

## **New Issue**

*This Official Statement has been prepared by the State Board of Finance to provide information on \$196,330,000 Capital Projects General Obligation Bonds, Series 2009 (the "Bonds"). Selected information is presented on this cover page for the convenience of the user. To make an informed decision, a prospective investor should read the entire Official Statement. Certain capitalized terms used on the cover page and elsewhere in this Official Statement have the meanings given in the Official Statement.*

**\$196,330,000**  
**THE STATE OF NEW MEXICO**  
**CAPITAL PROJECTS GENERAL OBLIGATION BONDS**  
**SERIES 2009**

### **Dated: Delivery Date**

**Due: March 1, as shown below**

<i>Ratings</i>	"Aa1" Moody's Investors Service, Inc.  "AA+" Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.
<i>Tax Exemption</i>	In the opinion of Sutin, Thayer & Browne A Professional Corporation, Bond Counsel, under existing laws, regulations, rulings and judicial decisions, and assuming continuing compliance with the covenants described herein, interest on the Bonds is excluded from gross income for federal income tax purposes and is not an item for purposes of the federal alternative minimum tax. Bond Counsel is also of the opinion that interest on the Bonds is exempt from State of New Mexico personal income taxes as described herein. See "TAX MATTERS."
<i>No Optional Redemption</i>	The Bonds are not subject to optional redemption prior to maturity.
<i>Security</i>	The Bonds are being issued under the authority of the 2008 Capital Projects General Obligation Bond Act, Chapter 80, Laws 2008 (the "Act"). The Act authorizes and directs State tax officials to levy on all property in the State that is subject to taxation an <i>ad valorem</i> tax sufficient to produce an amount equal to the interest and principal requirements for each year for any general obligation bonds outstanding. The Bonds are general obligations of the State of New Mexico, and the full faith and credit of the State is pledged to the payment of Bonds issued under the Act.
<i>Purpose</i>	The Bonds are being issued to provide funds for construction, acquisition or improvement of senior citizen, library, health, higher education and State special school projects as set forth in the Act and approved by the voters of the State on November 4, 2008.
<i>Interest Payment Dates</i>	March 1 and September 1, commencing September 1, 2009.
<i>Closing/Settlement</i>	On or about May 28, 2009.
<i>Denominations</i>	\$5,000
<i>Book-Entry System</i>	The Depository Trust Company
<i>Registrar/Paying Agent</i>	State Treasurer of New Mexico
<i>Bond Counsel</i>	Sutin, Thayer & Browne A Professional Corporation
<i>Disclosure Counsel</i>	Brownstein Hyatt Farber Schreck, LLP
<i>Issuer Contact</i>	State Board of Finance: Olivia Padilla-Jackson, Director, (505) 827-4980; <a href="mailto:Olivia.padilla-jackson@state.nm.us">Olivia.padilla-jackson@state.nm.us</a>

**Dated: April 21, 2009**

<b>Year (March 1)</b>	<b>Principal Amount</b>	<b>Interest Rate</b>	<b>Yield at Issuance<sup>1</sup></b>	<b>Price at Issuance<sup>1</sup></b>	<b>CUSIP<sup>2</sup></b>
2010	\$12,370,000	3.00%	0.45%	101.927%	647293MZ9
2011	16,685,000	5.00%	0.98%	106.989%	647293NA3
2012	17,515,000	5.00%	1.14%	110.450%	647293NB1
2013	18,395,000	5.00%	1.37%	113.251%	647293NC9
2014	19,315,000	5.00%	1.75%	114.773%	647293ND7
2015	20,280,000	5.00%	2.00%	116.237%	647293NE5
2016	21,290,000	5.00%	2.23%	117.285%	647293NF2
2017	22,355,000	5.00%	2.46%	117.836%	647293NG0
2018	23,475,000	5.00%	2.68%	117.999%	647293NH8
2019	24,650,000	5.00%	2.90%	117.732%	647293NJ4

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<sup>1</sup> This information not provided by the State.

<sup>2</sup> The State takes no responsibility for the accuracy of CUSIP numbers, which are included solely for the convenience of owners of the Bonds.

**ELECTED STATE OFFICIALS**

BILL RICHARDSON  
*Governor*

MARY HERRERA  
*Secretary of State*

DIANE D. DENISH  
*Lieutenant Governor*

JAMES B. LEWIS  
*State Treasurer*

HECTOR H. BALDERAS  
*State Auditor*

GARY K. KING  
*Attorney General*

PATRICK H. LYONS  
*Commissioner of Public Lands*

Public Regulation Commissioners:

JASON A. MARKS  
*District I*

DAVID W. KING  
*District II*

JEROME BLOCK  
*District III*

CAROL K. SLOAN  
*District IV*

SANDY R. JONES  
*District V*

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**STATE BOARD OF FINANCE**  
Ex Officio Members  
GOVERNOR BILL RICHARDSON  
*President*

*LT. GOVERNOR*  
DIANE D. DENISH  
*Member*

*STATE TREASURER*  
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KIM SANCHEZ RAEI  
*Secretary*

MARIA GRIEGO-RABY  
*Member*

STEVEN K. MOISE  
*Member*

KATHERINE B. MILLER  
*Executive Officer*

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Olivia Padilla-Jackson, Director

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*Albuquerque, New Mexico*

**FINANCIAL ADVISORS**  
*Fiscal Strategies Group, Inc.*  
*Swarthmore, Pennsylvania*  
*Public Resources Advisory Group*  
*(as subcontractor)*  
*Los Angeles, California*

In connection with the offering of the Bonds, the Underwriters may over-allot or effect transactions which stabilize or maintain the market price of such Bonds at a level above that which might otherwise prevail in the open market. Such stabilizing, if commenced, may be discontinued at any time.

No dealer, broker, salesperson or other person has been authorized to give any information or to make any representation other than those contained in this Official Statement and, if given or made, such information or representation must not be relied upon. This Official Statement does not constitute an offer to sell or solicitation of an offer to buy, nor shall there be any sale of the Bonds by any person, in any jurisdiction in which it is unlawful to make such an offer, solicitation or sale. The information and expressions of opinion herein are subject to change without notice. Neither the delivery of this Official Statement nor any sales hereunder shall under any circumstances create any implication that there has been no change in the affairs of the State of New Mexico or in the imposition and collection of *ad valorem* taxes since the date hereof.

This Official Statement contains statements relating to the State's receipt of future revenues that are "forward-looking statements" as defined in the Private Securities Litigation Reform Act of 1995. When used in this Official Statement, the words "estimate," "intend," "expect" and similar expressions are intended to identify forward-looking statements. Such statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated in such forward-looking statements. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof.

The issuer is the author of this Official Statement and is responsible for its accuracy and completeness. The Underwriters are not the authors of the Official Statement. In accordance with their responsibilities under federal securities laws, the Underwriters are required to review the information in this Official Statement and must have a reasonable basis for their belief in the accuracy and completeness of the Official Statement. Both the Preliminary Official Statement and the Official Statement are "deemed final" by the Board for purposes of Rule 15c2-12 of the Securities and Exchange Commission.

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## SUMMARY OF INFORMATION

### CAPITAL PROJECTS GENERAL OBLIGATION BONDS, SERIES 2009

The following material represents a summary of information concerning the Bonds and the security therefor set forth in this Official Statement and is qualified in its entirety by the detailed information herein. Purchasers of the Bonds should review the entire Official Statement before making an investment decision.

<i>Dated:</i>	Delivery Date.
<i>Interest Payment:</i>	Interest is payable semi-annually on September 1 and March 1, commencing on September 1, 2009.
<i>Principal Payment:</i>	The Bonds mature in serial installments as set forth on the inside cover page of this Official Statement.
<i>No Optional Redemption:</i>	The Bonds are <u>not</u> subject to optional redemption prior to maturity.
<i>Registration:</i>	The Bonds are being issued solely in book-entry form in the denomination of \$5,000 or any integral multiple thereof. The Bonds are being registered to Cede & Co., as nominee of The Depository Trust Company ("DTC"), New York, New York, which will act as depository.
<i>Legal Opinion:</i>	The Bonds are offered when, as and if issued, subject to the approval of legality by Sutin, Thayer & Browne A Professional Corporation, Bond Counsel.
<i>Security:</i>	The Bonds are being issued under the authority of the 2008 Capital Projects General Obligation Bond Act, Chapter 80, Laws 2008 (the "Act"). The Act authorizes and directs State tax officials to levy on all property in the State that is subject to taxation an <i>ad valorem</i> tax sufficient to produce an amount equal to the interest and principal requirements for each year for any general obligation bonds outstanding. The Bonds are general obligations of the State of New Mexico, and the full faith and credit of the State is pledged to the payment of Bonds issued under the Act.
<i>Limitation to the Issuance of Additional General Obligation Indebtedness:</i>	Section 8 of Article IX of the New Mexico State Constitution provides (in part) that no debt may be created if the total indebtedness of the State would thereby be made to exceed 1 percent of the assessed valuation of all the property subject to taxation in the State. Additional general obligation bonds for other than refunding purposes and levy of additional <i>ad valorem</i> taxes for payment thereof are subject to approval of the voters.

### STATE GENERAL OBLIGATION BONDS

General obligation bonds outstanding as of the closing of the Bonds	\$257,400,000
Plus: Series 2009 Bonds	\$196,330,000
Total State General Obligation Bonds, following the closing of the Bonds	<u>\$453,730,000</u>

### KEY BONDING MEASURES FOLLOWING THE ISSUANCE OF THE BONDS

Total General Obligation Bonds per capita (2008 population from Census Bureau)	\$228.65
Ratio of General Obligation Bonds to 2008 Net Taxable Value	<u>0.899%</u>
Ratio of General Obligation Bonds per capita to State 2008 per capita personal income	<u>0.713%</u>
Percent of General Obligation Bonds due within 10 years	<u><u>100%</u></u>

## OFFICIAL STATEMENT

**\$196,330,000**

### **THE STATE OF NEW MEXICO CAPITAL PROJECTS GENERAL OBLIGATION BONDS, SERIES 2009**

#### INTRODUCTION

The purpose of this portion of this Official Statement, including the cover page, the Summary of Information, and the Appendices hereto, is to furnish information regarding the issuance of the State of New Mexico Capital Projects General Obligation Bonds, Series 2009 in the principal amount of \$196,330,000 (the “Bonds”), the State of New Mexico (the “State”), and the State Board of Finance (the “Board”).

The Bonds are general obligations of the State for the payment of which the full faith and credit of the State is pledged. The Bonds are payable from *ad valorem* taxes levied without limit as to rate or amount on all property in the State subject to taxation for State purposes. The Bonds are authorized in the maximum principal amount of \$223,802,000 by the 2008 Capital Projects General Obligation Bond Act, Chapter 80, Laws 2008 (the “Act”) passed by the State Legislature and approved by the voters in a statewide election on November 4, 2008. See “THE BONDS,” below. The Bonds are being issued to provide funds for capital expenditures for construction, acquisition or improvement of senior citizen, library, health, higher education and State special school projects specified in the Act.

This Official Statement contains summaries of the terms of the Bonds, descriptions of the State, certain fiscal matters of the State and taxes imposed by the State. The descriptions included in this Official Statement do not purport to be comprehensive or definitive, and such summaries and descriptions are qualified in their entirety by reference to such laws, and the definitive forms of documents, exhibits or appendices where applicable. Requests for additional information about the State, the Bonds or requests for copies of any document or statute referred to in this Official Statement, may be directed to:

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#### RECENT LEGISLATION

During the State’s 2009 regular legislative session which concluded in March 2009, legislation relating to the budgets for Fiscal Years 2009 and 2010 was adopted. For a specific discussion regarding such legislation and its impact on the State’s financial condition, see “FINANCIAL OVERVIEW OF THE STATE—Review of Results and Projections in the General Fund—Fiscal Year 2009” and “—Fiscal Year 2010.”

## THE BONDS

### General Terms

The Bonds are dated as of their delivery date, bear interest until the principal amount thereof is paid, and mature as set forth on the inside cover page hereof. Interest on the Bonds is payable on September 1 and March 1, commencing on September 1, 2009. The Bonds are general obligations of the State for the payment of which the full faith and credit of the State is pledged under the authorizing Act. The Bonds are payable from *ad valorem* taxes levied on all property of the State subject to taxation for State purposes.

The Bonds are being issued solely in book-entry form in denominations of \$5,000 or an integral multiple thereof. The Bonds are being registered in the name of Cede & Co., as nominee of The Depository Trust Company (“DTC”), New York, New York, which will act as depository for the Bonds. The Bonds are subject to transfer and exchange as set forth in the sale resolution authorizing the issuance, sale and delivery of the Bonds adopted by the Board on April 21, 2009 (the “Resolution”).

### No Optional Redemption of Bonds

The Bonds are not subject to optional redemption prior to maturity.

### Authorization and Purpose

General obligation bonds of the State are issued and the proceeds thereof appropriated to various purposes pursuant to an act of the Legislature of the State, consisting of the Senate and the House of Representatives (the “Legislature”). Under the State Constitution, general obligation bonds cannot be issued pursuant to such an act unless the act has been submitted to the qualified electors of the State at a general election and receives a majority of all the votes cast thereon at such election. Such an act takes effect upon certification of the State Canvassing Board announcing the results of such election. In addition, the Act provides that general obligation bonds may be issued for refunding purposes without further legislative action or referendum.

The Bonds are being issued pursuant to the Act, which authorizes and directs State tax officials to levy on all property in the State which is subject to taxation for State purposes an *ad valorem* tax sufficient to produce an amount equal to the interest and principal redemption requirements of each year for general obligation bonds outstanding.

### Security and Sources of Payment

The Constitution of the State requires that any law, such as the Act, which authorizes general obligation debt of the State shall provide for an annual tax levy sufficient to pay the interest on and to provide a sinking fund to pay the principal of the debt. See “OUTSTANDING GENERAL OBLIGATION INDEBTEDNESS — Limitations to the Issuance of Additional State General Obligation Bonds,” below.

The Act requires the State to impose, during each year in which the Bonds are outstanding, an *ad valorem* tax on all property in the State subject to taxation for State purposes sufficient to pay the principal of and interest on the Bonds as they become due. The *ad valorem* taxes are required to be imposed, levied, assessed and collected. The State Treasurer is required to keep separate accounts of all amounts collected from taxes imposed pursuant to the Act and to use that money only for the purposes of paying the principal of and interest on the Bonds as they become due, and expenses relating thereto.

Currently the property taxes levied for State purposes are for the outstanding General Obligation Bonds, Series 2005 and Series 2007, and Refunding Series 2008A (collectively, the “Outstanding

Bonds”). Property taxes are also levied for local government purposes including locally-authorized general obligation bonds of various cities, counties, and school and special districts in the State.

The Act pledges the full faith and credit of the State for the payment of the Bonds and, pursuant to their provisions, constitutes an irrevocable contract with the holders of the Bonds. The payment of general obligation bonds from other than *ad valorem* taxes collected for that purpose requires an appropriation by the Legislature. If at any point there is not a sufficient amount of money from *ad valorem* taxes to make a required payment of principal of or interest on State general obligation bonds, the Governor may call a special session of the Legislature in order to secure an appropriation of money sufficient to make the required payment.

## OUTSTANDING GENERAL OBLIGATION INDEBTEDNESS

### Outstanding General Obligation Bonds

The principal amount of State general obligation bonds previously issued that will be outstanding at the delivery of the Bonds, and the annual debt service requirements on such outstanding bonds, are set forth below:

**TABLE 1**

#### General Obligation Bonds Outstanding Prior to the Issuance of the Bonds

<u>Series</u>	<u>Principal Outstanding</u>
Series 2005	\$ 73,780,000
Series 2007	112,885,000
Refunding Series 2008A	<u>70,735,000</u>
<b>Total</b>	<b>\$ 257,400,000</b>

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**TABLE 2**

**Debt Service Requirements on the Bonds**

<u>Date</u>	<u>Principal</u>	<u>Interest</u> <sup>(1)</sup>	<u>Fiscal Year Debt Service</u>
09/01/09		\$2,472,017.49	
03/01/10	\$12,370,000	4,784,550.00	\$19,626,567.49
09/01/10		4,599,000.00	
03/01/11	16,685,000	4,599,000.00	25,883,000.00
09/01/11		4,181,875.00	
03/01/12	17,515,000	4,181,875.00	25,878,750.00
09/01/12		3,744,000.00	
03/01/13	18,395,000	3,744,000.00	25,883,000.00
09/01/13		3,284,125.00	
03/01/14	19,315,000	3,284,125.00	25,883,250.00
09/01/14		2,801,250.00	
03/01/15	20,280,000	2,801,250.00	25,882,500.00
09/01/15		2,294,250.00	
03/01/16	21,290,000	2,294,250.00	25,878,500.00
09/01/16		1,762,000.00	
03/01/17	22,355,000	1,762,000.00	25,879,000.00
09/01/17		1,203,125.00	
03/01/18	23,475,000	1,203,125.00	25,881,250.00
09/01/18		616,250.00	
03/01/19	<u>24,650,000</u>	<u>616,250.00</u>	<u>25,882,500.00</u>
<b>Total</b>	<b>\$196,330,000</b>	<b>\$56,228,317.49</b>	<b>\$252,558,317.49</b>

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<sup>(1)</sup> Estimated.

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**TABLE 3****Future General Obligation Bond Debt Service Requirements**

<u>Date</u>	<u>Principal on Outstanding Bonds</u>	<u>Interest on Outstanding Bonds</u>	<u>Debt Service on Outstanding Bonds</u>	<u>Debt Service on the Bonds</u>	<u>Total Debt Service by Payment Date</u>	<u>Total Debt Service</u>
09/01/09		\$6,435,000	\$6,435,000	\$2,472,017	\$8,907,017	
03/01/10	\$42,780,000	6,435,000	49,215,000	17,154,550	66,369,550	\$75,276,567
09/01/10		5,365,500	5,365,500	4,599,000	9,964,500	
03/01/11	45,040,000	5,365,500	50,405,500	21,284,000	71,689,500	81,654,000
09/01/11		4,239,500	4,239,500	4,181,875	8,421,375	
03/01/12	39,325,000	4,239,500	43,564,500	21,696,875	65,261,375	73,682,750
09/01/12		3,256,375	3,256,375	3,744,000	7,000,375	
03/01/13	41,360,000	3,256,375	44,616,375	22,139,000	66,755,375	73,755,750
09/01/13		2,222,375	2,222,375	3,284,125	5,506,500	
03/01/14	27,530,000	2,222,375	29,752,375	22,599,125	52,351,500	57,858,000
09/01/14		1,534,125	1,534,125	2,801,250	4,335,375	
03/01/15	28,890,000	1,534,125	30,424,125	23,081,250	53,505,375	57,840,750
09/01/15		811,875	811,875	2,294,250	3,106,125	
03/01/16	15,840,000	811,875	16,651,875	23,584,250	40,236,125	43,342,250
09/01/16		415,875	415,875	1,762,000	2,177,875	
03/01/17	16,635,000	415,875	17,050,875	24,117,000	41,167,875	43,345,750
09/01/17		-	-	1,203,125	1,203,125	
03/01/18		-	-	24,678,125	24,678,125	25,881,250
09/01/18		-	-	616,250	616,250	
03/01/19		-	-	25,266,250	25,266,250	25,882,500
<b>Total<sup>(1)</sup></b>	<b>\$257,400,000</b>	<b>\$48,561,250</b>	<b>\$305,961,250</b>	<b>\$252,558,317</b>	<b>\$558,519,567</b>	<b>\$558,519,567</b>

<sup>(1)</sup>Totals may not add due to rounding.

**Mill Levy Rate**

In August of each year, the Local Government Division (the “Division”) of the Department of Finance and Administration (the “DFA”) receives certified net taxable values for all property in the State subject to taxation, which represents one-third of assessed property values. By September 1 of each year, the Board certifies to the Division a State property tax mill levy rate that will generate sufficient property tax revenue to cover the next three debt service payments due for the Bonds and the Outstanding Bonds combined, beginning the following March. A mill levy is the property tax rate expressed as \$1 per \$1000 of net taxable value. The property tax mill levy rate makes allowance for non-payment of property taxes. Once the property tax mill levy rate is certified by the Board, the State Treasurer, the Secretary of the DFA, the Director of the Division and the Director of the Board sign a memorandum to the Division requesting that the Division adopt that State property tax mill levy rate as the State property tax mill levy rate. The Division then certifies that State property tax mill levy rate to counties and local governments for inclusion in the property tax bills.

**Limitations to the Issuance of Additional State General Obligation Bonds**

Sections 7 and 8 of Article IX of the Constitution of the State limit the power of State officials to incur general obligation indebtedness extending beyond the fiscal year in the following ways:

1. The State may borrow money not exceeding the sum of two hundred thousand dollars (\$200,000) in the aggregate to meet casual deficits or failure in revenue, or for necessary expenses.

2. Other debt may be contracted by or on behalf of the State only when authorized by law for some specified work or object. Such a law takes effect only after being submitted to the qualified electors of the State and having received a majority of the votes cast thereon at a general election. No debt may be created if the total indebtedness of the State, exclusive of the debts of the territory and several counties thereof assumed by the State, would thereby be made to exceed 1 percent of the assessed valuation of all property subject to taxation in the State, as shown by the last preceding general assessment.
3. The State may also contract debts to suppress insurrection and to provide for the public defense.

General obligation bonds for refunding purposes are not subject to approval of the voters.

The following table sets forth the calculation of State general obligation bonding capacity prior to and inclusive of the issuance of the Bonds.

**TABLE 4**

**Calculation of 1 Percent Bonding Limitation and the Bonds**

Net Taxable Value	\$50,463,803,991
General obligation bond limitation @ 1 percent of net taxable value	\$504,638,040
Total general obligation bonds outstanding as of the closing of the Bonds	\$257,400,000
Plus: Series 2009 Bonds	<u>196,330,000</u>
Total general obligation bonds, following closing of the Bonds	\$453,730,000
Ratio of total debt to net taxable value	0.90%

**Underlying General Obligation Bonds**

The following table presents information on the principal amount of local debt outstanding, including the principal amount of county, city, and local public school district debt outstanding as of June 30, 2008. The table does not include debt of special districts or community colleges.

**TABLE 5**

**Certain Underlying General Obligation Debt**

Counties .....	\$169,993,998
Cities .....	\$363,068,000
Schools.....	<u>\$1,239,357,000</u>

*Source: New Mexico Department of Finance and Administration, Local Government Division and New Mexico Public Education Department.*

**THE PROJECTS**

**Plan of Financing**

The Bonds are being issued to provide for certain capital expenditures for senior citizen, library, health and higher education and State special school projects described in the Act, and to pay the expenses incurred in the preparation and sale of the Bonds.

The following table sets forth the sources and uses of funds, excluding accrued interest, with respect to the Bonds and the projects:

**Sources:**

Par Amount of Bonds	\$196,330,000.00
Original Issue Premium (Discount)	28,082,009.60
	<hr/>
<b>Total Sources</b>	<b>\$224,412,009.60</b>

**Uses:**

Project Fund Deposits:	
Senior Citizen Facilities	\$14,700,000.00
Academic, Public and Tribal Library Acquisitions	11,000,000.00
Health Facilities	57,828,000.00
Higher Education and Special Schools	139,900,000.00
	<hr/>
	223,428,000.00
Delivery Date Expenses:	
Cost of Issuance	\$440,000.00
Underwriter's Discount	518,311.20
	<hr/>
	958,311.20
Other Uses of Funds:	
Additional Proceeds	\$25,698.40
	<hr/>
<b>Total Uses</b>	<b>\$224,412,009.60</b>

**State Capital Program**

Proceeds from the State's general obligation bonds are an important source of capital financing for the State. Additional State-level sources of funding for capital projects are surplus State General Fund balances, severance tax and supplemental severance tax bonds issued by the Board, and state transportation bonds issued by the New Mexico Finance Authority. The following table summarizes bond proceeds and other capital authorizations by funding source for Fiscal Year 2004 through December 31, 2008.

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**TABLE 6**

**Principal Sources of Capital Project Funding**  
**Fiscal Year Ended June 30**  
(Dollars in millions)

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009<sup>(1)</sup></u>
<b>Proceeds from General Obligation Bonding Program</b>						
General Obligation Bonds	\$ 0.0	\$ 121.7	\$ 0.0	\$ 142.8	\$ 0.0	\$ 0.0
<b>Subtotal</b>	\$ 0.0	\$ 121.7	\$ 0.0	\$ 142.8	\$ 0.0	\$ 0.0
<b>Proceeds from Severance Tax Bonding Program</b>						
Severance Tax Bonds	\$ 74.5	\$ 87.6	\$ 136.1	\$ 136.4	\$ 153.6	\$ 0.0
Severance Tax Funding Notes <sup>(2)</sup>	63.7	87.8	102.1	193.3	150.9	169.0
Supplemental Severance Tax Bonds	10.0	10.5	0.0	0.0	0.0	0.0
Supplemental Severance Tax Funding Notes <sup>(2)</sup>	<u>151.9</u>	<u>213.3</u>	<u>193.6</u>	<u>210.8</u>	<u>222.8</u>	<u>105.0</u>
<b>Subtotal</b>	\$ 300.0	\$ 399.1	\$ 431.8	\$ 540.4	\$ 527.3	\$ 274.0
<b>Proceeds From Other Sources</b>						
General Fund	\$ 183.4	\$ 238.6	\$ 454.6	\$ 548.4	\$ 123.0	\$ 0.0
Transportation Bonds <sup>(3)</sup>	<u>743.6</u>	<u>0.0</u>	<u>0.0</u>	<u>459.4</u>	<u>0.0</u>	<u>\$ 200.0</u>
<b>Subtotal</b>	\$ 927.0	\$ 238.6	\$ 454.6	\$ 1,007.8	\$ 123.0	\$ 200.0
<b>Total</b>	<b><u>\$ 1,227.1</u></b>	<b><u>\$ 759.0</u></b>	<b><u>\$ 886.5</u></b>	<b><u>\$ 1,690.9</u></b>	<b><u>\$ 650.3</u></b>	<b><u>\$ 474.0</u></b>

<sup>(1)</sup> As of 12/31/08.

<sup>(2)</sup> The State Board of Finance, in order to take advantage of Severance Tax Bonding Fund revenue that would otherwise be transferred to the Severance Tax Permanent Fund, issues Funding Notes to the State Treasurer (which are retired within the same fiscal year with such revenue) to fund authorized projects.

