring<br>or Non-Rec | Fund<br>Affected                                     |
|---------------|-------------|-------------------------|------------------------------------------------------|
| FY09          | FY10        |                         |                                                      |
|               | (206,686.0) | Recurring               | General Fund                                         |
|               | (1,500.0)   | Nonrecurring            | General Fund                                         |
|               | 2,000.0     | Nonrecurring            | Federal Funds<br>(FMAP-DD)                           |
|               | 12,000.0    | Nonrecurring            | Federal Funds<br>(FMAP-Medicaid)                     |
|               | (45,500.0)  | Nonrecurring            | General Fund                                         |
|               | 45,500.0    | Nonrecurring            | Federal Funds<br>(ARRA –Education<br>Stimulus)       |
|               | 13,400.0    | Nonrecurring            | Federal Funds<br>(ARRA –Education<br>Stimulus)       |
|               | 4,000.0     | Nonrecurring            | Tobacco Settlement<br>Program Fund-cash<br>balances  |
|               | 3,000.0     | Nonrecurring            | General Fund                                         |
|               | 2,000.0     | Nonrecurring            | Federal Funds<br>ARRA – Workforce<br>Solutions Dept. |
|               | 29,000.0    | Nonrecurring            | Public School Capital<br>Outlay Fund                 |

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

| Estimated Revenue |          |      | Recurring or Non-Rec | Fund Affected                                    |
|-------------------|----------|------|----------------------|--------------------------------------------------|
| FY09              | FY10     | FY11 |                      |                                                  |
|                   | 20,000.0 |      | Nonrecurring         | General Fund - Appropriation Account (from ARRA) |

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to Senate Bill 25 and House Bill 16.

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

|              | FY09 | FY10       | FY11 | 3 Year Total Cost | Recurring or Non-Rec | Fund Affected                     |
|--------------|------|------------|------|-------------------|----------------------|-----------------------------------|
| <b>Total</b> |      | \$29,000.0 |      | \$29,000.0        | Nonrecurring         | School District Operational Funds |

(Parenthesis ( ) Indicate Expenditure Decreases)

**SOURCES OF INFORMATION**

LFC Files

**SUMMARY**

Synopsis of Senate Floor Amendment #4

Senate Floor Amendment #4 changes Section 2, Subsection B, to require the Governor to first reduce personal services and employee benefits for 102 exempt employees rather than 80 exempt employees as required by the original bill.

Synopsis of Senate Floor Amendment #3

Senate Floor Amendment #3 requires the general fund budget reduction for the Law Enforcement Program of the Department of Public Safety to be reduced by no more than 2 percent. As a cabinet level agency, the Department of Public Safety is considered an agency under the control of the executive which would be an agency subject to the aggregate reduction of 7.6 percent. The difference between a 7.6 percent reduction and a 2 percent reduction is \$3.9 million.

Synopsis of Senate Floor Amendment #2

Senate Floor Amendment #2 strikes the budget reductions to the New Mexico School for the Blind and Visually Impaired and the New Mexico School for the Deaf. The difference between a 4 percent reduction to the instruction and general category and a zero reduction is \$80.6 and \$44.7 thousand for the special projects category for a total general fund difference of \$125.3 thousand.

### Synopsis of Senate Floor Amendment #1

Senate Floor Amendment #1 adds a new section 12, a temporary provision which requires LCS, LFC and DFA to review all unexpended general fund capital outlay projects and identify \$150 million of voidable capital outlay projects by the effective date of this act. A minimum of \$150 million in voidable projects shall be submitted as a bill to the Second Session of the 49<sup>th</sup> Legislature.

### Synopsis of Original Bill

This bill reduces general fund appropriations in Laws 2009, Chapter 124 (General Appropriation Act) in Sections 4 and 5 by various amounts; allocates funds remaining from the American Recovery and Reinvestment Act of 2009, State Fiscal Stabilization Fund; appropriates cash balances from the Tobacco Settlement Program Fund; appropriates emergency supplemental funding for public schools in FY10 and appropriates \$29 million from the Public School Capital Outlay Fund to the New Mexico Public School Insurance Authority for the purpose of paying property insurance premiums on behalf of school districts and charter schools.

## **FISCAL IMPLICATIONS**

### **Section 2**

Subsection A (1) reduces Legislative Building Services by 4 percent.

Subsection A (2) reduces judicial agencies, district courts, Bernalillo Metropolitan Court, the District Attorneys and the Administrative Office of the District Attorneys by 2 percent.

Subsection A (3) reduces general fund appropriations in Section 4 of the 2009 General Appropriation Act by 4 percent for elected state officials other than the Governor, and reduces the Attorney General by 2 percent.

