

Chapter 184

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AN ACT

2

RELATING TO UNEMPLOYMENT COMPENSATION; AMENDING CERTAIN

3

PROVISIONS OF THE UNEMPLOYMENT COMPENSATION LAW THAT EXPAND

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ELIGIBILITY OR ALLOW INCREASED BENEFITS; PROVIDING THAT

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EXTENDED BENEFITS SHALL BE PAID ONLY IF FULLY REIMBURSED FROM

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FEDERAL SOURCES; ESTABLISHING A TEMPORARY SCHEDULE FOR

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CONTRIBUTIONS.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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SECTION 1. Section 51-1-4 NMSA 1978 (being Laws 2003,

11

Chapter 47, Section 8, as amended) is amended to read:

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"51-1-4. MONETARY COMPUTATION OF BENEFITS--PAYMENT

13

GENERALLY.--

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A. All benefits provided herein are payable from

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the unemployment compensation fund. All benefits shall be

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paid in accordance with rules prescribed by the secretary

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through employment offices or other agencies as the secretary

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approves by general rule.

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B. Weekly benefits shall be as follows:

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(1) an individual's "weekly benefit amount"

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is an amount equal to fifty-three and one-half percent of the

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average weekly wage for insured work paid to the individual in

23

that quarter of the individual's base period in which total

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wages were highest. No benefit as so computed may be less

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than ten percent or more than fifty-three and one-half percent HCPAC/HB 59

1 similar position, with the same employer, except upon a
2 determination by the division of disqualification pursuant to
3 Subsection C of this section.

4 F. As used in this section:

5 (1) "domestic abuse" means that term as
6 defined in Section 40-13-2 NMSA 1978; and

7 (2) "employment" means employment by the
8 individual's last employer as defined by rules of the
9 secretary."

10 SECTION 4. Section 51-1-11 NMSA 1978 (being Laws 2003,
11 Chapter 47, Section 11, as amended) is amended to read:

12 "51-1-11. FUTURE RATES BASED ON BENEFIT EXPERIENCE.--

13 A. The division shall maintain a separate account
14 for each contributing employer and shall credit the
15 contributing employer's account with all contributions paid by
16 that employer under the Unemployment Compensation Law.
17 Nothing in the Unemployment Compensation Law shall be
18 construed to grant an employer or individuals in the
19 employer's service prior claims or rights to the amounts paid
20 by the employer into the fund.

21 B. Benefits paid to an individual shall be charged
22 against the accounts of the individual's base-period employers
23 on a pro rata basis according to the proportion of the
24 individual's total base-period wages received from each
25 employer, except that no benefits paid to a claimant as

1 extended benefits under the provisions of Section 51-1-48 NMSA
2 1978 shall be charged to the account of any base-period
3 employer who is not on a reimbursable basis and who is not a
4 governmental entity and, except as the secretary shall by rule
5 prescribe otherwise, in the case of benefits paid to an
6 individual who:

7 (1) left the employ of a base-period
8 employer who is not on a reimbursable basis voluntarily
9 without good cause in connection with the individual's
10 employment;

11 (2) was discharged from the employment of a
12 base-period employer who is not on a reimbursable basis for
13 misconduct connected with the individual's employment;

14 (3) is employed part time by a base-period
15 employer who is not on a reimbursable basis and who continues
16 to furnish the individual the same part-time work while the
17 individual is separated from full-time work for a
18 nondisqualifying reason; or

19 (4) received benefits based upon wages
20 earned from a base-period employer who is not on a
21 reimbursable basis while attending approved training under the
22 provisions of Subsection E of Section 51-1-5 NMSA 1978.

23 C. The division shall not charge a contributing or
24 reimbursing base-period employer's account with any portion of
25 benefit amounts that the division can bill to or recover from

1 the federal government as either regular or extended benefits.

2 D. The division shall not charge a contributing
3 base-period employer's account with any portion of benefits
4 paid to an individual for dependent allowance or because the
5 individual to whom benefits are paid:

6 (1) separated from employment due to
7 domestic abuse, as "domestic abuse" is defined in Section
8 40-13-2 NMSA 1978; or

9 (2) voluntarily left work to relocate
10 because of a spouse, who is in the military service of the
11 United States or the New Mexico national guard, receiving
12 permanent change of station orders, activation orders or unit
13 deployment orders.

14 E. All contributions to the fund shall be pooled
15 and available to pay benefits to any individual entitled
16 thereto, irrespective of the source of the contributions.

17 F. For each calendar year, if, as of the
18 computation date for that year, an employer's account has been
19 chargeable with benefits throughout the preceding thirty-six
20 months, the secretary shall classify the employer in
21 accordance with its actual experience of benefits charged
22 against its accounts. For such an employer, the contribution
23 rate shall be determined pursuant to Subsection I of this
24 section on the basis of the employer's record and the
25 condition of the fund as of the computation date for the

1 calendar year. If, as of the computation date for a calendar
2 year, an employer's account has not been chargeable with
3 benefits throughout the preceding thirty-six months, the
4 contribution rate for that employer for the calendar year
5 shall be two percent, except that:

6 (1) an individual, type of organization or
7 employing unit that acquires all or part of the trade or
8 business of another employing unit, pursuant to Paragraphs (2)
9 and (3) of Subsection E of Section 51-1-42 NMSA 1978, that has
10 a rate of contribution less than two percent shall be entitled
11 to the transfer of the reduced rate to the extent permitted
12 under Subsection H of this section;