<sup>(3)</sup> On May 20, 2004, the New Mexico Finance Authority issued \$700,000,000 of new money bonds secured by a pledge of, and payable from, funds on deposit in the State Road Fund and the Highway Infrastructure Fund. On October 19, 2006, the New Mexico Finance Authority issued \$450,400,000 of new money bonds secured by a pledge of, and payable from, funds on deposit in the State Road Fund and the Highway Infrastructure Fund. On July 1, 2008, the New Mexico Finance Authority entered into a line of credit with a bank to provide an additional \$200,000,000 of available new money funding secured by a pledge of, and payable from, funds on deposit in the State Road Fund and the Highway Infrastructure Fund.

Source: New Mexico State Board of Finance and Department of Finance and Administration.

## THE STATE OF NEW MEXICO

The State was admitted as the forty-seventh state on January 6, 1912. It is the fifth largest state geographically and contains approximately 121,593 square miles. As of July 1, 2008, the State had an estimated population of 1,984,356.

The State's climate is characterized by sunshine and bright skies in both winter and summer. Every part of the State receives no less than 70 percent sunshine year-round. Humidity ranges from 60 percent (mornings) to 30 percent (afternoons). Evenings are crisp and cool in all seasons because of low humidity.

### Governmental Organization

The Executive Branch of State government consists of a Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, Attorney General, and Commissioner of Public Lands. These officials are elected to four-year terms beginning January 1 after their election. An

elected Executive Branch officer may succeed himself or herself in office once. The primary Executive Branch functions are performed by Executive Branch officeholders and their staffs, and approximately 20 cabinet departments. The Governor appoints and the Legislature confirms cabinet secretaries to lead cabinet departments. The DFA, a cabinet department, is the principal financial organization of State government and performs through its divisions the duties and functions relating to State and local government financing and general administration.

The State Board of Finance has seven voting members consisting of the Governor, the Lieutenant Governor, the State Treasurer, and four members appointed by the Governor with the advice and consent of the Senate. No more than two appointed members may be from the same political party. The DFA Secretary serves as the Executive Officer of the Board and is a non-voting Board member. The Board, in addition to other powers and duties provided by law, has general supervisory authority over the fiscal affairs of the State and over the safekeeping and depositing of all money and securities belonging to, or in the custody of, the State.

In March 2009, Ms. Roberta Cooper Ramo resigned as a member of the Board. Following Ms. Cooper Ramo's resignation, Governor Richardson appointed Mr. Steven K. Moise to fill the vacancy resulting from Ms. Cooper Ramo's resignation. Pursuant to New Mexico law, Mr. Moise will serve as a member of the Board as an interim appointment. On March 27, 2009, Governor Richardson reappointed two members of the Board, Ms. Kim Sanchez Rael and Ms. Maria Griego-Raby, for another term. Ms. Sanchez Rael and Ms. Griego-Raby will continue to serve on the Board pending confirmation of their reappointments by the Senate of the State of New Mexico.

The Governor serves as the President of the Board. In December 2008, President-elect Barack Obama nominated Governor Richardson to be Secretary of the United States Department of Commerce. On January 4, 2009, Governor Richardson issued a statement that, due to a pending investigation of a company that has done business with New Mexico State government, he had asked the President-elect not to move forward with his nomination at that time.

The Legislature consists of 112 members and is divided into a Senate and a House of Representatives. Senators are elected for four-year terms and members of the House are elected for two-year terms. The Legislature convenes in regular session annually on the third Tuesday in January. Regular sessions are constitutionally limited in length to 60 calendar days in odd-numbered years and 30 calendar days in even-numbered years. Special sessions of the Legislature may be convened by the Governor. Extraordinary sessions may be convened by the Legislature under certain limited circumstances. Legislators do not receive any salary, but do receive per diem and mileage allowances while in session or performing official State business.

The judicial branch is composed of a statewide system including Magistrate and District Courts, the Court of Appeals and the Supreme Court. The District Courts are the trial courts of record with general jurisdiction.

## **PROPERTY VALUATION AND TAXATION**

### **Property Tax System**

With certain limited exceptions, real and personal property owned by individuals or corporations is subject to *ad valorem* taxation (i.e., taxation as a fraction of value rather than on a per unit basis) in the State. County assessors are responsible for appraising most of New Mexico's residential and commercial property. The Appraisal Bureau of the New Mexico Taxation and Revenue Department (the "Tax Department") provides technical assistance to county assessors and helps them implement the Property Tax Code (Articles 35 through 38 of Chapter 7 NMSA 1978).

The State Assessed Property Bureau of the Tax Department, commonly known as the Central Assessment Bureau, is responsible for assessing certain types of property that are not assessed by counties because assessing the property is exceptionally technical or because the property extends across county boundaries. Assessments undertaken by the Central Assessment Bureau, referred to as central valuations, are performed on the following types of properties:

- Railroads;
- Communication systems;
- Pipelines;
- Public utilities;
- Airlines;
- Electric generating plants;
- Construction machinery and equipment, and other personal property of persons engaged in construction that is used in more than one county; and
- Mineral property, excepting oil and natural gas related property.

Property valuations are established as of January 1 of each year (except for certain livestock). Centrally assessed property is verified and certified to local assessors who combine the values with all locally assessed property values. The totals are reported to the Central Assessment Bureau and the DFA, and certified for budgetary use. County treasurers levy the applicable rates against individual properties and are required to mail tax bills for the current fiscal year no later than November 1. Property taxes are due in two equal installments on November 10 and April 10. Taxes become delinquent on December 10 and May 10 following the two respective due dates. Civil penalties and interest are imposed on delinquent taxes. County treasurers are responsible for collecting property taxes and distributing them to governmental entities that receive them. Major property tax recipients include counties, municipalities, and school districts. Approximately 4.5 to 5.5 percent of property tax collections statewide are distributed to the State for payment of principal of and interest on general obligation bonds.

State law provides a mechanism by which, in the event of a dispute with respect to property taxes owed, a taxpayer may make payment under protest. Such monies may not be spent by property tax recipients until the taxpayer's claim has been decided. At that time, the monies are distributed either to the county or the taxpayer, depending on the outcome of the taxpayer's claim. As a result, counties may experience delays in receiving tax revenues or may be required to refund monies already received.

Except for property that by statute is subject to special methods of valuation, assessed value of property is generally its market value as determined by the sales of comparable property subject to certain limitations. Income or cost valuation methods also are used when appropriate. Residential properties are eligible for a \$2,000 head of family exemption. A \$4,000 veteran exemption may be applied against residential and certain nonresidential property. Honorably discharged members of the armed services are eligible for the veteran exemption. Taxable value is one-third of assessed value, as required by Section 1 of Article VIII of the New Mexico Constitution. Net taxable value, against which rates are imposed, consists of taxable value less exemptions. Maximum property tax rates for operations for various types of local governments are imposed by the Constitution of the State and by governing statutes. See "Property Tax Limitations", below. Different tax rates typically apply to residential and non-residential properties in the same tax jurisdiction due to the State's "yield control" statute (Section 7-37-7.1 NMSA 1978) which is applied separately to residential property.

Oil and natural gas properties and related production equipment are subject to property taxation in the State. The oil and natural gas *ad valorem* production tax is levied and collected by the Oil and Gas Bureau of the Tax Department on the basis of assessed value deemed the equivalent of 50 percent of the actual price of oil and natural gas received at the production unit, less certain trucking expense deductions and royalties paid to the federal government, the State, or Indian tribes. The oil and natural gas production "equipment *ad valorem* tax" is levied based on assessed value deemed equivalent to 9 percent

of the previous calendar year sales value of the product from each production unit. The tax year for oil and natural gas production begins on September 1 based on tax rates that are set on August 31. The oil and natural gas “*ad valorem* production tax” is due by the 25th day of the second month following the month of production. Taxes are collected monthly. The oil and natural gas production “equipment *ad valorem* tax” is due on November 30 based upon assessments issued on or before October 15. The Tax Department distributes its collections to the county treasurers who further distribute the tax revenues to property tax recipients.

### **Property Tax Valuation Limitations**

In November 1998, the New Mexico electorate approved an amendment to Section 1 of Article VIII of the State Constitution to authorize the Legislature to limit increases in residential property valuation for property taxes. The limitation may be applied to classes of residential property taxpayers based on owner-occupancy, age or income. The limitations may be authorized statewide or at the option of a local jurisdiction and may include conditions. Any valuation limitations authorized as a local jurisdiction option shall provide for applying statewide or multi-jurisdictional property tax rates to the value of the property as if the valuations increase limitation did not apply. This amendment and related legislation may have an impact on future property taxation increases.

The 2000 Legislature passed and the Governor signed legislation limiting the increase in the value of residential property for property valuation purposes. Section 7-36-21.3 NMSA 1978 provides for a freezing of values for single-family dwellings occupied by certain low-income owners 65 years of age or older. Another law provides that the value of a residential property in any tax year, starting with the year 2001, shall not exceed certain percentage increases based on whether the county where the property is situated has a sales assessment ratio of at least 85 percent, as codified in Section 7-36-21.2 NMSA 1978. Sales assessment ratios are computed annually by the Tax Department and measure a county’s assessment valuations against current sales information. Counties that have at least an 85 percent sales assessment ratio are considered “current and correct,” while counties that fall below that threshold are considered not “current and correct.” If a residential property is situated in a current and correct county, the law limits the annual increase to no more than 3 percent (and 6.1 percent over the value two years ago). If a residential property is situated in a county that is not current and correct, the law limits the annual increase to 5 percent. In addition, in such a non-current and correct county, the law limits the aggregate annual increases for all residential properties (excluding net new properties added to the tax rolls) in that county to 3 percent. The annual limitations do not apply to new improvements or to any property that has had a change in ownership, use or zoning during the year.

The 2005 Legislature passed and the Governor signed a bill, codified as Section 7-38-12.1 NMSA 1978 of the Property Tax Code, requiring the disclosure only to the county assessor of sale prices and other items of value upon the sale of residential real property. This amendment has led to an increase in the assessed value of some residential properties.

The 2008 Legislature passed and the Governor signed legislation amending Section 7-36-15 NMSA 1978 to require county assessors to consider, in determining the market value of residential housing, any decrease in value that would be realized by an owner in the sale of the property because of the effects of any affordable housing subsidy, covenant or encumbrance under a federal, state or local housing program that restricts the future use or resale value of the property, or otherwise prohibits the owner from fully benefitting from any enhanced value of the property.

The following table sets forth the aggregate statewide next taxable valuations for the last 10 years.

**TABLE 7**  
**Final Net Taxable Valuations**  
(Dollars in thousands)

<b>Property Tax Year</b>	<b>Residential</b>	<b>Non- Residential</b>	<b>Oil and Gas</b>	<b>Copper</b>	<b>Net Taxable Value</b>
1999	\$14,660,993	\$9,311,907	\$1,852,447	\$192,897	\$26,018,245
2000	15,311,042	9,946,121	2,166,427	160,906	27,584,497
2001	16,336,147	10,209,818	4,238,592	117,376	30,901,933
2002	17,133,856	10,336,906	3,024,570	—	30,495,332
2003	18,279,692	10,778,559	3,024,570	66,614	32,149,435
2004	19,421,800	10,839,281	5,563,785	65,157	35,890,023
2005	21,120,378	12,161,447	4,643,270	65,157	38,910,768
2006	23,016,630	12,605,105	7,259,891	103,402	42,985,028
2007	25,805,629	14,458,192	5,758,696	133,262	47,288,631
2008	27,798,246	15,259,324	7,245,955	160,279	50,463,804

Source: New Mexico Department of Finance and Administration, Local Government Division.

**Property Tax Mill Levy Limitations**

Section 2 of Article VIII of the New Mexico Constitution states:

*Taxes levied upon real or personal property for state revenue shall not exceed four mills annually on each dollar of the assessed valuation thereof except for the support of the educational, penal and charitable institutions of the state, payment of the state debt and interest thereon; and the total annual tax levy upon such property for all state purposes exclusive of necessary levies for the state debt shall not exceed ten mills; provided, however, that taxes levied upon real or personal tangible property for all purposes, except special levies on specific classes of property and except necessary levies for public debt shall not exceed twenty mills annually on each dollar of the assessed valuation thereof, but laws may be passed authorizing additional taxes to be levied outside of such limitation when approved by at least a majority of the qualified electors of the taxing district who paid a property tax therein during the preceding year voting on such proposition.*

Currently the State imposes no levy of property taxes except for the payment of State debt.

Statutes establish maximum property tax rates for operating purposes for cities, counties and school districts. The DFA is permitted by statute to set a rate at less than the maximum rate in any tax year. These maximum property tax rates for operating purposes are set forth below:

**TABLE 8**  
**Maximum Operating Mill Levy Rates**

Counties.....	11.85
Cities.....	7.65
Schools.....	<u>0.50</u>
Maximum combined statutory rate.....	20.00

Source: Section 7-37-7(B) NMSA 1978.

Apart from the allowable operating tax rates above, New Mexico governments may levy additional property taxes as authorized by statute and voter approval for:

- Debt service;
- County hospitals and health care services;
- School district capital improvements;
- Branch and community colleges;
- Vocational schools;
- Flood control districts and authorities;
- Judgments;
- Water and sanitation districts;
- Conservancy districts;
- Public improvement districts;
- Tax increment development districts; and
- Other special districts.

In addition, the Legislature has established certain limits on the increase in property tax revenue that may be realized for county and city operating purposes. The “yield control” formula is activated by property valuation increases resulting from county assessor reappraisal programs. The yield control law limits the increase in operating revenue from existing properties in absence of new rate impositions in any one year over the prior year to the lesser of 5 percent or the percentage increase in the annual price index published by the United States Department of Commerce for State and Local Government Purchases of Goods and Services, plus increases in tax revenues resulting from new construction, improvements to properties and increased taxable value due to annexation.

## **FINANCIAL OVERVIEW OF THE STATE**

### **General Fund Revenues, Expenditures and Ending Fund Balances**

The State derives the majority of its recurring General Fund revenue from five major sources: general and selective sales taxes, income taxes, taxes and royalties on natural resource production, investment earnings from its two permanent funds, and investments made by the State Treasurer’s Office. Effective July 1, 1981, the Legislature repealed the property tax levy for general State operating purposes, and has not reinstated it since that time. However, the New Mexico Constitution authorizes a levy of up to four mills for general State operating purposes and additional levies for the support of State educational, penal and other institutions.

The table on the following two pages sets forth the revenues, expenditures and ending fund balances for Fiscal Years 2005 through 2008, and estimated results for Fiscal Years 2009 and 2010.

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**TABLE 9**

**General Fund Financial Summary  
Fiscal Year 2005 – Fiscal Year 2010**  
(Dollars in thousands)

	<u>Actual 2005</u>	<u>Actual 2006</u>	<u>Actual 2007<sup>(4)</sup></u>	<u>Actual 2008</u>	<u>Estimated 2009</u>	<u>Estimated 2010</u>
<b>A. APPROPRIATION ACCOUNT</b>						
<b>Recurring Receipts:</b>						
General and Selective Sales Taxes	\$1,946,395	\$2,147,069	\$2,315,105	\$2,323,298	\$2,379,846	\$2,423,330
Income Taxes	1,333,402	1,504,277	1,640,161	1,568,119	1,506,520	1,505,572
Severance Taxes	426,998	541,797	486,564	625,937	410,970	334,590
License Fees	44,265	48,971	48,959	50,676	50,400	51,681
Investment Income	547,287	590,193	602,132	661,359	684,500	676,100
Rents and Royalties	476,198	609,236	551,533	610,267	540,710	332,260
Miscellaneous Receipts	40,850	39,325	37,017	50,263	43,170	44,170
Tribal Revenue Sharing	41,263	49,520	56,158	66,560	65,570	68,410
Tobacco Settlement	38,009	34,892	0	0	0	0
Reversions/Adjustments	11,592	14,319	36,867	58,992	39,300	40,000
<b>Total Recurring Receipts</b>	<b>4,906,259</b>	<b>5,579,599</b>	<b>5,774,497</b>	<b>6,015,471</b>	<b>5,720,986</b>	<b>5,476,113</b>
<b>Total Non-Recurring and Adjustments</b>	<b>62,769</b>	<b>(62,461)</b>	<b>1</b>	<b>47,160</b>	<b>195,400</b>	<b>(3,500)</b>
<b>Total Receipts</b>	<b>4,969,028</b>	<b>5,517,138</b>	<b>5,774,498</b>	<b>6,062,632</b>	<b>5,916,386</b>	<b>5,472,613</b>
<b>Recurring Appropriations:</b>						
Legislative	15,435	16,113	17,334	18,809	20,139	19,975
Judicial	146,705	161,500	180,824	205,779	217,928	210,293
General Control	144,008	151,048	165,885	197,706	205,295	198,851
Commerce and Industry/Exam. and Lic. Agriculture, Energy and Natural Resources	48,595	47,695	51,365	58,369	61,735	58,209
Health and Human Services	62,022	70,449	75,409	86,560	90,529	82,100
Public Safety	1,003,064	1,119,210	1,233,645	1,393,378	1,502,146	1,297,961
Other Education	286,758	295,766	333,262	383,336	411,585	393,287
Higher Education	17,950	24,705	27,805	53,982	57,053	48,226
Public School Support	670,121	714,951	761,957	846,342	884,846	853,195
Recurring Appropriations	1,974,906	2,107,196	2,265,662	2,430,696	2,551,012	2,325,584
Other Recurring Appropriations	4,369,564	4,708,633	5,113,148	5,674,956	6,002,266	5,487,683
<b>Total Recurring Appropriations</b>	<b>4,384,999</b>	<b>4,708,633</b>	<b>5,113,148</b>	<b>5,674,956</b>	<b>6,002,266</b>	<b>5,487,683</b>
<b>Nonrecurring Appropriations<sup>(1)</sup></b>	<b>324,757</b>	<b>656,065</b>	<b>814,286</b>	<b>295,062</b>	<b>(132,570)</b>	<b>100,000</b>
<b>Total Expenditures</b>	<b>4,709,756</b>	<b>5,364,698</b>	<b>5,927,433</b>	<b>5,970,018</b>	<b>5,869,696</b>	<b>5,587,683</b>
Transfer to Appropriation Contingency Fund	0	0	0	0	0	0
<b>TRANSFER TO RESERVES</b>	<b>\$259,271</b>	<b>\$152,440</b>	<b>\$(152,936)</b>	<b>\$92,614</b>	<b>\$46,690</b>	<b>\$(115,070)</b>
<b>B. OPERATING RESERVE</b>						
<b>Beginning Balance</b>	<b>\$128,780</b>	<b>\$330,071</b>	<b>\$359,530</b>	<b>\$156,138</b>	<b>\$247,246</b>	<b>\$292,435</b>
Revenues/Repayments/Reversions	0	0	377	0	0	0
Appropriations:						
Contingencies	0	(277)	(9,300)	0	0	0
Other Appropriations and Adjustments	(2,644)	(1,400)	(1,533)	(1,506)	(1,500)	(2,250)
<b>Total Appropriations<sup>(2)</sup></b>	<b>(2,644)</b>	<b>(1,678)</b>	<b>(10,833)</b>	<b>(1,506)</b>	<b>(1,500)</b>	<b>(2,250)</b>
Transfers:						
From General Fund						
Appropriations Account	259,271	152,440	(152,935)	92,614	46,690	(115,070)
Special Session/Appropriations Contingency Fund	0	0	(40,000)	0	0	0
To Tax Stabilization Reserve Fund	(55,336)	(121,304)	0	0	0	0
<b>Total Transfers</b>	<b>203,935</b>	<b>31,136</b>	<b>(192,936)</b>	<b>92,614</b>	<b>46,690</b>	<b>(115,070)</b>
<b>Ending Balance<sup>(3)</sup></b>	<b>\$330,071</b>	<b>\$359,530</b>	<b>\$156,138</b>	<b>\$247,246</b>	<b>\$292,435</b>	<b>\$175,116</b>

Note: Detail may not add to column total due to independent rounding.

**TABLE 9**

**General Fund Financial Summary  
Fiscal Year 2005 – Fiscal Year 2010**  
(Dollars in thousands)

	<u>Actual 2005</u>	<u>Actual 2006</u>	<u>Actual 2007<sup>(4)</sup></u>	<u>Actual 2008</u>	<u>Estimated 2009</u>	<u>Estimated 2010</u>
<b>C. STATE SUPPORT RESERVE</b>						
<b>Beginning Balance</b>	\$0	\$0	\$0	\$1,000	\$1,000	\$1,000
Transfers From Operating Reserve/ Appropriation Account	0	0	1,000	0	0	0
<b>Ending Balance</b>	\$0	\$0	\$1,000	\$1,000	\$1,000	\$1,000
<b>D. APPROPRIATION CONTINGENCY FUND</b>						
<b>Beginning Balance, Excluding   Education Reform</b>	\$49,903	\$42,276	\$19,851	\$47,664	\$27,531	\$(1,469)
Expenditures/Appropriations <sup>(5)</sup>						
Disasters	(8,113)	(13,309)	(18,161)	(17,857)	(16,000)	(16,000)
Other	(6,178)	(9,525)	(4,663)	0	(13,000)	(1,000)
Prior period adjustment for water rights (Laws 2008, Chapter 111, Section 78)	0	0	9,000	(9,000)	0	
Reversions	6,664	409	1,636	6,724	0	
Transfers From General Fund	0	0	40,000	0	0	25,000
<b>Ending Balance, Excluding   Education Reform</b>	42,276	19,851	47,664	27,531	(1,469)	6,531
<b>Education Reform</b>						
<b>Beginning Balance, Education     Reform</b>	120,000	105,350	79,828	74,928	69,051	19,047
Transfers In	0	0	0	0	0	40,000
Expenditures	(14,650)	(25,523)	(4,900)	(7,527)	(48,354)	0
Audit Adjustment	0	0	0	1,650	(1,650)	0
<b>Ending Balance, Education     Reform</b>	105,350	79,828	74,928	69,051	19,047	59,047
<b>Ending Balance, Appropriation   Contingency Fund</b>	\$147,626	\$99,679	\$122,591	\$96,581	\$17,577	65,577
<b>E. TAX STABILIZATION RESERVE</b>						
<b>Beginning Balance</b>	\$77,715	\$133,051	\$254,355	\$254,355	\$254,355	\$198,655
Transfers In	55,336	121,304	0	0	0	0
Transfers Out	0	0	0	0	(55,700)	0
<b>Ending Balance<sup>(6)</sup></b>	\$133,051	\$254,355	\$254,355	\$254,355	\$198,655	\$198,655
<b>F. TOBACCO SETTLEMENT PERMANENT FUND RESERVE<sup>(7)</sup></b>						
<b>Beginning Balance</b>	\$70,688	\$77,332	\$84,629	\$116,719	\$135,884	\$97,837
Transfers In	38,009	34,892	36,240	44,864	44,864	44,864
Transfers Out	(38,009)	(35,257)	(18,120)	(22,432)	(44,864)	(44,864)
Gains Losses	6,644	7,662	13,970	(3,267)	(38,047)	2,940
<b>Ending Balance</b>	\$77,332	\$84,629	\$116,719	\$135,884	\$97,837	\$100,777
<b>G. TAXPAYER DIVIDEND FUND</b>						
<b>Beginning Balance</b>	\$0	\$0	\$0	\$0	\$0	\$0
Transfers In	0	0	0	0	0	0
Transfers Out	0	0	0	0	0	0
Gains Losses	0	0	0	0	0	0
<b>Ending Balance</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>H. TOTAL RESERVE BALANCES</b>						
<b>Beginning Balance</b>	\$447,086	\$688,080	\$798,193	\$650,803	\$735,066	\$607,505
<b>Ending Balance</b>	\$688,080	\$798,193	\$650,803	\$735,066	\$607,505	\$541,126
Reserves as a Percentage of Current Year Recurring Appropriations	15.7%	17.0%	12.7%	13.0%	10.1%	9.9%

Note: Detail may not add to column total due to independent rounding

## **NOTES TO GENERAL FUND FINANCIAL SUMMARY:**

### **Appropriation Account, Nonrecurring Appropriations:**

- (1) **Fiscal Year 2005 includes** \$8.9 million from the General Appropriation Act of 2004; \$69.8 million from HB 2 (Laws 2005, Chapter 33), \$7.4 million from SB 190 (Laws 2005, Chapter 34), \$238.6 million from HB 885 (Laws 2005, Chapter 347).  
**Fiscal Year 2006 includes** \$0.1 million from the General Appropriation Act of 2005 (Laws 2005, Chapter 33, Item 43); \$0.8 million from SB 190 (Laws 2005, Chapter 34); \$0.3 million from HB 901 (Laws 2005, Chapter 284); \$37.5 million for LIHEAP (Laws 2005 (1st SS), Chapter 2); \$158.6 million from the General Appropriation Act of 2006 (Laws 2006, Chapter 109, Sections 5 and 6); \$4.3 million from HB 1 (Laws 2006, Chapter 1); and \$454.6 million from HB 622 (Laws 2006, Chapter 111).  
**Fiscal Year 2007 includes** \$68.7 million from the General Appropriation Act of 2006 (Laws 2006, Chapter 109); and \$0.3 million from HB 337 for judgeships (Laws 2006, Chapter 99, Sections 5 and 12); \$2.1 million from the "Junior" bill (Laws 2006, Chapter 110); and \$743.2 million from various bills from the Laws of 2007.  
**Fiscal Year 2008 includes** \$15 million water trust fund transfer from the General Appropriation Act of 2007 (Laws 2007, Chapter 28); \$8 million for development training programs (Laws 2007, Chapter 363); \$0.2 million for judgeships (Laws 2007, Chapter 140); \$12 million for faculty endowments (Laws 2007, Chapter 364); \$3.2 million for breast cancer research (Laws 2007, Chapter 26); \$10.8 million from the "Junior" bill (Laws 2007, Chapter 21); \$118.3 million from Sections 4, 5 and 6 of the General Appropriation Act of 2008 (Laws 2008, Chapter 3); \$5.9 million for expenses of the Legislature (Laws 2008, Chapter 1); and \$121.5 million for capital outlay (Laws 2008, Chapter 92).  
**Fiscal Year 2009 includes** \$18.8 million from the General Appropriation Act of 2008 (Laws 2008, Chapter 3); \$0.5 million from HB 140 (Laws 2008, Chapter 78); \$8.5 million from SB 165 (Laws 2008, Chapter 6); \$1.5 million from SB 471 (Laws 2008, Chapter 92); \$45.8 million from Special Session Laws 2008, Chapters 3-10; \$8.3 million for expenses of the Legislature (Laws 2009, Chapter 1); \$(90.2) million from HB 9 (Laws 2009, Chapter 5); \$(139.3) million from HB 10 (Laws 2009, Chapter 2); \$(28.1) million from SB 79 (Laws 2009, Chapter 3); and \$41.6 million from the General Appropriation Act of 2009 (Laws 2009, Chapter 124, Sections 5 and 6).  
**Fiscal Year 2010 includes** \$100 million from the General Appropriation Act of 2009 transferred to various funds (Laws 2009, Chapter 124, Section 12).

