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# State of New Mexico

*Office of the Governor*

Bill Richardson  
*Governor*

November 12, 2009

## HOUSE EXECUTIVE MESSAGE NO. 5

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:

Times such as these challenge leaders to put aside pork-barrel politics, consider all options, and deliver creative, complete solutions. I admire much of the work and the dedication of our citizen legislators, who put aside personal pursuits and remuneration to selflessly serve the public during the special session. The truth is, however, that we did not completely meet the challenge.

While a good start, the fiscal year 2010 solvency bills passed during the special session did not completely bridge the budget gap. This was partly due to the Legislature's failure to put aside pork-barrel politics and void past capital appropriations. Many of those appropriations were hard to justify during times of plenty, either because they were not fully funded, not well-planned, or addressed only a marginal need. In these hard times, where core services face deep cuts, such appropriations simply cannot be justified. The Legislature also failed to duly consider the executive proposal to use supplemental severance tax bonds, which will be paid off by fiscal year end, to provide general fund operating revenue in the current fiscal year. This resulted in our trying to do a challenging job without all of the available tools.

This backdrop frames my primary objection to the House Appropriations and Finance Committee Substitute for House Bills 17 and 33, as amended ("HB 17/33"): Section 2(A)(4). That section would have reduced the operating appropriations to state agencies under my control by an aggregate of seven and six-tenths percent. Respectfully, Section 2(A)(4) is not a model of legislative draftsmanship. It would have raised substantial implementation and interpretation issues that could have engulfed my administration in controversy and potential lawsuits at a time when our focus needs to be on bridging the budget gap.

Those real issues aside, the bottom-line is that, with almost half the fiscal year gone, that cut, which amounts to approximately \$125 million, is simply too deep. Implementing it would have

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caused dangerous and unacceptable harm to core services. For example, the ability of the Children, Youth, and Families Department to investigate child neglect and abuse cases and take kids into protective custody would likely have been severely compromised, putting kids at risk and jeopardizing federal funding to the State. The Department of Health would have likely been forced to temporarily close some public health offices and reduce services at school-based and rural primary care clinics, which provide services to citizens with few (if any) other options. Two adult correctional facilities probably would have been closed, resulting in hundreds of prisoners being released early with inadequate supervision and employees being put out of work.

Cuts this deep could only be justified if all other responsible options had been exhausted and we still came up short. As explained above, however, that is not the case. Consequently, I have vetoed Section 2(A)(4) of HB 17/33 in its entirety.

That does not mean, however, that I am postponing meaningful restrictions on the expenditures of agencies under my control. Today I issue an executive order that imposes such restrictions while maintaining core services at acceptable levels. These expenditure restrictions will result in general fund savings that will, along with other measures that I will propose to the Legislature, bridge the budget gap while maintaining adequate levels of services and a prudent level of reserves.

My other objections to HB 17/33 are largely constitutional.

Parts of it sought to impermissibly intrude into the Executive managerial function. Section 11 attempted to control the content of the fiscal year 2011 Executive budget recommendation. Section 2(B) tried to mandate that the vetoed appropriation reductions in Section 2(A)(4) be implemented first through cuts to the salaries and benefits of exempt employees at agencies under the control of the Governor. I strongly object to the Legislature's continuing efforts to unconstitutionally reserve onto itself close powers of supervision and micromanagement.

HB 17/33 also contains parts that would, if enacted, nullify substantive law and/or create general legislation, practices precluded by Article IV, Section 16 of the New Mexico Constitution. Of particular concern is the Legislature's continuing efforts to enact reporting requirements and institute other means of Legislative oversight beyond what exists in substantive law. The Legislature's efforts to override substantive law by limiting emergency supplemental distributions to small, rural school districts is as misguided as it is unconstitutional. As a matter of basic fairness, students in a financially needy district should not be penalized because their district is urban or large.

