

EXECUTIVE ORDER 2009-044

ORDER CONCERNING FISCAL YEAR 2010 BUDGET GAP; REQUIRING STATE AGENCIES TO REDUCE FISCAL YEAR 2010 OPERATING EXPENDITURES; REQUIRING THE FURLOUGH OF STATE EMPLOYEES; DIRECTING THE PUBLIC EDUCATION DEPARTMENT AND HIGHER EDUCATION DEPARTMENT TO TAKE STEPS NECESSARY TO RESTORE FURTHER CUTS TO PUBLIC AND HIGHER EDUCATION

WHEREAS, Governor Richardson called the Legislature into special session in order to address the State's fiscal year 2010 budget shortfall;

WHEREAS, even if fully implemented, the so-called solvency bills passed during the First Special Session of the Forty-Ninth Legislature were insufficient to bridge the budget gap;

WHEREAS, among other shortcomings, the solvency bills failed to cut capital appropriations or effectively use supplemental severance tax bonding capacity;

WHEREAS, Section 2(A)(4) of the House Appropriations and Finance Committee Substitute for House Bills 17 and 33 ("HB 17/33"), as amended, sought to impose deep, aggregate cuts of 7.6% to the already reduced operating budgets of State agencies under the control of the Governor;

WHEREAS, implementing such cuts would likely have caused dangerous and unacceptable harm to core services;

WHEREAS, the Administration concluded that the cuts called for in Section 2(A)(4) would likely have (i) severely compromised the ability of the Children, Youth, and Families Department to investigate child neglect and abuse cases and take kids into protective custody, putting kids at risk and jeopardizing federal funding to the State; (ii) forced the Department of Health to temporarily close some public health offices and reduce services at school-based and rural primary care clinics, which provide services to citizens with few (if any) other treatment options; and (iii) resulted in the closure of two adult correctional facilities, resulting in hundreds of prisoners being released early with inadequate supervision and employees being put out of work;

WHEREAS, to avoid such unacceptable results, the Governor this day vetoed Section 2(A)(4) of HB 17/33;

WHEREAS, the Richardson Administration recognizes the need to responsibly and meaningfully reduce agency expenditures as part of a package of solvency measures that completes the job started in the First Special Session of the Forty-Ninth Legislature;

WHEREAS, the expenditure restrictions imposed in this Executive Order will result in savings that will, along with other measures to be proposed by the Richardson Administration during future legislative sessions, bridge the budget gap while maintaining adequate levels of services and a prudent level of budget reserves; and

WHEREAS, the fiscal year 2010 budget shortfall is so severe that solvency measures unfortunately must include the furlough of state employees.

NOW, THEREFORE, I, Bill Richardson, Governor of the State of New Mexico , by virtue of the authority and responsibility vested in me by the Constitution and the laws of the State of New Mexico , do hereby order the following:

1. **Expenditure and Encumbrance Restrictions.**

A. **General Fund Agencies.** In fiscal year 2010, the following agencies shall restrict their expenditures from general fund operating appropriations to achieve the savings indicated, calculated as the difference between their fiscal year 2010 general fund operating budgets and the amount of their actual expenditures:

<u>Agency</u>	<u>Expenditure Savings Requirements</u>
Taxation and Revenue Department	\$3,902,300
Department of Finance and Administration	\$1,438,800
General Services Department	\$892,500
New Mexico Sentencing Commission	\$36,200
Public Defender Department	\$854,000
Governor	\$244,900
Department of Information Technology	\$70,400
Personnel Board	\$89,500
Public Employee Labor Relations Board	\$24,600
Border Authority	\$25,700
Tourism Department	\$332,300
Economic Development Department	\$466,600
Regulation and Licensing Department	\$873,100
New Mexico State Fair	\$21,800
Gaming Control Board	\$314,200
State Racing Commission	\$115,700
Cumbres and Toltec Scenic Railroad Commission	\$5,000
Office of Military Base Planning and Support	\$11,300
Spaceport Authority	\$62,300
Cultural Affairs Department	\$1,684,400
New Mexico Livestock Board	\$58,700
Energy, Minerals and Natural Resources Department	\$995,400
Intertribal Ceremonial Office	\$200

<u>Agency</u>	<u>Expenditure Savings</u> <u>Requirements</u>
State Engineer/Interstate Stream Commission	\$1,218,000
Organic Commodity Commission	\$9,300
Commission on Status of Women	\$39,600
Office of African American Affairs	\$41,000
Commission for the Blind	\$41,400
Indian Affairs Department	\$188,200
Aging and Long-Term Services Department	\$1,274,500
Human Services Department, including \$16 million that will be replaced by increased federal funds and appropriations from the Tobacco Settlement Program Fund	\$28,702,500
Workforce Solutions Department	\$402,900
Division of Vocational Rehabilitation	\$117,800
Governor's Commission on Disability	\$58,500
Developmental Disabilities Planning Council	\$131,900
Department of Health, including \$2 million that will be replaced by increased federal funds	\$10,364,900
Department of Environment	\$800,400
Office of the Natural Resources Trustee	\$14,400
New Mexico Health Policy Commission	\$40,300
Children, Youth and Families Department	\$6,023,000
Department of Military Affairs	\$566,300
Parole Board	\$14,600
Juvenile Parole Board	\$6,700
Corrections Department	\$11,389,600
Crime Victims Reparation Commission	\$71,600
Department of Public Safety	\$2,826,100
Homeland Security and Emergency Management Department	\$166,600
Public Education Department	\$479,900
Higher Education Department	\$1,526,900
Total General Fund Savings:	\$79,036,800