### **General Fund Operating Reserve Appropriations:**

- (2) **Fiscal Year 2005 includes** \$1.1 million for Board of Finance ("BOF") Emergency Fund and \$1.5 million contingency for corrections.  
**Fiscal Year 2006 includes** \$1.5 million for BOF Emergency Fund (Laws 2005, Chapter 33, Section 4, Subsection C); and \$0.3 million for the Corrections Department (Laws 2005, Chapter 33, Section 4, Subsection G).  
**Fiscal Year 2007 includes** \$1.5 million for BOF Emergency Fund (Laws 2006, Chapter 109); \$0.7 million contingency for water litigation (Laws 2002, Chapter 4 (1st E.S.) as reauthorized by Laws 2006, Chapter 109); and \$8.6 million contingency for the spaceport (Laws 1998 (1st SS), Chapter 13, Laws 1998 (1st SS), Chapter 11 and Laws 2005, Chapter 347, Section 173).  
**Fiscal Year 2008 includes** \$1.5 million for BOF Emergency Fund.  
**Fiscal Year 2009 includes** \$1.5 million for BOF Emergency Fund.  
**Fiscal Year 2010 includes** \$2.3 million for BOF Emergency Fund.

### **Year-ending Balances in the Operating Reserve:**

- (3) Annually, if the balance in the Operating Reserve exceeds 8 percent of the previous year's recurring appropriations, the excess over 8 percent is transferred to the Tax Stabilization Reserve.  
**Fiscal Year 2006** – On the date the excess over 8 percent was calculated, \$8.73 million in Fiscal Year 2007 activity in the General Fund Operating Reserve had been recorded. The transfer of \$121.3 million from the Operating Reserve to the Tax Stabilization Reserve brought the balance in the Operating Reserve to 8.2 percent as of the end of Fiscal Year 2006, but to 8 percent on the date of the transfer.

### **State Support Reserve (See Section 22-8-31 NMSA 1978):**

- (4) **Fiscal Year 2007 includes** \$1 million transfer from the Appropriation Account (Laws 2007, Chapter 28, Section 5).

### **Appropriation Contingency Fund Appropriations:**

- (5) **Fiscal Year 2005 includes** \$8.1 million for disasters; \$0.5 million for the Secretary of State (Laws 2004, Chapter 114, Section 5, Item 28); \$0.6 million for the Department of Public Safety (Laws 2004, Chapter 114, Section 5, Subsection G); \$5.0 million to Public Education Department for emergency supplemental funds to public schools (Laws 2005, Chapter 33, Section 5, Item 109); education reform initiatives include \$14.7 million to the Public Education Department (Laws 2005, Chapter 33, Section 5, Subsection 5, Items 104, 105, 106, and 128); and reversions of \$6.7 million for federal reimbursements for fire season 2003-2005.  
**Fiscal Year 2006 includes** \$13.3 million for disaster allotments; \$0.5 million to Department of Public Safety for criminal background check contingency (Laws 2005, Chapter 33, Section 4 Subsection G); \$4.5 million for Interstate Stream Commission for land and water rights for augmentation; \$4.5 million to Interstate Stream Commission for augmentation services (Laws 2006, Chapter 111); and \$25.5 million to the Public Education Department for education reform initiatives.  
**Fiscal Year 2007 includes** \$18.2 million for disaster allotments; \$2.0 million for Department of Health Behavioral Health Services Program (Laws 2006, Chapter 109); \$1.9 million for Santa Fe Community College (Laws 2006, Chapter 109); \$4.9 million to the Public Education Department for education reform initiatives (Laws 2007, Chapter 28); \$0.8 million contingency to Corrections Department (Laws 2005, Chapter 33, Section 4) for Fiscal Year 2006; and \$9 million appropriation reduction prior period adjustment for water rights appropriations (Laws 2006, Chapter 111, Section 78 (HB 622)).  
**Fiscal Year 2008 includes** \$17.9 million for disaster allotments; \$9 million contingency appropriation for water rights appropriations (Laws 2006, Chapter 111, Section 78 (HB 622)); see prior period adjustment in Fiscal Year 2007); and \$7.5 million for education reform appropriations from the General Appropriation Act of 2008 (Laws 2008, Chapter 3, Section 5).  
**Fiscal Year 2009 includes** \$16 million for disaster allotments; \$13 million contingency for the Public Education Department (Laws 2008, Chapter 3, Section 5, Item 98); \$12.6 million for education reform appropriations from the General Appropriation Act of 2009 (Laws 2009, Chapter 124, Section 5, Items 57 through 62); and \$1.7 million deleted from Fiscal Year 2008 and added to Fiscal Year 2009 for an unexpended appropriation from education reform for a Public Education Department information technology system.

**Fiscal Year 2010 includes** \$16 million for disaster allotments; \$1 million contingency appropriation for the Department of Public Safety (Laws 2009, Chapter 124, Section 4); \$25 million transferred from the General Fund for general purposes (Laws 2009, Chapter 124)]; and \$40 million transferred from the Appropriation Account for education reform (Laws 2009, Chapter 124).

**Year-ending Balances in the Tax Stabilization Reserve:**

(6) Annually, if the balance in the Tax Stabilization Reserve exceeds 6 percent of the previous year's recurring appropriations, the excess over 6 percent is transferred to the Taxpayer's Dividend Fund.

**Fiscal Year 2006 includes** \$121.3 million transfer from the General Fund Operating Reserve, the excess in that fund of 8 percent of prior year recurring appropriations prior to the date of the transfer.

**Fiscal Year 2009 includes** \$55.7 million transfer from the Tax Stabilization Reserve into the Appropriation Account (Laws 2009, Chapter 3).

**Tobacco Settlement Permanent Fund Reserve** established pursuant to Section 6-4-9 NMSA 1978.

(7) **Fiscal Year 2009 includes** an additional \$22.4 million transferred from the Tobacco Settlement Permanent Fund Reserve to the Tobacco Settlement Program Fund (Laws 2009, Chapter 3).

**Fiscal Year 2010 includes** amendments to tobacco statutes, which transfer the second half of annual payment to the Tobacco Settlement Program Fund for appropriation to Medicaid (Laws 2009, Chapter 3).

*Source: New Mexico Department of Finance and Administration.*

## **General Fund Taxes and Revenues**

Programs and operations of the State are predominantly funded through a system of 28 major taxes, and a substantial number of minor taxes, administered by the Tax Department. The Public Regulation Commission collects taxes on insurance premiums. In addition, interest income and earnings from the Land Grant Permanent Fund and the Severance Tax Permanent Fund provide important sources of revenue for State purposes. The most important tax and revenue sources, as measured by magnitude of revenue generation, and the application of the monies to certain funds and purposes, as described below.

### **Gross Receipts and Compensating Taxes**

The gross receipts tax is levied on the total amount of money or the value of other consideration received from selling tangible and certain intangible personal property in the State, from leasing property employed in the State, from performing services in the State and from research and development services performed outside the State on a product initially used in the State. The tax is remitted by the seller but generally passed on to the purchaser. The compensating tax is imposed generally on property used in the State but purchased elsewhere. Gross receipts and compensating taxes are due on the 25th day of the month following the month in which the transaction occurs.

The general presumption is that all receipts of a person engaging in business are subject to the gross receipts tax, even though there are over 100 specified exemptions and deductions from gross receipts taxation. Exemptions from the gross receipts tax include, but are not limited to, certain receipts of governmental agencies and certain non-profit organizations; receipts from the sale of certain vehicles; occasional sales of property or services; wages; certain agricultural products; and dividends, interest and receipts from natural gas, oil or mineral interests sales or leases. Deductions from the gross receipts tax include, but are not limited to, receipts from various types of sales or leases of tangible personal property or service; receipts from certain sales of property to governmental agencies or to certain non-profit organizations; receipts from certain processing of some agricultural products; receipts from certain publication sales; certain receipts from interstate commerce transactions; and as set forth below, certain food and medical services as of January 1, 2005.

The gross receipts and compensating taxes are together the single largest source of State General Fund revenue. The gross receipts tax is also a significant source of revenue for cities and counties. The gross receipts tax includes the 5 percent statewide gross receipts tax levy, plus several city and county local-option gross receipts taxes. Until January 1, 2005, a credit of 0.5 percent against the statewide rate of 5 percent was allowed for transactions taking place in municipalities. Receipts from the statewide gross receipts tax levy, less certain disbursements, are deposited in the State General Fund. The disbursements include 1.225 percent of the taxable gross receipts reported in each incorporated municipality to that municipality. The State Aviation Fund receives a monthly distribution equal to 4.79 percent of the reported value of jet fuel sales, and a statutory monthly distribution of \$167,000. In July

2009, the monthly distribution will increase to \$250,000 as specified in Section 7-1-6.7 (D) NMSA 1978. An additional \$530,000 is distributed monthly to the New Mexico Finance Authority's State Building Bonding Fund, pursuant to Section 7-1-6.42 NMSA 1978. After all other distributions, the General Fund share of gross receipts tax collections is about 57 percent. Receipts from the compensating tax, less distributions, are transferred to the State General Fund. Compensating tax distributions include 10 percent to the small cities assistance fund and 10 percent to the small counties assistance fund, and a distribution to municipalities based on the level of their taxable gross receipts.

In 2005, the Legislature made a number of changes to the State gross receipts tax laws in Sections 7-1-6.16, 7-1-6.46, 7-1-6.47, 7-9-92, and 7-9-93 NMSA 1978. The credit of 0.5 percent granted to municipalities against the statewide rate was eliminated. The tax on food and certain medical services also was eliminated. The legislation created a deduction for gross receipts tax from retail sales of food as defined for federal food stamp program purposes. Retailers are required to report receipts from sales of groceries and then claim a deduction for the receipts. The deduction does not apply to receipts of restaurants and sales of prepared foods. The legislation also created a gross receipts tax deduction for some receipts of licensed health care providers (broadly defined) from Medicare Part C and managed health care plans, and health care insurers. This medical deduction was modestly expanded in the 2007 legislative session. The legislation also provides for payments from the State to reimburse local governments for lost gross receipts tax revenues. The legislation initially enacted significant penalties for improper filings, but all penalties were repealed and a credit created for past payment of penalties in the 2007 session.

In June 2008, the New Mexico Court of Appeals decided *Dell Catalog Sales L.P. v. Taxation and Revenue Dep't*, No. 26,843, finding that the Tax Department's assessment of gross receipts tax on the receipts Dell Catalog Sales L.P. ("Dell") derived from the sale of its computers and related products was proper even though transfer of title and risk of loss occurred in Texas. Because taxation of interstate sales was upheld based on the destination principle rather than the place of transfer of title and risk of loss as it has been historically, the case could impact the relative proportion of New Mexico gross receipts and compensating taxes collected. Specifically, State collections of compensating tax may decrease, while collections of gross receipts tax (of which the State retains a smaller portion) may increase. At this time, it is uncertain whether the administration of the *Dell* case will have a significant impact on State collections of gross receipts and compensating taxes. The New Mexico Supreme Court declined to hear the case and the United States Supreme Court denied a petition for certiorari on March 23, 2009.

In Fiscal Year 2008, total distributions to the General Fund from gross receipts and compensating taxes grew by 1.1 percent over the previous fiscal year to \$1.9 billion, comprising almost 32 percent of recurring General Fund revenue.

## **Personal Income Tax**

The personal income tax is imposed on the net income of every individual resident and upon the net income from business, property, or employment of individual nonresidents. Collections, net of refunds, are deposited in the General Fund. State taxable income is generally equal to federal adjusted gross income less deductions and amounts not taxable by State or federal laws. The State allows deductions for income earned by Indians on reservations, graduated deductions for income earned by taxpayers 65 years or older, and deductions for low- and middle-income taxpayers.

New Mexico's personal income tax structure has changed significantly in recent years, starting in 2003. Income tax incentives were enacted to encourage economic development and investment in New Mexico, as well as to assist low and middle-income taxpayers. The Legislature enacted significant personal income tax rate reductions that reduced the top marginal personal income tax rate from 8.2 percent in 2002 to 4.9 percent by 2008, codified in Section 7-2-7 NMSA 1978. This law combined the Head of Household filers' tax rate with the Married, Joint and Surviving Spouse filers' tax rate, beginning

in 2006. Single parents are now taxed at the same rate as married couples. Statutory changes enacted in 2005 also provided low and middle-income tax exemptions, a personal income tax exemption for medical expenses, incentives to encourage business formation in rural areas, and incentives to encourage renewable energy production in the State.

For Fiscal Year 2008, total distributions to the General Fund from personal income tax grew by 2.8 percent over the previous fiscal year to \$1.2 billion, and generated 20 percent of total recurring General Fund revenue.

State tax rates by filing status effective Calendar Years 2008 and 2009 are set forth below:

<b>If the taxable income is:</b>	<b>Married Filing Separate:</b>	<b>If the taxable income is:</b>	<b>Surviving Spouse, Married Filing Jointly and Head of Household</b>
Not over \$4,000	1.7% of taxable income	Not over \$8,000	1.7% of taxable income
\$4,001 to \$8,000	\$68.00 plus 3.2% of excess over \$4,000	\$8,001 to \$16,000	\$136.00 plus 3.2% of excess over \$8,000
\$8,001 to \$12,000	\$196.00 plus 4.7% of excess over \$8,000	\$16,001 to \$24,000	\$392.00 plus 4.7% of excess over \$16,000
Over \$12,000	\$384.00 plus 4.9% of excess over \$12,000	Over \$24,000	\$768.00 plus 4.9% of excess over \$24,000

<b>If the taxable income is:</b>	<b>Single Including Trust and Estates:</b>
Not over \$5,500	1.7% of taxable income
\$5,501 to \$11,000	\$93.50 plus 3.2% of excess over \$5,500
\$11,001 to \$16,000	\$269.50 plus 4.7% of excess over \$11,000
Over \$16,000	\$504.50 plus 4.9% of excess over \$16,000

## **Corporate Income Tax**

The corporate income tax is imposed on the net income of a corporation doing business in the State or deriving any income from property or employment in the State by Section 7-2A-3 NMSA 1978. Collections, net of refunds, are transferred to the General Fund. Corporations are required to file a return on or before the fifteenth day of the third month following the end of each taxable year at which time corporate income taxes are also due. A corporation is required to make estimated tax payments if the tax, net of credits, is \$5,000 or more. Insurance companies do not pay corporate income tax; rather, they pay a tax on insurance premiums. Nonprofit organizations and retirement trust funds also do not pay corporate income tax.

Tax rates are established under a graduated table and range from 4.8 percent on the first \$500,000 or less of taxable income to 7.6 percent on income in excess of \$1,000,000. For Fiscal Year 2008, total distributions to the General Fund of net receipts from corporate income taxes totaled \$354.6 million. This is a decrease of 22.9 percent from the prior fiscal year and generated 5.9 percent of recurring General Fund revenue.

In recent years, a number of credits administered through the corporate income tax system have been enacted. These include: the film production credit, codified as Section 7-2F-1 NMSA 1978; the real property tax credit, codified as Section 7-2-18.10 NMSA 1978; the rural jobs tax credit, codified as Section 7-2E-1 NMSA 1978; the biodiesel production and sale credit, codified as Section 7-2-18.21 NMSA 1978; the agricultural water conservation tax credit, codified as 7-2-18.20 NMSA 1978; the sustainable building tax credit, codified as Section 7-2-18.19 NMSA 1978; and the renewable energy production tax credit, codified as Section 7-2A-19 NMSA 1978.

## **Mineral Production Taxes**

Mineral production taxes (Resource Excise Tax, Natural Gas Processors Tax, Oil and Gas Conservation Tax, and Oil and Gas Emergency School Tax) are levied on producers and others on the value of severed minerals and material resources from within the State and these taxes are disbursed to the General Fund. The Oil and Gas Emergency School Tax is imposed for the privilege of engaging in the business of severing oil, natural gas, liquid hydrocarbons and carbon dioxide from the soil of the State. The Oil and Gas Emergency School Tax is imposed at a rate of 3.15 percent of taxable value of oil and 4 percent of taxable value for natural gas. Taxable value reflects gross sales value less deductions for royalties paid to government entities and for certain processing and transportation expenses. The same definition of taxable value is used for calculation of oil and natural gas severance tax liability.

For Fiscal Year 2008, distributions to the General Fund from Oil and Gas Emergency School Tax receipts totaled \$558 million. This represents a 32.7 percent increase from the prior fiscal year. Other General Fund taxes on natural resource production totaled \$68.3 million. For Fiscal Year 2008, mineral production taxes contributed 10.4 percent of recurring General Fund revenue. This is an increase from the 8.4 percent of recurring revenues for Fiscal Year 2007.

In 2002, the Legislature created the Jicarilla Apache Tribal Capital Improvement Tax Credit, codified in Section 7-31-27 NMSA 1978. This tax credit can reduce the Oil and Gas Emergency School Tax on products severed from wells drilled on the Jicarilla Apache Nation by up to 0.7 percent of the taxable value of production. This credit totaled \$2.0 million for Fiscal Year 2008.

## **Royalties, Rents and Bonuses**

*Federal Lands.* Under terms of the 1920 Federal Mineral Leasing Act, the State receives 50 percent of all income generated from leasing federal lands located in the State for mineral production. Principal sources of income are royalty payments on oil and natural gas production. Additional income is derived from bonus payments for oil and natural gas leases and royalty payments on production of coal, potash and other minerals. The U.S. Minerals Management Service collects federal mineral lease income and deducts the State's share of administrative costs. The State receives payments on a monthly basis and makes deposits to the General Fund. For Fiscal Year 2008, distributions to the General Fund from federal mineral leases totaled \$564.2 million. This equals 9.4 percent of recurring General Fund receipts for the fiscal year.

Federal Fiscal Year 2008 appropriations bills implemented a 2 percent deduction from the federal royalty payments to the states. This 2 percent deduction is expected to be permanent. Approximately \$8 million was deducted from the federal mineral leasing payments to the State for Fiscal Year 2008 and \$11 million is expected to be deducted in Fiscal Year 2009. However, since the oil and natural gas price forecasts have been significantly decreased, the value of this deduction will be less than one-half of this amount for Fiscal Year 2010.

*State Lands.* The State Land Office manages lands acquired by the State under the federal Fergusson Act enacted prior to statehood, as well as under the State Constitution. All income from State lands is dedicated to specific educational purposes and institutions. As with federal lands, the oil and natural gas industry is the principal source of revenue from State lands. Bonus income is also collected in the form of cash payments as a result of competitive bidding for State leases. Rentals and bonus income are distributed to the respective beneficiary institutions. The largest beneficiary group is the State's public school system. Mineral production from State trust lands also generates royalty income which is deposited in the State Land Grant Permanent Fund ("LGPF"). Royalties are imposed on most mineral production values at the rate of 12.5 percent, although there is a provision for rates of up to 20 percent for new leases on developed acreage. LGPF beneficiaries and "State lands" beneficiaries are the same: educational institutions and public schools. For Fiscal Year 2008, total distributions to the General Fund

from State Land Office income were \$46.1 million, a decrease of 8.6 percent from the previous fiscal year.

## **Investment Income**

Investment earnings are generated from three primary sources: the LGPF, the Severance Tax Permanent Fund, and cash balances held by the State Treasurer. Income from the LGPF is distributed among the beneficiary institutions and public schools. The dedication received by the public schools, which is approximately 83 percent, is deposited in the General Fund. For Fiscal Year 2008, \$390.5 million of LGPF distributions were transferred to the General Fund for public school purposes. The State distributed \$177.2 million of income from the Severance Tax Permanent Fund, all of which was deposited in the General Fund. In Fiscal Year 2008, the Treasurer's cash balances produced \$93.7 million for the General Fund, net of the issuance and interest cost of Tax and Revenue Anticipation Notes (TRAN). Total investment income credited to the General Fund was \$661.4 million. This is 11.0 percent of recurring General Fund receipts.

## **Review of Results and Projections in the General Fund**

### *Fiscal Year 2005*

In Fiscal Year 2005, recurring General Fund revenue totaled \$4.9 billion, representing growth of 14.6 percent over Fiscal Year 2004. Prices for oil and natural gas remained elevated, leading to growth of 29.6 percent in mineral production taxes and 33.4 percent in rents and royalties. General and selective sales taxes grew 8.3 percent. Growth in selective sales was due to adoption of a health insurance premium surtax and to the opening of a new casino in Hobbs that increased gaming excise tax collections. Income taxes grew 15.6 percent in Fiscal Year 2005; this growth occurred despite the continued phase-in of the personal income tax reduction passed by the 2003 Legislature. Revenues from investments increased by 13 percent in Fiscal Year 2005. Total recurring appropriations were \$4.4 billion, representing 6.4 percent growth over the previous fiscal year. Non-recurring appropriations of \$324.7 million were appropriated by the legislature, largely for capital investments. Year-end reserves in the General Fund increased by \$241 million to \$688.1 million, or 15.7 percent of recurring appropriations.

### *Fiscal Year 2006*

In Fiscal Year 2006, recurring General Fund revenue grew by 13.7 percent to \$5.6 billion. Prices for oil and natural gas remained high, as Hurricane Katrina resulted in a reduction in natural gas production, and international oil prices remained elevated through the year, leading to growth of 26.9 percent in mineral production taxes and 27.9 percent in rents and royalties. General and selective sales taxes grew by 10.3 percent, while income tax growth was 12.8 percent. Revenues from investments increased by 7.8 percent. Total recurring appropriations for the fiscal year totaled \$4.7 billion, representing 7.4 percent growth over the previous year. Non-recurring appropriations of \$656.1 million were appropriated by the Legislature, largely for capital investments. Year-end reserves in the General Fund increased by \$110.1 million to \$798.2 million, or 17 percent of recurring appropriations.

### *Fiscal Year 2007*

In Fiscal Year 2007, recurring General Fund revenue grew by 3.5 percent to \$5.8 billion. This growth followed three consecutive years in which General Fund recurring revenue grew at least 10.0 percent year-over-year. Prices for oil and natural gas remained high by historical standards, but were lower than in Fiscal Year 2006. Mineral production tax collections fell by 10.2 percent, while rents and royalties fell 9.5 percent. General and selective sales taxes grew by 7.8 percent, while income tax growth was 9 percent. Revenues from investments increased by 2 percent. Total recurring appropriations for the fiscal year totaled \$5.1 billion, representing 8.6 percent growth over the previous fiscal year. General

Fund balances of \$814.3 million were appropriated by the Legislature largely for capital investments. Year-ending reserves in the General Fund decreased by \$209.9 million to \$650.8 million, or 12.7 percent of Fiscal Year 2007 recurring appropriations. Year-ending General Fund operating reserves did not exceed 8 percent of Fiscal Year 2006 recurring appropriations, therefore no additional amounts were transferred from the General Fund Operating Reserve to the Tax Stabilization Reserve. The balance in the Tax Stabilization Reserve remained at \$254.4 million or just under 5 percent of Fiscal Year 2007 recurring appropriations.

#### *Fiscal Year 2008*

Recurring General Fund revenues increased by 4.2 percent to \$6.0 billion in Fiscal Year 2008. Both oil and natural gas prices peaked late in the fiscal year, with oil prices averaging \$132.14 per barrel in June 2008 for New Mexico producers. Natural gas prices ranged from \$6.25 per thousand cubic feet (“mcf”) in August 2007 to \$11.70 per mcf in June 2008. On balance, this strength in mineral production taxes and royalties covered slow growth in the broad-based taxes. Mineral production taxes and rents and royalties increased 28.6 percent and 10.6 percent respectively. General and selective sales taxes declined for the fiscal year by 0.4 percent, while income taxes declined by 4.4 percent, due to the final step in the 2003 personal income tax rate cuts and an accounting policy change that shifted some corporate income tax payments to the next fiscal year. Although short-term interest rates decreased in the course of the fiscal year, investment income grew by 9.8 percent. Total recurring appropriations for the fiscal year totaled \$5.7 billion, representing 11.0 percent growth over the previous year. The Legislature appropriated and the Governor approved \$295.1 million for nonrecurring projects during the 2007 and 2008 regular legislative sessions. Fiscal Year 2008 year-end reserves in the General Fund increased by \$84.3 million to \$735.1 million, or 13.0 percent of Fiscal Year 2008 recurring appropriations.

#### *Fiscal Year 2009*

Based upon revenue projections for Fiscal Year 2009 made in February 2009, as adjusted for 2009 legislation, recurring General Fund revenues are projected to decrease by 4.9 percent over the previous fiscal year to approximately \$5.7 billion. The price of oil is expected to average \$62.00 per barrel and the price of natural gas is expected to average \$5.60 per mcf for the fiscal year. General and selective sales taxes are projected to grow by 2.4 percent while income taxes are projected to decrease by 3.9 percent. After accounting for laws enacted in the 2009 regular legislative session and an executive initiative to increase revenue collections, which is detailed below, General Fund balances are expected to decrease to \$607.5 million, or 10.1 percent of Fiscal Year 2009 recurring appropriations. In addition to legislative actions taken during the 2009 regular legislative session, the Governor has implemented a partial hiring freeze and has required all executive agencies to prepare plans to save a minimum of 5 percent of their General Fund budgets. Additional cost-saving measures announced by the Governor include freezing salary increases, eliminating non-essential overtime for classified employees, prohibiting upward reclassification of postings through June 30, 2010, suspending awards of compensatory time and buyouts for annual leave for exempt employees, reducing expenses related to travel, equipment, supplies and furniture and employing energy conservation strategies. The Governor also requested elected public officials and the legislative and judicial branches to contribute to the overall effort to reduce expenditures.

The 2009 Legislature adopted and the Governor signed four bills that include revisions to the Fiscal Year 2009 budget. These bills bring General Fund reserves to the targeted level of 10 percent of recurring appropriations for Fiscal Year 2009. House Bill 9 (Laws 2009, Chapter 5) cancelled the authorization for various capital outlay projects that were previously appropriated from the General Fund and Severance Tax bond funds and reauthorized certain other projects. House Bill 10 (Laws 2009, Chapter 2) provided for a 2.5 percent reduction in certain General Fund operating budgets for Fiscal Year 2009, and other appropriations, with variations and exemptions for certain agencies and programs. Senate Bill 79 (Laws 2009, Chapter 3) reduced and repealed General Fund appropriations and authorized transfers to the General Fund from several other funds. Senate Bill 79 also partially restored reductions to

public schools and Medicaid by appropriating from two reserve funds. The bill appropriated \$35.8 million from the Appropriation Contingency Fund's education reform balance to diminish the public schools budget reduction from 2.5 percent to 1.1 percent, and appropriated \$22.6 million from the Tobacco Settlement Permanent Fund Reserve to diminish the Medicaid budget reduction from 2.5 percent to 1 percent. Senate Bill 80 (Laws 2009, Chapter 4) restored the requirement that was inadvertently deleted in 2003 legislation for a first quarterly installment of corporate estimated income tax, causing some corporate income tax revenue to arrive during Fiscal Year 2009 instead of Fiscal Year 2010. Lastly, an additional \$6.8 million of revenue is expected in Fiscal Year 2009 due to an executive initiative to sell certain stocks held in unclaimed property and transfer the proceeds to the General Fund.