The Legislature has also attempted to assert control over state fiscal stabilization funds awarded to the Governor by the federal government. Our Supreme Court, however, has clearly ruled that such federal funds are beyond the Legislature's appropriation power. In addition, the Legislature's proposal to simply deposit government services funds into the general fund would have raised substantial compliance issues under the federal American Recovery and Reinvestment Act of 2009, which requires the State to specifically account to the federal government on how every dollar was spent and the impact the spending had on jobs. Depositing

the federal money into the general fund to fund all State operations would have precluded the State from complying with these stringent reporting requirements. I have vetoed the offending provisions as a matter of principle. Concerned citizens should know, however, that I will be distributing federal education stabilization funds in a timely manner to offset HB 17/33's cuts to public and higher education.

Finally, HB 17/33 would have denied the New Mexico Computing Applications Center of needed seed funding. The Center will ultimately be self-sufficient. But it needs State funding during these critical early days to get to that point.

My vetoes remedy these deficiencies.

I have this day SIGNED

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE FOR  
HOUSE BILLS 17 AND 33, as amended

enacted during the Forty-Ninth Legislature, First Special Session, 2009, except the following item or items, part or parts, which I hereby veto pursuant to the authority granted me in Article IV, Section 22 of the Constitution of New Mexico:

On page 2, I have vetoed all of lines 6 through 23.

On page 3, I have vetoed all of line 25, and on page 4, I have vetoed all of lines 1 through 5.

On page 4, line 9, beginning with "--AMERICAN", I have vetoed the remainder of the line, and on line 10, I have vetoed "APPROPRIATIONS".

On page 4, I have vetoed all of lines 16 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 13.

On page 6, line 4, I have vetoed the word "small", on line 5, I have vetoed the word "rural" and, beginning with the word "with", I have vetoed through the remainder of the line, and on line 6, I have vetoed beginning with the word "six" through the word "schools".

On page 8, I have vetoed all of line 25, and on page 9, I have vetoed all of lines 1 through 11.

On page 9, I have vetoed all of lines 12 through 16.

I look forward to working with you to finish in future sessions the work we began in the special session.

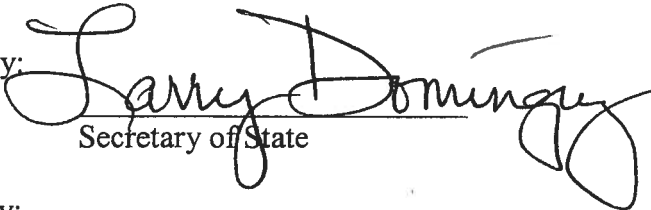
Respectfully yours,



Bill Richardson  
Governor

RECEIVED FROM THE OFFICE OF THE GOVERNOR:

Time: 11:27 a.m./p.m.  
Date: 11/21 2009

by:   
Secretary of State

Time: \_\_\_\_\_ a.m./p.m.  
Date: \_\_\_\_\_ 2009

by: \_\_\_\_\_  
Chief Clerk of the House



The Legislature  
of the  
State of New Mexico

49th Legislature, 1st Special Session

LAWS 2009

CHAPTER 5

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE

SUBSTITUTE FOR HOUSE BILLS 17 AND 33, as amended

Introduced by

**PARTIAL VETO**



# CHAPTER 5

## AN ACT

RELATING TO GENERAL APPROPRIATIONS; REDUCING FISCAL YEAR 2010 APPROPRIATIONS; PROVIDING AUTHORITY TO THE DEPARTMENT OF FINANCE AND ADMINISTRATION TO ADJUST BUDGETS AND ALLOTMENTS TO COMPLY WITH THE PROVISIONS OF THIS ACT; REQUIRING CREATION OF A LIST OF VOIDABLE CAPITAL OUTLAY; MAKING APPROPRIATIONS.

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

Section 1. A new section of the General Appropriation Act of 2009 is enacted to read:

"FINDING.--Due to discrepancies between anticipated revenues and appropriations for fiscal year 2010, the legislature finds that New Mexico must reduce expenditures in fiscal year 2010."