13 (2) an employer that, at the time of
14 establishing an account, is in business in another state or
15 states and that is not currently doing business in New Mexico
16 may elect, pursuant to Paragraph (3) of this subsection, to
17 receive a beginning contribution rate of two percent or a
18 contribution rate based on the current contribution rate
19 schedule in Paragraph (4) of Subsection I of this section,
20 whichever is lower, if:

21 (a) the employer has been in operation
22 in the other state or states for at least three years
23 immediately preceding the date of becoming a liable employer
24 in New Mexico, throughout which an individual in the
25 employer's employ could have received benefits if eligible;

1 and

2 (b) the employer provides the
3 authenticated account history as defined by rule of the
4 secretary from information accumulated from operations in the
5 other state or all the other states to compute a current New
6 Mexico rate; and

7 (3) the election authorized in Paragraph (2)
8 of this subsection shall be made in writing within thirty days
9 after receiving notice of New Mexico liability and, if not
10 made timely, a two percent rate will be assigned; if the
11 election is made timely, the employer's account will receive
12 the lesser of the computed rate determined by the condition of
13 the account for the computation date immediately preceding the
14 New Mexico liable date, or two percent; rates for subsequent
15 years will be determined by the condition of the account for
16 the computation date.

17 G. An employer may make voluntary payments in
18 addition to the contributions required under the Unemployment
19 Compensation Law, which shall be credited to the employer's
20 account in accordance with department rule. The voluntary
21 payments shall be included in the employer's account as of the
22 employer's most recent computation date if they are made on or
23 before the following March 1. Voluntary payments when
24 accepted from an employer shall not be refunded in whole or in
25 part.

1 H. In the case of a transfer of an employing
2 enterprise, notwithstanding any other provision of law, the
3 experience history of the transferred enterprise shall be
4 transferred from the predecessor employer to the successor
5 under the following conditions and in accordance with the
6 applicable rules of the secretary:

7 (1) as used in this subsection:

8 (a) "employing enterprise" means a
9 business activity engaged in by a contributing employing unit
10 in which one or more persons have been employed within the
11 current or the three preceding calendar quarters. An
12 "employing enterprise" includes the employer's work force;

13 (b) "predecessor" means the owner and
14 operator of an employing enterprise immediately prior to the
15 transfer of such enterprise;

16 (c) "successor" means any person that
17 acquires an employing enterprise and continues to operate such
18 business entity;

19 (d) "experience history" means the
20 experience rating record and reserve account, including the
21 actual contributions, benefit charges and payroll experience
22 of the employing enterprise;

23 (e) "common ownership" means that two
24 or more businesses are substantially owned, managed or
25 controlled by the same person or persons;

1 (f) "knowingly" means having actual
2 knowledge of or acting with deliberate ignorance of or
3 reckless disregard for the prohibition involved; and

4 (g) "violates or attempts to violate"
5 includes an intent to evade, a misrepresentation or a willful
6 nondisclosure;

7 (2) except as otherwise provided in this
8 subsection, for the purpose of this subsection, two or more
9 employers who are parties to or the subject of any transaction
10 involving the transfer of an employing enterprise shall be
11 deemed to be a single employer and the experience history of
12 the employing enterprise shall be transferred to the successor
13 employer if the successor employer has acquired by the
14 transaction all of the business enterprises of the
15 predecessor; provided that:

16 (a) all contributions, interest and
17 penalties due from the predecessor employer have been paid;

18 (b) notice of the transfer has been
19 given in accordance with the rules of the secretary during the
20 calendar year of the transaction transferring the employing
21 enterprise or the date of the actual transfer of control and
22 operation of the employing enterprise;

23 (c) the successor shall notify the
24 division of the acquisition on or before the due date of the
25 successor's first wage and contribution report. If the

1 successor employer fails to notify the division of the
2 acquisition within this time limit, the division, when it
3 receives actual notice, shall effect the transfer of the
4 experience history and applicable rate of contribution
5 retroactively to the date of the acquisition, and the
6 successor shall pay a penalty of fifty dollars (\$50.00); and

7 (d) where the transaction involves only
8 a merger, consolidation or other form of reorganization
9 without a substantial change in the ownership and controlling
10 interest of the business entity, as determined by the
11 secretary, the limitations on transfers stated in
12 Subparagraphs (a), (b) and (c) of this paragraph shall not
13 apply. A party to a merger, consolidation or other form of
14 reorganization described in this subparagraph shall not be
15 relieved of liability for any contributions, interest or
16 penalties due and owing from the employing enterprise at the
17 time of the merger, consolidation or other form of
18 reorganization;

19 (3) the applicable experience history may be
20 transferred to the successor in the case of a partial transfer
21 of an employing enterprise if the successor has acquired one
22 or more of the several employing enterprises of a predecessor
23 but not all of the employing enterprises of the predecessor
24 and each employing enterprise so acquired was operated by the
25 predecessor as a separate store, factory, shop or other

1 separate employing enterprise and the predecessor, throughout
2 the entire period of the contribution with liability
3 applicable to each enterprise transferred, has maintained and
4 preserved payroll records that, together with records of
5 contribution liability and benefit chargeability, can be
6 separated by the parties from the enterprises retained by the
7 predecessor to the satisfaction of the secretary or the
8 secretary's delegate. A partial experience history transfer
9 will be made only if the successor:

10 (a) notifies the division of the
11 acquisition, in writing, not later than the due date of the
12 successor's first quarterly wage and contribution report after
13 the effective date of the acquisition;

14 (b) files an application provided by
15 the division that contains the endorsement of the predecessor
16 within thirty days from the delivery or mailing of such
17 application by the division to the successor's last known
18 address; and

19 (c) files with the application a Form
20 ES-903A or its equivalent with a schedule of the name and
21 social security number of and the wages paid to and the
22 contributions paid for each employee for the three and one-
23 half year period preceding the computation date as defined in
24 Subparagraph (d) of Paragraph (3) of Subsection I of this
25 section through the date of transfer or such lesser period as

1 the enterprises transferred may have been in operation. The
2 application and Form ES-903A shall be supported by the
3 predecessor's permanent employment records, which shall be
4 available for audit by the division. The application and Form
5 ES-903A shall be reviewed by the division and, upon approval,
6 the percentage of the predecessor's experience history
7 attributable to the enterprises transferred shall be
8 transferred to the successor. The percentage shall be
9 obtained by dividing the taxable payrolls of the transferred
10 enterprises for such three and one-half year period preceding
11 the date of computation or such lesser period as the
12 enterprises transferred may have been in operation by the
13 predecessor's entire payroll;

14 (4) if, at the time of a transfer of an
15 employing enterprise in whole or in part, both the predecessor
16 and the successor are under common ownership, then the
17 experience history attributable to the transferred business
18 shall also be transferred to and combined with the experience
19 history attributable to the successor employer. The rates of
20 both employers shall be recalculated and made effective
21 immediately upon the date of the transfer;

22 (5) whenever a person, who is not currently
23 an employer, acquires the trade or business of an employing
24 enterprise, the experience history of the acquired business
25 shall not be transferred to the successor if the secretary or

1 the secretary's designee finds that the successor acquired the
2 business solely or primarily for the purpose of obtaining a
3 lower rate of contributions. Instead, the successor shall be
4 assigned the applicable new employer rate pursuant to this
5 section. In determining whether the business was acquired
6 solely or primarily for the purpose of obtaining a lower rate
7 of contribution, the secretary or the secretary's designee
8 shall consider:

9 (a) the cost of acquiring the business;

10 (b) whether the person continued the
11 business enterprise of the acquired business;

12 (c) how long such business enterprise
13 was continued; and

14 (d) whether a substantial number of new
15 employees were hired for performance of duties unrelated to
16 those that the business activity conducted prior to
17 acquisition;

18 (6) if, following a transfer of experience
19 history pursuant to this subsection, the department determines
20 that a substantial purpose of the transfer of the employing
21 enterprise was to obtain a reduced liability for
22 contributions, then the experience rating accounts of the
23 employers involved shall be combined into a single account and
24 a single rate assigned to the combined account;

25 (7) the secretary shall adopt such rules as

1 are necessary to interpret and carry out the provisions of
2 this subsection, including rules that:

3 (a) describe how experience history is
4 to be transferred; and

5 (b) establish procedures to identify
6 the type of transfer or acquisition of an employing
7 enterprise; and

8 (8) a person who knowingly violates or
9 attempts to violate a rule adopted pursuant to Paragraph (7)
10 of this subsection, who transfers or acquires, or attempts to
11 transfer or acquire, an employing enterprise for the sole or
12 primary purpose of obtaining a reduced liability for
13 contributions or who knowingly advises another person to
14 violate a rule adopted pursuant to Paragraph (7) of this
15 subsection or to transfer or acquire an employing enterprise
16 for the sole or primary purpose of obtaining a reduced
17 liability for contributions is guilty of a misdemeanor and
18 shall be punished by a fine of not less than one thousand five
19 hundred dollars (\$1,500) or more than three thousand dollars
20 (\$3,000) or, if an individual, by imprisonment for a definite
21 term not to exceed ninety days or both. In addition, such a
22 person shall be subject to the following civil penalty imposed
23 by the secretary:

24 (a) if the person is an employer, the
25 person shall be assigned the highest contribution rate

1 established by the provisions of this section for the calendar
2 year in which the violation occurs and the three subsequent
3 calendar years; provided that, if the difference between the
4 increased penalty rate and the rate otherwise applicable would
5 be less than two percent of the employer's payroll, the
6 contribution rate shall be increased by two percent of the
7 employer's payroll for the calendar year in which the
8 violation occurs and the three subsequent calendar years; or

9 (b) if the person is not an employer,
10 the secretary may impose a civil penalty not to exceed three
11 thousand dollars (\$3,000).

12 I. For each calendar year, if, as of the
13 computation date for that year, an employer's account has been
14 chargeable with benefits throughout the preceding thirty-six
15 months, the contribution rate for that employer shall be
16 determined as follows:

17 (1) the total assets in the fund and the
18 total of the last annual payrolls of all employers subject to
19 contributions as of the computation date for each year shall
20 be determined. These annual totals are here called "the fund"
21 and "total payrolls". For each year, the "reserve" of each
22 employer shall be fixed by the excess of the employer's total
23 contributions over total benefit charges computed as a
24 percentage of the employer's average payroll reported for
25 contributions. The determination of each employer's annual

1 rate, computed as of the computation date for each calendar
2 year, shall be made by matching the employer's reserve as
3 shown in the reserve column with the corresponding rate in the
4 rate column of the applicable rate schedule of the table
5 provided in Paragraph (4) of this subsection;

