



**STATE OF NEW MEXICO**  
**DEPARTMENT OF FINANCE AND ADMINISTRATION**  
**STATE BUDGET DIVISION**  
BATAAN MEMORIAL BUILDING, SUITE 180 SANTA FE, NM 87501  
(505) 827-4985 | FAX (505) 827-4984

**MICHELLE LUJAN GRISHAM**  
GOVERNOR

**DEBORAH K. ROMERO**  
CABINET SECRETARY

April 1, 2022

The Honorable Miguel Cardona  
The Secretary of Education  
United States Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202

***RE: State of New Mexico – maintenance of effort waiver request for FY2022***

Dear Mr. Secretary:

The State of New Mexico requests a waiver for the FY2022 maintenance of effort for higher education. The State will be below the average baseline percentage by 0.51% for higher education, with the average baseline at 13.81% for overall state spending.

The State of New Mexico experienced a budget shortfall in FY2021 due to a decline of severance tax revenue which funds the state's general fund. Attachment A, the Department of Finance and Administration (DFA) General Fund Financial Summary shows the actual revenues received in FY2021. To address the shortfall, during a special session, the legislature swapped a portion of general fund funding for higher education and replaced it with federal funding with the intent to replace the funding later on. During the legislative session to appropriate FY2022 budgets, some of the federal funding was added back to the higher education sector but not at the level of pre-solvency funding levels of FY2020.

Funding for higher education will increase in future years due to the implementation of the Opportunity Scholarship Program for New Mexico students. Higher Education Emergency Relief funding will not be used to replace state funding for higher education, although it was a factor the legislature considered in determining overall funding levels to higher education institutions. The Governor's Emergency Education Relief Funding will also not be used to replace state funding for higher education.

We appreciate your consideration for this waiver request. Please reach out if you have any additional questions or concerns.

Sincerely,

**(b) (6)**

Deborah K. Romero  
Cabinet Secretary  
New Mexico Department of Finance and Administration

OMB Control #: 1810-0745

Expiration Date: September 30, 2024

## Appendix B: MOE Data Submission

State State of New Mexico - Higher education totals updated 4/1/2022

### Data Submission Timelines

	State support for elementary and secondary education	State support for higher education	Overall State spending
FY 2017	Submitted September 1, 2020; May be updated by May 17, 2021		Due May 17, 2021
FY 2018			
FY 2019			
FY 2020	Submitted December 30, 2020; May be updated by May 17, 2021		
FY 2021	Collected by December 30, 2021		
FY 2022	FY 2022 data on appropriated or allocated amounts for State support for elementary and secondary education, State support for higher education, and overall State spending will be collected by December 30, 2021. The Department intends to collect final expenditure data in spring 2023 when data are available.		
FY 2023	FY 2023 data on appropriated or allocated amounts for State support for elementary and secondary education, State support for higher education, and overall State spending will be collected by December 30, 2022. The Department intends to collect final expenditure data in spring 2024 when data are available.		

### Data for State support and overall State spending

A State must submit the required information below. Additionally, a State may use this form to update previously submitted MOE data for FYs 2017, 2018, 2019, and 2020.

	State support for elementary and secondary education	State support for higher education	Overall State spending
<b>FY 2017</b>	\$	\$854.8	\$6,103.6
<b>FY 2018</b>	\$	\$835.0	\$6,078.8
<b>FY 2019</b>	\$	\$868.6	\$6,339.8
<b>FY 2020</b>	\$	\$932.3	Not required
<b>FY 2021</b>	\$	\$905.5	Not required
<b>FY 2022 interim data (appropriated or allocated)</b>	\$	\$991.5	\$7,457.3
<b>FY 2022 (final data)</b>	\$	\$	\$
<b>FY 2023 interim data (appropriated or allocated)</b>	\$	\$	\$
<b>FY 2023 (final data)</b>	\$	\$	\$

**Additional submission requirements:** In an attachment, identify and describe the data sources used in determining the levels of —

- (a) State support for elementary and secondary education;
- (b) State support for higher education; and
- (c) Overall State spending.