Section 2. A new section of the General Appropriation Act of 2009 is enacted to read:

"APPROPRIATION REDUCTIONS.--

A. The general fund appropriations in Section 4 of the General Appropriation Act of 2009 are reduced as follows:

(1) in Subsection A of that section, legislative building services is reduced by four percent;

(2) in Subsection B of that section, judicial agencies, district courts, the Bernalillo county metropolitan court, the district attorneys and the administrative office of the district attorneys are each

1 reduced by two percent;

2 (3) state agencies under the control of all  
3 elected executive officials other than the governor are each  
4 reduced by four percent, except that the attorney general is  
5 reduced by two percent;

6 ~~bl (4) state agencies under the control of the~~  
7 ~~governor are reduced by an aggregate of seven and six-tenths~~  
8 ~~percent, except that:~~

9 ~~(a) the public defender department is~~  
10 ~~reduced by two percent;~~

11 ~~(b) the other financing uses category~~  
12 ~~in the developmental disabilities support program of the~~  
13 ~~department of health is reduced by two million dollars~~  
14 ~~(\$2,000,000), which will be offset by two million dollars~~  
15 ~~(\$2,000,000) from federal funds in the human services~~  
16 ~~department;~~

17 ~~(c) the law enforcement program of the~~  
18 ~~department of public safety is reduced by not more than two~~  
19 ~~percent; and~~

20 ~~(d) the other category in the medical~~  
21 ~~assistance program of the human services department is reduced~~  
22 ~~by sixteen million dollars (\$16,000,000), which will be offset~~  
23 ~~by twelve million dollars (\$12,000,000) from federal funds;~~ ~~bl~~

24 (5) each public post-secondary educational  
25 institution is reduced by four percent in the instruction and

1 general purposes category and six and five-tenths percent in  
2 every other category, including research and public service  
3 projects, with the institution determining reductions in each  
4 item of the category and between categories;

5 (6) the New Mexico military institute is  
6 reduced by two percent in the instruction and general purposes  
7 category and six and five-tenths percent in every other  
8 category, including research and public service projects, with  
9 the school determining reductions in each item of the category  
10 and between categories; and

11 (7) public school support is reduced as  
12 follows:

13 (a) the state equalization guarantee  
14 distribution by two percent;

15 (b) the transportation distribution,  
16 including operational, school-owned bus replacements and  
17 rental fees, is reduced by four percent; and

18 (c) the supplemental distribution,  
19 including out-of-state tuition and emergency supplemental; the  
20 instructional material fund; dual-credit instructional  
21 materials; the educational technology fund; the schools in  
22 need of improvement fund; public education department special  
23 appropriations; apprenticeship assistance; and regional  
24 education cooperatives by six and five-tenths percent.

25 ~~B. In reducing budgets pursuant to the~~



1 ~~appropriation reductions pursuant to Paragraph (4) of~~  
2 ~~Subsection A of this section, the governor shall first reduce~~  
3 ~~personal services and employee benefits for one hundred two~~  
4 ~~exempt positions in state agencies under the control of the~~  
5 ~~governor."~~ BR

6 Section 3. A new section of the General Appropriation  
7 Act of 2009 is enacted to read:

8 "ADDITIONAL REDUCTIONS FOR EDUCATIONAL INSTITUTIONS AND  
9 PUBLIC SCHOOLS<sup>BR</sup> ~~AMERICAN RECOVERY AND REINVESTMENT ACT~~  
10 ~~APPROPRIATIONS~~<sup>BR</sup>

11 A. In addition to the general fund reductions in  
12 Subparagraph (a) of Paragraph (7) of Subsection A of Section 2  
13 of this 2009 special session act, the state equalization  
14 guarantee distribution shall be further reduced by forty-five  
15 million five hundred thousand dollars (\$45,500,000).

16 <sup>BR</sup> ~~B. For fiscal year 2010, of the ninety three~~  
17 ~~million two hundred thousand dollars (\$93,200,000) remaining~~  
18 ~~from the federal American Recovery and Reinvestment Act of~~  
19 ~~2009 allocation to the state through the education fund of the~~  
20 ~~state fiscal stabilization fund, forty five million five~~  
21 ~~hundred thousand dollars (\$45,500,000) shall be distributed to~~  
22 ~~school districts and charter schools through the state~~  
23 ~~equalization guarantee distribution, and thirteen million four~~  
24 ~~hundred thousand dollars (\$13,400,000) shall be distributed~~  
25 ~~proportionally to public post-secondary educational~~

1 ~~institutions in the instruction and general purposes category.~~

2 ~~G. Of the amount remaining from the public safety~~  
3 ~~and other government services allocation from the federal~~  
4 ~~American Recovery and Reinvestment Act of 2009, twenty million~~  
5 ~~dollars (\$20,000,000) is allocated to the appropriation~~  
6 ~~account of the general fund for fiscal year 2010."~~ *pk*