6 (2) for each calendar year after 2012,
7 except as otherwise provided, each employer's rate shall be
8 the corresponding rate in:

9 (a) Contribution Schedule 0 of the
10 table provided in Paragraph (4) of this subsection if the fund
11 equals at least two and three-tenths percent of the total
12 payrolls;

13 (b) Contribution Schedule 1 of the
14 table provided in Paragraph (4) of this subsection if the fund
15 equals less than two and three-tenths percent but not less
16 than one and seven-tenths percent of the total payrolls;

17 (c) Contribution Schedule 2 of the
18 table provided in Paragraph (4) of this subsection if the fund
19 equals less than one and seven-tenths percent but not less
20 than one and three-tenths percent of the total payrolls;

21 (d) Contribution Schedule 3 of the
22 table provided in Paragraph (4) of this subsection if the fund
23 equals less than one and three-tenths percent but not less
24 than one percent of the total payrolls;

25 (e) Contribution Schedule 4 of the

1 table provided in Paragraph (4) of this subsection if the fund
2 equals less than one percent but not less than seven-tenths
3 percent of the total payrolls;

4 (f) Contribution Schedule 5 of the
5 table provided in Paragraph (4) of this subsection if the fund
6 equals less than seven-tenths percent but not less than three-
7 tenths percent of the total payrolls; or

8 (g) Contribution Schedule 6 of the
9 table provided in Paragraph (4) of this subsection if the fund
10 equals less than three-tenths percent of the total payrolls;

11 (3) as used in this section:

12 (a) "annual payroll" means the total
13 amount of remuneration from an employer for employment during
14 a twelve-month period ending on a computation date, and
15 "average payroll" means the average of the last three annual
16 payrolls;

17 (b) "base-period wages" means the wages
18 of an individual for insured work during the individual's base
19 period on the basis of which the individual's benefit rights
20 were determined;

21 (c) "base-period employers" means the
22 employers of an individual during the individual's base
23 period; and

24 (d) "computation date" for each
25 calendar year means the close of business on June 30 of the

1 preceding calendar year;

2 (4) table of employer reserves and
3 contribution rate schedules:

4 Employer	Contribution	Contribution	Contribution	Contribution
5 Reserve	Schedule 0	Schedule 1	Schedule 2	Schedule 3
6 10.0% and over	0.03%	0.05%	0.1%	0.6%
7 9.0%-9.9%	0.06%	0.1%	0.2%	0.9%
8 8.0%-8.9%	0.09%	0.2%	0.4%	1.2%
9 7.0%-7.9%	0.10%	0.4%	0.6%	1.5%
10 6.0%-6.9%	0.30%	0.6%	0.8%	1.8%
11 5.0%-5.9%	0.50%	0.8%	1.1%	2.1%
12 4.0%-4.9%	0.80%	1.1%	1.4%	2.4%
13 3.0%-3.9%	1.20%	1.4%	1.7%	2.7%
14 2.0%-2.9%	1.50%	1.7%	2.0%	3.0%
15 1.0%-1.9%	1.80%	2.0%	2.4%	3.3%
16 0.9%-0.0%	2.40%	2.4%	3.3%	3.6%
17 (-0.1%)-(-0.5%)	3.30%	3.3%	3.6%	3.9%
18 (-0.5%)-(-1.0%)	4.20%	4.2%	4.2%	4.2%
19 (-1.0%)-(-2.0%)	5.00%	5.0%	5.0%	5.0%
20 Under (-2.0%)	5.40%	5.4%	5.4%	5.4%
21 Employer	Contribution	Contribution	Contribution	
22 Reserve	Schedule 4	Schedule 5	Schedule 6	
23 10.0% and over	0.9%	1.2%	2.7%	
24 9.0%-9.9%	1.2%	1.5%	2.7%	
25 8.0%-8.9%	1.5%	1.8%	2.7%	

1	7.0%-7.9%	1.8%	2.1%	2.7%
2	6.0%-6.9%	2.1%	2.4%	2.7%
3	5.0%-5.9%	2.4%	2.7%	3.0%
4	4.0%-4.9%	2.7%	3.0%	3.3%
5	3.0%-3.9%	3.0%	3.3%	3.6%
6	2.0%-2.9%	3.3%	3.6%	3.9%
7	1.0%-1.9%	3.6%	3.9%	4.2%
8	0.9%-0.0%	3.9%	4.2%	4.5%
9	(-0.1%)-(-0.5%)	4.2%	4.5%	4.8%
10	(-0.5%)-(-1.0%)	4.5%	4.8%	5.1%
11	(-1.0%)-(-2.0%)	5.0%	5.1%	5.3%
12	Under (-2.0%)	5.4%	5.4%	5.4%;

13 (5) from January 1, 2011 through December
14 31, 2011, each employer making contributions pursuant to this
15 subsection shall make a contribution at the rate specified in
16 Contribution Schedule 1, SM and
17 ~~(6) from January 1, 2012 through December 31,~~
18 ~~2012, each employer making contributions pursuant to this~~
19 ~~subsection shall make a contribution at the rate specified in~~
20 ~~Contribution Schedule 3.~~ SM

21 J. The division shall promptly notify each
22 employer of the employer's rate of contributions as determined
23 for any calendar year pursuant to this section. Such
24 notification shall include the amount determined as the
25 employer's average payroll, the total of all of the employer's

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the 1990s, the number of people with a mental health problem has increased in the UK (Mental Health Act 1983).