**NOTE:** You are only required to submit this information for data categories included in your submission above.

To the best of my knowledge and belief, all of the information in this MOE data submission is true and correct and the failure to submit accurate data may result in liability under the False Claims Act, 31 U.S.C. § 3729 et seq.; OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; and 18 USC § 1001, as appropriate, and other enforcement actions.

Deborah K. Romero, Cabinet Secretary of the Department of Finance and Administration 505-827-3865  
 Governor or Chief State School Officer or Authorized Representative (Typed or Printed Name) Telephone

(b) (6)

4/1/2022

Signature of Governor or Chief State School Officer or Authorized Representative

Date

### Public Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1810-0745. Public reporting burden for this collection of information is estimated to average 5.5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain or retain benefit under section 18008 of the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act, Division M, Section 317 of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA) Act, and Section 2004(a) of the American Rescue Plan Act of 2021 (ARP Act). If you have any comments concerning the accuracy of the time estimate, suggestions for improving this individual collection, or if you have comments or concerns regarding the status of your individual form, application or survey, please contact Britt Jung, Office of State and Grantee Relations, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202-6450, email: [SGR@ed.gov](mailto:SGR@ed.gov) directly.



## Appendix C: MOE Waiver Request

This form must be used for the submission of a request for a waiver of the requirements noted below. For assistance, please contact your State mailbox, which is [State].[oece@ed.gov](mailto:oece@ed.gov).

State State of New Mexico

On behalf of my State, I request a waiver of the following State maintenance of effort (MOE) requirements for the following fiscal years:

*Please check all that apply:*

- ☐ FY 2020 MOE requirement for elementary and secondary education under section 18008 of the CARES Act.
- ☐ FY 2020 MOE requirement for higher education under section 18008 of the CARES Act.
- ☐ FY 2021 MOE requirement for elementary and secondary education under section 18008 of the CARES Act.
- ☐ FY 2021 MOE requirement for higher education under section 18008 of the CARES Act.
- ☐ FY 2022 MOE requirement for elementary and secondary education under section 317(a) of the CRRSA Act and section 2004(a) of the ARP Act.
- ☒ FY 2022 MOE requirement for higher education under section 317(a) of the CRRSA Act and section 2004(a) of the ARP Act.
- ☐ FY 2023 MOE requirement for elementary and secondary education under section 2004(a) of the ARP Act.
- ☐ FY 2023 MOE requirement for higher education under section 2004(a) of the ARP Act.

### Data for State support and overall State spending

A State must resubmit the baseline data for FYs 2017, 2018, and 2019 (baseline years) as part of this MOE waiver request. If these baseline data differ from a State's previously submitted data, please provide a description of the reason for the change. Additionally, a State must submit MOE data for the years in which it is requesting this waiver.

	State support for elementary and secondary education	State support for higher education (in millions)	Overall State spending * (in millions)
<b>FY 2017</b>	\$	\$ 854.8	\$6,103.6
<b>FY 2018</b>	\$	\$ 835.0	\$6,078.8
<b>FY 2019</b>	\$	\$868.6	\$6,339.8
<b>FY 2020</b>	\$	\$932.3	\$7,092.1
<b>FY 2021</b>	\$	\$905.5	\$7,072.9
<b>FY 2022</b>	\$	\$991.5	\$7,457.3
<b>FY 2023</b>	\$	\$	\$

\*For overall State spending, a State may request a waiver based on final allocations or appropriations. For more information, see FAQ 10.

### Additional submission requirements

In an attachment, please provide:

1. A description of the extent to which the State experienced fiscal burdens in preventing, preparing for, and responding to the coronavirus and an explanation of how those fiscal burdens affected the State's ability to maintain fiscal effort (e.g., the status of and any changes to the State's rainy day fund, whether the State experienced a decline in revenues, or an increase in other emergency expenses resulting from the pandemic, such as expenses related to health care, unemployment insurance, or support for small businesses); and

2. Documentation and data supporting the description of the State's fiscal burdens (e.g., revenue data, appropriation tables, unemployment statistics, etc.) including any State action that impacted State revenue (e.g., tax increases or decreases).
3. In addition, in its waiver request, a State should submit information on the relevant factors listed below to support its request. The Secretary may ask States for additional information after States submit the MOE waiver request form.