### *Fiscal Year 2010*

Based upon revenue projections for Fiscal Year 2010 made in February 2009 and adjusted for 2009 legislation, recurring General Fund revenues are projected to decrease by 4.3 percent over Fiscal Year 2009 to approximately \$5.5 billion. The price of oil is expected to average \$47.00 per barrel and the price of natural gas is expected to average \$4.80 per mcf for the fiscal year. General and selective sales taxes are projected to grow by 1.8 percent while income taxes are projected to decrease by 0.1 percent. Severance taxes are projected to decline by 18.6 percent over the previous fiscal year, while rents and royalties are expected to decline by 38.6 percent over the previous fiscal year. In addition to this recurring General Fund revenue, New Mexico is expected to receive just over \$2 billion in federal stimulus funding from the American Recovery and Reinvestment Act of 2009 for use in Fiscal Years 2009 and 2010. Federal funding contained in this act for Fiscal Years 2009 and 2010 includes \$544.6 million for Medicaid, \$260.4 million for education, and \$57.9 million for general purposes.

After adjusting for Governor's vetoes, the Fiscal Year 2010 General Fund budget, which was enacted in the 2009 regular session contains \$5.5 billion of recurring appropriations, a decrease of 8.6 percent over Fiscal Year 2009. General Fund balances are expected to fall to \$541.1 million, or 9.9 percent of Fiscal Year 2010 recurring appropriations. The Fiscal Year 2010 budget was balanced using \$331.2 million in federal American Recovery and Reinvestment Act funding to avoid significant reductions in public education and Medicaid, substituting \$24.1 million of State Medicaid funding with annual tobacco settlement payments on a recurring basis, shifting 1.5 percent of annual State pension contributions from the employer to employees to save \$42.6 million, and reducing State agency, public education, and higher education budgets by \$139.7 million. Lastly, an executive initiative to collect all outstanding tax obligations owed to the State by taxpayers is expected to increase recurring revenue by \$21.3 million in Fiscal Year 2010.

The Governor has indicated that it is likely he will call a special session after Fiscal Year 2010 commences to address the status of receipt of funds in connection with the American Recovery and Reinvestment Act and to revisit the budget in light of future revenue forecasts.

### **Severance Taxes (Not Part of General Fund)**

Severance taxes are levied on producers and others severing minerals and natural resources from within the State. Severance taxes have been levied since 1937 when the first severance tax act was adopted. Severance taxes are distinguished from several other taxes on, or revenue sources related to, valuable mineral extraction in the State, including the taxes described above. Severance taxes are collected monthly. Taxes on oil, gas and carbon dioxide are due the 25th day of the second month following the end of the sale month. Other severance taxes are due the 25th day of the month following the end of the production month, with a few exceptions.

Severance taxes are deposited in the Severance Tax Bonding Fund and pledged to the payment of principal of and interest on severance tax bonds and supplemental severance tax bonds issued in accordance with the Severance Tax Bonding Act. Revenues not required for the payment of principal of

or interest on severance tax bonds as determined by the Severance Tax Bonding Act and the bond resolutions governing such outstanding bonds are transferred on a semi-annual basis to the Severance Tax Permanent Fund.

The minerals extracted from the State that contribute the largest portion of Severance Tax revenues are natural gas and oil. Severance Tax collections on natural gas and oil in Fiscal Year 2008 represented approximately 96.4 percent of total Fiscal Year 2008 Severance Tax Bonding Fund tax receipts.

### **Severance and Mineral Production Taxes on Indian Land**

The State can tax non-Indian oil and natural gas production on tribal land, according to United States Supreme Court precedent in *Cotton Petroleum Co. v. State of New Mexico*, 490 U.S. 163, 104 L. Ed. 2d 209, 109 S. Ct. 1968 (1989). The State's authority to impose severance taxes on Indian oil and natural gas production on tribal land was upheld by the United States District Court in New Mexico in *Jicarilla Apache Tribe v. New Mexico Taxation and Revenue Department*, No. USDC 87-922. The Tax Department reports that natural gas production and crude oil production on Indian land were approximately 4.22 percent and 0.81 percent, respectively, of total taxable statewide production in Fiscal Year 2008. The Tax Department estimates that oil and natural gas production on Indian land generated \$13.4 million in severance tax revenues to the State in the production months corresponding to Fiscal Year 2008. The Tax Department estimates that coal production on Indian land ranges from 40 to 45 percent of total statewide production from year to year. No potash or copper is produced on Indian land.

Section 7-29C-1 NMSA 1978, enacted by the 1995 Legislature, authorized a credit against State production and property taxes for similar taxes imposed by tribal governments. The credit applies to crude oil and natural gas from new wells drilled on or after July 1, 1995 on land within Indian reservation boundaries on March 1, 1995. The amount of the credit is 75 percent of the lesser of State taxes or tribal taxes imposed. If the applicable tribal taxes were raised after March 1, 1995, then the amount of the State's credit is lowered. The Tax Department estimates that total credits claimed under this provision were about \$3.7 million in 2008. About \$1.5 million of these credits were applied against oil and natural gas severance tax liability. The Severance Tax Bonding Fund revenue projection assumes that this amount will grow slowly in the future.

The 2001 Legislature enacted Sections 7-29C-2, 7-9-88.2 and 9-11-12.2 NMSA 1978, which provided a similar 75 percent intergovernmental tax credit against severance tax and severance surtax on coal mined on the Navajo Nation. The Tax Department reports that this credit reduced Severance Tax Bonding Fund revenue by \$4.5 million in Fiscal Year 2008. The enactment of Section 7-31-27 NMSA 1978 created the Jicarilla Apache Tribal Capital Improvement Tax Credit, but this credit does not apply against severance taxes due on the same production.

### **Severance Tax Permanent Fund and the Land Grant Permanent Fund**

The Severance Tax Permanent Fund was established in the State Treasury in 1973 to receive the residual revenues from the Severance Tax Bonding Fund and serve as an endowment for future capital projects. In 1976, the electorate approved a constitutional amendment giving the Severance Tax Permanent Fund constitutional status. In 1982, the electorate approved a second constitutional amendment that removed the discretionary power of the Legislature to appropriate funds from the corpus of the Severance Tax Permanent Fund. Distributions from investments of the Severance Tax Permanent Fund, however, may be appropriated by the Legislature in the same manner as other general revenues are appropriated. Severance tax receipts have been the primary source of funding for the Severance Tax Permanent Fund. The State Investment Officer under the direction of the State Investment Council (the "SIC") invests the corpus and non-appropriated income of the Severance Tax Permanent Fund. The

market value of the Severance Tax Permanent Fund as of June 30, 2008 was approximately \$4.3 billion, a decrease of approximately 9 percent from the prior fiscal year. Since the end of Fiscal Year 2008, this fund has experienced a material loss in value related to the downturn in the nation's economy. For the quarter ended September 30, 2008, the SIC had losses of approximately 7.9 percent in the Severance Tax Permanent Fund. For the year ended September 30, 2008, the SIC had losses of approximately 13.3 percent in the Severance Tax Permanent Fund. For the quarter ended December 31, 2008, the SIC had losses of approximately 19.5 percent in the Severance Tax Permanent Fund. Money on deposit in the Severance Tax Permanent Fund is not pledged to and may not be used to pay any Bonds.

The LGPF is designed solely to benefit the public educational system of the State and other specified institutions. The origins of the LGPF are found in the Fergusson Act of 1898, which granted two sections of land in every township for the benefit of the public schools in the territories of New Mexico. Also under this Act, specific acreage was granted to individual education, medical and penal institutions in the territory. The initial grant totaled in excess of 5.5 million acres. In 1910, the Enabling Act granted additional lands to various beneficiaries in New Mexico, including the public schools, with the latter receiving the largest share. This brought the total lands placed in trust for the common school system and other beneficiaries to over 13 million acres. Over the years, some land has been sold (and the proceeds used to increase the corpus of the LGPF), so the current total is nine million surface acres and 12.8 million subsurface acres. The corpus of the LGPF is constitutionally protected from appropriation and amounts on deposit therein are not pledged to and may not be used to pay debt. The LGPF is also protected by the Federal Enabling Act of 1910.

Pursuant to Section 19-1-1 NMSA 1978, the State Land Office is charged with the custody and disposition of the land granted to the State. The Commissioner of Public Lands sells or leases these properties in accordance with the provisions of the appropriate statutes. The State Investment Officer under the direction of the SIC invests the corpus and income of the LGPF. As of June 30, 2008, the market value of the LGPF was approximately \$10.1 billion, a decrease of approximately 5 percent from the prior fiscal year. For the quarter ended September 30, 2008, the SIC had losses of approximately 7.5 percent in the LGPF. For the year ended September 30, 2008, the SIC had losses of approximately 12.6 percent in the LGPF. For the quarter ended December 31, 2008, the SIC had losses of approximately 18 percent in the LGPF.

In November 1996, the State electorate approved a constitutional amendment regarding distributions from both of the State's permanent funds. Distributions are now based on a total return basis rather than an income distribution method. In addition, distributions to beneficiaries are now based on a formula under which 4.7 percent of the previous average five-year market value of the fund is distributed.

In September 2003, the State electorate approved a constitutional amendment increasing the rate of distribution from the LGPF from 4.7 percent to 5 percent of the five-year average market value of the LGPF beginning in Fiscal Year 2005. Certain additional distributions shall be made to implement and maintain educational reforms as provided by law. An additional 0.8 percent has been and will be distributed in Fiscal Years 2005 through 2012 and an additional 0.5 percent will be distributed in Fiscal Years 2013 through 2016. A three-fifths majority of each house of the Legislature may suspend this additional distribution.

### **State Auditing and Accounting Systems**

The financial affairs of every agency in the State are examined and audited each year by the State Auditor, personnel of the State Auditor's office designated by the State Auditor, or by the independent auditors approved by the State Auditor, as required by Section 12-6-3 NMSA 1978. The audits are conducted in accordance with generally accepted auditing standards. The audit reports include financial statements that are presented in accordance with generally accepted accounting principles.

In July 2006, the State implemented a Statewide Human Resources, Accounting and Management Reporting System (the “SHARE System”). The SHARE System replaced the State’s existing Central Accounting System, central payroll system, personnel system, treasury reconciliation accounting and cashing system, and 114 additional systems then in place at various State agencies. Since June 2007, the State has officially used SHARE as its books of record.

On April 14, 2009, the Federal Highway Department (the “FHWA”) advised the New Mexico Department of Transportation (the “NMDOT”) of the suspension of the reimbursement of all Federal-Aid billings to the NMDOT until such time as the Federal Billing Report in the SHARE System is brought into compliance with the format agreed upon by the FHWA and the NMDOT in March 2008. The FHWA further requested a resubmission of certain outstanding billing reports as a condition for payment approval, and that future billing reports be in the agreed upon format. On April 15, 2009, the NMDOT responded to the FHWA. The NMDOT recognized and acknowledged the federal requirement that grantees have fiscal control and accounting procedures that permit the tracing of federal funds. The NMDOT accepted the conditions placed on it by the FHWA for resumption of federal billing and agreed to comply with the requirements outlined in the April 14 letter. The NMDOT further stated its intention to complete a plan relating to certain other billing adjustments by June 30, 2009. The Board does not believe that any such suspension of reimbursements of Federal-Aid billings to the NMDOT would have any effect on the ability of the State to repay the Bonds.

After the date of this Official Statement, on April 22, 2009, the FHWA notified the NMDOT that it would permit the NMDOT to resume billing eligible projects costs provided that reimbursements are restricted to items listed on appropriate billing vouchers, the amounts billed match detailed reports submitted to FHWA, pending bills are resubmitted, and the FHWA continues pre-billing sampling of all reimbursement requests.

### **State Budgetary and Appropriation Process**

All State agencies are required by Section 6-3-19 NMSA 1978 to submit completed budget forms to the DFA Budget Division by September 1 of each year. Guidelines and forms are provided to State agencies in advance of the September 1 deadline. Budget hearings to examine the merits of budget requests are scheduled through the fall and are usually completed by mid-December. The DFA Budget Division presents comprehensive budget recommendations to the Governor, as required by Section 6-3-15(B) NMSA 1978.

The Governor is required by Section 6-3-21 NMSA 1978 to submit a budget for the upcoming fiscal year to the Legislature in early January. The Governor’s budget includes the executive recommendations for public education; higher education; State agencies; and historical information on prior expenditures, revenues and revenue projections, among other information. The State budget is contained in a General Appropriation Act, which also may contain proposals for supplemental and deficiency appropriations for the current fiscal year.

Upon passage by the Legislature, the Governor may sign the General Appropriation Act, veto it, veto line items or veto parts of it. After the Governor has signed the General Appropriation Act, the DFA Budget Division approves the agency budgets and monitors the expenditure of the funds beginning on July 1, the first day of the fiscal year.

### **State Treasurer’s Investment Responsibilities**

Pursuant to Section 6-10-10(I) NMSA 1978, the State Treasurer, with the advice and consent of the State Board of Finance, may invest money not immediately needed for government operations. These investment responsibilities are conducted in accordance with the State Treasurer’s Investment Policy (the “Investment Policy”). The Investment Policy is adopted by the State Treasurer and approved by the State Board of Finance. The Investment Policy states that in keeping with the

office's fiduciary responsibility, all investment decisions made by the State Treasurer will adhere to the following three fundamental principles: safety, liquidity and return. The Investment Policy governs the State Treasurer's investment activities. This policy applies to all financial assets of the State invested by the Treasurer in the exercise of the Treasurer's statutory authority or invested as directed by other agencies which have specific investment authority and for which the Treasurer acts as the investing authority. The public money includes the State's General Fund, the Local Government Investment Pool ("LGIP"), Bond Proceeds Investment Pools, bond debt service funds, and other special funds with respect to which the State Treasurer is the investing authority.

In Fiscal Year 2007, the State Treasurer's Office invested a portion of the General Fund in the Reserve Primary Fund (RPF). On September 15, 2008, the balance of the General Fund's RPF investment was \$484.7 million. On September 16, 2008, RPF net asset value fell below \$1.00 and holdings in the fund were frozen. Since then, RPF has returned approximately \$0.85 per share to shareholders. The remaining \$65.2 million of RPF position held in the General Fund is a non-performing asset. On February 26, 2008, RPF announced that it was withholding \$3.5 billion of RPF assets for anticipated and pending litigation against it, which amount could increase or decrease as RPF evaluates information related to such litigation. As a result, the State Treasurer's Office cannot anticipate what the General Fund's actual losses from RPF may be or when they may be realized. No actual losses have been realized to date.

According to the Investment Policy, an Investment Committee must be appointed by the State Treasurer with the specific purpose and responsibility of establishing, maintaining and administering the Investment Policy. The Investment Committee consists of five voting members: the State Treasurer, or designee, who serves as Investment Committee Chair; the State Treasurer's Chief Investment Officer (with the State Cash Manager as an alternate); the Director of the State Board of Finance or designee; and two additional members. These additional members must be participants in the private investment community or have expert knowledge or professional experience in public finance or public fund investing. One member is appointed by the State Treasurer and approved by the Board and one member is appointed by the Board and approved by the State Treasurer.

The Investment Committee is charged with the following responsibilities:

- Reviewing the Investment Policy, no less than annually, and recommending, if advisable, modifications in the Investment Policy from time to time;
- Assessing, no less than annually, the utility and efficacy of established internal controls as loss prevention measures with respect to the investment portfolio;
- Determining, no less than annually, whether legislation affecting the investment activities of the State Treasurer should be recommended;
- Recommending investment procedures that may be useful or required in maintaining currency with public money investment practices;
- Deliberating on such topics as economic outlook, portfolio diversification and maturity structure, potential risks, the target rate of return on the investment portfolio;
- Identifying potential violations of and suggesting remedial actions to achieve conformity with the Investment Policy;
- Recommending, no less than annually, action on depositories, custodians, broker/dealers and investment managers and advisors; and
- Assessing whether the Investment Policy is being properly implemented by the individuals and entities involved in the administration and management of investment activities.

On October 26, 2005, then-New Mexico State Treasurer Robert Vigil resigned following his indictment on multiple charges of extortion, money laundering and conspiracy related to his time in office. On September 30, 2006, Mr. Vigil was convicted of one count of attempted extortion and acquitted on 23 other charges. The State Treasurer who preceded Mr. Vigil pleaded guilty to extortion for actions he took as State Treasurer.

Following the indictment of Mr. Vigil, the State engaged the law firm of Hogan and Hartson, LLP and Deloitte Financial Advisory Services L.L.P. to conduct a special audit of the State Treasurer's Office. The special audit found a significant number of internal control weaknesses and deficiencies in the operations of the State Treasurer's Office; however, the special audit did not find that the integrity of funds held at the State Treasurer's Office had been compromised. The special audit recommended a slate of legislative, rulemaking and control enhancements designed to ensure that funds held by the State Treasurer's Office are prudently invested and safely handled.

The State Treasurer's Office has implemented many of the recommendations of the special audit and has implemented a detailed corrective action plan of the type necessary to establish an effective internal control management program. Additionally, the State Treasurer's Office and the Board revised the Investment Policy to increase transparency and oversight and ensure better operating procedures in the State Treasurer's Office. These changes include a requirement to use electronic trading; a requirement to attain a financing rating for the LGIP from a national rating agency; a provision that the investment consultants used by the State Treasurer be approved by the Board and that they establish performance benchmarks for the State Treasurer's Office and report performance relative to that benchmark; improved reporting requirements and more meaningful controls over trading activity; requirements for the State Treasurer to adopt an employee code of conduct policy, a campaign contributions policy, and a whistleblower policy; and a requirement that the State Treasurer and employees involved in the investment process refrain from personal business activity that may impair their ability to make impartial investment decisions.

## **Pension Funds**

The Legislature enacted the Educational Retirement Act, Section 22-11-1 et seq. NMSA 1978, and the Public Employees Retirement Act, Section 10-11-1 et seq. NMSA 1978, which created the retirement plans that cover most employees of the State and its political subdivisions. These retirement plans are described below. In 1998, the voters adopted an amendment to Section 22D of Article XX of the State Constitution which stated that upon meeting the minimum service requirements of an applicable retirement plan created by law for employees of the State or any of its political subdivisions or institutions, a member of a plan shall acquire a vested property right with due process protections under the applicable provisions of the New Mexico and United States Constitutions. The Legislature establishes all financing provisions of the plans and the provisions are not subject to negotiation. Financing provisions include employee and employer contributions, fund investment provisions and benefit provisions. The balances reported below are official data as of June 30, 2008. Due to the significant market turmoil related to the downturn in the nation's economy, New Mexico's pension funds, along with pension funds throughout the nation, have been subject to a material loss in market value for the year ended December 31, 2008.

House Bill 573, which was enacted during the 2009 regular legislative session, amends various provisions of the Educational Retirement Act, the Public Employees Retirement Act and the New Mexico Health Care Retiree Act in order to increase the solvency of the pension funds. House Bill 573 increases the years of service requirement from 25 years to 30 years for new members who join the Educational Retirement Board (the "ERB") and the Public Employees Retirement Association ("PERA") on or after July 1, 2010, while existing ERB and PERA members remain under the 25-year service requirement. In addition, House Bill 573 increases payroll contributions by employers and employees to the New Mexico Retiree Health Care Fund (the "NMRHCF"). House Bill 573 also includes

training requirements for members of the ERB and PERA boards and establishes a 25-member retirement systems solvency task force to study the pension plans and make recommendations to the Legislature and Governor by October 1, 2010. Related to House Bill 573, House Bill 631, which was enacted during the 2009 regular legislative session, adds a section to the Educational Retirement Act to extend the rule whereby ERB members could retire with full benefits if their combined service and age at retirement met or exceeded 75, to a combined service and age at retirement of 80 for ERB members hired after July 1, 2010.

House Bill 351, which was enacted during the 2009 regular legislative session, increases the employer/employee contribution to the NMRHCF from the current 1.95 percent to 3 percent for most employers and employees. The contribution increase would be slightly higher for employees in an enhanced retirement plan. The increase would be phased-in over a four-year period. Due to the passage of this legislation, the NMRHCA estimates that solvency will be extended from approximately 2018 to 2027.

Finally, House Bill 854, which was enacted during the 2009 regular legislative session, modifies most employer and employee contributions to the State's retirement funds for Fiscal Years 2010 and 2011, shifting 1.5 percent of the annual contribution rate from employers to employees for those employees with a full-time equivalent annual salary greater than \$20,000. In Fiscal Year 2012, the employee contribution rate will return to previous levels.

### **Educational Retirement Board**

The ERB had 124,872 members as of June 30, 2008, including active, retired, inactive vested and inactive non-vested members. An actuarial valuation of the Educational Retirement Fund completed by Gabriel Roeder, Smith & Co., reported that as of June 30, 2008 the actuarial value of assets was \$9.3 billion and the unfunded accrued actuarial liability ("UAAL") was \$3.7 billion. The funded ratio (ratio of the actuarial value of assets to actuarial accrued liability) increased from 70.5 percent at June 30, 2007 to 71.5 percent at June 30, 2008. As of June 30, 2008, the UAAL had an amortization period of 61.4 years, compared to an infinite period as of the 2007 actuarial valuation. The amortization period, also referred to as the funding period, is a calculation based on actuarial models of the period required to amortize the UAAL, assuming ERB's experience exactly follows actuarial assumptions. The actuarial assumptions include an 8 percent rate of return. As required by Governmental Standards Accounting Board ("GASB") Statement 25, the calculation is based on current contribution rates and does not take into account the statutorily scheduled increases in those rates described below. The ERB has suffered investment losses since June 30, 2008. The investment return for the quarter ended September 30, 2008 was a negative 8 percent. The investment return for the year ended September 30, 2008 was a negative 15.4 percent. The investment return for the quarter ended December 31, 2008 is estimated to be a negative 16.7 percent. The investment return for the year ended December 31, 2008 is estimated to be a negative 28.1 percent. The actuarial effect of losses will be reflected in future actuarial reports.

Member and employer contribution rates are established by statute. In 2005, the Legislature amended Section 22-11-21 NMSA 1978 to increase the employer contribution rate by 75 basis points (0.75 percent) for each of the seven years beginning July 1, 2005, and to increase member contribution rates by 7.5 basis points (0.075 percent) for each of the four years beginning July 1, 2005. As of July 1, 2008, the start of Fiscal Year 2009, the employer contribution rate is 11.65 percent and the member contribution rate is 7.9 percent. In addition, New Mexico universities and colleges make an additional contribution of 3 percent of the salary of those employees who elect to participate in the Alternative Retirement Plan ("ARP"), a defined contribution retirement plan available to certain faculty and professional employees to satisfy the UAAL attributable to participation in the ARP.

As indicated above, as of June 30, 2008, ERB has an amortization or funding period of 61.4 years, based on the employer and member contribution rates in effect as of July 1, 2008. The employer

contribution in Fiscal Year 2009 that would have been required in order to amortize the UAAL over 30 years was 13.54 percent. Under current law, the employer rate will increase to 13.9 percent on July 1, 2011. As GASB Statement 25 does not permit the consideration of contribution rates not yet in effect, the 61.4 year funding period must be reported.

### The Public Employees Retirement Association

Gabriel, Roeder, Smith & Co. completed an actuarial valuation of the PERA Fund, Judicial Retirement Fund, Magistrate Fund, Legislative Division and Volunteer Firefighter Fund (“VFF”) as of June 30, 2008. The Public Employees Retirement Board accepted the actuary’s conclusions that the assets, benefit values, reserves and computed contribution rates reflect utilization of an inflation rate of 4 percent per annum, compounded annually, and other risk assumption changes including salary increases for longevity and merit, the real rate of return on investments, mortality, active member withdrawals, disability and retirement rates to allow for expected future experience. For the quarter ended September 30, 2008, the quarterly PERA total fund return was a negative 11.76 percent. For the year ended September 30, 2008, the annual PERA total fund return was a negative 19.7 percent. For the quarter ended December 31, 2008, the quarterly PERA total fund return was a negative 16.5 percent. For the year ended December 31, 2008, the annual PERA total fund return was negative 31.96 percent.

As of June 30, 2008, PERA has an amortization or funding period of 13 years, based on the employer and member contribution rates in effect as of July 1, 2008. Member and employer rates are established pursuant to Section 10-11-1 through 10-11-141 NMSA 1978. The funded ratio (ratio of the actuarial value of assets to actuarial accrued liability) was 93 percent in Fiscal Years 2007 and 2008. PERA may consider proposing legislation to increase contributions in response to material losses in value related to the downturn in the nation’s economy since June 30, 2008

Actuarial information, for each fund, as of June 30, 2008, is shown in Table 10.

**TABLE 10**

**Summary of State Retirement Funds**  
(Dollars in thousands)

	<u>PERA</u> <sup>(1)</sup>	<u>Judicial</u>	<u>Magistrate</u>	<u>VFF</u>	<u>Legislative</u>
Membership	80,302	233	120	4,952	277
<u>Actuarial Information</u>					
Accrued Liability <sup>(2)</sup>	\$ 13,740,335	\$ 111,721	\$ 41,721	\$ 16,946	\$ 21,414
Value of Assets <sup>(3)</sup>	\$ 12,816,218	\$ 87,430	\$ 38,866	\$ 48,438	\$ 19,999
Unfunded (Overfunded) Accrued Liability	\$ 924,117	\$ 24,292	\$ 2,855	(\$31,492)	\$ 1,415
Present Value of Statutory Obligations	\$ 17,351,959	\$ 142,492	\$ 49,378	\$ 25,633	\$ 23,977

<sup>(1)</sup> Includes both the State and municipal divisions.

<sup>(2)</sup> Includes the accrued liability of both the retired and active members.

<sup>(3)</sup> The valuation of assets is based on an actuarial value of assets whereby gains and losses relative to an 8 percent annual return are smoothed in over a four-year period.

Source: Public Employees Retirement Association.

### New Mexico Retiree Health Care Authority

The Retiree Health Care Act was enacted in Sections 10-7C-1 through 10-7C-19 NMSA 1978, for the purpose of providing comprehensive group health insurance coverage for persons who have retired from certain public service in the State and their eligible dependents. The Retiree Health Care Act provides that the benefits offered to retired public employees may be modified, diminished or

extinguished by the Legislature, and that the Act does not create any contract, trust or other rights in public employees to health care benefits.

