

STATE OF NEW HAMPSHIRE
INFORMATION STATEMENT SUPPLEMENT

DATED AUGUST 19, 2009

***Information Statement Supplement.** The following information is provided by the State of New Hampshire (the “State”) to supplement the information contained in the State’s most recent Information Statement dated March 11, 2009 (the “Information Statement”). The Information Statement is available on the New Hampshire State Treasury website as Part II of the Official Statement entitled “State of New Hampshire General Obligation Refunding Bonds 2009 Series A” and may be found at the following website address - <http://www.nh.gov/treasury/Divisions/DM/DMdocs.htm>. The headings set forth in this Supplement (the “Supplement”) correspond to the same headings in the Information Statement. This Supplement sets forth additional information concerning the matters described below as of the date of this Supplement and is subject to change without notice. This Supplement and the Information Statement must be read collectively and in their entirety in order to obtain the appropriate fiscal and financial information concerning the State as of August 19, 2009. All capitalized terms not otherwise defined in this Supplement have the meanings given to them in the Information Statement.*

All fiscal year 2009 information presented in this Supplement is preliminary, unaudited and subject to change, whether or not expressly labeled as such.

STATE FINANCES

General

The State’s Attorney General resigned effective July 17, 2009 to seek elected office. The Governor nominated Michael Delaney, the Governor’s legal counsel and former Deputy Attorney General, to the Attorney General post. The Executive Council confirmed the nomination on August 19, 2009.

Financial Controls

The State went live with Phase I of its new enterprise resource planning system on July 6, 2009. This phase supports general ledger and budgetary accounting, accounts payable, accounts receivable, and treasury functions. Chapter 145, Laws of 2009, the capital budget for fiscal years 2010-2011, appropriates \$1.4 million for planning of Phase II of the project which includes human resources and payroll.

Revenue Stabilization Account

Chapter 143, Laws of 2009, the operating budget for fiscal years 2010-2011, assumes \$69 million will be drawn from the Revenue Stabilization Fund at June 30, 2009 leaving a balance of \$20 million at June 30, 2009. The operating budget currently adopted for fiscal years 2010 and 2011 assumes no further draw on the Revenue Stabilization Fund.

State Revenues

Meals and Rooms Tax. Effective July 1, 2009, a tax is imposed equal to 9% of hotel, motel and other public accommodation charges and 9% of charges for meals served in restaurants, cafes and other eating establishments. Prior

to July 1, 2009, the meals and rooms tax rate was at 8%. Effective July 1, 2009, this tax was extended to cover campsites. The increase is expected to generate an additional \$31.2 million in each of the fiscal years 2010 and 2011.

Pursuant to Chapter 144, Laws of 2009, the meals and rooms tax distributions to cities and towns in each of fiscal years 2010 and 2011 are to be no more than the fiscal year 2009 distribution of \$58.8 million.

Tobacco Tax. Effective July 1, 2009, the tax rate increased by 45 cents to \$1.78 per package of 20 cigarettes. The increase is estimated to generate an additional \$35.2 million in fiscal year 2010 and \$24 million in fiscal year 2011.

Interest and Dividends Tax. Chapter 144, Laws of 2009 amends the interest and dividends tax to treat distributions from limited liability companies, partnerships and associations as dividends subject to the tax to the same extent that distributions to corporate shareholders are taxable as dividends. This change is effective for calendar tax years beginning on or after January 1, 2009. A distribution that is a return of capital is not subject to taxation. This change in the tax is estimated to generate an additional \$15 million in each of fiscal years 2010 and 2011.

Tax on Gambling Winnings. Effective July 1, 2009, a tax of 10% is imposed on gambling winnings of New Hampshire residents from anywhere derived and gambling winnings of nonresidents derived from New Hampshire entities. This new tax is estimated to generate \$5.9 million in fiscal year 2010 and \$7.9 million in fiscal year 2011.

Results of Operations

Fiscal Year 2009 (unaudited)

The fiscal year 2009 budget as originally adopted estimated a surplus of \$18.4 million would be available to begin fiscal year 2009. The actual General Fund surplus at June 30, 2008 totaled \$17.2 million.

The unaudited preliminary accrual basis General and Education Trust Funds revenues for fiscal year 2009 were \$2,205.1 million, which were \$312.6 million (12.4%) below plan and \$161.6 million (6.8%) below the prior year audited revenues. As experienced in fiscal year 2008, business taxes and the Real Estate Transfer Tax continued to drive the underperformance in revenues. Business taxes were \$186.1 million (27.6%) below plan for the year and \$130.2 million (21.1%) below the prior year audited figures.