In determining whether to grant a State an MOE waiver, the Secretary may consider factors such as:

**Has the State increased support for education?**

The Department understands that it is possible that a State has maintained or increased overall funding for education and the proportion of the State budget for education has still declined because of increases in other areas of the budget (e.g., public health). In these cases, the Secretary may consider:

- Has total State funding for K-12 education and for higher education (calculated separately) increased from the prior fiscal year?
- Has total State funding for K-12 education and for higher education (calculated separately) increased over time (e.g., since baseline years)?
- Has per-pupil State funding for K-12 education and for higher education (calculated separately) increased from the prior fiscal year?
- Has per-pupil State funding for K-12 education and for higher education (calculated separately) increased over time (e.g., since baseline years)?
- Has the State appropriated an increase in State funding for K-12 education and for higher education for future fiscal years?

**Are there exceptional circumstances that caused the State to be unable to maintain support for education?**

If a State's support for education declined, the Secretary may consider:

- Are there specific severe effects of the COVID-19 pandemic on the State's economy that necessitated reductions in support for elementary and secondary education and for higher education?
- What steps did the State take to avoid and/or minimize such reductions?
- Did the State use Coronavirus State and Local Fiscal Recovery Funds awarded by the U.S. Department of the Treasury under section 9901 of the ARP Act to support elementary and secondary education and higher education?
- How did reductions in support for elementary and secondary education and for higher education compare to other budget categories?
- Did the State take steps that reduced or will it take steps to proactively reduce its financial resources in a way that impacted or will impact its ability to meet MOE requirements (e.g., tax changes (and in what context), additional contributions to rainy day funds)? If so, what was the impact of the reduction (e.g., to what extent were its resources reduced or will its resources be reduced)?

**Has the State used or will it use ESSER, GEER, or Higher Education Emergency Relief (HEER) funding to replace State funding for education?**

It is important for the Department to understand the State's use of pandemic-related Federal funds when reviewing a request for a waiver. The Secretary may therefore consider:

- Will all unallocated ESSER or GEER funds relevant to the waiver be used to provide net new resources to K-12 schools and to higher education and not be used to replace existing State commitments to K-12 education and to higher education?
- Will all unallocated HEER funds be used to provide net new resources to higher education and not be used to replace existing State commitments to higher education?
- Has the State previously used any ESSER, GEER, or HEER funds to replace State funding for education?

To the best of my knowledge and belief, all of the information in this MOE data submission are true and correct and the

failure to submit accurate data may result in liability under the False Claims Act, 31 U.S.C. § 3729 et seq.; OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; and 18 USC § 1001, as appropriate, and other enforcement actions.

Deborah K. Romero, Cabinet Secretary of the Department of Finance and Administration	505-827-3865
Governor or Chief State School Officer or Authorized Representative (Typed or Printed Name)	Telephone

(b) (6)