7 *pk* Section 4. A new section of the General Appropriation  
8 Act of 2009 is enacted to read:

9 ~~"APPROPRIATION REDUCTION--SECTION 5.--The appropriation~~  
10 ~~in Section 5 of the General Appropriation Act of 2009 to the~~  
11 ~~department of information technology for the New Mexico~~  
12 ~~computing applications center is reduced by one million five~~  
13 ~~hundred thousand dollars (\$1,500,000)."~~ *pk*

14 Section 5. A new section of the General Appropriation  
15 Act of 2009 is enacted to read:

16 "TOBACCO SETTLEMENT PROGRAM FUND--APPROPRIATION TO  
17 MEDICAID.--Four million dollars (\$4,000,000) is appropriated  
18 from the tobacco settlement program fund to the human services  
19 department for expenditure in fiscal year 2010 for the medical  
20 assistance program. Any unexpended or unencumbered balance  
21 remaining at the end of fiscal year 2010 shall revert to the  
22 tobacco settlement program fund."

23 Section 6. A new section of the General Appropriation  
24 Act of 2009 is enacted to read:

25 "PUBLIC SCHOOLS--EMERGENCY SUPPLEMENTAL.--Three million

1 dollars (\$3,000,000) is appropriated from the general fund to  
2 the emergency supplemental distribution of the public school  
3 fund for expenditure in fiscal year 2010 by the public  
4 education department to make emergency distributions to ~~small~~  
5 ~~rural~~ school districts ~~with a total membership of fewer than~~  
6 ~~six hundred in their elementary, middle and high schools~~ in  
7 financial need, but no money shall be distributed to any  
8 school district having cash and invested reserves, or other  
9 resources or any combination thereof, equaling five percent or  
10 more of the school district's operational budget. Any  
11 unexpended or unencumbered balance remaining at the end of  
12 fiscal year 2010 shall revert to the general fund."

13 Section 7. A new section of the General Appropriation  
14 Act of 2009 is enacted to read:

15 "APPROPRIATION--PUBLIC SCHOOL CAPITAL OUTLAY FUND FOR  
16 INSURANCE COVERAGE.--Notwithstanding the provisions of the  
17 Public School Capital Outlay Act, twenty-nine million dollars  
18 (\$29,000,000) is appropriated from the public school capital  
19 outlay fund to the public school insurance authority for  
20 expenditure in fiscal year 2010 for the purpose of reimbursing  
21 or paying property insurance premiums on behalf of school  
22 districts and charter schools. Of the appropriation, the  
23 amount necessary to reimburse or pay up to seven million  
24 dollars (\$7,000,000) for property insurance coverage in fiscal  
25 year 2010 for the Albuquerque public school district shall be

1 distributed by the public school insurance authority to the  
2 Albuquerque public school district. Any unexpended or  
3 unencumbered balance remaining at the end of fiscal year 2010  
4 shall revert to the public school capital outlay fund."

5 Section 8. A new section of the General Appropriation  
6 Act of 2009 is enacted to read:

7 "WORKFORCE SOLUTIONS DEPARTMENT APPROPRIATION.--Two  
8 million dollars (\$2,000,000) is appropriated from the federal  
9 American Recovery and Reinvestment Act of 2009 unemployment  
10 insurance modernization funding to the workforce solutions  
11 department for operating expenditures in fiscal year 2010."

12 Section 9. A new section of the General Appropriation  
13 Act of 2009 is enacted to read:

14 "OPERATING BUDGETS AND ALLOTMENTS REDUCED TO COMPLY--  
15 OTHER REDUCTIONS TO CONFORM--OVER-ALLOTMENTS--DEPARTMENT OF  
16 FINANCE AND ADMINISTRATION.--

17 A. The department of finance and administration  
18 shall reduce fiscal year 2010 operating budgets and adjust  
19 allotments to comply with the provisions of this 2009 special  
20 session act and may reduce appropriations from other state  
21 funds, internal service/interagency transfers and federal  
22 funds as necessary to match the general fund reductions in the  
23 fiscal year 2010 operating budgets. The legislative finance  
24 committee shall review the adjusted operating budgets in a  
25 timely manner.