The New Mexico Retiree Health Care Authority (the “NMRHCA”), the agency that administers the Retiree Health Care Act, has a fund base comprised of active employee payroll deductions, participating employer contributions, monthly premium contributions of enrolled participants, investment income, and amounts distributed annually from the Taxation Administration Suspense Fund (“TAA Fund”). A separate distribution from the TAA Fund, which is currently set at \$3,000,000 per year, is scheduled to sunset on June 30, 2010. Employer and employee contribution rates are established in statute as is the amount distributed from the TAA Fund. Respective employer/employee contribution rates are currently 1.3 percent and 0.65 percent of the participating employee’s salary. These rates combined, as well as other sources of revenue, are significantly less than what is necessary to fund the normal cost and amortization of the UAAL (as described below) over a 30-year period.

There were 42,111 NMRHCA enrolled participants as of June 30, 2008. Accrued assets at fair value on June 30, 2007 were \$208.8 million and on June 30, 2008 were estimated to be \$182.2 million. For the quarter ended September 30, 2008, NMRHCA estimates losses of approximately 9 percent. For the year ended September 30, 2008, NMRHCA estimates losses of approximately 8 percent. For the quarter ended December 31, 2008, NMRHCA estimates losses of approximately 23 percent. For the year ended December 31, 2008, NMRHCA estimates losses of approximately 27 percent.

Based on the GASB Statement 43 valuation for Fiscal Year 2008, and assuming that the NMRHCA Fund is an equivalent arrangement to an irrevocable trust and, hence using a discount rate of 5 percent, the unfunded actuarial accrued liability (“UAAL”) has been calculated to be approximately \$2.9 billion. As required by GASB Statement 43, this calculation takes into consideration only current assets of the NMRHCA Fund. The UAAL is approximately \$1.2 billion less than calculated in the June 30, 2006 GASB Statement 43 valuation. In addition, the June 30, 2008 GASB Statement 43 valuation indicates that the State’s annual required contribution, (the amount necessary to fully fund normal cost plus a 30-year amortization of the UAAL) is approximately \$100 million less than in the June 30, 2006 valuation. The Board has taken several actions to reduce the UAAL in 2008 and in future years, including raising premiums and increasing contributions from retirees for the most generous plans, and continues to investigate additional opportunities including legislative initiatives to increase the combined employer/employee contribution.

### **Economic and Demographic Characteristics**

New Mexico is the 36th largest state by population and the fifth largest in land area. The population of the State as of the time of the 2000 United States Census was 1,819,046. In the 1990s, the State was the 12th fastest growing state, as the population increased 20.1 percent from the 1990 population of 1,515,069. Over the same period of time, the national population grew 13.2 percent.

There are four Metropolitan Statistical Areas (MSAs) in the State. The Albuquerque MSA is comprised of Bernalillo, Sandoval, Torrance and Valencia Counties; the Las Cruces MSA is comprised of Doña Ana County; the Santa Fe MSA is comprised of Santa Fe County; and the Farmington MSA is comprised of San Juan County. The fastest growing counties in the State are Sandoval, Doña Ana, Luna, Lincoln, Bernalillo and San Juan. The following table sets forth information on population growth in New Mexico and nationally over the past decade.

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**TABLE 11****Population****New Mexico and the United States  
1999-2008**

<u>Year</u>	<u>Population</u>		<u>Annual Percentage Change</u>	
	<u>New Mexico</u>	<u>United States</u>	<u>New Mexico</u>	<u>United States</u>
1999	1,808,082	279,040,168	0.8%	1.2%
2000	1,820,704	282,171,936	0.7%	1.1%
2001	1,828,330	285,039,803	0.4%	1.0%
2002	1,848,986	287,726,647	1.1%	0.9%
2003	1,867,909	290,210,914	1.0%	0.9%
2004	1,889,266	292,892,127	1.1%	0.9%
2005	1,912,884	295,560,549	1.3%	0.9%
2006	1,937,916	298,362,973	1.3%	0.9%
2007	1,964,402	301,290,332	1.4%	1.0%
2008	1,984,356	304,059,724	1.0%	0.9%

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*Source : Population Division, U.S. Census Bureau, March 2009.*

Major industries in the State include oil and natural gas production, manufacturing, service, tourism, services, arts and crafts, agribusiness, government and mining. Major federally funded scientific research facilities at Los Alamos, Albuquerque and White Sands are also a notable part of the State's economy. The following table sets forth information on employment by industry over the period of 1998 through 2007.

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TABLE 12

Total New Mexico Full-time and Part-time Employment by North American Industry Classification System 1998-2007

	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>Growth 2006-2007</u>	<u>Growth 1998-2007</u>
<b>Total employment</b>	945,474	951,156	972,954	977,815	987,693	1,013,107	1,038,845	1,051,704	1,091,651	1,115,677	2.20%	18.00%
Wage and salary employment	765,582	773,819	789,690	801,610	809,872	822,438	838,544	855,049	877,954	887,936	1.25%	16.11%
Proprietors employment	179,892	177,337	183,264	176,205	177,821	190,669	200,301	196,655	213,697	227,741	6.57%	26.60%
Farm proprietors employment	15,818	15,237	14,985	17,470	17,649	17,035	16,972	17,159	17,095	17,519	2.48%	10.75%
Nonfarm proprietors employment	164,074	162,100	168,279	158,735	160,172	173,634	183,329	179,496	196,602	210,222	6.93%	28.13%
Farm employment	23,203	21,982	21,760	24,091	24,038	23,855	23,757	24,550	24,318	24,575	1.06%	5.91%
Nonfarm employment	922,271	929,174	951,194	953,724	963,655	989,252	1,015,088	1,027,154	1,067,333	1,091,169	2.23%	18.31%
Private employment	723,483	730,406	748,804	748,250	754,776	775,615	797,520	808,390	853,037	881,017	3.28%	21.77%
Forestry, fishing, related activities and other <sup>(1)</sup>	7,469	7,250	7,144	7,019	7,284	7,080	7,132	7,219	7,164	7,086	-0.84%	-4.89%
Mining <sup>(2)</sup>	19,348	17,428	18,823	19,469	17,520	18,875	19,025	21,118	23,666	24,596	3.93%	27.12%
Utilities	4,253	4,214	4,312	4,272	4,100	4,120	4,063	4,082	4,142	4,397	6.16%	3.39%
Construction <sup>(3)</sup>	60,783	60,167	60,646	63,144	61,086	63,927	68,145	72,453	79,654	82,275	3.29%	35.36%
Manufacturing	48,246	46,895	47,294	46,001	43,939	41,770	40,954	41,083	42,857	42,563	-0.69%	-11.78%
Durable goods manufacturing <sup>(4)</sup>	35,139	33,902	33,888	32,671	30,887	28,868	28,162	28,412	29,877	29,705	-0.58%	-15.46%
Non-durable goods manufacturing <sup>(5)</sup>	13,107	12,993	13,406	13,330	13,052	12,902	12,792	12,671	12,980	12,858	-0.94%	-1.90%
Wholesale trade	27,862	27,634	28,022	27,970	27,181	26,761	27,441	28,248	29,419	30,243	2.80%	8.55%
Retail trade <sup>(6)</sup>	115,073	113,110	112,676	111,250	111,912	113,827	115,746	116,168	118,189	121,257	2.60%	5.37%
Transportation and warehousing <sup>(7)</sup>	24,726	24,310	24,903	23,854	23,930	23,920	24,980	25,077	26,060	27,625	6.01%	11.72%
Information <sup>(8)</sup>	16,468	17,287	18,194	19,331	18,584	17,942	17,238	17,240	18,511	18,663	0.82%	13.33%
Finance and insurance <sup>(9)</sup>	33,079	32,216	31,904	30,996	31,079	31,515	31,844	31,460	32,210	32,460	0.78%	-1.87%
Real estate and rental and leasing <sup>(10)</sup>	26,192	27,250	30,598	29,117	29,489	32,319	34,859	35,664	38,754	41,905	8.13%	59.99%
Professional and technical services	59,006	60,081	62,146	60,386	60,693	64,443	67,459	66,884	75,824	81,750	7.82%	38.55%
Management of companies and enterprises	6,307	5,848	5,815	6,083	5,923	5,423	5,354	6,388	6,426	6,105	-5.00%	-3.20%
Administrative and waste services <sup>(11)</sup>	43,969	47,680	51,125	52,659	53,555	53,077	54,423	54,336	58,185	60,687	4.30%	38.02%
Educational services	10,457	11,067	11,411	11,826	12,535	13,936	14,838	15,015	15,850	16,645	5.02%	59.18%
Health care and social assistance <sup>(12)</sup>	82,368	85,883	89,726	89,614	96,323	102,830	107,352	108,336	112,171	115,090	2.60%	39.73%
Arts, entertainment and recreation <sup>(13)</sup>	18,359	19,294	19,605	18,570	19,496	20,722	21,479	21,062	22,081	22,823	3.36%	24.32%
Accommodation and food services <sup>(14)</sup>	70,552	72,611	74,398	76,403	77,903	79,733	80,498	81,137	84,443	85,528	1.28%	21.23%
Other services, except public administration <sup>(15)</sup>	48,966	50,181	50,062	50,286	52,244	53,395	54,690	55,420	57,431	59,319	3.29%	21.14%
Government and government enterprises <sup>(16)</sup>	198,788	198,768	202,390	205,474	208,879	213,637	217,568	218,764	214,296	210,152	1.93%	5.72%

(1) The "Forestry, fishing, related activities, and other" category includes: forestry and logging; fishing, hunting and trapping; agriculture and forestry support activities; and other.

(2) The "Mining" category includes: oil and gas extraction; mining (except oil and gas); and support activities for mining.

(3) The "Construction" category includes: construction of buildings; heavy and civil engineering construction; and specialty trade contractors.

- (4) The “Durable good manufacturing” category includes: wood product manufacturing; nonmetallic mineral product manufacturing; primary metal manufacturing; fabricated metal product manufacturing; machinery manufacturing; computer and electronic product manufacturing; electrical equipment and appliance manufacturing; motor vehicles, bodies and trailers, and parts manufacturing; other transportation equipment manufacturing; furniture and related product manufacturing; and miscellaneous manufacturing.
- (5) The “Nondurable goods manufacturing” category includes: food manufacturing; beverage and tobacco product manufacturing; textile mills; textile product mills; apparel manufacturing; leather and allied product manufacturing; paper manufacturing; printing and related support activities; petroleum and coal products manufacturing; chemical manufacturing; and plastics and rubber products manufacturing.
- (6) The “Retail trade” category includes: motor vehicle and parts dealers; furniture and home furnishings stores; electronics and appliance stores; building material and garden supply stores; food and beverage stores; health and personal care stores; gasoline stations; clothing and clothing accessories stores; sporting goods, hobby, book and music stores; general merchandise stores; miscellaneous store retailers; and nonstore retailers.
- (7) The “Transportation and warehousing” category includes: air transportation; rail transportation; water transportation; truck transportation; transit and ground passenger transportation; pipeline transportation; scenic and sightseeing transportation; support activities for transportation; couriers and messengers; and warehousing and storage.
- (8) The “Information” category includes: publishing industries, except Internet; motion picture and sound recording industries; broadcasting, except Internet; Internet publishing and broadcasting; telecommunications; ISPs, search portals and data processing; and other information services.
- (9) The “Finance and insurance” category includes: monetary authorities-central bank; credit intermediation and related activities; securities, commodity contracts, investments; insurance carriers and related activities; and funds, trusts and other financial vehicles.
- (10) The “Real estate and rental and leasing” category includes: real estate; rental and leasing services; and lessors of nonfinancial intangible assets.
- (11) The “Administrative and waste services” category includes: administrative and support services; and waste management and remediation services.
- (12) The “Health care and social assistance” category includes: ambulatory health care services; hospitals; nursing and residential care facilities; and social assistance.
- (13) The “Arts, entertainment and recreation” category includes: performing arts and spectator sports; museums, historical sites, zoos and parks; and amusement, gambling and recreation.
- (14) The “Accommodation and food services” category includes: accommodation; and food services and drinking places.
- (15) The “Other services, except public administration” category includes: repair and maintenance; personal and laundry services; membership associations and organizations; private households;
- (16) The “Government and government enterprises” category includes: federal, civilian; military; state and local; and state government and local government.

Source: *U.S. Department of Commerce, Bureau of Economic Analysis, February 2009.*

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The following tables set forth selected additional economic and demographic data with respect to the State.

**TABLE 13**

**Employment and Labor Force  
New Mexico and the United States  
1999-2008**

<u>Year</u>	<u>Civilian Labor Force</u> (Thousands)		<u>Number of Employed</u> (Thousands)		<u>Unemployment Rate</u>		<u>N.M. as % of U.S. Rate</u>
	<u>New Mexico</u> <sup>(1)</sup>	<u>United States</u> <sup>(1)(2)</sup>	<u>New Mexico</u> <sup>(1)</sup>	<u>United States</u> <sup>(1)(2)</sup>	<u>New Mexico</u> <sup>(1)</sup>	<u>United States</u> <sup>(1)(2)</sup>	
1999	840	139,439	793	133,414	5.5%	4.3%	128%
2000 <sup>(3)</sup>	853	142,278	811	136,531	4.9%	4.0%	123%
2001	864	143,654	822	137,071	4.9%	4.6%	107%
2002	872	144,803	824	136,413	5.6%	5.8%	97%
2003 <sup>(3)</sup>	889	146,485	836	137,474	6.0%	6.2%	97%
2004 <sup>(3)</sup>	902	147,692	850	139,556	5.7%	5.5%	104%
2005 <sup>(3)</sup>	918	149,445	871	142,029	5.1%	5.0%	102%
2006 <sup>(3)</sup>	935	151,414	897	144,427	4.1%	4.7%	87%
2007 <sup>(3)</sup>	945	153,101	912	145,972	3.5%	4.7%	74%
2008 <sup>(3)</sup>	959	154,506	919	145,596	4.2%	5.8%	72%

<sup>(1)</sup> July figures rounded to nearest thousand.

<sup>(2)</sup> United States figures are unweighted averages of reported monthly figures, as annual figures were not available from the U.S. Department of Labor.

<sup>(3)</sup> The U.S. Department of Labor notes that 2004-2008 New Mexico figures reflect revised population controls, model re-estimation, and new seasonal factors, and that 2000 and 2003-2008 United States figures are affected by changes in population controls.

Source: U.S. Department of Labor, Bureau of Labor Statistics, March 2009.

**TABLE 14**

**Personal Income  
New Mexico and the United States  
1999-2008**

<u>Year</u>	<u>Personal Income</u> (Dollars in thousands)		<u>Annual Percentage Change</u>	
	<u>New Mexico</u>	<u>United States</u>	<u>New Mexico</u>	<u>United States</u>
1999	38,045,599	7,796,137,000	2.7%	5.1%
2000	40,318,443	8,422,074,000	6.0%	8.0%
2001	44,138,165	8,716,992,000	9.5%	3.5%
2002	44,986,517	8,872,871,000	1.9%	1.8%
2003	46,650,275	9,150,320,000	3.7%	3.1%
2004	49,813,042	9,711,363,000	6.8%	6.1%
2005	53,382,823	10,252,973,000	7.2%	5.6%
2006	56,870,351	10,978,053,000	6.5%	7.1%
2007	60,318,370	11,634,322,000	6.1%	6.0%
2008	63,679,909	12,086,533,576	5.6%	3.9%

Source: U.S. Department of Commerce, Bureau of Economic Analysis, March 2009.

**TABLE 15**  
**Per Capita Personal Income**  
**New Mexico and the United States**  
**1999-2008**

<u>Year</u>	<u>Per Capita Income</u>		<u>N.M. as a % of U.S.</u>	<u>Annual Percentage Change</u>	
	<u>New Mexico</u>	<u>United States</u>		<u>N.M.</u>	<u>U.S.</u>
1999	21,042	27,939	75%	1.9%	3.9%
2000	22,144	29,847	74%	5.2%	6.8%
2001	24,141	30,582	79%	9.0%	2.5%
2002	24,330	30,838	79%	0.8%	0.8%
2003	24,975	31,530	79%	2.7%	2.2%
2004	26,366	33,157	80%	5.6%	5.2%
2005	27,907	34,690	80%	5.8%	4.6%
2006	29,346	36,794	80%	5.2%	6.1%
2007	30,706	38,615	80%	4.6%	4.9%
2008	32,091	39,751	81%	4.5%	3.5%

*Source: U.S. Department of Commerce, Bureau of Economic Analysis, March 2009.*

### BOOK-ENTRY-ONLY SYSTEM

*The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the State believes to be reliable, but the State takes no responsibility for the accuracy thereof.*

The Depository Trust Company ("DTC"), New York, New York, will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond certificate will be issued for each maturity of the Bonds, each in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has Standard & Poor's highest rating: AAA. The DTC Rules applicable to its Participants are on file with the Securities

and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org).

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of the Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices shall be sent to DTC. If less than all of the Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the State as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions and dividend payments on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the State or Agent, on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, Agent or the State, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the State or Agent, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

When reference is made to any action that is required or permitted to be taken by the Beneficial Owners, such reference only relates to those permitted to act by statute, regulation or otherwise on behalf of such Beneficial Owners for such purposes. When notices are given, they are to be sent to DTC, and the State does not have responsibility for distributing such notices to the Beneficial Owners.

The State does not have any responsibility or obligation to the DTC Participants or the Beneficial Owners with respect to (a) the accuracy of any records maintained by DTC or any DTC Participant; (b) the payment by DTC or any DTC Participant of any amount due to any Beneficial Owner in respect of the principal of and premium, if any, and interest on the Bonds; (c) the selection of the Beneficial Owners to receive payment in the event of any partial redemption of the Bonds; (d) any consent given or other action taken by DTC, or its nominee, Cede & Co., as Bond Owner; or (e) the distribution by DTC to DTC Participants or Beneficial Owners of any notices received by DTC as registered owners of the Bonds.

DTC may discontinue providing its services as securities depository with respect to the Bonds at any time by giving reasonable notice to the State. Under such circumstances, in the event that a successor securities depository is not obtained, Bond certificates are required to be printed and delivered.

The State may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Bond certificates will be printed and delivered to DTC.

**THE STATE WILL NOT HAVE ANY RESPONSIBILITY OR OBLIGATION TO THE DTC PARTICIPANTS OR BENEFICIAL OWNERS.**

**SO LONG AS CEDE & CO., AS NOMINEE OF DTC, IS THE REGISTERED OWNER OF THE BONDS, REFERENCES HEREIN TO THE BONDHOLDERS OF THE BONDS WILL MEAN CEDE & CO., AND WILL NOT MEAN THE BENEFICIAL OWNERS OF THE BONDS.**

#### **SUMMARY OF CERTAIN PROVISIONS OF THE BOND RESOLUTION**

The following summarizes certain provisions of the Resolution. This summary does not purport to be complete and reference is made to the Resolution for a full and complete statement of its provisions.

#### **Covenants**

So long as any Bonds are outstanding, the State and the Board have covenanted and agreed with the owners of Bonds that: (a) the State will levy, assess and collect *ad valorem* taxes, without limit as to rate or amount, in amounts sufficient to pay the principal of and interest on the Bonds as they become due and the State will cause the proceeds of the *ad valorem* taxes collected to be set aside and applied promptly to pay the principal of and interest on the Bonds when due; (b) the State will promptly pay the principal of and the interest on the Bonds, at the places, on the dates and in the manner specified in the Resolution and in the Bonds; (c) the State will keep proper books of record and account, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to *ad valorem* taxes and the accounts designated in the Resolution; (d) any registered owner or Beneficial Owner of any of the Bonds or any duly authorized agent of such registered owner or Beneficial Owner, shall have the right, at all reasonable times, to inspect all records, accounts and data relating to the Bonds, the collection of *ad valorem* taxes and the accounts designated in the Resolution; provided, however, that pursuant to Section 6-14-10E NMSA 1978, records with regard to the ownership of or pledges of the Bonds are not subject to inspection or copying under any law of the State relating to the right of the public to inspect or copy public records; (e) the State will prepare annual statements or audits of collections and disbursements of *ad valorem* taxes in sufficient detail to show compliance with requirements of the Resolution and the State will furnish a copy of such audit to any owner of Bonds upon written request therefor; (f) in order to prevent any accumulation of claims for interest after maturity, the State will not

directly or indirectly extend or assent to the extension of time for the payment of interest on any of the Bonds; (g) each official or other person having custody of any funds derived from State *ad valorem* taxes, or responsible for their handling, shall be bonded as provided by law, which bond shall be conditioned upon the proper application of those funds; (h) the State will make no use of the proceeds of the Bonds or any funds reasonably expected to be used to pay the Bonds which will cause the Bonds to be arbitrage bonds within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code") or which would result in the loss of the exclusion from gross income for federal income tax purposes of the interest on the Bonds; (i) the State (1) will take or cause to be taken such actions which may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes and (2) will not take or permit to be taken any actions which would adversely affect that exclusion, and the State or persons acting for it, will, if necessary to maintain such exclusion, among other acts of compliance, (i) apply, or cause to be applied, the proceeds of the Bonds to the purpose of the borrowing, (ii) restrict the yield on investment property acquired with those proceeds, (iii) make timely rebate payments to the federal government in accordance with Section 148 of the Code and the Resolution, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code; and (j) interest on the Bonds is exempt from taxation by the State.

## **Defeasance**

If the State shall pay all of the outstanding Bonds, or shall cause them to be paid and discharged in accordance with the next paragraph of this section, or if all payments of principal of and interest on the Bonds, due or to become due, shall otherwise be paid to the owners of the outstanding Bonds, then the Resolution shall cease and become null and void (except for those provisions surviving in accordance with the last paragraph of this section), and the covenants, agreements and obligations of the Board and the State under the Resolution shall be released, discharged and satisfied.

All or any part of the Bonds shall be deemed to have been paid and discharged if: (1) the Registrar/Paying Agent shall, in advance of any payment to the owners of the outstanding Bonds, have received sufficient moneys for the payment in full of the principal of and interest on the Bonds, or part thereof, or (2) there shall have been placed in trust for the payment of the Bonds and irrevocably committed to such payment, noncallable Defeasance Obligations (defined below) which are certified by an independent public accounting firm of national reputation to be of such maturities or redemption dates and interest payment dates, and scheduled to bear such interest, as will be sufficient, together with any moneys on deposit with the Registrar/Paying Agent available to pay principal of and interest on the Bonds, without further investment or reinvestment of either the principal amount or the interest earnings on such Defeasance Obligations (which earnings are to be held likewise in trust and so committed, except as provided herein), for the payment in full of all principal of and interest on the Bonds, or part of the Bonds, deemed to have been paid, at their maturity.

As used in the Resolution, "Defeasance Obligations" means, as permitted by law:

(i) direct obligations of, or obligations the full and timely payment of the principal of and interest on which is unconditionally guaranteed by, or obligations issued by or backed by the full faith and credit of corporations sponsored by, the United States of America;

(ii) obligations issued or guaranteed as to full and timely payment of principal and interest by any agency or person controlled by and acting as an instrumentality of the United States of America, pursuant to authority granted by the Congress of the United States of America; and

(iii) obligations described in Section 103(a) of the Code (a) provisions for the payment of the principal of, premium, if any, and interest on which (1) shall have been made by the irrevocable deposit, with a bank or trust company acting as a trustee or escrow agent for holders of such obligations,

of non-callable securities described in clauses (i) and (ii) above, the maturing principal of and interest on which, when due and payable, without further investment or reinvestment, will provide sufficient moneys to pay when due the principal of and interest on such obligations, and (2) which securities described in clauses (i) and (ii) are not available to satisfy any other claim, including any claim of such trustee or escrow agent or of any person claiming through such trustee or escrow agent or to whom such trustee or escrow agent may be obligated, including claims in the event of the insolvency of such trustee or escrow agent or proceedings arising out of such insolvency or (b) rated by either Standard & Poor's, a division of The McGraw-Hill Companies, Inc. or Moody's Investors Service, or similar rating agency in its highest rating category (without regard to any refinement or gradation by numerical modifier or otherwise).

Any moneys held in trust in accordance with the defeasance provisions of the Resolution may be invested only in noncallable Defeasance Obligations having maturity dates, or having redemption dates which, at the option of the holder of such Obligations, shall not be later than the date or dates at which moneys will be required for the purposes described above. Within fifteen (15) days after any Bonds are deemed to be paid and discharged pursuant to this paragraph, a written notice of such deemed payment and discharge shall be given to each registered owner of Bonds as shown on the registration books kept by the Registrar/Paying Agent on the date on which such Bonds are deemed paid and discharged. Such notice shall state the numbers of the Bonds deemed paid and discharged or state that all Bonds are deemed paid and discharged and set forth a description of the obligations held pursuant to this paragraph.

Notwithstanding that Bonds may be deemed to have been paid and discharged pursuant to the above paragraph, any provisions of the Resolution which relate to the maturity of Bonds, interest payments and dates thereof, exchange, transfer and registration of Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of Bonds, nonpresentment of Bonds, and the duties of the Registrar/Paying Agent in connection with all of the foregoing, shall remain in effect and be binding upon the State and the Registrar/Paying Agent until final payment of all Bonds notwithstanding the release and discharge of the Resolution. Notwithstanding any provision of the Resolution to the contrary, any provisions of the Resolution which relate to the exclusion of interest from gross income for federal income tax purposes shall remain in effect and be binding upon the State and the Registrar/Paying Agent.

### **Amendment of Resolution**

The Resolution may be amended or supplemented from time to time without the consent of or notice to the holders of the Bonds for any of the following purposes: (a) to cure any ambiguity, omission, formal defect or inconsistency, or (b) to make any change that, in the judgment of the Board, in reliance upon an opinion of counsel, does not have a material adverse effect on the rights of the owners of any Bonds, or (c) to achieve compliance with any applicable federal securities or tax laws or to ensure the exclusion of interest on the Bonds from the gross income of the owners of the Bonds for federal income tax purposes.

Except as provided above, the Resolution may only be amended or supplemented by resolution adopted by the Board in accordance with applicable law, with or without receipt by the State of any additional consideration, but with the written consent of the owners of a majority in principal amount of the Bonds then outstanding; provided, however, that no such resolution shall have the effect of permitting: (i) an extension of the maturity of any Bond; or (ii) a reduction in the principal amount of, or the rate of interest on, and Bond; or (iii) a reduction of the principal amount of Bonds required for consent to such amendatory or supplemental resolution; or (iv) the establishment of priorities as between Bonds issued and outstanding under the provisions of the Resolution; or (v) the modification of, or otherwise affecting, the rights of the owners of less than all of the Bonds then outstanding.