4/1/2022

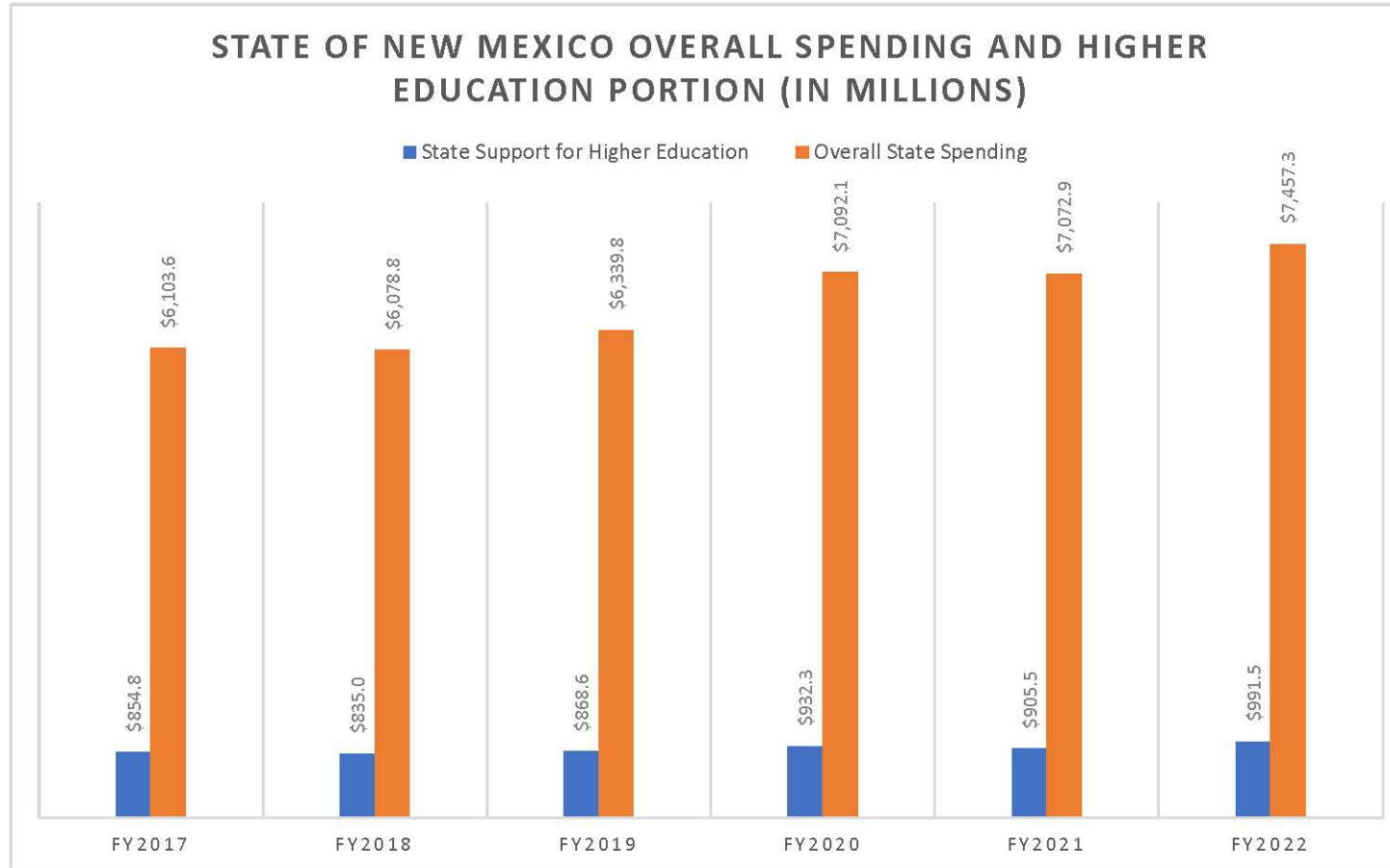
Signature of Governor or Chief State School Officer or Authorized Representative	Date
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### Public Burden Statement

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## State of New Mexico - State Support for Higher Education

	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022
<b>State Support for Higher Education</b>	\$ 854.8	\$ 835.0	\$ 868.6	\$ 932.3	\$ 905.5	\$ 991.5
<b>Overall State Spending</b>	\$ 6,103.6	\$ 6,078.8	\$ 6,339.8	\$ 7,092.1	\$ 7,072.9	\$ 7,457.3
<b>Higher Ed % of State Spending</b>	14.00%	13.74%	13.70%	13.15%	12.80%	13.30%