Throughout fiscal year 2009, the State's revenue outlook for the year continued to deteriorate. The State earlier estimated a fiscal year 2009 revenue shortfall for the General and Education Trust Funds of approximately \$306 million. In addition to the revenue shortfall, the estimated General Fund lapse amount was reduced by \$24 million, resulting in a total budget gap of approximately \$330 million that needed to be closed. To close the fiscal year 2009 gap, the following actions were taken:

- 1) Chapter 144, Laws of 2009, directs \$65 million be liquidated from the \$110 million surplus in the medical malpractice insurance fund. This fund was originally established in the 1970s to provide coverage as the insurer of last resort. The fund is administered the Joint Underwriters Association and has accumulated a surplus in excess of required reserves. However, a group of medical providers in the State have challenged the State's right to use this surplus and it is currently uncertain whether these funds will be available. See "Litigation" below.
- 2) An estimated \$69 million of the \$89 million currently in the State's Rainy Day Fund will be applied to the fiscal year 2009 shortfall.
- 3) Bonding of \$40 million in fiscal year 2009 school building aid payments.
- 4) Applying increased federal Medicaid reimbursement rates from the American Recovery and Reinvestment Act (ARRA) of \$32 million to Medicaid costs incurred during fiscal year 2009.
- 5) Applying \$15.7 million in unallocated State Fiscal Stabilization Funds from ARRA monies.

- 6) Executive Order 2008-1, initially issued on February 22, 2008 and expanded with Executive Order 2008-8 to include all of fiscal year 2009 on June 17, 2008, reduced fiscal year 2009 expenditures by \$8 million (unaudited).
- 7) Executive Order 2008-9, issued on June 17, 2008, reduced fiscal year 2009 appropriations and increased miscellaneous revenues across all State agencies. It is expected to reduce the shortfall by \$30 million (unaudited).
- 8) Executive Order 2008-10 issued on November 21, 2008 further reduced fiscal year 2009 appropriations and increased miscellaneous revenues across all State agencies in addition to those in Order 2008-9 and reduced the shortfall by \$53.6 million (unaudited).
- 9) Executive Order 2008-11 significantly restricted, and in some instances eliminated, the use of overtime, consultants, tuition reimbursements, and other categories of spending for fiscal year 2009 savings of \$5 million (unaudited).
- 10) Chapter 1, Laws of 2009 effective February 20, 2009 further reduced the shortfall by \$11.25 million (unaudited) primarily by transferring dedicated funds and reducing the General Fund contribution to the Highway Fund.

It is projected that after these measure are taken there will be \$20 million remaining in the State's Rainy Day Fund and no undesignated, unreserved balances in the State's General and Education Trust Funds.

The following table compares on an accrual basis, for the fiscal year ended June 30, 2009, General Fund and Education Trust Fund unrestricted revenues for the fiscal years 2008 and 2009 and a comparison to the original revenue estimates for fiscal year 2009. The revenue estimates reflected in the table are based on those revenues defined in Chapter 262, Laws of 2007, the State budget law for fiscal year 2009, adjusted upward only for tobacco and liquor revenue based on changes made pursuant to Chapter 296, Laws of 2008. The information in the table under the column heading "FY09 Plan" does not reflect the more recent downward revisions described above in other categories or the most recent revenue estimates provided in the biennial operating budget for fiscal years 2010 and 2011. Due to the combined filing of the business profits tax and business enterprise tax, it is not possible to measure accurately the individual effects of each of these taxes. They should be evaluated in their entirety. All information in this table is preliminary and unaudited and subject to change.

**GENERAL FUND AND EDUCATION TRUST FUND UNRESTRICTED REVENUES
FOR THE FISCAL YEAR ENDED JUNE 30, 2009
(Preliminary Accrual Basis-In Millions – Unaudited)**