Subsection A (4) reduces general fund appropriations in Section 4 of the 2009 General Appropriation Act by an aggregate of 7.6 percent for all state agencies under the direct control of the Executive. This subsection gives the executive branch discretion and flexibility to manage appropriation reductions under the control of the executive

The Public Defender Department is reduced by 2 percent.

Exceptions are the Department of Health (DOH), Developmental Disabilities Support Program and all Medicaid programs at Human Services Department. The Medical Assistance Program is reduced by \$16 million, which will be offset by \$12 million in federal funds and \$4 million in cash balances from the tobacco settlement program fund. The Developmental Disabilities program at DOH is reduced by \$2 million, which will be offset by \$2 million in federal funds.

Since the Human Services Department and Department of Health are state agencies under the control of the Governor, the methodology used to hold harmless the Medicaid appropriations and the Developmental Disabilities Support program was to remove the entire FY10 appropriation of \$601 million at HSD and the appropriation of \$107.1 million for the Developmental Disabilities Support program at DOH from the aggregate reduction of 7.6 percent. The result is all Medicaid programs at HSD such as Medicaid Physical Health, Medicaid Behavioral Health and the Medical Assistance Division administration less \$16 million are in tact. Similarly, at DOH the entire Developmental Disabilities Support program less \$2 million is in tact.

Subsections A (5) reduce the instruction and general appropriations for colleges and universities by 4 percent and 6.5 percent for special projects. Institutions have full flexibility to make reductions to research and public service projects.

Subsection A (6) reduces the three special schools (NMSD, NMSBVI, NMMI) instruction and general appropriations by 2 percent and 6.5 percent for special projects.

Subsection A (7) reduces the state equalization guarantee (SEG) by 2 percent and most “below the line distributions by 6.5 percent with the exception of the transportation distributions which are reduced by 4 percent and the Indian Education Fund is not reduced.

Subsection B directs the Governor to first reduce personal services and employee benefits for 80 exempt positions in state agencies under the control of the governor prior to reducing budgets in Subsection A.

### **Section 3**

This section distributes \$45.5 million of the remaining \$93.2 million from the American Recovery and Reinvestment Act of 2009, State Fiscal Stabilization Fund allocation awarded to New Mexico and directs that it shall be distributed through the State Equalization Guarantee (SEG) distribution to districts in FY10 and distributes \$13.4 million proportionally to public postsecondary institutions in the instruction and general purposes category.

This section also appropriates \$20 million awarded as part of the state fiscal stabilization fund to New Mexico for other government services. Under this provision of the federal law, the Governor may use up to \$58 million for public safety and other government services. Based on the State Fiscal Stabilization Fund Application submitted by Office of the Governor on June 4, 2009, to the U.S. Department of Education, 3 percent of the total allocation was estimated to be used for “public assistance” and 97 percent was “undetermined”.

### **Section 4**

Reduces a nonrecurring appropriation made in Section 5 of the General Appropriation Act of 2009, to the Department of Information Technology by \$1.5 million for the New Mexico Computing Applications Center. The appropriation is for staff and operational costs of the center.

According to the New Mexico Computing Applications Center, they are expected to generate \$2.2 million in other revenue from private sources which they could use to replace this general fund reduction.

### **Section 5**

This section appropriates \$4 million in cash balances from the tobacco settlement program fund to the Human Services Department for expenditure in fiscal year 2010 for the Medical Assistance Program. This appropriation is an offset to the reduction to the Medical Assistance Program discussed above.

### **Section 6**

This section appropriates \$3 million from the general fund to the emergency supplemental distribution for expenditure in FY10 so the Public Education Department may make emergency distributions to small rural school districts in financial need and further defines a rural school

district as one with a total membership of less than 600 in elementary, middle and high schools. The bill also prohibits funds to be distributed to any school district with cash and invested reserves, or a combination of other resources equal to 5 percent or more of the school district's operational budget.

### **Section 7**

The appropriation of \$29 million to the Public School Insurance Authority contained in this bill is a nonrecurring expense to the Public Schools Capital Outlay Fund. (PSCOF) Any unexpended or unencumbered balance remaining at the end of Fiscal year 2010 shall revert to the Public School Capital Outlay Fund.

The FY10 awards from the Public School Capital Outlay Fund were made in August 2009 and a number of projects have begun construction. The use of \$29 million from the fund, combined with the use of \$41.5 million of supplemental severance tax bond capacity in Senate Bill 26 would under fund FY10 awards from the PSCOC by \$11.8 million causing a number of school building construction projects to be delayed or moved to subsequent fiscal years.

The proposed legislation would also push back approximately \$30 million of additional awards which were expected to be made in FY10.