**DFA GENERAL FUND FINANCIAL SUMMARY**  
**2022 Post-Session**  
**(Dollars in Millions)**

	Actuals FY21	Est. FY22	Est. FY23
<b>APPROPRIATION ACCOUNT</b>			
<b>Revenue:</b>			
Recurring Revenue:			
<i>August 2021 Consensus Revenue Forecast</i>	\$ 8,045.7	\$ 8,108.6	\$ 8,841.7
<i>December 2021 Forecast Revisions</i>	\$ 39.4	\$ 54.4	\$ 207.4
<i>2022 Legislation</i>			\$ (194.2)
<b>Subtotal Recurring Revenue</b>	<b>\$ 8,085.2</b>	<b>\$ 8,163.1</b>	<b>\$ 8,855.0</b>
<b>Nonrecurring Revenue</b>			
<i>Federal Stimulus Funds</i>	\$ 750.0	\$ 1,069.2	
<i>2021 Session Nonrecurring Revenue</i>	\$ (148.8)	\$ (8.2)	
<i>Other nonrecurring revenue</i>	\$ 114.6	\$ -	
<i>2022 Legislation</i>		\$ -	\$ (337.6)
<b>Subtotal Nonrecurring Revenue</b>	<b>\$ 715.8</b>	<b>\$ 1,061.0</b>	<b>\$ (337.6)</b>
<b>Total Revenue</b>	<b>\$ 8,801.0</b>	<b>\$ 9,224.0</b>	<b>\$ 8,517.4</b>
<b>Appropriations:</b>			
Recurring Appropriations:			
<i>Prior Legislative Sessions</i>			
<i>2020 Legislative Session and Feed Bill</i>	\$ 7,621.4		
<i>2020 Special Session Solvency Savings</i>	\$ (411.9)		
<i>2021 Legislative Session and Feed Bill</i>	\$ 10.0	\$ 7,449.7	\$ -
<i>2020 First Special Session Federal Funds Swaps</i>	\$ (146.6)		
<i>2022 Recurring Appropriations</i>		\$ 7.6	\$ 8,458.2
<b>Subtotal Recurring Appropriations</b>	<b>\$ 7,072.9</b>	<b>\$ 7,457.3</b>	<b>\$ 8,458.2</b>
<b>Nonrecurring:</b>			
<i>Prior Legislative Sessions</i>			
<i>Audit Adjustments</i>			
<i>2020 Legislative session</i>	\$ 320.0	\$ -	\$ -
<i>2020 First Special Session Solvency Savings</i>	\$ (20.0)		
<i>2020 GAA Undistributed Nonrecurring Appropriations</i>	\$ 259.5		
<i>2020 Second Special Session Appropriations</i>	\$ 329.2		
<i>2021 Legislative Session Nonrecurring Appropriations</i>	\$ 931.0	\$ -	\$ -
<i>Audit Adjustments</i>	\$ 11.5		
		\$ -	
<i>2021 SSS Nonrecurring Appropriations (ARPA Appropriations)</i>		\$ 346.1	
<i>2022 Nonrecurring Appropriations (ARPA Appropriations)</i>		\$ 448.7	\$ 135.0
<i>2022 Nonrecurring (all sections)</i>		\$ 1,011.7	\$ 100.0
<b>Subtotal Nonrecurring Appropriations</b>	<b>\$ 1,831.2</b>	<b>\$ 1,806.6</b>	<b>\$ 235.0</b>
<b>Total Appropriations</b>	<b>\$ 8,904.1</b>	<b>\$ 9,263.9</b>	<b>\$ 8,693.2</b>
Transfers to/(from Operating Reserves)	\$ (103.2)	\$ (314.9)	\$ (40.8)
Transfers to/(from Appropriation Contingency Fund)		\$ 275.0	\$ (135.0)



## GENERAL FUND FINANCIAL SUMMARY

Reserve Detail  
(Dollars in Millions)

