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State of New Mexico OFFICE OF
SECRETARY OF STATE

Susana Martinez
Governor

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.

HOUSE EXECUTIVE MESSAGE NO. 40

The Honorable Ben Luján

April 8, 2011

Page 2

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

HOUSE EXECUTIVE MESSAGE NO. 40
The Honorable Ben Luján
April 8, 2011
Page 3

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

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Time: 10:14 a.m. p.m.
Date: April 8 2011

By Patricia L. Romero for
Secretary of State

Time: 10:33 a.m. p.m.
Date: 4.8 2011

By [Signature]
Chief Clerk of the Senate