The PSCOF, primarily dedicated for capital outlay projects, is already used to fund the Capital Improvements Act (SB-9), New School Development Act, the lease payment assistance program, CID reimbursement, assistance for master facility plans, demolition allocations, and emergency allocations. As the annual uses from the fund have increased, the amount available for standards-based projects is reduced accordingly.

The Department of Finance and Administration notes that there may be legal issues with using severance tax bond proceeds to pay for insurance related expenditures. However, this issue has yet to be reviewed and discussed with the State Board of Finance bond counsel.

The Public School Capital Outlay Fund (PSCOF) [22-24-4 NMSA 1978] identifies specific uses for the fund. These include capital expenditures deemed necessary by the Public School Capital Outlay Council to provide an adequate educational program, for the administrative functions of the public school facilities authority, for lease payments for classroom facilities, including facilities leased by charter schools, to assist school districts in developing and updating five-year facilities plans, and for demolishing abandoned school district facilities. Under these definitions it appears that the use of PSCOF proceeds may not be appropriate to pay the districts share of property insurance costs.

### **Section 8**

This section appropriates \$2 million from the federal American Recovery and Reinvestment Act of 2009, Unemployment Insurance Modernization funding to the Workforce Solutions Department for operating expenses in FY10.

### **Section 9**

This section provides Department of Finance and Administration with the necessary authority to reduce FY10 operating budgets and adjust allotment accordingly. In addition, it provides DFA with the necessary authority to re-coup a general fund over-allotment in order to comply with this act.

### **Section 10**

This section requires Department of Finance and Administration, the Higher Education Department and the Public Education Department to report on adjusted operating budgets for state agencies, higher education institutions and public schools. The oversight agencies shall provide a report to the Legislative Council, Legislative Finance Committee and the Legislative Education Study Committee and the reports shall be published on the departments' web sites.

### **Section 11**

This section requires the recurring general fund reductions provided in this act to be carried forward in the FY11 Executive Budget recommendations.

### **SIGNIFICANT ISSUES**

- FY09 recurring revenue fell \$98 million short of the August 2009 forecast.
- FY10 revenue is down by \$219 million and FY11 by \$224 million.
- FY09 revenue fell \$214 million short of appropriations.
- Absent legislative action, FY10 ending balances would be minus \$324 million.
- FY10 changes of \$653 million are needed to reach a target reserve of 6 percent.

As the economy has deteriorated and revenues have fallen significantly, the October 2009 revenue estimate now projects a deficit for FY10 of \$324 million. It is necessary that the Legislature and the governor move quickly to address this shortfall. This bill is part of a comprehensive approach that will address the fiscal solvency while maintaining an adequate reserve level at the end of FY10. Maintaining a prudent reserve level in the current fiscal year is critical as the economy has shown only modest signs of improving and downside risks to the revenues still exist.

This bill along with its companion bills will address the current \$324 million deficit (based on the October 2009 revenue estimate) and maintain adequate reserves. LFC believes these actions are necessary to avoid possible legal issues regarding interfund transfers (Section 6-4-6 NMSA 1978) and to comply with a constitutional mandate that appropriations not exceed revenues.

Despite the solvency measures for FY10, the FY11 “new money” outlook is still bleak, because projected revenue would still be less than post-solvency FY10 appropriations and because of the need to replace federal stimulus funds.

The \$29 million appropriation to the Public School Insurance Authority for FY10 to pay insurance premiums on behalf of school districts and charter schools will free up an equal amount of district operational funds for other uses such as salaries and benefits for teachers and other direct instruction costs.

The PSCOF, primarily dedicated for capital outlay projects, is already used to fund the Capital Improvements Act (SB-9), New School Development Act, the lease payment assistance program, CID reimbursement, assistance for master facility plans, demolition allocations, and emergency allocations. As the annual uses from the fund have increased, the amount available for standards-based projects is reduced accordingly.

## **ADMINISTRATIVE IMPLICATIONS**

Department of Finance and Administration (DFA) will be required to reduce the operating budgets, appropriations and adjust agency allotment distributions accordingly. DFA, State Budget Division and LFC staff should review the adjusted FY10 operating budgets in a timely manner.

The General Appropriation Act of 2010 will include FY09 supplemental appropriations and supplemental FY10 BAR authority thus allowing another opportunity to consider agencies with additional needs and flexibility to manage the reductions in this bill.

## **COMPANIONSHIP**

This is a companion bill to other bills that are also part of a solvency solution.

- A bill that (1) voids capital outlay and (2) swaps general fund appropriated for certain projects and replaces with severance tax bond funding.
- A bill that reduces FY10 appropriations for Legislative offices; Laws 2009 Chapter 1 (Feed Bill).
- A bill that implements a 2 year delay for the increase in the employer contribution for the Educational Retirement Board and delays implementation of Laws 2009, Chapter 287 which contains a monthly distribution to the Retiree Health Care Authority.
- A bill which transfers money from various state funds in the treasury to the general fund.
- A bill that transfers money from the reserve accounts to the appropriation account.