## **Remedies of Holders of Bonds**

The registered owners, or Beneficial Owners, of not less than 25 percent in aggregate principal amount of the Bonds then outstanding may bring an action to protect the rights of the registered owners and Beneficial Owners of Bonds under the Resolution in any court of competent jurisdiction, for the specific performance of any covenant or agreement contained in the Resolution or to enjoin any act or thing which may be unlawful or in violation of any right of any owner of the Bonds. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all owners of the Bonds then outstanding. The failure of any registered owner or owners or Beneficial Owner or Beneficial Owners of Bonds to so proceed shall not relieve the State or the Board of any obligation to perform any duty under the Resolution. Each right or privilege of such owner and Beneficial Owner is in addition and cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of any registered owner or Beneficial Owner shall not be deemed a waiver of any other right or privilege.

## **Payment of Principal and Interest**

Interest on the Bonds shall be payable by check or draft mailed to their registered owners, as shown on the registration books for the Bonds maintained by the Registrar/Paying Agent at the address appearing in such books at the close of business on the fifteenth (15th) day of the calendar month next preceding each applicable interest payment date (the "Record Date") or, if such date is not a business day, the first business day thereafter, or in such other manner as may be agreed upon by the Registrar/Paying Agent and the registered owner of a Bond. Interest which is not timely paid or duly provided for shall cease to be payable to the owners of the Bonds (or of one or more predecessor Bonds) as of the Record Date, but shall be payable to the registered owners of the Bonds (or of one or more predecessor Bonds) at the close of business on a special record date (the "Special Record Date") for the payment of that overdue interest to be fixed by the Registrar/Paying Agent. The Special Record Date shall be fixed by the Registrar/Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the Special Record Date shall be given to owners of Bonds not less than ten (10) days prior to such date. The principal of the Bonds is payable upon presentation and surrender of the Bonds without deduction for exchange or collection charges at the office of the Registrar/Paying Agent. Principal of and interest on the Bonds are payable in lawful money of the United States of America.

While registered in the name of DTC or its nominee, payments of principal of and interest on the Bonds shall be made to DTC or its nominee as set forth in the Letter of Representation between DTC and the State.

## **TRANSCRIPT AND LEGAL OPINIONS**

The Board will furnish an official transcript of proceedings of the authorization and issuance of the Bonds.

Legal matters incident to the issuance of the Bonds and the exclusion from gross income for Federal and State of New Mexico income tax purposes of interest on the Bonds (see "TAX MATTERS" below and the form of opinion of Bond Counsel attached hereto as Appendix C) are subject to the approving legal opinion of Sutin, Thayer & Browne A Professional Corporation, Bond Counsel to the State. Certain legal matters will be passed upon for the State by the Office of the Attorney General of the State of New Mexico and by Brownstein Hyatt Farber Schreck, LLP, as Disclosure Counsel to the State.

## **TAX MATTERS**

The Internal Revenue Code of 1986 (the "Code") imposes certain requirements that must be met subsequent to the issuance and delivery of the Bonds for interest thereon to be excluded from gross

income for Federal income tax purposes. Noncompliance with such requirements could cause the interest on the Bonds to be included in gross income for Federal income tax purposes retroactive to the date of issue of the Bonds. The issuer has covenanted to comply with the applicable requirements of the Code in order to maintain the exclusion of the interest on the Bonds from gross income for Federal income tax purposes.

In the opinion of Sutin, Thayer & Browne A Professional Corporation, Bond Counsel, under existing law and assuming compliance with the aforementioned covenant, interest on the Bonds is excluded from gross income for Federal income tax purposes. Bond Counsel is also of the opinion that the interest on the Bonds will not be treated as a preference item for purposes of computing the alternative minimum tax imposed by Section 55 of the Code.

In rendering its opinion, Bond Counsel will rely on, and will assume the accuracy of, certain representations and certifications, and compliance with certain covenants of the issuer. Bond Counsel will not independently verify the accuracy of the certifications and representations made by the issuer. In addition, Bond Counsel has not been engaged, and will not undertake, to monitor the issuer's compliance with the covenants or to inform any person as to whether the covenants are being complied with; nor has Bond Counsel undertaken to determine or to inform any person as to whether any actions taken or not taken, or events occurring or not occurring, after the date of the issuance of the Bonds may affect the federal tax-exempt status of the interest on the Bonds.

Bond Counsel is also of the opinion that the difference between the principal amount of the Bonds and the initial offering price to the public (excluding bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of Bonds were sold constitutes to an initial purchaser amortizable bond premium which is not deductible from gross income for Federal income tax purposes. The amount of amortizable bond premium for a taxable year is determined actuarially on a constant interest basis over the term of each Bond. For purposes of determining gain or loss on the sale or other disposition of a Bond, an initial purchaser who acquires such obligation in the initial offering to the public at the initial offering price is required to decrease such purchaser's adjusted basis in such Bond annually by the amount of amortizable bond premium for the taxable year. The amortization of bond premium may be taken into account as a reduction in the amount of tax-exempt income for purposes of determining various other tax consequences of owning the Bonds. Owners of the Bonds are advised that they should consult with their own advisors with respect to the state and local tax consequences of owning the Bonds.

Interest on the Bonds is subject to information reporting in a manner similar to interest paid on taxable obligations. Backup withholding may be imposed on payments made to any bondholder who fails to provide certain required information including an accurate tax payer identification with the number to any person required to collect such information pursuant to Section 6049 of the Code.

Future legislative proposals, if enacted into law, clarification of the Code or court decisions may cause interest on the Bonds to be subject, directly or indirectly, to federal income taxation or to be subject to or exempted from State income taxation, or otherwise prevent Owners from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such future legislative proposals, clarification of the Code or court decisions may also affect the market price for, or marketability of, the Bonds. Prospective purchasers of the Bonds should consult their own tax advisers regarding any pending or proposed federal or State tax legislation, regulations or litigation, as to which Bond Counsel expresses no opinion.

Bond Counsel has not undertaken to advise in the future whether any events after the date of issuance of the Bonds may affect the tax status of interest on the Bonds. No assurance can be given that future legislation, or amendments to the Code, if enacted into law, will not contain provisions which could directly or indirectly reduce the benefit of the exclusion of the interest on the Bonds from gross

income for Federal income tax purposes. Furthermore, Bond Counsel expresses no opinion as to any Federal, State or local tax law consequences with respect to the Bonds, or the interest thereon, if any action is taken with respect to the Bonds or the proceeds thereof upon the advice or approval of bond counsel other than Bond Counsel.

Although Bond Counsel has rendered an opinion that interest on the Bonds is excluded from gross income for Federal income tax purposes, a Beneficial Owner's Federal, State or local tax liability may otherwise be affected by the ownership or disposition of the Bonds. The nature and extent of these other tax consequences will depend upon the Beneficial Owner's other items of income or deduction. Without limiting the generality of the foregoing, prospective purchasers of the Bonds should be aware that (i) Section 265 of the Code denies a deduction for interest on indebtedness incurred or continued to purchase or carry the Bonds, (ii) with respect to insurance companies subject to the tax imposed by Section 831 of the Code, Section 832(b)(5)(B)(i) reduces the deduction for loss reserves by 15 percent of the sum of certain items, including interest on the Bonds, (iii) interest on the Bonds earned by certain foreign corporations doing business in the United States could be subject to a branch profits tax imposed by Section 884 of the Code, (iv) passive investment income, including interest on the Bonds, may be subject to Federal income taxation under Section 1375 of the Code for Subchapter S corporations that have Subchapter C earnings and profits at the close of the taxable year if greater than 25 percent of the gross receipts of such Subchapter S corporation is passive investment income and (v) Section 86 of the Code requires recipients of certain Social Security and certain Railroad Retirement benefits to take into account, in determining the taxability of such benefits, receipts or accruals of interest on the Bonds. Bond Counsel has expressed no opinion regarding any such other tax consequences.

Unless separately engaged, Bond Counsel is not obligated to defend the issuer or the Beneficial Owners regarding the tax-exempt status of the Bonds in the event of an audit examination by the IRS. Under current procedures, parties other than the issuer and their appointed counsel, including the Beneficial Owners, would have little, if any, right to participate in the audit examination process. Moreover, because achieving judicial review in connection with an audit examination of tax-exempt bonds is difficult, obtaining an independent review of the IRS positions with which the issuer legitimately disagrees, may not be practicable. Any action of the IRS, including but not limited to selection of the Bonds for audit, or the course or result of such audit, or an audit of bonds presenting similar tax issues may affect the market price for, or the marketability of, the Bonds, and may cause the issuer or the Beneficial Owners to incur significant expense.

Bond Counsel is also of the opinion that interest on the Bonds is exempt from State of New Mexico personal income taxes as described herein.

A copy of the proposed form of opinion of Bond Counsel is attached hereto as Appendix C.

**The foregoing is not intended to be an exhaustive discussion of collateral tax consequences arising from receipt of interest on the Bonds. Prospective purchasers or owners should consult their tax advisors with respect to collateral tax consequences, including without limitation the calculations of alternative minimum tax, environmental tax or foreign branch profits tax liability, inclusion of Social Security or other retirement payments in taxable income and the State and local tax rules in New Mexico and other states.**

## LITIGATION

At the time of the original delivery of the Bonds, the Board will deliver a no-litigation certificate to the effect that no litigation or administrative action or proceeding is pending, or, to the knowledge of the appropriate State Officials, threatened, restraining or enjoining, or seeking to restrain or enjoin, the issuance and delivery of the Bonds, the effectiveness of the legislation authorizing the issuance of the Bonds, the levying or collecting of any taxes for the payment of the debt service on the Bonds (other than

those cases described in Appendix B, which proceedings are not, in the opinion of the State Attorney General, reasonably expected to have a material effect on the bondholders), or contesting or questioning the proceedings and authority under which the Bonds have been authorized and are to be issued, sold, executed or delivered, or the validity of the Bonds.

The State is a party to various legal proceedings seeking damages or injunctive relief and generally incidental to its operations which proceedings are unrelated to the Bonds, and to the security therefor. The ultimate disposition of such proceedings is not presently determinable. Such proceedings are not, in the opinion of the State Attorney General, reasonably expected to have a material adverse effect on the Bonds or the security for the payment of the because property taxes levied under the Act may be used only for the payment of principal of and interest on the Bonds.

## **FINANCIAL STATEMENTS**

Appendix A contains excerpts from the State of New Mexico General Fund, Annual Financial Report for the year ended June 30, 2008, the most recent year for which such excerpts are available.

## **FINANCIAL ADVISORS**

The Board has retained Fiscal Strategies Group, Inc., as Financial Advisor in connection with the preparation of this Official Statement and with respect to the issuance of the Bonds, and subcontractor Public Resources Advisory Group serves as co-advisor with Fiscal Strategies Group (together, the “Financial Advisors”) in connection with the issuance of the Bonds. The Financial Advisors are not obligated to undertake, and have not undertaken to make, an independent verification or to assume responsibility for the accuracy, completeness, or fairness of the information contained in this Official Statement nor the information, covenants and representations contained in any of the Bond documentation with respect to the federal income tax status of the Bonds. The Financial Advisors are independent advisory firms and are not engaged in the business of underwriting, trading or distributing municipal securities or other public securities. The Financial Advisor fee for services performed with respect to the Bonds is contingent upon the issuance and delivery of the Bonds.

## **RATINGS**

The Bonds have received ratings from Moody’s Investors Service, Inc. and Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., as set forth on the cover of this Official Statement.

Such ratings reflect only the views of the respective organizations. An explanation of the significance of each rating may be obtained from the rating agency furnishing such rating. There is no assurance that such ratings will continue for any given period of time or that they will not be revised downward or withdrawn entirely by such agencies if, in the judgment of such rating agencies, circumstances so warrant. Any downward revision or withdrawal of either rating can be expected to have an adverse effect on the market price of the Bonds.

## **CONTINUING DISCLOSURE UNDERTAKING**

The Board will agree, by means of a Continuing Disclosure Undertaking (the substantial form of which appears in Appendix D) to be delivered to the purchaser of the Bonds at closing, for the benefit of owners of the Bonds to provide certain annual financial information relating to the State by no later than 210 days after the end of each fiscal year of the State, commencing with the fiscal year ending June 30, 2009, and to provide notices of occurrence of certain enumerated events, if material. The Board will further agree in the Continuing Disclosure Undertaking that if its audited financial statements are not provided as part of the annual financial information, the Board will provide such audited statements when available. The annual financial information and audited financial statements (when available) will be

filed by the Board with each Nationally Recognized Municipal Securities Information Repository and with any New Mexico State Information Depository. The notices of material events will be filed by the Board with the Municipal Securities Rulemaking Board and with any New Mexico State Information Depository. In the event of a failure of the Board to comply with any provision of the Continuing Disclosure Undertaking, any owner of Bonds (including beneficial owners of the Bonds) may seek specific performance by court order from a State court in Santa Fe County, New Mexico.

The Continuing Disclosure Undertaking is being executed by the Board to assist in complying with Rule 15c2-12(b)(5) promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the "Rule"). The Continuing Disclosure Undertaking will be in effect from and after the issuance and delivery of the Bonds and shall extend to the earliest of: (i) the date the principal and interest on the Bonds is paid or deemed paid; (ii) the date the Board is no longer an "obligated person" with respect to the Bonds within the meaning of the Rule; and (iii) the date on which those portions of the Rule which require the Continuing Disclosure Undertaking are held invalid or repealed.

Except as set forth in the succeeding sentences, the State has never failed to comply in all material respects with any previous undertakings with regard to the Rule to provide annual reports or notices of material events. Continuing disclosure undertakings previously entered into by the Board in relation to the State's Capital Projects General Obligation Bonds and Severance Tax Bonds called for it to file audited financial statements of the State as part of the Board's annual financial information disclosures, or when available if the financial statements had not been finally audited by the time that it was required to make the annual financial disclosures. Due to the investigation by federal authorities of potentially criminal activity by two prior elected State Treasurers, and the seizure of financial information from the State Treasurer's Office to further that investigation, preparation and auditing of the audited financial statements of the State for the fiscal year ended June 30, 2005 was substantially delayed, and the audited financial statements were not available until August 22, 2006. The State filed the audited financial statements on October 31, 2006, and, on that date, the State notified the Municipal Securities Rulemaking Board of the filing. Continuing disclosure undertakings previously entered into by the Board in relation to the State's Capital Projects General Obligation Bonds and Severance Tax Bonds state that if audited financial statements are not available by the time the other annual financial information must be provided, unaudited financial statements shall be provided as part of the annual financial information. In connection with its continuing disclosure obligations for Fiscal Year 2008, the State timely filed its annual financial information on January 23, 2009. At that time, neither unaudited nor audited financial statements from the State of New Mexico State General Fund Annual Financial Report (the "General Fund Audit") and the State of New Mexico Office of the State Treasurer Financial Statements (the "STO Audit") for the fiscal year ended June 30, 2008, were available. The annual financial information disclosed this fact and provided that as soon as they were available, the unaudited and audited financial statements would be submitted. On February 17, 2009, the State filed the unaudited financial statements from the General Fund Audit. On March 5, 2009, the State filed the audited financial statements from the STO Audit. On March 31, 2009, the State filed the audited financial statements from the General Fund Audit. The Board believes that it is now in compliance with all its continuing disclosure undertakings.

### **GOVERNOR'S FINANCE COUNCIL**

The Governor's Finance Council was established to develop an overall strategy for issuing long-term debt obligations and making investments to improve the New Mexico economy and to coordinate and integrate infrastructure development and the capital outlay processes. The Executive Order designates, among other State officials, the Director of the Board and a Board Member as selected by the Governor as members of the Governor's Finance Council.

## MISCELLANEOUS

The foregoing summaries, descriptions and references do not purport to be comprehensive or definitive, and such summaries, descriptions and references are qualified in their entirety by reference to each statute, document, exhibit or other materials summarized or described. The instruments and other materials referred to in this Official Statement may be examined, or copies thereof will be furnished in reasonable amounts, upon written request to the NM State Board of Finance, 131 South Capitol Street, Bataan Memorial Building, Room 181, Santa Fe, New Mexico 87501, 505-827-4980.

Statements made in this Official Statement involving matters of opinion, forecasts or estimates, whether or not expressly so stated, are intended as such and not as representations of fact. The Appendices are integral parts of this Official Statement and must be read with all other parts of this Official Statement.

This Official Statement has been authorized and issued by the Board.

State Board of Finance of the State of New Mexico

By           s/ Bill Richardson            
President

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**APPENDIX A**

**STATE OF NEW MEXICO  
STATE GENERAL FUND  
COMPONENT APPROPRIATION ACCOUNTS  
FINANCIAL STATEMENTS**

**YEAR ENDED JUNE 30, 2008**

THE STATE OF NEW MEXICO  
CONTINUING DISCLOSURE  
ANNUAL FINANCIAL INFORMATION FILING  
FOR FISCAL YEAR 2008  
(THIRD SUPPLEMENT)

The State of New Mexico timely filed its Continuing Disclosure Annual Financial Information Filing for Fiscal Year 2008 on January 23, 2009. At that time, neither unaudited nor audited financial statements from the State of New Mexico State General Fund Annual Financial Report (the "General Fund Audit") and the State of New Mexico Office of the State Treasurer Financial Statements (the "STO Audit") for the fiscal year ended June 30, 2008, were available. The unaudited financial statements from the General Fund Audit were filed on February 17, 2009. The audited financial statements from the STO Audit were filed on March 5, 2009. Attached are the audited financial statements from the General Fund Audit.



State of New Mexico  
For the Fiscal Year Ended June 30, 2008

State General Fund  
Component Appropriation Accounts

# Annual Financial Report

Prepared by  
The New Mexico Department of Finance and Administration

Bill Richardson, Governor

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# Introductory Section



State of New Mexico  
**State General Fund**  
**COMPONENT APPROPRIATION ACCOUNTS**  
June 30, 2008

Elected Official

Governor Bill Richardson



Appointed Officials

Department of Finance and Administration:

Cabinet Secretary

State Controller

Deputy Division Director, Financial Control Division

Katherine B. Miller

Anthony I. Armijo, CPA, CGFM

Steve Gonzales

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# Financial Section



## Independent Auditors' Report

Ms. Katherine B. Miller, Cabinet Secretary  
State of New Mexico  
Department of Finance and Administration  
and  
Mr. Hector H. Balderas,  
New Mexico State Auditor

We have audited the accompanying financial statements of the governmental activities and the major fund of the State of New Mexico, State General Fund Component Appropriation Accounts (Hereafter referred to as the State General Fund), as of and for the year ended June 30, 2008, which collectively comprise the State General Fund's basic financial statements as listed in the table of contents. We have also audited the financial statements of each of the State General Fund's statutorily and administratively created funds presented as supplementary information in the accompanying combining and individual fund financial statements as of and for the year ended June 30, 2008, as listed in the table of contents. These financial statements are the responsibility of the State General Fund's management. Our responsibility is to express opinions on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the State General Fund's internal control over financial reporting. Accordingly, we express no such opinion. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinions.

As described in Note 5 to the financial statements, as of July 1, 2007, the State General Fund restated fund balances for the Appropriation Account Fund 85300 and the Appropriation Contingency Reserve Fund 85400. As of July 1, 2007 the State General Fund also restated government-wide net assets.

As discussed in Note 1A, the financial statements of the State General Fund are intended to present the financial position, and the changes in the financial position, of only that portion of the governmental activities and the major fund financial statements that is attributable to the State General Fund. They do not purport to, and do not, present fairly in the financial position of the State of New Mexico as of June 30, 2008, and the changes in its financial position for the year then ended in conformity with accounting principles generally accepted in the United States of America.

Ms. Katherine B. Miller, Cabinet Secretary  
State of New Mexico  
Department of Finance and Administration  
and  
Mr. Hector H. Balderas,  
New Mexico State Auditor

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities and the major fund of the State General Fund as of June 30, 2008, and the respective changes in financial position thereof for the year then ended in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of each of the statutorily and administratively created funds of the State General Fund as of June 30, 2008, and the respective changes in financial position thereof for the year then ended in conformity with accounting principles generally accepted in the United States of America.

In accordance with *Government Auditing Standards*, we have also issued our report dated February 20, 2009 on our consideration of the State General Fund's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be read in conjunction with this report and should be considered in assessing the results of our audit.

The accompanying management discussion and analysis on pages 4 through 9 is not a required part of the basic financial statements but is supplementary information required by accounting principles generally accepted in the United States of America. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the required supplementary information. However, we did not audit the information and express no opinion on it.

Our audit was conducted for the purpose of forming opinions on the basic financial statements and the combining and individual fund financial statements. The accompanying other supplementary information as listed in the table of contents is presented for purposes of additional analysis and is not a required part the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements, and in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole.

*Moss Adams LLP*

Albuquerque, New Mexico  
February 20, 2009



The State General Fund Component Appropriation Accounts (hereto after referred to as the State General Fund) is a single administratively created reporting entity. It consists of nine funds: four created by statute and five created by management. For presentation in the accompanying basic financial statements, management has consolidated the nine funds into one, the "general fund."

As disclosed in the notes to the financial statements, the State General Fund is not a primary government, as defined by

Governmental Accounting Standards Board Statement 34, because it is not fiscally independent or legally separated from the State of New Mexico.

However, to comply with the State of New Mexico's Audit Act and to meet the information needs of interested parties—the public, bond holders, bond rating entities, Legislature, etc.—management has presented the State General Fund as a reporting entity in the accompanying financial statements.

### Financial Highlights

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The State ended the year with reserves of 14.4% of recurring prior year appropriations.

The net assets of the State General Fund increased by \$278.7 million in fiscal year 2005, by \$102.4 million in fiscal year 2006, decreased by \$167.5 million in fiscal year 2007 and

increase by \$174.4 in fiscal year 2008. The increase in 2008 is attributable to revenue exceeding expenses in 2008. For the same reasons, fund balances of the State General Fund increase by \$93.3 million in 2008.

### Using This Annual Financial Report

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This annual report consists of two categories of basic financial statements: 1) the government-wide financial statements (on pages 17 and 18), which provide information about the activities of the State General Fund as a whole and present a long-term view of the State General Fund's finances; and 2) the fund financial statements (on pages 20 and 21), which for governmental activities tell how services were financed in the short term as well as what remains for future spending.

Since the State General Fund consists of one fund, the fund statements report the State

General Fund's operations at the same level of detail as the government-wide statements. However, this annual report includes other supplementary information that provides additional information on the financial activities of the nine funds that comprise the general fund of the State General Fund.

### Government-wide Financial statements

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The *government-wide financial statements* are designed to provide readers with a broad overview of the State General Fund's finances, in a manner similar to a private-sector business.

The *statement of net assets* presents information on all of the State General Fund's

assets and liabilities, with the difference between the two reported as *net assets*. Over time, increases or decreases in net assets may serve as a useful indicator of whether the financial position of the State General Fund is improving or deteriorating.



The *statement of activities* presents information showing how the State General Fund's net assets changed during the most recent fiscal year. All changes in net assets are reported as soon as the underlying event giving rise to the change occurs, regardless of the timing of related cash flows. Thus, revenues and expenses are reported in this statement for some items that will only result in cash flows in future fiscal periods.

Both of the government-wide financial statements distinguish functions of the State General Fund that are principally supported by taxes and intergovernmental revenues (*governmental activities*) from other functions that are intended to recover all or a significant portion of their costs through user fees and charges (*business-type activities*). The governmental activities of the State of New Mexico include general government, legislative,

judicial, commerce and industry, natural resources, health and human services, public safety, transportation, higher education, public school support, and other education. The State General Fund did not have any business-type activities during the fiscal year.

The government-wide financial statements include only the State General Fund. Given the nature of the State General Fund—it is not a legal entity—it does not have organizations for which it is financially accountable or other organizations for which the nature and significance of their relationship are such that exclusion would cause the State General Fund's financial statements to be misleading.

The government-wide financial statements can be found on pages 17 and 18 of this report.

## Fund financial statements

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A *fund* is a grouping of related accounts that is used to maintain control over resources that have been segregated for specific activities or objectives. Like states and local governments, the State General Fund uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements. The State General Fund has one fund. That fund is categorized as a *governmental fund*.

**Governmental funds.** *Governmental funds* are used to account for essentially the same functions reported as *governmental activities* in the government-wide financial statements. However, unlike the government-wide financial statements, governmental fund financial statements focus on *near-term inflows and outflows of spendable resources*, as well as on *balances of spendable resources* available at the end of the fiscal year. Such information may be useful in evaluating a government's near-term financing requirements.

Because the focus of governmental funds is narrower than that of the government-wide financial statements, it is useful to compare the information presented for *governmental*

*funds* with similar information presented for *governmental activities* in the government-wide financial statements. By doing so, readers may better understand the long-term impact of the government's near term financing decisions. Both the governmental fund balance sheet and the governmental fund statement of revenues, expenditures, and changes in fund balances provide a reconciliation to facilitate this comparison between *governmental funds* and *governmental activities*.

The General Fund has one fund, its general fund, which is considered to be a major fund. The State General Fund does not adopt an annual appropriated budget for its general fund. However, the expenditures of the State General Fund by law must equal the individual amounts appropriated in the various appropriation acts. To demonstrate legal compliance with the appropriation acts, a Schedule of Appropriations is included in this report as supplementary information.

The basic governmental fund financial statements can be found on pages 20 and 21 of this report.



**Notes to the financial statements**

The notes provide additional information that is essential to a full understanding of the data provided in the government-wide and fund financial statements.

The notes to the financial statements can be found on pages 23 through 31 of this report.

**Other information**

In addition to the basic financial statements and accompanying notes, this report also presents supplementary information. The Schedule of Statutorily and Administratively Created Funds Balance Sheets and the Schedule of Statutorily and Administratively Created Funds Revenues, Expenditures, and Changes in Fund Balance provide detailed information on the nine statutorily and administratively created funds that comprise the general fund of the State General Fund. The schedules demonstrate legal compliance with the statutes governing those eight funds.

Also provided as supplementary information are the Schedule of Revenues by Type and the Schedule of Revenues by Source. Revenue is presented by type in the Statement of Activities and by source in the Statement of

Revenue, Expenditures, and Changes in Fund Balances—Governmental Funds. These schedules provide detail information on State General Fund revenues and demonstrate legal compliance with the statutes governing the collection of revenue by the State General Fund.

The Schedule of Amounts Due from Other Entities, Schedule of Amounts Due to Other Entities, Schedule of Amounts Due to Taxpayers, and the Schedule of Amounts Due from Taxpayers are also included in this report. The schedules provide information on the amounts due by and due from other entities and individuals to the State General Fund, and are considered supplementary information.