Revenue Category	FY08 Actual	FY09 Actual	FY09 Plan	FY09 vs Plan		FY09 vs FY08	
				Variance	%Change	Variance	%Change
Business Profits Tax	\$385.4	\$303.8	\$388.6	\$(84.8)	(21.8)%	\$(81.6)	(21.2)%
Business Enterprise Tax	<u>232.7</u>	<u>184.1</u>	<u>285.4</u>	<u>(101.3)</u>	<u>(35.5)</u>	<u>(48.6)</u>	<u>(20.9)</u>
Subtotal	618.1	487.9	674.0	(186.1)	(27.6)	(130.2)	(21.1)
Meals & Rooms Tax	214.2	209.9	230.0	(20.1)	(8.7)	(4.3)	(2.1)
Tobacco Tax	166.4	193.9	194.9	(1.0)	(0.5)	27.5	16.5
Liquor Sales and Distribution	133.1	146.0	153.6	(7.6)	(4.9)	12.9	9.7
Interest & Dividends Tax	118.8	98.1	126.0	(27.9)	(22.1)	(20.7)	(17.4)
Insurance Tax	95.9	94.2	98.3	(4.1)	(4.2)	(1.7)	(1.8)
Communications Tax	80.9	80.5	82.9	(2.4)	(2.9)	(0.4)	(0.5)
Real Estate Transfer Tax	116.3	80.4	145.6	(65.2)	(44.8)	(35.9)	(30.9)
Transfers from							(9.9)
Lottery/PariMutuel	77.1	69.5	89.3	(19.8)	(22.2)	(7.6)	
Tobacco Settlement	48.4	52.8	49.3	3.5	7.1	4.4	9.1
Securities Revenue	34.7	34.7	34.0	0.7	2.1	-	-
Utility Property Tax	24.2	29.0	23.6	5.4	22.3	4.8	19.8
State Property Tax	363.1	363.7	363.0	0.7	0.2	0.6	0.2
Other	<u>162.3</u>	<u>148.8</u>	<u>146.8</u>	<u>2.0</u>	<u>1.4</u>	<u>(13.5)</u>	<u>(8.3)</u>
Subtotal	2,253.5	2,089.4	2,411.3	(321.9)	(13.3)	(164.1)	(7.3)
Net Medicaid Enhancement Revenues	93.1	99.6	91.8	7.8	8.5	6.5	7.0
Recoveries	<u>20.1</u>	<u>16.1</u>	<u>14.6</u>	<u>1.5</u>	<u>10.3</u>	<u>(4.0)</u>	<u>(19.9)</u>
Total	<u>\$2,366.7</u>	<u>\$2,205.1</u>	<u>\$2,517.7</u>	<u>\$(312.6)</u>	<u>(12.4)%</u>	<u>(161.6)</u>	<u>(6.8)%</u>

Operating Budget Fiscal Years 2010 and 2011

General and Education Trust Funds. The operating budget laws for fiscal years 2010 and 2011, Chapters 143 and 144, Laws of 2009, were signed by the Governor on June 30, 2009. Total net appropriations for the General and Education Trust Funds for fiscal years 2010 and 2011 are \$2,461.8 million and \$2,496.9 million, respectively. Major noteworthy reductions in the 2010-2011 budgeted appropriations when compared with the 2008-2009 biennium include:

1. School building aid totaling \$45 million in each year of the biennium will be bonded and is not budgeted as General Fund appropriations.
2. Revenue sharing to cities and towns of \$25 million in each year of the biennium has been suspended for the biennium. (This suspension of revenue sharing is separate from the limitation imposed on meals and rooms tax distributions to cities and towns described above under "State Revenues.")
3. A reduction of \$12.5 million in each year of the biennium in General Fund personnel and/or personnel related costs.
4. The State share of municipal employer retirement contributions for police, fire and teacher groups is temporarily reduced from 35% to 30% in fiscal year 2010 and to 25% in fiscal year 2011. The General Fund savings from this statutory change approximate \$27.7 million over the biennium.
5. The Liquor Commission is no longer budgeted under the General Fund. It has been established as separate enterprise fund. This reduces General Fund appropriations by approximately \$45 million in each year of the biennium.
6. There are numerous other funding changes in the operating budget including, but not limited to, the closure of the Lakes Region prison, the Tobey School, and three district courts.
7. Department of Safety fee revenue of \$9 million in each year of the biennium previously budgeted as unrestricted General Fund revenue is now budgeted as restricted revenue to fund specific Department of Safety programs previously funded from net General Fund appropriations.

Education Trust Fund appropriations increased from \$897 million in fiscal year 2009 to \$957 million in each year of the 2010-2011 biennium to fully fund the new formula for determining the cost of an adequate education enacted during the 2008 legislative session.

A number of revenue enhancements were enacted pursuant to Chapter 144, Laws of 2009, to fund the biennial operating budget. They include, but are not limited to:

1. The tobacco tax was increased by \$.45 from \$1.33 to \$1.78 per package of 20 cigarettes effective July 1, 2009.
2. The meals and rooms tax was increased from 8% to 9% effective July 1, 2009 and makes campsites subject to the tax.
3. A new 10% tax on gambling winnings was enacted effective July 1, 2009.
4. The interest and dividends tax will now be imposed on distributions from limited liability companies, partnerships and associations to the same extent that distributions to corporate shareholders are taxed as dividends.