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

1. Failing to pass solvency measures would result in a violation of Section 6-4-6 NMSA 1978 and possibly require the Secretary of Department of Finance and Administration to suspend issuing warrants and the State Treasurer to suspend the redemption of warrants.
2. The state will incur a budget deficit in violation of Article IX of the New Mexico Constitution.

CTF:PA:DA/svb

**BILLS PASSED**  
(dollars in millions)

|                                                           | EXEC Counter    | General Fund      | Federal Funds  | Other State Funds | Total             |
|-----------------------------------------------------------|-----------------|-------------------|----------------|-------------------|-------------------|
| <b>Legislature Reductions (Feed Bill-HB16)</b>            |                 | (0.9)             |                |                   |                   |
| <b>FY10 Agency Budget Reductions- (CSHB17 &amp; 33)</b>   |                 |                   |                |                   |                   |
| State Agencies                                            | 67.3            | (95.9)            |                |                   | (95.9)            |
| Leg Bldg Svcs, Courts, DA's, Elected Officials            |                 | (5.6)             |                |                   | (5.6)             |
| Medicaid                                                  |                 | (16.0)            | 12.0           | 4.0               | -                 |
| DD                                                        |                 | (2.0)             | 2.0            |                   |                   |
| Public Schools                                            | 35.4            | (51.8) *          |                | 29.0              | (22.8)            |
| Higher Education                                          | 15.5            | (35.4)            |                |                   | (35.4)            |
| Special Schools                                           |                 | -                 |                |                   | -                 |
| <b>Subtotal</b>                                           | <b>118.2</b>    | <b>(207.6)</b>    | <b>14.0</b>    | <b>33.0</b>       | <b>(159.7)</b>    |
| Education ARRA                                            | 93.2            | (45.5)            | 45.5           |                   | -                 |
| <b>Education ARRA - Higher Ed (2% of I&amp;G =\$13.4)</b> |                 |                   | 13.4           |                   | 13.4              |
| Executive ARRA                                            | -               | (20.0)            |                |                   | (20.0)            |
| Void Capital Outlay                                       | 110.0           |                   |                |                   |                   |
| <b>Swap GF for 2010 STB Capacity (SB29)</b>               | <b>180.0</b>    | <b>(136.1)</b>    |                |                   | <b>(136.1)</b>    |
| DD-special session 2008                                   | 4.0             |                   |                |                   |                   |
| Delay ERB                                                 | 18.3            |                   |                |                   |                   |
| Delay RHCA                                                | 3.0             |                   |                |                   |                   |
| <b>Fund Transfers (HB3):</b>                              |                 |                   |                |                   |                   |
| College Affordability                                     | 44.3            | (68.0)            |                |                   | (68.0)            |
| Other Sweeps                                              | 46.0            | (48.0)            |                |                   | (48.0)            |
| <b>TOTAL</b>                                              | <b>\$ 617.0</b> | <b>\$ (525.2)</b> | <b>\$ 72.9</b> | <b>\$ 33.0</b>    | <b>\$ (418.4)</b> |

\* The bill contains a \$3 million GF appropriation for additional assistance for small school districts experiencing difficulty with budget reductions.

|                                                  |         |            |                                    |
|--------------------------------------------------|---------|------------|------------------------------------|
| Legislative - Feed Bill - HB16                   | (839.4) | -          | -5.3%                              |
| Legislative - HB2 (Bldg Svcs.)                   |         | (164.2)    | -4%                                |
| Courts                                           |         | (2,987.8)  | -2%                                |
| Elected Officials                                |         | (893.8)    | -4%                                |
| Attorney General                                 |         | (314.5)    | -2%                                |
| District Attorneys                               |         | (1,218.1)  | -2%                                |
| HSD- Medicaid                                    |         | (16,000.0) |                                    |
| DOH - DD                                         |         | (2,000.0)  |                                    |
| All Other - Governor                             |         | (93,701.3) | -7.6%                              |
| Dept. Of Public Safety - Law Enforcement Program |         | (1,389.8)  | -2.0%                              |
| Public Defender                                  |         | (853.6)    | -2.0%                              |
| Public Schools                                   |         | (51,751.1) | SEG= -2.0% below the line = -6.5%  |
| Special Schools (NMMI)                           |         | (16.8)     | Transportation = 4%, Indian Ed= 0% |
| Higher Education                                 |         | (35,395.0) | I&G= -4.0%, below the line = -6.5% |

(206,686.0)