	Actuals FY21	Est. FY22	Est. FY23
<b>OPERATING RESERVE</b>			
Beginning Balance	\$ 507.2	\$ 347.5	\$ 92.6
BOF Emergency Appropriations/Reversions	\$ -	\$ (2.5)	\$ (2.5)
Disaster Allotments	\$ (6.7)	\$ -	\$ -
Transfers from/to Appropriation Account	\$ (103.2)	\$ (314.9)	\$ (40.8)
Transfers to Tax Stabilization Reserve	\$ -	\$ -	\$ -
Transfers from (to) ACF/Other Appropriations	\$ (50.0)	\$ -	\$ -
Transfers from Tax Stabilization Reserve (1% transfer from TSR)	\$ -	\$ 62.6	\$ 33.7
Transfers from Tax Stabilization Reserve	\$ 0.1	\$ -	\$ -
<b>Ending Balance</b>	<b>\$ 347.5</b>	<b>\$ 92.6</b>	<b>\$ 83.0</b>
<b>APPROPRIATION CONTINGENCY FUND</b>			
Beginning Balance	\$ 6.7	\$ 55.5	\$ 322.5
Disaster Allotments	\$ (13.0)	\$ (16.0)	\$ (16.0)
Other Appropriations		(794.2)	\$ (135.0)
Transfers In <sup>1</sup>	\$ 50.0	1,069.2	
Revenue and Reversions	\$ 11.7	\$ 8.0	\$ 8.0
<b>Ending Balance</b>	<b>\$ 55.5</b>	<b>\$ 322.5</b>	<b>\$ 179.5</b>
<b>STATE SUPPORT RESERVE</b>			
Beginning Balance	\$ 29.1	\$ 4.0	\$ 10.4
Revenues/Transfers <sup>2</sup>	\$ 30.9	\$ 15.5	\$ -
Appropriations <sup>3</sup>	\$ (20.9)	\$ -	\$ -
Impact Aid Liability	\$ (35.1)	\$ (39.1)	
	\$ -	\$ 30.0	
<b>Ending Balance</b>	<b>\$ 4.0</b>	<b>\$ 10.4</b>	<b>\$ 10.4</b>
<b>TOBACCO SETTLEMENT PERMANENT FUND</b>			
Beginning Balance	\$ 243.2	\$ 285.3	\$ 301.0
Transfers In <sup>6</sup>	\$ 35.3	\$ 12.0	\$ 32.5
Appropriation to Tobacco Settlement Program Fund	\$ (35.5)	\$ (12.0)	\$ (16.3)
Gains/Losses	\$ 42.3	\$ 15.7	\$ 16.6
Additional Transfers from TSPF	\$ -	\$ -	\$ -
Transfer to General Fund Appropriation Account	\$ -	\$ -	\$ -
<b>Ending Balance</b>	<b>\$ 285.3</b>	<b>\$ 301.0</b>	<b>\$ 333.8</b>
<b>TAX STABILIZATION RESERVE</b>			
Beginning Balance	\$ 1,727.3	\$ 1,812.6	\$ 1,830.9
Revenues In <sup>4</sup>	\$ 342.7	\$ 824.1	\$ 448.3
Transfers In (from Operating Reserve)	\$ -	\$ -	\$ -
Transfer Out to Operating Reserve <sup>6</sup>	\$ -	\$ (62.6)	\$ (33.7)
Transfers Out to Early Childhood Trust Fund <sup>5</sup>	\$ (342.7)	\$ (824.1)	\$ (448.3)
Gains/Losses	\$ 87.1	\$ 81.0	\$ 77.8
Other appropriations	\$ -	\$ -	\$ -
Audit Adjustments	\$ (1.9)	\$ -	\$ -
<b>Ending Balance</b>	<b>\$ 1,812.6</b>	<b>\$ 1,830.9</b>	<b>\$ 1,875.1</b>
<b>Total General Fund Ending Balances</b>	<b>\$ 2,504.8</b>	<b>\$ 2,557.5</b>	<b>\$ 2,481.8</b>
<b>Percent of Recurring Appropriations</b>	<b>35.4%</b>	<b>34.3%</b>	<b>29.3%</b>

1. 2021 Second Special session appropriated \$1.069 billion of ARPA funds to appropriation contingency fund

2. Laws 2021, Chapter 137 (HB2) contained a \$15.5 million transfer from the repealed K-3 Plus Program Fund to the state support reserve.

3. Laws 2021, Chapter 137 (HB2, Section 6-16) includes a \$20.9 million appropriation to the state support reserve fund

4. Estimated transfers to TSR from excess oil and gas emergency tax revenues in excess of the rolling five-year average.

5. Laws 2020, Chapter 3 (HB83) established that if reserve balances exceed 25 percent of recurring appropriations the excess oil and gas emergency tax revenue in excess of the rolling five-year average be distributed to the Early Childhood Trust Fund.

6. Laws 2020, HB341 transfers a portion of the balance in the Tax Stabilization Reserve (TSR) if the General Fund Operating Reserve is less than one percent of aggregate appropriations. The amount transferred is equal to the lesser of the one percent of appropriations or the amount necessary so that the balance in the Operating Reserve is one percent of percent aggregate appropriations.

6. DFA and LFC estimate \$12 million in TSPF revenue due to expected arbitration ruling to affect FY22; Laws 2021, Chapter 60(SB187) allows use of 100% of revenue for tobacco program fund.

**Totals may not sum due to rounding**