There is a growing awareness of the need to improve the lives of people with mental health problems. The Department of Health (1999) has set out a strategy for mental health care in the UK. The strategy is based on the following principles:

- People with mental health problems should be treated as individuals.
- People with mental health problems should be given the opportunity to participate in decisions about their care.
- People with mental health problems should be given the opportunity to live in their own homes.

The strategy also states that people with mental health problems should be given the opportunity to live in their own homes.

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April 8, 2011

HOUSE EXECUTIVE MESSAGE NO. 40

The Honorable Ben Luján and
Members of the House of Representatives
State Capitol Building
Santa Fe, NM 87501

Honorable Speaker Luján and Members of the House:

I have this day SIGNED HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR HOUSE BILL 59, as amended, which was enacted during the Fiftieth Legislature, First Session, 2011, except the following part or parts, item or items, which I have vetoed pursuant to Article IV, Section 22 of the Constitution of the State of New Mexico:

On page 37, line 16, I have vetoed “; and”, I have vetoed all of lines 17 through 19, and on line 20, I have vetoed from the beginning of the line through the “3”.

In order to properly understand the motivation behind the passage of HOUSE BILL 59, it is crucial to understand its origins and the series of manipulations which, over the last 6 years, have significantly impacted the monies available in New Mexico’s Unemployment Fund.

The Unemployment Fund receives money from employers, who pay a certain amount of tax for each employee. Originally, an employer’s contribution level was determined through a “floating schedule,” which involved a detailed calculation that considered the health of the fund, the benefits projected to be paid out, and an employer’s benefit experience. If the fund had a large balance and the unemployment rate was low, the contribution rate would be low. If the fund was short of funds and the unemployment rate rose, the contribution rate paid by employers would automatically rise to protect the fund’s solvency.

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The Honorable Ben Luján

April 8, 2011

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Beginning in 2005, the legislature increased unemployment benefits, while simultaneously creating a new contribution rate, a Schedule 0. In subsequent legislative sessions, the legislature increased benefits to be paid out of this fund and locked in the rate at a Schedule 1 during the 2010 legislative session. From 2005 to 2010, the additional benefits reduced the trust fund's balance by more than \$100 million.

There is now great concern that the fund could become insolvent. As a result, this legislation was introduced to scale back unemployment benefits effective July 1, 2011, and increase the contribution rate paid by employers to Schedule 3, effective January 1, 2012. This would raise the amount businesses pay by approximately \$128.2 million during 2012.

Some have incorrectly stated that this bill must be signed, or the fund will become insolvent and that insolvency will force employers to pay the highest tax rate. This claim is false and is unfortunately being used as a fear-tactic to garner support for this bill.

While the solvency of the fund is a legitimate concern, the rate increase is not triggered by insolvency.

The reason the contribution rate would increase is because the current law locking the rate at Schedule 1 will sunset on December 31, 2011. Once that law sunsets, the rate will again be determined by the floating calculation. To avoid the floating calculation, this bill arbitrarily sets the contribution rate at Schedule 3, beginning January 1, 2012. However, the legislature could have instead continued the contribution rate at Schedule 1 and thus prevented any tax increase, regardless of the status of the fund.

With respect to the solvency of the fund, reducing benefits and creating jobs to reduce the unemployment rate will do far more to help the long-term solvency of the fund, and well-being of New Mexico, than arbitrarily increasing the contribution rate that small businesses pay.

For this reason, I support reducing the unemployment benefits to protect the solvency of the fund, but I do not support increasing job-killing taxes on small businesses while we are struggling to recover from a recession. Making it more expensive for small businesses to hire people would be counter-productive to our efforts to put more New Mexicans back to work.

Therefore, I am signing this bill to implement the benefit reductions and line-item vetoing the portion of the bill which appropriates money to the Unemployment Fund by way of increasing the contribution rate paid by employers.

I have already begun working with members of the legislature on a plan that will protect the solvency of the fund and keep the contribution rate locked at Schedule 1, in order to help small businesses create more jobs. I intend to include this issue on the agenda for the

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The Honorable Ben Luján

April 8, 2011

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upcoming special session on redistricting. I seek a bi-partisan solution that will protect the solvency of the Unemployment Fund without crippling job growth.

Respectfully yours,

Susana Martinez

Governor

RECEIVED FROM THE OFFICE OF THE GOVERNOR

Time: _____ a.m. p.m.

Date: _____ 2011

By _____
Secretary of State

Time: _____ a.m. p.m.

Date: _____ 2011

By _____
Chief Clerk of the Senate

the 1990s, the number of people in the world who are under 15 years of age has increased from 1.1 billion to 1.5 billion (UNEP 2000).

As a result of the increasing number of children in the world, the number of children in the world who are under 5 years of age has increased from 0.8 billion to 1.1 billion (UNEP 2000). This increase in the number of children in the world has led to a corresponding increase in the number of children who are under 5 years of age who are at risk of malnutrition.

Malnutrition is a major cause of child mortality and morbidity in the developing world. It is estimated that 10% of children under 5 years of age are malnourished (UNEP 2000).

Malnutrition is a complex problem that is caused by a number of factors, including poverty, lack of access to food, and lack of access to health care.

One of the most common causes of malnutrition is poverty. Poor families are often unable to afford the food and health care that their children need.