B. Non-General Fund Agencies. The following agencies funded by other state funds shall develop expenditure restriction requirements that result in responsible but meaningful operating budget savings for fiscal year 2010: State Investment Council; Board of Examiners for Architects; Medical Board; Board of Nursing; State Board of Licensure for Engineers and Land Surveyors; Board of Veterinary Medicine; Department of Game and Fish; Youth Conservation Corps; Commission for Deaf and Hard-of-Hearing Persons; Workers' Compensation Administration; Miners' Hospital of New Mexico; Veterans' Services Department; and Department of Transportation. The operating budget savings requirements of these agencies are subject to approval by the State Budget Division ("SBD") of the Department of Finance and Administration ("DFA"). Agencies subject to this subsection must submit their proposed savings requirements to SBD by 5:00 p.m. on November 17, 2009.

C. Implementation.

i. Agencies subject to expenditure restrictions under Section 1(A) or Section 1(B) shall submit to SBD for SBD's review and approval a fiscal year 2010 expenditure plan. The expenditure plan shall be in such form and contain such information as SBD may require but, at a minimum, shall show the agency's operating budget by category, the agency's restricted expenditure amount by category, and the difference (savings) between the two. All plans are due to SBD by 5:00 p.m. on November 20, 2009.

ii. Agencies may request and SBD may approve of expenditure plan amendments, provided that the total savings under the amended plan equals the amount stated in Section 1(A) or amount developed pursuant to Section 1(B).

iii. Agencies may not encumber or expend more than the expenditure amount in its SBD-approved expenditure plan for any given category.

iv. By 5:00 p.m. on November 25, 2009, agencies shall, as necessary, submit to DFA's Financial Control Division and Contracts Review Bureau the necessary documentation to reduce outstanding encumbrances to bring them in line with their expenditure plans.

v. DFA is authorized and empowered to take such other action as may be necessary or advisable to effectuate or enforce the requirements contained in or developed pursuant to Section 1 of this Executive Order, including deadlines. Without limiting the generality of the foregoing, DFA may in appropriate cases extend the deadlines contained in this Section in writing.

2. Furloughs.

A. Immediately, the Chief of Staff for the Office of the Governor shall:

i. notify the unions with collective bargaining agreements covering employees at agencies subject to Section 1(A) or Section 1(B) of this Executive Order of the need for furloughs and discuss those furloughs with the unions;

ii. develop a furlough plan that:

- a. is limited to those agencies subject to expenditure restrictions under Section 1(A) or Section 1(B) of this Executive Order;
 - b. is consistent with Regulation 1.7.10.8 NMAC;
 - c. limits the number of required furlough days, which, if possible, should be no more than five (5) days during fiscal year 2010;
 - d. to the extent practicable and advisable, given the needs of individual agencies, schedule furlough days in a manner that least affects the provision of services to the public;
 - e. provides a process for limited exceptions based upon public safety, welfare, and cost-effectiveness; and
- iii. seek approval of the furlough plan from the State Personnel Board in accordance with Regulation 1.7.10.8(A) NMAC; and
 - iv. oversee agency implementation of the approved furlough plan.

B. Agencies subject to the approved furlough plan shall implement the plan.

C. The State Personnel Director shall issue necessary or desirable guidance to affected agencies to implement the approved furlough plan, which guidance shall help agencies avoid overtime or other liabilities during the weeks when the furlough is effective.

3. **Non-Compliance with Section 1 or Section 2.** DFA shall report to the Office of the Governor any agency that fails to comply with the requirements, including deadlines, of Section 1 or Section 2 of this Executive Order. The head of an agency, including a board or commission, that fails to comply with any of the requirements of Section 1 or Section 2 of this Executive Order shall be held accountable for the non-compliance.

4. **Agencies Not Under Gubernatorial Control.** Agencies not under Gubernatorial control and whose fiscal year 2010 operating budgets were not reduced in the First Special Session of the Forty-Ninth Legislature are respectfully requested to impose expenditure restrictions that will result in administrative operating budget savings of approximately three percent (3%). These agencies include the Public School Insurance Authority, Educational Retirement Board, Public Employees Retirement Association, Public School Facilities Authority, Retiree Health Care Authority, State Commission of Public Records, and Martin Luther King, Jr. Commission.

5. **Recalculation of Fiscal Year 2010 Support Restoration Subgrants.** In order to offset the reductions to public and higher education contained in HB 17/33 and pursuant to Executive Order 2009-035, the Public Education Department and Higher Education Department are directed to expeditiously:

A. calculate the amount of each local educational agency's and public institution of higher education's fiscal year 2010 Support Restoration Subgrant; and

B. take the steps necessary to enable the recalculated Support Restoration Subgrants to be awarded and funds distributed to local educational agencies and public institutions of higher education.

6. **General Provisions.**

A. This Executive Order supersedes any other previous orders, proclamations, or directives in conflict.

B. This Executive Order shall take effect immediately and shall remain in effect until such time as it is rescinded by the Governor.

C. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the State, its agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.