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FISCAL IMPACT REPORT

ORIGINAL DATE 10/20/09
LAST UPDATED 10/22/09 **HB** 3/aHAFC/aSFL#1
SPONSOR Lujan
SHORT TITLE Fund Transfers & Appropriation Voids **SB** _____
ANALYST Weber/Lucero

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
(\$667.0)		Nonrecurring	General Fund
(\$550.0)		Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	(\$1,000.0)		Nonrecurring	Legislative Cash Balances
	(\$100.0)		Nonrecurring	Magistrate Court Mediation Fund
	(\$500.0)		Nonrecurring	Water Project Fund
	(\$150.0)		Nonrecurring	Metropolitan Court Warrant Enforcement Fund
	(\$100.0)		Nonrecurring	Metropolitan Court Mediation Fund
	(\$150.0)		Nonrecurring	Alternative Dispute Resolution Fund of the Third Judicial District
	(\$500.0)		Nonrecurring	Audit Fund
	(\$1,100.0)		Nonrecurring	Property Valuation Fund
	(\$1,500.0)		Nonrecurring	Electronic Voting System Revolving Fund
	(\$500.0)		Nonrecurring	Domestic Violence Offender Treatment or Intervention Fund
	(\$3,000.0)		Nonrecurring	Enhanced 911 Fund
	(\$412.0)		Nonrecurring	Public Election Fund

	(\$25.0)		Nonrecurring	State Employees' Career Development Fund
	(\$100.0)		Nonrecurring	Securities Education and Training Fund
	(\$172.0)		Nonrecurring	Real Estate Recovery Fund
	(\$100.0)		Nonrecurring	Barbers and Cosmetologists Fund
	(\$300.0)		Nonrecurring	Massage Therapy Fund
	(\$500.0)		Nonrecurring	Counseling and Therapy Practice Board Fund
	(\$200.0)		Nonrecurring	Chiropractic Fund
	(\$200.0)		Nonrecurring	Psychology Fund
	(\$200.0)		Nonrecurring	Physical Therapy Fund
	(\$200.0)		Nonrecurring	Private Investigations Fund
	(\$400.0)		Nonrecurring	Public Accountancy Fund
	(\$1,500.0)		Nonrecurring	Real Estate Commission Fund
	(\$650.0)		Nonrecurring	Board of Social Work Examiners Fund
	(\$1,000.0)		Nonrecurring	New Mexico Medical Board Fund
	(\$750.0)		Nonrecurring	Board of Nursing Fund
	(\$600.0)		Nonrecurring	Office of Cultural Affairs Fund
	(\$800.0)		Nonrecurring	Trail Safety Fund
	(\$150.0)		Nonrecurring	Mining Act Fund
	(\$500.0)		Nonrecurring	Oil and Gas Reclamation Fund
	(\$500.0)		Nonrecurring	Employment Security Department Fund
	(\$3,500.0)		Nonrecurring	Workers' Compensation Administration Fund
	(\$1,000.0)		Nonrecurring	Uninsured Employers' Fund
	(\$2,500.0)		Nonrecurring	Hazardous Waste Emergency Fund
	(\$150.0)		Nonrecurring	Natural Resources Trustee Fund
	(\$250.0)		Nonrecurring	Children, Youth and Families Pre-Kindergarten Fund
	(\$250.0)		Nonrecurring	Juvenile Continuum Grant Fund
	(\$1,176.0)		Nonrecurring	Juvenile Community Corrections Grant Fund
	(\$1,500.0)		Nonrecurring	Community Corrections Grant Fund
	(\$1,500.0)		Nonrecurring	Corrections Department Intensive Supervision Fund

	(\$1,000.0)		Nonrecurring	Crime Laboratory Fund
	(\$500.0)		Nonrecurring	Concealed Handgun Carry Fund
	(\$973.0)		Nonrecurring	Educational Technology Deficiency Correction Fund
	(\$1,900.0)		Nonrecurring	Instructional Material Fund
	(\$1,450.2)		Nonrecurring	Public Pre-Kindergarten Fund
	(\$68,000.0)		Nonrecurring	College Affordability Endowment Fund
	(\$2,848.7)		Nonrecurring	Higher Education Performance Fund
	(\$314.1)		Nonrecurring	Higher Education Endowment Fund
	(\$171.3)		Nonrecurring	Higher Education Program Development Enhancement Fund
	(\$1,200.0)		Nonrecurring	Attorney General Antitrust Cases and Consumer Protection Settlements
	(\$100.0)		Nonrecurring	Energy, Minerals and Natural Resources Department's Mine Reclamation Program – Hard Rock and Coal Mining
	(\$1,700.0)		Nonrecurring	Public Education Department Driving Safety Fees
	(\$5,000.0)		Nonrecurring	Higher Education Department's Special Program Fund – Student Financial Aid Program
	\$114,842.3		Nonrecurring	General Fund Appropriations Account

(Parenthesis () Indicate Revenue Decreases)

Companion to other LFC sponsored legislation dealing with FY10 solvency

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of Senate Floor Amendment #1

Senate Floor Amendment #1 increases the amount to be swept from the college affordability endowment fund by \$8 million to a total of \$68 million. The amendment increases the amount transferred to the general fund to \$114.8 million.