Lack of access to food is another major cause of malnutrition. In many developing countries, food is scarce and expensive.

Lack of access to health care is also a major cause of malnutrition. Many children in the developing world do not receive the health care that they need.

Malnutrition is a serious problem that needs to be addressed. It is a major cause of child mortality and morbidity in the developing world.

There are a number of ways to address malnutrition, including providing food, providing health care, and providing education.

Providing food is one of the most important ways to address malnutrition. Poor families need to have access to the food that their children need.

Providing health care is another important way to address malnutrition. Children need to receive the health care that they need.

Providing education is also an important way to address malnutrition. Education can help children to understand the importance of good nutrition.

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Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total/Target
1	Authorized FTE: 19.00 Permanent				
2	Performance measures:				
3	(a) Output:	Number of licensed practical nurse, registered nurse and advanced practice licenses issued			14,500
4	(b) Output:	Number of months to resolution of a disciplinary matter			6
5	(c) Quality:	Number of rule reviews			1
6	Subtotal				
7	2,579.2				
8	NEW MEXICO STATE FAIR:				
9	The purpose of the state fair program is to promote the New Mexico state fair as a year-round operation with venues, events and facilities that provide for greater use of the assets of the agency.				
10	Appropriations:				
11	(a)	Personal services and employee benefits			6,070.2
12	(b)	Contractual services			3,492.0
13	(c)	Other			3,869.9
14	Authorized FTE: 62.50 Permanent				
15	The internal service funds/interagency transfers appropriation to the New Mexico state fair in the other category includes six hundred ninety-five thousand dollars (\$695,000) from parimutuel revenues for debt service and debt service interest on negotiable bonds issued for capital improvements.				
16	<div style="border: 1px solid black; padding: 5px; display: inline-block;"> <p>SM 52-4-SM SM 208-0-SM SM 08-9-SM</p> </div>				
17	<div style="border: 1px solid black; padding: 5px;"> <p>The general fund appropriation to the New Mexico state fair includes three hundred forty nine thousand three hundred dollars (\$349,300) for the operation of the African American performing arts center and exhibit hall at the New Mexico state fair. SM</p> <p>The appropriations to the New Mexico state fair in the personal services and employee benefits category include sufficient funding for one full time equivalent position for the African American performing arts center and exhibit hall at the New Mexico state fair. SM</p> </div>				
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Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total/Target
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1 The purpose of the commission on the status of women program is to provide information, public events,
 2 leadership, support services and career development to individuals, agencies and women's organizations so
 3 they can improve the economic, health and social status of women in New Mexico.

4 Appropriations:

5 (a) Personal services and			180.7		519.0
6 employee benefits	338.3 SM				
7 (b) Contractual services	217.5 SM	25.0	541.5		588.2
8 (c) Other	400.0 SM	55.0	127.8		272.8
9 Authorized FTE: 8.00 Permanent SM 4.00 Term					

10 The internal service funds/interagency transfers appropriations to the status of women program of the
 11 commission on the status of women include eight hundred fifty thousand dollars (\$850,000) for the
 12 teamworks program directed toward workforce development for adult women on temporary assistance for needy
 13 families from the federal block grant to New Mexico, should the program successfully be awarded a
 14 contract for this purpose.

15 The other state funds appropriations to the status of women program of the commission on the status
 16 of women include twenty thousand dollars (\$20,000) from the girls' program fund to host conferences and
 17 seminars and associated expenses; forty thousand dollars (\$40,000) from the commission on the status of
 18 women conference fund to host conferences and seminars and associated expenses and the governor's award
 19 for outstanding New Mexico women, the pioneer award, the trailblazer award and various conference booths;
 20 and twenty thousand dollars (\$20,000) from the commission on the status of women's office of the
 21 governor's council on women's health to host conferences and seminars and associated expenses and various
 22 women's health events.

23 ~~SM Revenue collected in excess of expenses in other state funds for conferences, awards, seminars and~~
 24 ~~various events shall not revert to the general fund.~~ SM

25 Performance measures:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total/Target
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To support legal work relating to interstate water conflicts. The appropriation is from the natural resources trustee fund.

(9) TAXATION AND REVENUE DEPARTMENT 250.0 250.0

For the Native American veterans' income tax settlement fund.

(10) STATE INVESTMENT COUNCIL 5,124.0 5,124.0

For attorney fees for restitution.

(11) DEPARTMENT OF FINANCE AND ADMINISTRATION

SM 150.0 SM 150.0

For disbursement to the New Mexico mortgage finance authority to carry out the responsibilities, duties and provisions of the regional housing law.

(12) SECRETARY OF STATE 250.0 250.0

For the 2012 primary election.

(13) ECONOMIC DEVELOPMENT DEPARTMENT ~~3,000.0~~ 3,000.0

~~For the job training incentive program. The federal funds are from reallocation of the public safety and other government services allocation from the federal American Recovery and Reinvestment Act of 2009. SM~~

(14) CULTURAL AFFAIRS DEPARTMENT ~~200.0~~ 200.0

~~For the New Mexico centennial. SM~~

(15) AGING AND LONG-TERM SERVICES DEPARTMENT 200.0 200.0

To assist with personnel and other costs associated with the transfer of services from the aging and long-term services department to the human services department.

(16) HUMAN SERVICES DEPARTMENT 7,000.0 25,941.2 32,941.2

For a shortfall in the medical assistance program for medicaid programs.