**Government-wide Financial Analysis**

**Net Assets  
June 30, 2008 and 2007  
(in millions of dollars)**

	2008	2007 <u>(Restated)</u>
Current assets	\$ 2,011.3	\$1,842.3
Current liabilities	<u>(1,144.6)</u>	<u>(1,149.9)</u>
Net assets, unrestricted	<u>\$ 866.7</u>	<u>\$ 692.4</u>

As noted earlier, net assets may serve over time as a useful indicator of a government's financial position. In the case of the State General Fund, assets exceeded liabilities by \$866.7 million at the close of fiscal year 2008.

The assets held by the State General Fund are unappropriated and are not restricted. However, it has been the policy of the State of New Mexico to not consider the amount of revenue deferred under the modified accrual

basis of accounting, \$ 131.7 million, as available for appropriation. The beginning net assets presented in the accompanying Statement of Activities reflect an adjustment of \$8.8 million. The adjustment is necessary to correct two errors, which resulted in an overstatement of expenditures in 2006 of \$9.0 million in fund 85400 and an overstatement of revenue in fiscal year 2007 of \$0.2 million in fund 85300. The \$9.0 million overstatement resulted from accruing appropriations that had contingencies and

**Management's Discussion and Analysis**

thus did not meet all eligibility requirements for accrual. Those contingencies were met in fiscal year 2008. A \$0.2 million overstatement in revenue resulted from accruing reversion revenue from an appropriation that had not been requested or allotted. That appropriation had an appropriation end date of June 30, 2007. The agency provided documentation to the State Budget Division in fiscal year 2008 that it had incurred expenditures of \$0.2 million in fiscal

year 2007. These errors impacted the governmental fund balance by the same amount. Change in government-wide net assets and change in fund balance for the Appropriation Account Fund for the year ended June 30, 2007 was decreased by \$0.2 million.

*Governmental activities*

**Changes in Net Assets**  
June 30, 2008 and 2007  
(in millions of dollars)

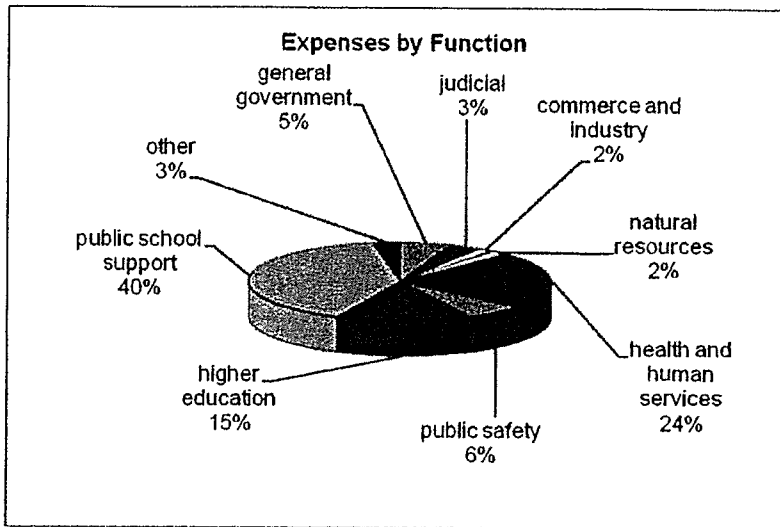
	<u>2008</u>	<u>2007</u> <u>(Restated)</u>	<u>Increase</u> <u>(Decrease)</u>
<b>Revenues</b>			
Program revenues:			
Charges for services	\$ 119.5	\$ 117.3	\$ 2.2
General Revenues:			
Sales and use taxes	405.7	403.9	1.8
Business privilege taxes	2,510.7	2,362.1	148.6
Personal income taxes	1,246.4	1,187.2	59.2
Corporate income taxes	414.9	453.8	(38.9)
Severance taxes	37.7	30.7	7.0
Other taxes	656.2	545.0	111.2
Investment income (unrestricted)	288.9	265.6	23.3
Investment income (restricted)	390.5	364.7	25.8
Gaming revenue sharing	66.6	56.2	10.4
Escheats	11.4	12.3	(.9)
Reversions	73.7	38.9	34.8
Transfers	-	-	-
Total revenues	<u>6,222.2</u>	<u>5,837.7</u>	<u>384.5</u>
<b>Program Expenses</b>			
General government	329.9	531.0	(201.1)
Legislative	24.2	24.8	(.6)
Judicial	202.9	178.7	24.2
Commerce and industry	99.3	64.2	35.1
Natural resources	108.8	121.8	(13.0)
Health and human services	1,429.7	1,341.6	88.1
Public safety	384.6	345.0	39.6
Transportation	50.7	73.9	(23.2)
Higher education	883.8	923.2	(39.4)
Public school support	2,430.7	2,277.6	153.1
Other education	81.9	102.6	(20.7)
Interest on short term debt	20.9	20.4	.5
Issuance costs on short term debt	.4	.4	-
Total expenses	<u>6,047.8</u>	<u>6,005.2</u>	<u>42.6</u>
<b>Increase (Decrease) in net assets</b>	<u>\$ 174.4</u>	<u>\$ (167.5)</u>	<u>\$ 341.9</u>



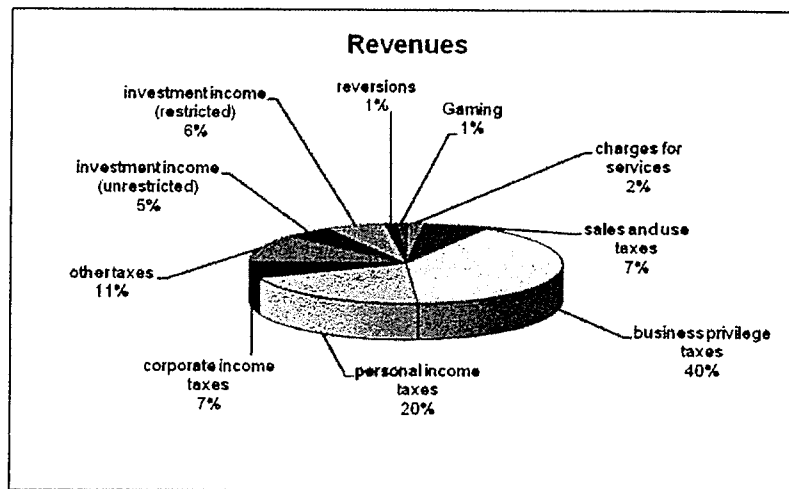
The State General Fund's net assets increase by \$174.4 million, as compared to the \$167.5 million decrease in 2007. In fiscal year 2008, overall, revenue increased 6.6% compared to

2007, and expenses increased .7%, which accounts for the increase in net assets.

*Expenses by Function – Governmental Activities*



*Revenues – Governmental Activities*



*Business-type Activities*

The State General Fund did not have any business-type activities during fiscal year 2008.



## Financial Analysis of the State General Fund's General Fund

As noted earlier, the State General Fund uses fund accounting to ensure and demonstrate

compliance with finance-related legal requirements.

### *Governmental funds*

The focus of the State General Fund's *governmental fund* (its general fund) is to provide information on near-term inflows, outflows, and balances of *spendable* resources. Such information is useful in assessing the State General Fund's financing requirements. In particular, *unreserved fund balance* may serve as a useful measure of the State General Fund's net resources available for spending at the end of the fiscal year.

As of the end of the current fiscal year, the State General Fund's general fund reported an ending fund balance of \$735.1 million, an increase of \$93.3 million. The increase is attributable to the same key factors noted on

page 12 for the increase in net assets—revenues exceeding expenditures. The entire amount of the general fund's ending fund balance is *unreserved fund balance* and is available for appropriation by the Legislature. As a measure of the general fund's liquidity, it may be useful to compare unreserved fund balance to total fund expenditures. It is the policy of the State of New Mexico to keep at least 10% of the amount of prior year reoccurring appropriations as unreserved fund balance. For fiscal year 2007, reserves were 12.7% of recurring prior year appropriations.

### *Economic Factors*

Fiscal year 2008 compares to fiscal year 2007 as follows:

- Recurring revenue grew by \$241.0 million or 4.0 percent. Total revenue grew by \$384.5 million or 6.6 percent. This compares to the prior year's total revenue growth of \$306.9 million or 5.5%.
- Receipts from business privilege tax increased by \$148.6 or 6.6%. The majority was related to oil and gas emergency gas tax increase of \$137.4 million. Corporate income decreased by \$38.9 million.
- Reversion collections grew by \$34.8 million or 89.0 percent.
- Other tax revenue increased by \$102.6million. This is attributable to an increase in federal mineral lease receipts.
- The continuing national downturn in the housing market and the global financial crisis will continue to spread their effects through the economy and be a drag on income and general sales revenues.

## Requests for Information

This financial report is designed to provide a general overview of the State General Fund's finances for all those with an interest in its finances. Questions concerning any of the information provided in this report or requests for additional financial information should be

addressed to the Director of the Financial Control Division, Department of Finance and Administration, 407 Galestee, Room 166 Bataan Memorial Building, Santa Fe, New Mexico 87501.

# Basic Financial Statements



# GOVERNMENT-WIDE FINANCIAL STATEMENTS

State of New Mexico  
**State General Fund**  
**COMPONENT APPROPRIATION ACCOUNTS**  
Statement of Net Assets  
June 30, 2008

		<b>Primary Government Governmental Activities</b>
<b>ASSETS</b>		
Current assets:		
Investments, State Treasurer, Note 2	\$	578,222,224
Investments, State Investment Council, Note 2		135,883,945
Due from other state entities		1,165,528,115
Due from taxpayers		131,694,683
Total assets		2,011,328,967
 <b>LIABILITIES</b>		
Current liabilities:		
Cash overdraft		963,016,161
Due to other state entities		117,101,040
Due to local governments		23,717,479
Due to taxpayers		40,733,645
Total liabilities		1,144,568,325
 <b>NET ASSETS</b>		
Unrestricted		866,760,642
Total net assets	\$	866,760,642

The notes to the financial statements are an integral part of this statement.

State of New Mexico  
**State General Fund**  
**COMPONENT APPROPRIATION ACCOUNTS**  
Statement of Activities  
For the Year Ended June 30, 2008

Functions	Expenses	Program Revenues Charges for Services	Net (Expense) Revenue and Changes in Net Assets
			Primary Government Governmental Activities
<b>Primary government:</b>			
Governmental Activities:			
General government	\$ 329,947,713	\$ 8,291,127	\$ (321,656,586)
Legislative	24,215,000	63,859	(24,151,141)
Judicial	202,868,676	10,318,790	(192,549,886)
Commerce and industry	99,333,900	50,361,485	(48,972,415)
Natural resources	108,772,400	-	(108,772,400)
Health and human services	1,429,680,400	4,372,963	(1,425,307,437)
Public safety	384,552,850	-	(384,552,850)
Transportation	50,659,573	-	(50,659,573)
Higher education	883,844,140	-	(883,844,140)
Public school support	2,430,695,700	46,085,123	(2,384,610,577)
Other education	81,935,920	-	(81,935,920)
Interest on short term debt	20,856,311	-	(20,856,311)
Issuance costs on short term debt	414,625	-	(414,625)
Total primary government	<u>\$ 6,047,777,208</u>	<u>\$ 119,493,347</u>	<u>(5,928,283,861)</u>

General revenues:

Taxes:

Sales and use	405,754,639
Business privilege	2,510,740,270
Personal income	1,246,375,307
Corporate income	414,941,506
Severance	37,658,778
Other	656,205,176
Investment income (Unrestricted)	288,879,971
Investment income (Restricted)	390,483,772
Tribal gaming revenue sharing	66,559,895
Escheats	11,427,027
Reversions	73,658,762
Total general revenues and transfers	<u>6,102,685,103</u>

Change in net assets 174,401,242

Net assets-beginning, originally reported 683,542,297  
Restatement 8,817,103

Net assets-beginning, restated 692,359,400

Net assets-ending \$ 866,760,642

The notes to the financial statements are an integral part of this statement.

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## FUND FINANCIAL STATEMENTS

State of New Mexico  
**State General Fund**  
**COMPONENT APPROPRIATION ACCOUNTS**  
Balance Sheet  
Governmental Funds  
June 30, 2008

	<b>General</b>
<b>ASSETS</b>	
Current assets:	
Investments, State Treasurer, Note 2	\$ 578,222,224
Investments, State Investment Council, Note 2	135,883,945
Due from other state entities	1,165,528,115
Due from tax payers	131,694,683
Total assets	\$ 2,011,328,967
 <b>LIABILITIES AND FUND BALANCES</b>	
Current liabilities:	
Deferred revenues	131,694,683
Cash overdraft	963,016,161
Due to other state entities	117,101,040
Due to local governments	23,717,479
Due to taxpayer	40,733,645
Total liabilities	1,276,263,008
 Fund balances:	
Unreserved/undesignated	735,065,959
 Total liabilities and fund balances	\$ 2,011,328,967
 Reconciliation of Governmental Funds Balance Sheet to Statement of Net Assets:	
Total fund balances - Governmental Funds	\$ 735,065,959
The amounts due from taxpayer that are not available to pay for current period expenditures and, therefore, are deferred in the funds.	131,694,683
Net assets of governmental activities	\$ 866,760,642

The notes to the financial statements are an integral part of this statement.

State of New Mexico  
**State General Fund**  
**COMPONENT APPROPRIATION ACCOUNTS**  
Statement of Revenues, Expenditures and Changes in Fund Balances  
Governmental Funds  
For the Year Ended June 30, 2008

	<b>General</b>
<b>REVENUES</b>	
General and selective taxes	\$ 2,324,749,980
Income taxes	1,568,119,471
Severance taxes	625,936,858
License fees	50,675,758
Net increase in the fair value of investments	679,363,743
Rents and royalties	657,266,661
Miscellaneous receipts	160,395,010
Reversions	65,715,482
Total revenues	6,132,222,963
<b>EXPENDITURES</b>	
Current:	
Appropriations:	
Legislative	24,215,000
Judicial	202,868,676
General control	329,947,713
Commerce and industry	99,333,900
Natural resources	108,772,400
Health and human services	1,429,680,400
Public safety	384,552,850
Transportation	50,659,573
Other education	81,935,920
Higher education	883,844,140
Public school support	2,430,695,700
	6,026,506,272
Tax and Revenue Anticipation Notes:	
Interest expense	20,856,311
Issuance costs	414,625
	21,270,936
Total expenditures	6,047,777,208
Excess of expenditures over revenues	84,445,755
<b>OTHER FINANCING SOURCES</b>	
Transfers In	-
Total other financing sources	-
Net change in fund balance	84,445,755
Fund balance - beginning, originally reported	641,803,101
Restatement	8,817,103
	650,620,204
Fund balance - beginning, restated	650,620,204
Fund balance - ending	\$ 735,065,959

The notes to the financial statements are an integral part of this statement

State of New Mexico  
**State General Fund**  
**COMPONENT APPROPRIATION ACCOUNTS**  
 Reconciliation of the Statement of Revenues,  
 Expenditures and Changes in Fund Balances of Governmental Funds  
 To the Statement of Activities  
 For the Year Ended June 30, 2008

Amounts reported for governmental activities in the Statement of Activities (page 18) are different because:

Net change in fund balances—total governmental funds (page 21)	\$ 84,445,755
Revenues earned in fiscal year 2007 that were not “available” until fiscal year 2008 are reported in the funds as fiscal year 2008 revenue	(41,739,196)
Revenues earned in fiscal year 2008 that will not be “available” until fiscal year 2009 are <u>not</u> reported in the funds	131,694,683
Change in net assets of governmental activities (page 18)	<u>\$174,401,242</u>

The notes to the financial statements are an integral part of this statement.

## NOTES TO THE FINANCIAL STATEMENTS

# NOTES TO THE FINANCIAL STATEMENTS INDEX

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**State of New Mexico**  
**State General Fund Component Appropriation Accounts**  
Notes to the Financial Statements  
June 30, 2008

## 1. Summary of Significant Accounting Policies

### A. Reporting entity

The New Mexico Audit Act, Sections 12-6-1 through 12-6-14, NMSA 1978, as amended, requires the financial affairs of every New Mexico state agency to be audited. In addition, Section 12-6-3(B) of the Act states, "... the state auditor may cause the financial affairs and transactions of an agency to be audited in whole or in part [emphasis added]."

The financial affairs of the Department of Finance and Administration, a state agency, include administering nine statutorily and administratively created funds. Collectively, the nine funds are called the "State General Fund Component Appropriation Accounts" or, more commonly, the "State General Fund." The State General Fund together with many other statutorily and administratively created funds comprise the general fund presented in the annual financial statements of the State of New Mexico.

Under generally accepted accounting principles, the State of New Mexico is the reporting entity and primary government; however, the State General Fund is not audited as part of that reporting entity. Instead it is treated as the nucleus of a reporting entity and audited separately.

Given the nature of the State General Fund—it is not a legal entity—it does not have organizations for which it is financially accountable or other organizations for which the nature and significance of their relationship are such that exclusion would cause the State General Fund's financial statements to be misleading.

The State General Fund does not constitute a primary government, component unit, or any other type of reporting entity as defined by generally accepted accounting principles. The State General Fund is the primary mechanism for accounting for the revenue and financing of the operations of the State of New Mexico. As such the Legislature, state officials and the citizens of the State of New Mexico, as well as other groups such as bond issuers and rating services, have an interest in the operations of the State General Fund. The accompanying financial statements are presented to meet that need.

For presentation in the accompanying financial statements, the State General Fund has elected to consolidate four statutorily created funds and five administratively created funds into one general fund.

However, to supplement the consolidated data and present data on a legally prescribed basis, a Schedule of Statutorily and Administratively Created Funds Balance Sheets and a Schedule of Statutorily and Administratively Created Funds Revenues, Expenditures, and Changes in Fund Balances are also presented as supplementary information.

The following is a description of the nine statutorily and administratively created funds presented in those schedules.

#### *Statutorily Created Funds:*

##### *1. Common School Current Fund*

The *common school current fund* (also known as the *common school income fund*) was created by Section 19-1-17, NMSA 1978. This statute requires that the fund be credited with its respective proportion of money from the *state land income fund* and the *state permanent fund*. Section 22-8-32, NMSA 1978, requires that at the end of each month, the State Treasurer transfer out the cash balance in this fund to the *current school fund*.

##### *2. Current School Fund*

The *current school fund* was created by Section 22-8-32, NMSA 1978. This statute requires the State Treasurer to deposit into this fund: 1) all fines and forfeitures collected under general laws; 2) the net proceeds of property that may come to the State by escheat (however, Section 7-8A-13, NMSA 1978, requires all funds received under the Unclaimed Property Act to be deposited in the tax administration suspense fund for distribution to the *general fund*); and 3) all other revenue required by law to be credited to the fund. In addition, as noted above, the statute requires that each month the cash balance in the *common school current fund* be transferred into this fund.

In addition to the above, Section 22-8-32 requires any unencumbered balance in this fund to be transferred out to the *public school fund*—a statutorily created fund administered by both the Education Department and the State General Fund.

##### *3. State-support Reserve Fund*

The *state-support reserve fund* was created by Section 22-8-31, NMSA 1978. This statute requires the following: The *state-support reserve fund* shall be used only to augment the appropriations for the state equalization

**State of New Mexico**  
**State General Fund Component Appropriation Accounts**  
Notes to the Financial Statements  
June 30, 2008

guarantee distribution in order to ensure, to the extent of the amount undistributed in the fund, that the maximum figures for such distribution established by law shall not be reduced.

#### 4. Tobacco Settlement Permanent Fund

The *Tobacco Settlement Permanent Fund* was created by Section 6-4-9, NMSA 1978. Originally the fund was created as a permanent fund as defined by generally accepted accounting principles. In 2003, legislation was enacted (Laws of 2003, Chapter 312) that made the fund a reserve within the State General Fund. The amendment is not written clearly; however, the intent of the legislation was to make the fund a reserve within the *state general fund*.

The statute allows balances in the fund to be appropriated by the Legislature if balances in the *state general fund*, including its *general fund operating reserve*, *appropriation contingency reserve fund*, and *tax stabilization reserve*, do not meet the level of appropriations authorized from the state general fund for a fiscal year. By statute, balances in the fund are to be invested by the state investment officer, which are accounted for in a private-purpose trust fund at State Investment Council.

Section 6-4-9(B), NMSA 1978, requires that all money received by the State Treasurer in fiscal years 2003 through 2006 be distributed from the *tobacco permanent settlement fund to the state general fund*. Subsection C of that section requires that, in fiscal year 2007 and beyond, an annual distribution be made from the *tobacco settlement permanent fund to the tobacco settlement program fund* of an amount equal to fifty percent of the total amount distributed to the *tobacco settlement permanent fund* in that fiscal year until the amount is less than an amount equal to four and seven-tenths percent of the average of the year-end market values of the *tobacco settlement permanent fund* for the immediately preceding five years.

### Administratively Created Funds

#### 1. Appropriation Account Fund

The *appropriation account fund* is an administratively created fund the State General Fund uses to account for the financial activity of the statutorily created *general fund* and for portions of the financial activity of the statutorily created *public school fund*.

State statute, Section 6-4-2, NMSA 1978, creates the *general fund* and requires the State Treasurer to credit all revenues, not otherwise allocated, to the fund. In addition, the statute requires that expenditures from the fund be made only in accordance with appropriations authorized by the Legislature. Those appropriations result in allotments of cash from the *general fund*. The allotments are presented as expenses/expenditures in the accompanying financial statements.

Section 22-8-14, NMSA 1978, creates the *public school fund*. The State General Fund administers three financial activities of that fund; all other activities of the fund are administered by the Education Department.

One of those activities administered by the State General Fund is the transfer from the *current school fund* to the *public school fund* required by Section 22-8-32, NMSA 1978. The State General Fund administers the other two activities through its *federal mineral leasing fund* (see item 2 below). Those activities include receiving receipts under the Federal Minerals Land Act, 30 USC 181 (the General Appropriation Act defines *general fund* to include Federal Mineral Leasing Act receipts) and allotting cash, based on legislative appropriations, from the *public school fund* to the *Instructional Materials Fund* and to the Bureau of Mines and Mineral Resources of the New Mexico Institute of Mining and Technology

The transfer described in the previous paragraph reduces (offsets) the appropriation and related cash allotments that have been made from the *general fund* to the portion of the *public school fund* administered by the Education Department. The General Appropriations Act requires that the appropriation from the *general fund* to the portion of the *public school fund* administered by the Education Department be reduced by the amounts transferred to the *public school fund* from the *current school fund*.

#### 2. Federal Mineral Leasing Fund

As noted above, the State General Fund administers two other activities of the *public school fund* through its administratively created *federal mineral leasing fund*. Those activities include receiving receipts under the Federal Minerals Land Act, 30 USC 181, and allotting cash—based on legislative appropriation—from the portion of the *public school fund* administered by the State General Fund to the *Instructional Materials Fund* and to the Bureau of Mines and Mineral Resources of the New Mexico Institute of Mining and Technology

**State of New Mexico**  
**State General Fund Component Appropriation Accounts**  
Notes to the Financial Statements  
June 30, 2008

Like the transfer in from the *current school fund*, the receipts from the Federal Minerals Land Act, 30 USC 181 reduce (offset) the appropriation and related cash allotments that have been made from the *general fund* to portion of the *public school fund* administered by the Education Department. As noted above, the General Appropriations Act requires that the appropriation from the *general fund* to the portion of the *public school fund* administered by the Education Department be reduced by the amount of Federal Minerals Land Act receipts.

The General Appropriations Act is consistent with Section 22-8-34, NMSA 1978, in that Section 22-8-34 requires the State Treasurer to deposit all money received under the Federal Mineral Lands Leasing Act to the *public school fund*, except for the following: 1) that portion appropriated to the *instructional materials fund* and to the Bureau of Mines and Mineral Resources of the New Mexico Institute of Mining and Technology; and 2) the remainder of any prepayments after deducting the amount that the State would have received as its share of royalties during the fiscal year. (The statute requires that the remainder be distributed to the *common school permanent fund*.)

**3. Appropriation Contingency  
Reserve Fund**

Section 6-4-2.3, NMSA 1978, creates the appropriation contingency reserve within the *general fund*. To account for the reserve, the State General Fund has established the *Appropriation Contingency Reserve Fund*. Section 6-4-2.3 includes the following requirements: The appropriation contingency reserve may be expended only upon specific authorization by the legislature or as provided in Sections 6-7-1 through 6-7-3 NMSA 1978 in the event there is no surplus of unappropriated money in the *general fund*.

**4. General Fund Operating  
Reserve Fund**

Section 6-4-2.1, NMSA 1978, creates the general fund operating reserve within the *general fund*. To account for the reserve, the State General Fund has established the *general fund operating reserve fund*. Section 6-4-4, NMSA 1978, requires that excess revenue over appropriations (expenditures/expenses) in the *general fund* be transferred to the *general fund operating reserve* provided that 1) if the sum of the excess revenue plus the balance in the operating reserve prior to the transfer is greater than eight percent of the aggregate recurring

appropriations from the *general fund* for the previous fiscal year, then an amount equal to the smaller of either the amount of the excess revenue or the difference between the sum and eight percent of the aggregate recurring appropriation from the *general fund* for the previous fiscal year; and 2) that if the total of the amount transferred to the *tax stabilization reserve fund* plus the balance in that reserve prior to the transfer is greater than six percent of the aggregate recurring appropriations from the *general fund* for the previous fiscal year, then an amount equal to the smaller of either the amount transferred or the difference between the total and six percent of the aggregate recurring appropriation from the *general fund* for the previous fiscal year is appropriated to the *taxpayer dividend fund*.

The *general fund operating reserve* may be expended only upon specific authorization by the legislature and only in the event *general fund* revenues and balances, including all other transfers to the *general fund* authorized by law, are insufficient to meet the level of appropriations authorized.

**5. Tax Stabilization Reserve Fund**

Section 6-4-2.2, NMSA 1978, creates the tax stabilization reserve within the *general fund*. To account for the reserve, the State General Fund has established the *Tax Stabilization Reserve Fund*. The balance of the tax stabilization reserve consists of those funds directed to it by law (Section 6-4-4) and such other funds as the legislature may appropriate from time to time to the reserve. Except as otherwise provided in Subsection D of Section 6-4-2.2, NMSA 1978, any balance in the *tax stabilization reserve* may be appropriated only by a two-thirds majority vote of both houses of the legislature following receipt by the legislature of a declaration of the governor that such an appropriation is necessary for the public peace, health and safety. However, subsection D allows the legislature to appropriate balances in the fund without any restrictions, in the event that resources are not sufficient to meet authorized appropriations.