One-time General Fund and Education Trust Fund revenues in the 2010-2011 biennial operating budget include:

1. \$22.5 million in each year of the biennium remaining from the surplus in the medical malpractice fund. The fund is administered the Joint Underwriters Association and has accumulated a surplus in excess of required reserves. However, see "Litigation" below.
2. \$30 million in fiscal year 2011 from the sale of the Liquor Commission warehouse and leasing of service areas on highways around liquor stores.

3. Federal dollars from the American Recovery and Reinvestment Act:
 - a. Education Trust Fund will receive \$80 million in each year of the biennium to fund educational adequacy payments.
 - b. Enhanced Federal Medical Assistance Payments to offset Medicaid costs will total \$145.2 million over the biennium with \$91.2 million being credited to fiscal year 2010 and \$54 million credited to fiscal year 2011.
 - c. State Fiscal Stabilization Fund moneys totaling \$10.4 million in each fiscal year of the biennium.

Highway and Turnpike Funds. A deficit of \$8.7 million is expected in the Highway Fund at June 30, 2009. To address this deficit and ensure adequate funding for the 2010/2011 biennium, motor vehicle surcharges were added and a section of Interstate 95 will be sold to the Turnpike System. Chapter 144, Laws of 2009, authorizes the sale of a portion of Interstate 95 in Portsmouth to the Turnpike System for \$120 million. The law also specifies that the Turnpike System will pay for the purchase from its general reserve account over a period not to exceed twenty years with \$30 million being paid in fiscal year 2010 and \$20 million being paid in fiscal year 2011. The Governor and Council approved a \$.50 toll increase on the Hampton mainline interchange effective July 1, 2009 that will fund open road tolling in Hampton and will provide the Turnpike System with adequate revenues to meet its obligations and to make the required payments to the Highway Fund.

Surcharges on motor vehicle registration fees were enacted effective July 1, 2009 pursuant to Chapter 144, Laws of 2009. The law repeals these surcharges effective July 1, 2011. The surcharges are estimated to generate an additional \$38.9 million and \$29.7 million in Highway Fund revenue in fiscal year 2010 and 2011, respectively. The reduction of the estimated revenue in 2011 is attributable to the dedication of this revenue in the amount of \$2 million and \$15 million in fiscal years 2010 and 2011, respectively, to the highway and bridge betterment account established in RSA 235:23-a.

American Recovery and Reinvestment Act of 2009 (ARRA)

On January 27, 2009, the Governor issued Executive Order 2009-1 creating the Office of Economic Stimulus ("OES"). The OES is responsible for coordinating with State agencies to ensure all conditions of the American Recovery and Reinvestment Act of 2009 ("ARRA") are met.

In fiscal year 2009, the State received \$32.2 million in ARRA funding related to an increased federal Medicaid reimbursement rate of 6.25% on Medicaid claims paid from October 1, 2008 through June 30, 2009. It is estimated that the State will receive \$91.2 million and \$54 million from this ARRA funding in fiscal year 2010 and 2011, respectively.

The ARRA provides significant State funding through a provision known as the State Fiscal Stabilization Fund. The State's allocation totals \$200.8 million. As required by federal law, the State budgeted 81.8 percent (\$164 million) of its allocation for education. In each of fiscal years 2010 and 2011, \$80 million is budgeted in the Education Trust Fund for educational adequacy payments to local school districts. Additionally, the Community College System and the University System will receive \$1.1 million and \$3 million, respectively, in fiscal year 2010. The State will request reimbursement from the federal government for all amounts based on the timing of expenditures made at the local school district, college, and university system levels. The ARRA provides that a portion of the State Fiscal Stabilization Fund can be used by states for public safety and other government services. The State has allocated this flexible portion to fund other State government services of \$15.7 million in fiscal year 2009 and \$10.4 million in each of fiscal years 2010 and 2011. The State will request reimbursement from the federal government as expenditures are incurred. The \$15.7 million related to fiscal year 2009 is expected to be received before September 1.

The State has received additional direct program allocations through ARRA for specific program purposes that are being administered through various State agencies. These amounts cannot be used to offset amounts previously funded with State dollars. These amounts include:

Department of Education	\$97.2 million
Department of Transportation	\$235.8 million
Department of Environmental Services	\$73.3 million
Department of Health and Human Services	\$56.5 million
Office of Energy and Planning	\$58.6 million
Department of Labor	\$39.5 million
Department of Justice	\$11.9 million
Department of Employment Security	\$11.1 million

The following table compares General Fund and Education Trust Fund unrestricted revenues for fiscal years 2010 and 2011. The information is based on the projections included in Chapters 143 and 144 of the Laws of 2009, the State's operating budget for fiscal years 2010 and 2011.