(17) HUMAN SERVICES DEPARTMENT

Any unexpended balances remaining at the end of fiscal year 2011 from reimbursements received from the

April 8, 2011

HOUSE EXECUTIVE MESSAGE NO. 31

The Honorable Ben Luján and
Members of the House of Representatives
State Capitol Building
Santa Fe, New Mexico 87501

Honorable Speaker Luján and Members of the House:

I have this day SIGNED HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE FOR HOUSE BILLS 2, 3, 4, 5 AND 6 (the “General Appropriation Act of 2011”), as amended, with certificate of correction, which was enacted during the Fiftieth Legislature, First Session, 2011, except the following part or parts, item or items, which I have vetoed pursuant to Article IV, Section 22 of the Constitution of the State of New Mexico:

On page 4, I have vetoed all of lines 4 through 8. The consensus revenue forecasting process is well-established, making the mandate that the Department of Finance and Administration regularly consult with Legislative Finance Committee staff concerning revenue collections unnecessary. Further, the executive and legislative branches must work together to address a revenue shortfall; the vetoed part would have put the burden on the executive to unilaterally develop a plan to discharge this joint responsibility.

On page 4, I have vetoed all of lines 14 through 25, and on page 5, I have vetoed all of lines 1 through 6.

On page 5, I have vetoed all of lines 7 through 25, and on page 6, I have vetoed all of lines 1 through 4.

On page 6, I have vetoed all of lines 5 through 12. Limiting the number of employees an agency may hire excessively intrudes into the Executive managerial function. The part that would have established which employees have an annual salary greater than \$20,000 for purposes of the General Appropriation Act of 2011 and other acts of the First Session of the Fiftieth Legislature is not necessary because of – and actually conflicts with – Section 15 of House Bill 628.

On page 10, I have vetoed all of line 23 and all of line 25. On page 11, I have vetoed all of lines 1 and 2.

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The Honorable Ben Luján

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On page 43, line 24, I have vetoed from the beginning of the line through the word “committee”.

On page 44, I have vetoed all of lines 3 through 5. The vetoed item would have converted into a grant a specific emergency loan originated by the Board of Finance pursuant to its statutory authority. This is special legislation, which violates Article IV, Section 24 of the Constitution of the State of New Mexico.

On page 60, I have vetoed all of lines 23 and 24.

On page 64, line 13, I have vetoed beginning with the word “with” through the end of the line, and on line 14, I have vetoed the word “department”.

On page 64, line 14, I have vetoed the words “efforts with”, and on line 15, I have vetoed from the beginning of the line through the word “department”.

On page 64, line 16, I have vetoed beginning with the word “efforts” through the word “tourism”.

On page 90, line 13, I have vetoed “52.4”.

On page 90, line 14, I have vetoed “208.0”.

On page 90, line 15, I have vetoed “88.9”.

On page 90, I have vetoed all of lines 20 through 22.

On page 90, I have vetoed all of lines 23 through 25.

On page 95, line 25, I have vetoed the entire line, and on page 96, I have vetoed all of lines 1 and 2.

On page 96, I have vetoed all of lines 3 through 6.

On page 99, I have vetoed all of lines 5 and 6.

On page 115, line 6, I have vetoed “338.3”.

On page 115, line 7, I have vetoed “21.7”.

On page 115, line 8, I have vetoed “90.0”.

On page 115, line 9, I have vetoed “8.00 Permanent;”.

On page 115, I have vetoed all of lines 23 and 24.

On page 127, line 11, I have vetoed beginning with the second instance of the word “and” through the remainder of the line, and on line 12, I have vetoed from the beginning of the line through the word “committee”.

On page 140, line 6, I have vetoed beginning with the word “general” through the word “and”.

On page 142, I have vetoed all of lines 6 through 8.

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On page 145, line 18, I have vetoed beginning with the word “There” through the end of the line, and all of lines 19 through 25. In addition to the applicable general reasons set forth below, I have vetoed these parts because they would potentially preclude the Department of Health from complying with requirements imposed upon it by the federal court in the *Jackson v. Ft. Stanton* lawsuit.

On page 146, I have vetoed all of lines 4 through 6.

On page 156, I have vetoed all of lines 19 through 24.

On page 174, I have vetoed all of lines 22 through 24.

On page 175, I have vetoed all of lines 3 through 6. Conditioning the appropriation to the Public Education Department for its operating budget management system and student, teacher accountability reporting system on the legislative finance committee and the legislative education study committee being given access to those systems is not reasonable. Providing the requested access risks putting the State in violation of federal law, which protects the confidentiality of student information contained in those systems. The Public Education Department will continue to provide the Legislature with any non-confidential information from those systems that the Legislature needs to discharge its responsibilities.

On page 177, I have vetoed all of lines 4 through 6.

On page 177, line 8, I have vetoed beginning with the word “At” through the end of the line and all of lines 9 and 10.

On page 178, I have vetoed all of lines 11 through 14.

On page 178, I have vetoed all of lines 15 through 17.

On page 199, I have vetoed all of line 2.

On page 199, I have vetoed all of line 3. The problems at the Northern New Mexico College are well-known. Providing it with special appropriations is not prudent at this time. Looking forward, if it is unable to get its financial house in order, the Legislature should carefully consider the level of future general funding for this institution.

On page 201, I have vetoed all of lines 7 and 8.

On page 212, I have vetoed all of lines 18 and 19.