The effect of interfund activity between these nine statutorily and administratively created funds has been eliminated from the accompanying financial statements. This interfund activity included the receivables and payables listed in the table below.

**State of New Mexico**  
**State General Fund Component Appropriation Accounts**  
Notes to the Financial Statements  
June 30, 2008

<u>Due from Other Funds</u>		<u>Due to Other Funds</u>		
<u>Name</u>	SHARE System Fund <u>Number</u>	<u>Name</u>	SHARE System Fund <u>Number</u>	<u>Amount</u>
Appropriations Account Fund	85300	Current School Fund	71700	\$ 37,113,950
Current School Fund	71700	Common School Current Fund	71600	36,963,664
Appropriation Account Fund	85300	Federal Mineral Leasing	85100	59,964,340
General Operating Fund	85200	Appropriation Account Fund	85300	<u>92,613,837</u>
				<u>\$226,655,791</u>

**B. Government-wide and fund financial statements**

The government-wide financial statements (i.e., the statement of net assets and the statement of activities) report information on all of the activities of the State General Fund. Since the State General Fund has only one fund, interfund activity did not exist. *Governmental activities*, which normally are supported by taxes and intergovernmental revenues, are reported separately from *business-type activities*, which relay to a significant extent on fees and charges for support.

The statement of activities demonstrates the degree to which the direct expenses of a given function are offset by program revenues. *Direct expenses* are those that are clearly identifiable with a specific function. *Program revenues* include 1) charges to customers or applicants who purchase, use, or

directly benefit from goods, services, or privileges provided by a given function and 2) grants and contributions that are restricted to meeting the operational or capital requirements of a particular function. Taxes and other items not properly included among program revenues and are reported instead as *general revenues*.

Separate financial statements are provided for governmental funds. The State General Fund does not have proprietary or fiduciary funds. The State General Fund's one and only fund, its general fund, is a major governmental fund.

Internally dedicated resources are reported as *general revenues* rather than as program revenues. Likewise, general revenues include all taxes.

**C. Basis of Accounting and Presentation**

**1. Government-wide financial statements**

The government-wide financial statements are reported using the *economic resources measurement focus* and the *accrual basis of accounting*. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows.

Derived tax revenues, which generally include income and sales taxes and similar assessments on earnings or consumption, and related assets, are recognized when the exchange transaction occurs (due from other state agencies) or when the resources are received (cash), which ever occurs first.

**2. Fund financial statements**

**State of New Mexico**  
**State General Fund Component Appropriation Accounts**  
Notes to the Financial Statements  
June 30, 2008

Governmental fund financial statements are reported using the *current financial resources measurement focus* and the *modified accrual basis of accounting*. Revenues are recognized as soon as they are both measurable and available. For derived tax revenues, related assets are recognized when the exchange transaction occurs or when the resources are received, whichever occurs first. If the resources are not available, deferred revenues are reported for the assets that are recognized before the revenues. Revenues are considered to be *available* when they are collectible within the current period or soon enough thereafter to pay liabilities of the current period. For this purpose, the State General Fund considers tax revenues to be available, if they are collected within 60 days after the end of the fiscal year; reversions, if collected within 90 days of the end of the current fiscal period; and all other revenues to be

available if collected prior to completion of the State General Fund's financial statements, which is usually the December 15<sup>th</sup> following the end of the fiscal year. Expenditures generally are recorded when a liability is incurred, as under accrual accounting. However, debt service expenditures are recorded only when payment is due.

Taxes, investment income, and reversions associated with the current fiscal period are all considered to be susceptible to accrual and so have been recognized as revenues of the current fiscal period. Escheats are not considered susceptible to accrual and, therefore, are recognized when received.

#### **D. Assets, Liabilities, and Net Assets and Fund Balances**

##### **1. Due from Other State Entities**

Section 6-4-2, NMSA 1978, requires all revenues—not otherwise allocated by law—to be credited to the State General Fund. In addition, Section 6-5-10, NMSA 1978, requires all undesignated/unreserved fund balances in reverting state agency funds to be reverted to the State General Fund. Various state agencies collect revenues on behalf of the State General

Fund. In addition, most state agencies administer funds that revert balances to the State General Fund. The amounts due from other state entities reported in the accompanying financial statements and in the Schedule of Amount Due from Other Entities are the amounts due to the State General Fund under the authority of the two statutes cited above.

##### **2. Restricted Resources**

When both restricted and unrestricted resources are available for use, it is the State General Fund's policy to use restricted

resources first, and then unrestricted resources as they are needed.

#### **E. Revenues and Expenditures/Expenses**

##### **1. Reversions**

Once an appropriation lapses, the related cash balance is usually required by law to be returned to the fund from where the appropriation allotment originated (that is, from where the cash related to the appropriation originated). In the accompanying financial statements, the cash

returned to the State General Fund is treated as general revenue and presented as "reversions." Beginning fiscal year 2005, the State adopted generally accepted accounting principles for governmental funds as its budgetary basis of accounting.

**State of New Mexico**  
**State General Fund Component Appropriation Accounts**  
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**F. Budgets**

The component appropriation accounts are non-budgeted funds, as the Legislature does not make appropriations to the State General Fund.

Accordingly, budget comparisons are not presented in these financial statements.

**2. Investments**

State law requires the State General Fund investments be managed by the New Mexico State Treasurer's Office, with the exception of those belonging to the Tobacco Settlement Fund. State law requires that Tobacco Settlement Fund investments be managed by the New Mexico State Investment Council. Accordingly, the investments of the State General Fund consist of

investments in the investment pools managed by these two entities.

As of June 30, 2008 the State General Fund had the following investments:

<u>Investment</u>	<u>Maturities</u>	<u>Fair Value</u>
The New Mexico State Treasurer's Office:		
General Fund Investment Pool	1 day to 5 years	\$ <u>578,222,224</u>
The State Investment Council:		
Equities-	Not Applicable	
Large Cap Active Pool		\$ 27,064,286
Large Cap Index Pool		5,062,319
Small/Mid Cap Active Pool		11,709,043
Non-US Developed Markets Pool		7,010,939
Non-US Emerging Markets Pool		3,603,147
Core Bonds-		
US Core Bonds Pool	<1yr to >10 years	26,827,689
Hedge Fund Pool	Not Applicable	9,871,337
Cash/Cash Equivalents/Accruals	Not Applicable	<u>44,735,185</u>
		<u>\$ 135,883,945</u>

*Interest Rate Risk.* The State General Fund does not have an investment policy that limits investment maturities as a means of managing its exposure to fair value losses arising from increasing interest rates.

*Credit Risk.* The New Mexico State Treasurer and State Investment Council pools are not rated.

For additional GASB 40 disclosure information related the above investment pools, the reader should see the separate audit reports for the State Treasurer's Office and the State Investment Council for the fiscal year ended June 30, 2008.

*Cash Overdraft.* At June 30, 2008, the State General Fund had a cash overdraft of \$963,016,161. At June 30, 2008, the net cash overdraft, which includes \$578,222,224 in the General Fund Investment Pool, was (\$384,793,937). The amount of cash overdraft has significantly increased due to an acceleration of allotments (\$240.9 million) related to special and capital project appropriations. The Financial Control Division now requires state agencies to budget special and capital projects appropriations, and request the allotments for those appropriations, in the first fiscal year the appropriations are available. In past fiscal years, most agencies budgeted projects in the year following the appropriation. Also, amounts due from other state agencies increased by \$143.9 from FY 2007.

*State of New Mexico*  
**State General Fund Component Appropriation Accounts**  
Notes to the Financial Statements  
June 30, 2008

### 3. Tax and Revenue Anticipation Notes

The following notes were issued by the State of New Mexico during fiscal year 2008 and matured June 30, 2008:

- A. 2007-2008 Tax and Revenue Anticipation Notes, Series 2007, \$400.0 million.
- B. 2007-2008 Tax and Revenue Anticipation Notes, Series 2007A, \$300.0 million

These notes were issued by the State of New Mexico under the authority of the Short-Term Cash Management Act, Section 6-12A-1, NMSA 1978. The notes were issued to fund a portion of the State's cash flow needs for the State General Fund during its fiscal year 2008.

The transactions related to the notes have been presented in accordance with generally accepted accounting principles (GASB Codification Section B50.101); accordingly, interest and issuance costs are presented in the accompanying financial statements as expenses/expenditures.

### 4. Transfer Authority

For fiscal year 2008, the General Appropriations Act of 2008, section 11, provides the State General Fund with authority to transfer \$150.0 million from the operating reserve to the *general fund*, in the event that revenues and transfers (exclusive of transfers to the general fund operating reserve,

The processes to deposit the proceeds from the notes and subsequently pay the notes were as follows:

The Office of the State Treasurer deposited the net proceeds from the sale of the notes, \$753.9 million to its *anticipation notes fund* (SHARE system fund number 32300). The Office of the State Treasurer subsequently transferred the entire amount of the proceeds to the *appropriation account fund* (SHARE system fund number 85300).

To pay the notes, the State General Fund transferred \$775.2 million from the *appropriation account fund* to the *state treasurer anticipation notes debt service fund* (SHARE system fund number 39300). From the debt service fund, the Office of the State Treasurer then paid the note principal and interest due at maturity.

appropriation contingency fund, tax stabilization reserve, and public school state-support reserve) were not sufficient to meet appropriations.

For fiscal year 2008, revenues exceeded appropriations and transfers by \$92.6 million.

### 5. Restatement of Beginning Net Assets

The beginning net assets presented in the accompanying Statement of Activities reflect an adjustment of \$8.8 million. The adjustment is necessary to correct two errors, which resulted in an overstatement of expenditures in 2006 of \$9.0 million in fund 85400 and an overstatement of revenue in fiscal year 2007 of \$0.2 million in fund 85300. The \$9.0 million overstatement resulted from accruing appropriations that had contingencies and thus did not meet all eligibility requirements for accrual. Those contingencies were met in fiscal year 2008. A \$0.2 million overstatement in revenue resulted from

accruing reversion revenue from an appropriation that had not be requested or allotted. That appropriation had an appropriation end date of June 30, 2007. The agency provided documentation to the State Budget Division in fiscal year 2008 that it had incurred expenditures of \$0.2 million in fiscal year 2007. These errors impacted the governmental fund balance by the same amount. Change in government-wide net assets and change in fund balance for the Appropriation Account Fund for the year ended June 30, 2007 was decreased by \$0.2 million.

**State of New Mexico**  
**State General Fund Component Appropriation Accounts**  
Notes to the Financial Statements  
June 30, 2008

*Summary of Adjustments:*

	<u>Net Assets</u>	<u>Fund Balance</u>
Unadjusted beginning balance	\$683,542,297	\$641,803,101
Premature expenditure recognition	9,000,000	9,000,000
Incorrect recognition of revenue	<u>(182,897)</u>	<u>(182,897)</u>
Adjusted beginning balance	<u>\$692,359,400</u>	<u>\$650,620,204</u>

**6. Transfers In/out**

**A. Required Transfers**

For fiscal year 2008, in accordance with State statute and law, the following transfer was made: \$152.9 million from the Appropriation Account (fund 85300) to the General Operating Reserve (fund 85200).

**APPENDIX B**

**FORM OF ATTORNEY GENERAL'S NO LITIGATION LETTER**

[date]

State Board of Finance  
State of New Mexico  
Bataan Memorial Bldg.  
Santa Fe, NM 87501

Brownstein Hyatt Farber Schreck, LLP  
201 Third Street, NW, Suite 1700  
Albuquerque, NM 87102

Sutin, Thayer & Browne  
Professional Corporation  
P.O. Box 1945  
Albuquerque, NM 87103

Re: \$196,330,000 State of New Mexico General Obligation Bonds, Series 2009

Ladies and Gentlemen:

This letter will serve as our certificate of litigation concerning the State of New Mexico General Obligation Bonds, Series 2009, in the principal amount of \$196,330,000 and other litigation affecting the State of New Mexico (the "State").

Litigation Directly Affecting Issuance of the Bonds

To the best of our knowledge, there is no pending or threatened action, suit or proceeding at law or in equity before or by any judicial or administrative agency against or affecting the State wherein an unfavorable decision, ruling, or finding would materially and adversely affect: (i) any officers of the State in their respective capacities as such or the existence, organization or power of the State, insofar as these matters relate to these bonds; (ii) the notice of sale, award, issuance and delivery of these bonds; (iii) the effectiveness of the legislation authorizing the issuance of these bonds (i.e. NMSA 1978, sections 6-12-6 through 14, as amended); (iv) the transactions authorized by the State Board of Finance in its resolutions of February 17, 2009 and April 21, 2009 (the "Bond Legislation") relating to the issuance, sale and delivery of these bonds; or (v) the validity or enforceability of the bonds or the Bond Legislation.

Property Tax Litigation

The pro se tax resistor case that was pending in a State district court challenging the State's power to impose property and other taxes was dismissed with prejudice on December 19, 2008. The New Mexico Department of Taxation and Revenue has informed this office that currently there is no pending or threatened action, suit or proceeding or law or in equity that contests the validity of the State's imposition of property taxes. The State is a party to suits in which the taxpayers contest the assessed value of their properties, but do not contest the validity of the State's imposition of the tax itself. Such proceedings are not reasonably expected to have a material adverse effect on these bonds, the security for these bonds, or any improvements financed by these bonds.

Other Litigation

The State is a party to various legal and administrative proceedings seeking damages or injunctive relief and generally incidental to its operations, which proceedings are unrelated to these bonds, the security therefor, or any improvements to be financed with these bonds.

Sincerely,

Assistant Attorney General

APPENDIX C

**FORM OF OPINION OF BOND COUNSEL  
GENERAL OBLIGATION BONDS, SERIES 2009**

May 28, 2009

State Board of Finance  
State of New Mexico

Ladies and Gentlemen:

We have examined the transcript of proceedings (the "Transcript") relating to the issuance of the \$196,330,000 State of New Mexico Capital Projects General Obligation Bonds, Series 2009 (the "Bonds"), dated May 28, 2009 and being a series of bonds in registered form maturing on March 1, 2010 and serially thereafter on March 1 of each year through 2019.

We have also examined the provisions of the Constitution and laws of the State of New Mexico (the "State") including the 2008 Capital Projects General Obligation Bond Act, Chapter 80, Laws 2008, under authority of which the Bonds were issued, the resolution authorizing the issuance and sale of the Bonds (the "Bond Legislation") adopted by the State Board of Finance (the "Board") on April 21, 2009, an executed Bond of the first maturity, and the Tax Regulatory Certificate of the State (the "Tax Certificate"). We have also made such further inquiries and investigations and have examined such further documents and matters as we have considered necessary in rendering this opinion.

Certain agreements, requirements and procedures contained or referred to in the Bond Legislation, the Tax Certificate and other relevant documents may be changed and certain actions (including, without limitation, the defeasance of Bonds) may be taken or omitted under the circumstances and subject to the terms and conditions set forth in such documents. No opinion is expressed herein as to any Bond or the interest thereon with respect to any such change or action taken or omitted upon the advice or approval of counsel other than ourselves.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. Such opinions may be affected by actions taken or omitted or events occurring after the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur or any other matters come to our attention after the date hereof. Our engagement with respect to the Bonds has concluded with their issuance, and we disclaim any obligation to update this letter. Furthermore, we have assumed compliance with the covenants and agreements contained in the Bond Legislation and the Tax Certificate, including (without limitation) covenants and agreements compliance with which is necessary to assure that future actions, omissions or events will not cause interest on the Bonds to be included in gross income for federal income tax purposes. We call attention to the fact that the rights and obligations under the Bonds, the Bond Legislation and the Tax Certificate and their enforceability may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and

other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against the State of New Mexico. We express no opinion with respect to any indemnification, contribution, penalty, choice of law, choice of forum or waiver provisions contained in the documents described herein. Finally, we undertake no responsibility for the accuracy, completeness or fairness of the Official Statement or other offering material relating to the Bonds and express herein no opinion relating thereto.

Based on our examination, we are of the opinion that, under the law existing on the date of this opinion:

1. The Bonds constitute valid and binding general obligations of the State and the principal of and interest on the Bonds, unless paid from other sources, are required to be paid from the proceeds of the levy of ad valorem taxes on all property within the State subject to ad valorem taxes for State purposes, without limit as to rate or amount.

2. The Bond Legislation is valid and binding on the Board and is enforceable in accordance with its terms.

3. The interest on the Bonds is excluded from gross income for federal income tax purposes under Section 103(a) of the Internal Revenue Code of 1986, as amended (the "Code"), and is not treated as an item of tax preference for purposes of the alternative minimum tax imposed by the Code on individuals and corporations. We express no opinion regarding other federal income tax consequences caused by the receipt or accrual of interest on or ownership of the Bonds.

4. The interest on the Bonds is exempt from personal income taxes imposed directly thereon by the State under existing law.

Very truly yours,

SUTIN, THAYER & BROWNE  
A Professional Corporation

## APPENDIX D

### FORM OF CONTINUING DISCLOSURE UNDERTAKING

This Continuing Disclosure Undertaking (the “Disclosure Undertaking”) is executed and delivered by the State Board of Finance (the “Board”) of the State of New Mexico (the “State”) on behalf of the State in connection with the issuance by the State of \$196,330,000 Capital Projects General Obligation Bonds, Series 2009 (the “Bonds”). The Bonds are being issued pursuant to the Bond Resolution adopted by the Board on April 21, 2009 (the “Resolution”).

### BACKGROUND

1. The Bonds are being issued to provide funds for capital expenditures for construction, acquisition or improvement of senior citizen, library, health, higher education and State special school projects as set forth in the 2008 Capital Projects General Obligation Act, Chapter 80, Laws 2008 and approved by the voters of the State on November 4, 2008.

2. In order to allow the underwriters of the Bonds to comply with Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (17 CFR Part 240, § 240.15c2-12) to the date hereof, the State is required to make certain continuing disclosure undertakings for the benefit of owners (including beneficial owners) of the Bonds.

3. This Disclosure Undertaking is intended to satisfy the requirements of said Rule 15c2-12, as in effect on the date hereof.

### STATE COVENANTS AND AGREEMENTS

#### **Section 1. Definitions**

(a) “Annual Financial Information” means the financial information or operating data with respect to the State, delivered at least annually pursuant to Sections 2(a) and 2(b) hereof, of the type set forth in the sections of the final Official Statement identified on Exhibit A hereto. Annual Financial Information includes Audited Financial Statements.

(b) “Audited Financial Statements” means the annual financial statements for the State, prepared in accordance with generally accepted accounting principles, as in effect from time to time.

(c) “Event Information” means the information delivered pursuant to Section 2(d) hereof.

(d) “MSRB” means the Municipal Securities Rulemaking Board. The current address of the MSRB is 1900 Duke Street, Suite 600, Alexandria, Virginia, 22314, phone (703) 797-6600, fax (703) 797-6700.

(e) “National Repository” shall mean any Nationally Recognized Municipal Securities Information Repository (“NRMSIR”) for purposes of the Rule. Currently, the following are National Repositories:

Until June 30, 2009

Bloomberg Municipal Repository  
100 Business Park Drive  
Skillman, New Jersey 08558  
Phone: (609) 279-3225  
Fax: (609) 279-5962  
Email: Munis@Bloomberg.com  
Web: [www.bloomberg.com/markets/rates/municontacts.html](http://www.bloomberg.com/markets/rates/municontacts.html)

DPC Data Inc.  
One Executive Drive  
Fort Lee, New Jersey 07024  
Phone: (201) 346-0701  
Fax: (201) 947-0107  
Email: nrmsir@dpcdata.com  
Web: [www.MuniFILINGS.com](http://www.MuniFILINGS.com)

Interactive Data Pricing and Reference Data, Inc.  
Attn: NRMSIR  
100 William Street, 15<sup>th</sup> Floor  
New York, New York 10038  
Phone: (212) 771-6999; (800) 689-8466  
Fax: (212) 771-7390  
Email: NRMSIR@interactivedata.com  
Web: [www.interactivedata-prd.com](http://www.interactivedata-prd.com)

Standard & Poor's Securities Evaluations, Inc.  
55 Water Street, 45th Floor  
New York, New York 10041  
Phone: (212) 438-4595  
Fax: (212) 438-3975  
Email: nrmsir\_repository@sandp.com  
Web: [www.disclosuredirectory.standardandpoors.com](http://www.disclosuredirectory.standardandpoors.com)

As of July 1, 2009

Municipal Securities Rulemaking Board  
Electronic Municipal Market Access  
<http://emma.msrb.org>

- (f) "Official Statement" means the Official Statement dated April 21, 2009 delivered in connection with the original issue and sale of the Bonds.
- (g) "Repository" means (i) each NRMSIR and (ii) any SID.
- (h) "Rule" means Rule 15c2-12 promulgated by the SEC under the Securities Exchange Act of 1934, as amended (17 CFR Part 240, § 240.15c2-12), as the same may be amended.
- (i) "SEC" means the Securities and Exchange Commission.

(j) “SID” means any State Information Depository operated or designated by the State that receives information from all issuers within the State. As of the date of this Disclosure Undertaking, no SID exists for the State.

**Section 2. Provision of Annual Information and Reporting of Event Information**

(a) Commencing with the fiscal year ending June 30, 2009 and annually while the Bonds remain outstanding, the State agrees to provide or cause to be provided the Annual Financial Information to each Repository annually.

(b) Such Annual Financial Information shall be provided not later than 210 days after the end of each fiscal year for the State (*i.e.*, each June 30). If the Audited Financial Statements are not available by the time the other Annual Financial Information must be provided, unaudited financial statements shall be provided as part of the Annual Financial Information. If not provided as a part of the Annual Financial Information, the Audited Financial Statements will be provided when available.

(c) The State may provide Annual Financial Information by specific reference to other documents, including information reports and official statements relating to other debt issues of the State, which have been submitted to each Repository; provided, however, that if the document so referenced is a final official statement within the meaning of the Rule, such final official statement must also be available from the MSRB.

(d) At any time the Bonds are outstanding, the State shall provide, in a timely manner, to the MSRB and any SID notice of any of the following events with respect to the Bonds, if material (provided, that any event under clauses (viii), (ix) or (xi) will always be deemed to be material):

- i. Principal and interest payment delinquencies;
- ii. Non-payment related defaults;
- iii. Unscheduled draws on debt service reserves reflecting financial difficulties;
- iv. Unscheduled draws on credit enhancements reflecting financial difficulties;
- v. Substitution of credit or liquidity providers, or their failure to perform;
- vi. Adverse tax opinions or events affecting the tax-exempt status of the security;
- vii. Modifications to rights of security holders;
- viii. Bond calls, other than mandatory sinking fund redemption;
- ix. Defeasances;
- x. Release, substitution or sale of any property securing repayment of the securities; and
- xi. Rating changes.

(e) At any time the Bonds are outstanding, the State shall provide, in a timely manner, to the MSRB and any SID notice of any failure of the State to timely provide the Annual Financial Information as specified in Sections 2(a) and 2(b) hereof.

(f) Any filing under this Disclosure Undertaking may be made by transmitting such filing to the Texas Municipal Advisory Council (the “MAC”) as provided at <http://www.disclosureusa.org> unless the United States Securities and Exchange Commission has withdrawn the interpretive advice in its letter to the MAC dated September 7, 2004.

**Section 3. Method of Transmission.** Subject to technical and economic feasibility, the State shall employ such methods of electronic or physical information transmission as is requested or recommended by the Repositories or the MSRB unless otherwise required by law.

**Section 4. Enforcement.** The obligations of the State hereunder shall be for the benefit of the owners (including the beneficial owners) of the Bonds. The owner or beneficial owner of any Bonds is authorized to take action to seek specific performance by court order to compel the State to comply with its obligations under this Disclosure Undertaking, which action shall be the exclusive remedy available to it or any other owners or beneficial owners of the Bonds. Any such action shall be brought only in a State court of competent jurisdiction in Santa Fe County, New Mexico. Breach of the obligations of the State hereunder shall not constitute an event of default under the Resolution and none of the rights and remedies provided by the Resolution shall be available to the owners (including the beneficial owners) of the Bonds.

**Section 5. Additional Information.** Nothing in this Disclosure Undertaking shall be deemed to prevent the State from disseminating any other information, using the means of dissemination set forth in this Disclosure Undertaking or any other means of communication, or including any other annual information or notice of occurrence of an event which is not Event Information, in addition to that which is required by this Disclosure Undertaking; provided that the State shall not be required to do so. If the State chooses to include any annual information or notice of occurrence of an event in addition to that which is specifically required by this Disclosure Undertaking, the State shall have no obligation under this Disclosure Undertaking to update such information or include it in any future annual filing or Event Information filing.

**Section 6. Term.** This Disclosure Undertaking shall be in effect from and after the issuance and delivery of the Bonds and shall extend to the earliest of (i) the date all principal and interest on the Bonds shall have been paid or legally defeased pursuant to the terms of the Resolution; (ii) the date that the State shall no longer constitute an “obligated person” with respect to the Bonds within the meaning of the Rule; or (iii) the date on which those portions of the Rule which require this Disclosure Undertaking are determined to be invalid by a court of competent jurisdiction in a non-appealable action, have been repealed retroactively or otherwise do not apply to the Bonds.

**Section 7. Amendments and Waivers.** Notwithstanding any other provision of this Disclosure Undertaking, the State may amend this Disclosure Undertaking from time to time, and any provision of this Disclosure Undertaking may be waived, without the consent of the owners or beneficial owners of the Bonds upon the State’s receipt of an opinion of counsel experienced in federal securities laws to the effect that such amendment or waiver will not adversely affect compliance with the Rule. Any Annual Financial Information containing amended operating data or financial information will explain, in narrative form, the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided. If an amendment changes the accounting principles to be followed in preparing financial statements, the Annual Financial Information and Audited Financial Statements for the year in which the change is made will present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. The State shall provide notice of any such amendment or waiver to each Repository.

**Section 8. Beneficiaries.** This Disclosure Undertaking shall inure solely to the benefit of the State and the owners (including beneficial owners) from time to time of the Bonds, and shall create no rights in any other person or entity.

**Section 9. Governing Law.** This Disclosure Undertaking shall be governed by the laws of the State.

Date: May 28, 2009

STATE BOARD OF FINANCE

By \_\_\_\_\_  
President

By \_\_\_\_\_  
Secretary

**EXHIBIT A**

Portions of the Official Statement  
Containing the Type of Information  
To Be Included As Annual Financial Information

1. OUTSTANDING GENERAL OBLIGATION INDEBTEDNESS  
All
2. THE STATE OF NEW MEXICO  
All
3. PROPERTY VALUATION AND TAXATION  
All
4. FINANCIAL OVERVIEW OF THE STATE  
All
5. STATE OF NEW MEXICO FINANCIAL STATEMENTS (Audited)  
All