1           B. If, in this act or any other act of the first  
2 special session of the forty-ninth legislature, a general fund  
3 appropriation or budget is reduced and funds in excess of the  
4 amount of the reduced appropriation or budget have already  
5 been allotted to the state agency receiving the appropriation,  
6 the department of finance and administration may reduce any  
7 other general fund allotment to the state agency in order to  
8 recoup the over-allotment of the reduced appropriation or  
9 budget. In the case of an appropriation made to one state  
10 agency but disbursed or transferred to another state agency,  
11 the department of finance and administration may reduce any  
12 other general fund allotment to the agency to which the  
13 appropriation was disbursed or transferred in order to recoup  
14 the over-allotment of the reduced appropriation or budget.  
15 The authority provided in this section is additional to any  
16 other power the department of finance and administration has  
17 to remedy over-allotments, and the grant of authority in this  
18 section shall not be deemed to be a legislative determination  
19 that the department of finance and administration does not  
20 otherwise have the authority provided in this section.

21           C. As used in this section, "state agency" means  
22 any department, institution, board, bureau, commission,  
23 district or committee of the government of the state and means  
24 every office or officer of any of the above."

25     ~~H Section 10. TEMPORARY PROVISION REPORTS. The~~

1 ~~department of finance and administration, the higher education~~  
2 ~~department for public post secondary educational institutions~~  
3 ~~and special schools and the public education department for~~  
4 ~~public schools shall report the new operating budgets,~~  
5 ~~including allotment adjustments, to the New Mexico legislative~~  
6 ~~council, the legislative finance committee and the legislative~~  
7 ~~education study committee on the implementation of this act~~  
8 ~~for state government, public post secondary educational~~  
9 ~~institutions and public schools. Reports, including new~~  
10 ~~operating budgets, shall be published on the departments' web~~  
11 ~~sites.~~ ~~W~~

12 ~~W Section 11. TEMPORARY PROVISION--FISCAL YEAR 2011~~  
13 ~~BUDGET RECOMMENDATIONS.--The recurring general fund reductions~~  
14 ~~provided for in this act shall be carried forward in the~~  
15 ~~fiscal year 2011 executive budget recommendations presented to~~  
16 ~~the legislature as provided by Section 6-3-21 NMSA 1978.~~ ~~W~~

17 Section 12. TEMPORARY PROVISION--CAPITAL OUTLAY LIST OF  
18 VOIDABLE PROJECTS.--The legislative council service, the  
19 legislative finance committee and the department of finance  
20 and administration shall review all unexpended capital outlay  
21 projects funded by general fund appropriations and identify  
22 one hundred fifty million dollars (\$150,000,000) of voidable  
23 capital outlay projects by the effective date of this special  
24 session act. A minimum of one hundred fifty million dollars  
25 (\$150,000,000) in unexpended general fund capital outlay

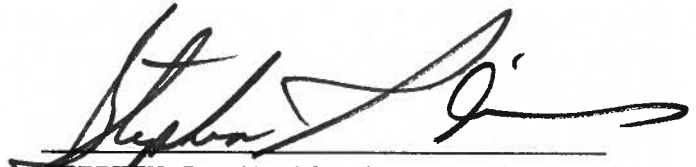
1 projects that have been determined by the legislative council  
2 service, the legislative finance committee and the department  
3 of finance and administration to be voidable shall be  
4 submitted as a bill for legislative consideration and action  
5 in the second session of the forty-ninth legislature. \_\_\_\_\_

HAFC/HB 17&33  
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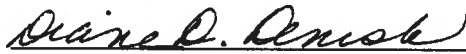
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BEN LUJAN, SPEAKER  
HOUSE OF REPRESENTATIVES



STEPHEN R. ARIAS, CHIEF CLERK  
HOUSE OF REPRESENTATIVES



DIANE D. DENISH, PRESIDENT  
SENATE



LENORE M. NARANJO, CHIEF CLERK  
SENATE

Approved by me this 12<sup>th</sup> day of November, 2009



BILL RICHARDSON, GOVERNOR  
STATE OF NEW MEXICO

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