On page 212, I have vetoed all of lines 20 and 21. The \$100,000 appropriation to the Legislative Council Service for the redistricting committee is unnecessary.

On page 214, line 8, I have vetoed the “1” in “150.0” in both places where it appears. I agree that regional housing authority oversight is a necessary expenditure. My disagreement is with the amount appropriated for this purpose. I have disapproved of the excessive part of the appropriation.

On page 214, I have vetoed all of lines 13 through 15.

On page 214, I have vetoed all of lines 16 and 17.

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On page 217, line 5, I have vetoed beginning with the word “no” through the end of the line, and on line 6, beginning with the word “than” through the second “,” and “continued quarterly”.

On page 217, I have vetoed all of lines 13 through 15.

On page 217, line 20, I have vetoed beginning with the second instance of the word “and” through the word “committee”.

On page 219, I have vetoed all of lines 14 through 16.

On page 219, I have vetoed all of line 25, and on page 220, I have vetoed all of lines 1 through 3.

On page 220, I have vetoed all of lines 4 and 5.

On page 231, I have vetoed all of lines 21 through 25.

On page 232, I have vetoed all of lines 1 through 13. The Legislature’s focus on twelve state agencies to obtain up to \$2.5 million in efficiency savings is too narrow. Further, given its failure to pass meaningful restructuring legislation, the deadline of identifying savings by May 1, 2011, is unreasonable. I intend to look for savings throughout all agencies under my control throughout the fiscal year.

On page 235, I have vetoed all of lines 9 through 25.

On page 236, I have vetoed all of lines 1 through 14. Revenue shortfalls require tough decisions about the State’s funding priorities. Section 12 of the General Appropriation Act of 2011 would have avoided those tough decisions by mandating that the Executive implement across-the-board, pro-rata budget reductions in the event of a revenue shortfall. Should such a revenue shortfall materialize in Fiscal Year 2012, we will need to work together, in a regular or special session, to make those tough decisions.

In addition to specific objections noted above, the general reasons for my vetoes are as follows.

Parts and items of the General Appropriation Act of 2011 would have nullified substantive law and/or created general legislation, practices generally precluded by Article IV, Section 16 of the Constitution of the State of New Mexico. Of particular concern were the Legislature’s continuing efforts to enact reporting requirements and institute other means of Legislative and other oversight and control beyond what exists in substantive law. Also objectionable were efforts to impose substantive obligations on agencies beyond those contained in existing law.

Parts and items would have impermissibly intruded into the Executive managerial function, in violation of Article III, Section 1 of the Constitution of the State of New Mexico. Examples of impermissible intrusions include parts that would have earmarked funds for subparts of larger programs or specific purposes, such as advertising of specific tourist attractions, or dictated the contents of executive proposals.

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The General Appropriation Act of 2011 contained contingencies that exceed the Legislature's limited authority to attach reasonable conditions to appropriations. These contingencies sometimes also amounted to general policy that ought to be enacted outside the general appropriation act.

I vetoed some excessive appropriations, some that were not for core services or programs, and some that were inconsistent with the necessity that all state agencies must do more with less. I have also vetoed parts that would have made certain appropriations non-reverting, meaning that agencies could squirrel away excess funds from Fiscal Year 2012 for future years. If agencies do not need all that they are appropriated for a fiscal year, the money should revert. These actions will help to boost reserves and ensure that the State has sufficient resources to respond to disasters and other emergencies.

As was the case with Laws 2011, Chapter 1 (HB 1), the Legislature's lack of fiscal restraint in appropriations to itself is notable. Out of respect for the Legislature, I have only vetoed the special appropriations to the Legislative Council Service for pre-session expenses and the redistricting committee.

Finally, the Legislature also attempted to assert control over federal money that our Supreme Court has clearly ruled is beyond the Legislature's appropriation power. I vetoed those attempts.

Respectfully yours,

Susana Martinez
Governor

RECEIVED FROM THE OFFICE OF THE GOVERNOR

Time: _____ a.m. p.m.

Date: _____ 2011

By _____
Secretary of State

Time: _____ a.m. p.m.

Date: _____ 2011

By _____
Chief Clerk of the House

Constitution of the State of New Mexico

Article IV, Sec. 22

Every bill passed by the legislature shall, before it becomes a law, be presented to the governor for approval. If he approves, he shall sign it, and deposit it with the secretary of state; **otherwise, he shall return it to the house in which it originated, with his objections**, which shall be entered at large upon the journal; and such bill shall not become a law unless thereafter approved by two-thirds of the members present and voting in each house by yea and nay vote entered upon its journal. Any bill not returned by the governor within three days, Sundays excepted, after being presented to him, shall become a law, whether signed by him or not, unless the legislature by adjournment prevent such return. Every bill presented to the governor during the last three days of the session shall be approved by him within twenty days after the adjournment and shall be by him immediately deposited with the secretary of state. Unless so approved and signed by him such bill shall not become a law. **The governor may in like manner approve or disapprove any part or parts, item or items, of any bill appropriating money, and such parts or items approved shall become a law, and such as are disapproved shall be void unless passed over his veto, as herein provided.**

Article IV, Sec. 30

Except interest or other payments on the public debt, **money shall be paid out of the treasury only upon appropriations made by the legislature.** No money shall be paid therefrom except upon warrant drawn by the proper officer. **Every law making an appropriation shall distinctly specify the sum appropriated and the object to which it is to be applied.**