Synopsis of HAFC Amendment

The House Appropriations and Finance Committee amendment modifies the bill to address technical corrections to fund and agency names and changes the following:

- Eliminates the following fund sweeps:

- \$500 thousand from the recycling and illegal dumping fund;
- \$500 thousand from the hazardous waste fund;
- Increases the following fund sweep:
 - Increases from \$1.5 million to \$2.5 million from the hazardous waste emergency fund.

Synopsis of Original Bill

House Bill 3 proposes to transfer \$106.8 million from state funds to the general fund and voids \$1.2 million appropriated in Laws 2008 Chapter 3 Section 7.

The provisions contained in the bill will be effective upon passage and signing due to the emergency clause.

Section 1. Transfers cash balances from various state funds. LFC, executive, and LCS staff reviewed the balances of all the funds to identify money that may not be required for the intended purpose. The funds were evaluated based on beginning FY10 balances, FY10 projected revenues, and FY10 appropriations to ensure availability of the balances recommended for transfer to the general fund. The funds listed above and amounts transferred to the general fund are for the purpose of meeting appropriations from the general fund.

Information relating to some of the funds is included below:

College Affordability Endowment Fund. The college affordability endowment fund distributes funds annually to the college affordability scholarship fund based on annual income from investment. Until fifty percent of the annual income from investment of the college affordability endowment fund is equal to or exceeds two million dollars, an annual distribution of two million dollars shall be made from the college affordability endowment fund to the college affordability scholarship fund. The September 30 fund value was \$83.9 million. Sweeping \$60 million leaves sufficient balance for approximately 12 years of awards without any investment gains.

Public Election Fund. This fund, administered by the Public Regulations Commission, is used to finance the election campaigns of the PRC and certain judgeships. The fund replenishes from insurance premium taxes, utility and carrier inspection fees, and inspection and supervision fees which are ongoing. The resultant fund balance takes into account the 2010 elections.

Pre-Kindergarten Fund. This fund is administered by Children Youth and Families Department to carry out the provisions of the pre-Kindergarten Act. The fund is non-reverting and has accumulated a balance in excess of typical annual expenditures.

Workers Compensation Fund. The Workers Compensation Administration projects the fund balance to be \$5.9 million at the end of FY10. WCA reports workers compensation assessments are projected to decrease by 3.7 percent in FY10 due to declining payrolls. Fund balances are unlikely to grow in FY10 and could decline if the unemployment rate continues to increase in New Mexico; however, the remaining balance plus assessments should be adequate for FY11 operating expenses.

Uninsured Employers Fund. The fund was created in 2003 to provide workers compensation benefits for employees whose employers by law should, but do not have workers compensation coverage. The funding is from a 30 cent quarterly assessment and is supplemented by recoveries

of costs plus penalties from uninsured employers whose employees receive benefits from the fund. In FY09, Workers Compensation Administration collected a total of \$1.5 million in fees and fines, and expended \$748.4 thousand for medical and indemnity payments from the fund.

Corrections Department Intensive Supervision Fund. These funds are collected from fees paid by parolees who require and are assigned intensive supervision. The fund has accumulated non-reverting fund balance in excess of typical annual appropriation requirements.

The Financial Aid Fund. This fund is considered a special revenue fund used for specific revenue sources from various financial aid programs for students and is restricted to expenditures for specified purposes related to those programs. The balances earn interest and do not revert. Fund revenues are distributed by HED for the various scholarship programs in accordance with statute. The swept amount is interest gained over several years but not distributed as qualified scholarships.

Higher Education Performance. The fund balance reflects an unallocated general fund appropriation and interest earnings. The original appropriation was for a pilot project to reward higher education institutions for improving student persistence and graduation outcomes; however, only 50 percent of the original appropriation was awarded.

The Real Estate Commission Fund. The fund receives revenues from real estate agents who are assessed fees for licenses, registrations, permits, penalties, exams, and training materials. Revenue from the fund is then used to develop and update training manuals and conduct brokerage office inspections, complaint hearings, surveys, trainings, and investigations. The amount recommended is in excess of typical annual expenditures.

Instructional Material Fund. The fund was established to meet statutory requirements specifying that any student attending a public school, state institution, approved private school in grades kindergarten through twelfth grade; students enrolled in certain early childhood programs and adult basic education classes are entitled to use of instructional materials for free. Public school districts, charter schools and private schools use the instructional materials fund to pay for the cost of purchasing instructional materials, including textbooks and some classroom materials. In the case of private schools, the department provides payment directly to in-state depositories on behalf of the private school. Over time, a number of private schools have used little or none of their allocations allowing considerable balances to accrue. Of these balances, PED has determined that \$1.9 million will not be used either because a school has ceased operations or because the school chooses not to use the funds.

Driving Safety Fees. A driver's safety fee of \$3.00 or \$6.00 is charged for each driver's license or duplicate driver's license issued by the state and is disbursed to each school district through the state equalization guarantee distribution for the purpose of providing defensive driving instruction in schools. As a result of higher than expected payments from the federal government for the last two or three years the department has not needed these revenues and has allowed them to accrue.

The Hazardous Waste Emergency Fund. The funds are used for cleanup of hazardous waste substance incidents, disposal of hazardous substances and necessary repairs related to state property and for the state's share of costs associated with the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980. All penalties collected by

the Environment Department pursuant to the Hazardous Waste Act are deposited to this fund. The fund balance has exceeded \$2 million since 2007 and expenditures averaged under \$300 thousand for each of the last 11 years, with the highest one-year expenditure being just under \$1 million.

Enhanced 911 (E-911). A surcharge of \$0.51 per land line and cell phone generates approximate revenues of \$12 million per year. Typical annual expenditures are comprised of call center operating costs (between \$8 million and \$9 million annually), one-time equipment costs (which is variable depending on budget), and the administrative costs of the program (set at 5 percent of revenues, which average \$600 thousand). The original goal of 90 percent coverage has been achieved and the agency is now looking to upgrade and replace equipment under a Phase II plan. This fund sweep would delay the equipment replacement planned by the department. The agency is considering seeking additional revenues, such as applying the fee to disposable phones and internet phone services to sufficiently fund the Phase II upgrades.

Consumer Settlement Fund. Under certain circumstances, the Attorney General will file a civil lawsuit to challenge business practices that violate New Mexico or Federal law. The lawsuit may seek restitution for consumers impacted by the business' practice(s), fines and civil penalties for businesses that violate the law, and consumer education benefits. If the courts rule in favor of the State and award a settlement, it is deposited into the consumer settlement fund.

Section 2. Voids appropriations in Section 7 of Chapter 3 of Laws 2008 that have not been allotted from the general fund to an agency account.

- Item (7) Taxation and Revenue Department - \$667.0
- Item (29) Health Department - \$550.0

SIGNIFICANT ISSUES

Solvency Issues. The October 2009 consensus revenue estimate projects a deficit for FY10 of approximately \$650 million. The LFC proposal to address fiscal solvency includes a plan to transfer other state fund balances to the general fund.

This bill represents substantial consensus with the executive and LFC on a variety of different sweep scenarios; however, the college affordability endowment sweep amount in this bill differs from both the LFC and the Legislative Solvency Task Force by \$16 million.

COMPANIONSHIP

Companion to other LFC sponsored legislation dealing with FY10 solvency

AMENDMENT

Recommended amendments following agency input:

- On page 2 line 19 strike “three million dollars (\$3,000,000)” and insert “four million three hundred twenty-six thousand dollars (\$4,326,000)” This amount is more closely aligned with the executive recommendation of \$5 million for E-911;
- On page 5 strike lines 10 through 12 in its entirety;

- On page 5 line 13 and 14 strike” one million one hundred seventy-six thousand dollars (\$1,176,000)” and insert “five hundred thousand dollars (\$500,000)”. This change is necessary as CYFD reports the fund balance reported in SHARE is not current since not all FY09 expenditures have been posted;
- On page 7 line 10 strike “Five million dollars (\$5,000,000)” and insert “Four million six hundred thousand dollars (\$4,600,000)”.

Consideration may be given to void the fund transfer enacted in Laws 2009 Chapter 124 Section 12 item (A). This action reduces \$40 million from the appropriation contingency fund and increases the general fund account by the same amount making the money readily accessible for solvency.

H AFC amendment the bill to resolve the following technical issues in the original bill:

- On page 7 lines 11 and 12. The bill as drafted specifies Department of Finance and Administration; however, the bill should read Higher Education Department. In addition, according to the Higher Education Department’s annual audit, the correct name for fund 216 is the “Financial Aid Fund.”
- On page 4 line 8. The bill as drafted specifies the arts and cultural district fund; however, the bill should read Office of Cultural Affairs fund.

ALTERNATIVES

	Executive 10/17/09	HB3	Other Solvency Scenarios	Executive - HB3 Difference	Other Solvency - HB3 Difference
College Affordability	\$40,000.0	\$60,000.0	\$76,000.0	(\$20,000.0)	(\$16,000.0)
Other Funds	\$44,325.3	\$48,059.3	\$48,100.0	(\$3,734.0)	(\$40.7)
Total	\$84,325.3	\$108,059.3	\$124,100.0	(\$23,734.0)	(\$16,040.7)
					in thousandths

The table above identifies the difference between the executive recommendation, this bill, and other solvency scenarios.

- The most significant difference, as identified in the table above, is the college affordability endowment. The September 30, 2009 balance in the fund was \$83.9 million. The balance suggests larger amounts could be swept. By statute current annual awards are limited to \$2 million.
- The executive recommends only \$1 million per year over 5-years from the Higher Education Special Programs Fund whereas HB3 recommends the whole \$5 million be swept in FY10. While the amounts equal, the timeframe differs.

MW:DL/svb:mt