**GENERAL FUND AND EDUCATION TRUST FUND UNRESTRICTED REVENUES
BUDGET
FISCAL YEARS 2010-2011
(GAAP Basis-In Millions)**

<u>Revenue Category</u>	<u>Budget Fiscal Year 2010</u>			<u>Budget Fiscal Year 2011</u>		
	<u>General</u>	<u>Education</u>	<u>Total</u>	<u>General</u>	<u>Education</u>	<u>Total</u>
Business Profits Tax	\$257.8	\$55.3	\$313.1	\$261.0	\$ 56.0	\$317.0
Business Enterprise Tax	<u>63.2</u>	<u>126.5</u>	<u>189.7</u>	<u>64.0</u>	<u>128.0</u>	<u>192.0</u>
Subtotal	321.0	181.8	502.8	325.0	184.0	509.0
Meals & Rooms Tax	243.3	7.8	251.1	245.1	8.1	253.2
Tobacco Tax	121.6	95.6	217.2	115.4	90.6	206.0
Liquor Sales and Distribution ¹	-	-	-	-	-	-
Interest & Dividends Tax	117.0	-	117.0	125.0	-	125.0
Insurance Tax	85.8	-	85.8	86.3	-	86.3
Communications Tax	82.0	-	82.0	85.0	-	85.0
Real Estate Transfer Tax	56.5	28.2	84.7	60.5	30.2	90.7
Transfers from Liquor	117.3	-	117.3	127.9	-	127.9
Transfers from Lottery	-	74.7	74.7	-	77.7	77.7
Tobacco Settlement	9.4	40.0	49.4	10.0	40.0	50.0
Utility Property Tax	-	28.0	28.0	-	28.0	28.0
Securities Revenue	34.0	-	34.0	34.0	-	34.0
State Property Tax	-	363.0	363.0	-	363.0	363.0
Other	<u>129.2</u>	<u>1.3</u>	<u>130.5</u>	<u>134.0</u>	<u>1.3</u>	<u>135.3</u>
Subtotal	1,317.1	820.4	2,137.5	1,348.2	822.9	2,171.1
Net Medicaid Enhancement Revenues	99.3	-	99.3	114.6	-	114.6
Recoveries	<u>22.3</u>	<u>-</u>	<u>22.3</u>	<u>23.1</u>	<u>-</u>	<u>23.1</u>
Total	<u>\$1,438.7</u>	<u>\$820.4</u>	<u>\$2,259.1</u>	<u>\$1,485.9</u>	<u>\$822.9</u>	<u>\$2,308.8</u>

¹ Effective as of the beginning of fiscal year 2010, Liquor Sales and Distribution revenue is no longer budgeted and accounted for in the General Fund. Liquor Sales and Distribution revenues are now accounted for in a separate enterprise fund.

The following table sets out the General Fund and Education Trust Fund undesignated fund balances and the amounts designated for the Revenue Stabilization Account for fiscal years 2007, 2008 and 2009. The fiscal years 2007 and 2008 information is derived from the State's audited financial statements. The fiscal year 2009 information is based on the estimate included in the operating budget for fiscal years 2010 and 2011. The fiscal year 2009 information is also unaudited and subject to change.

**GENERAL FUND AND EDUCATION TRUST FUND BALANCES
FISCAL YEARS 2007 – 2009
(GAAP Basis - In Millions)**

	FY 2007			FY 2008			FY 2009		
	Actual			Actual			Budgeted Estimate		
	General	Education	Total	General	Education	Total	General	Education	Total
Undesignated Fund Balance, July 1	\$26.0	\$8.4	\$34.4	\$61.7	\$0.0	\$61.7	\$17.2	\$0.0	\$17.2
Additions:									
Unrestricted Revenue	1,421.6	869.6	2,291.2	1,483.9	882.8	2,366.7	1,473.7	842.8	2,316.5
Total Additions	<u>1,421.6</u>	<u>869.6</u>	<u>2,291.2</u>	<u>1,483.9</u>	<u>882.8</u>	<u>2,366.7</u>	<u>1,473.7</u>	<u>842.8</u>	<u>2,316.5</u>
Deductions:									
Appropriations Net of									
Estimated Revenues	(1,432.6)	(843.1)	(2,275.7)	(1,575.8)	(897.1)	(2,472.9)	(1,520.0)	(897.7)	(2,417.7)
Less: Lapses	41.6	4.5	46.1	61.6	(0.3)	61.3	15.0	-	15.0
Total Net Appropriations	<u>(1,391.0)</u>	<u>(838.6)</u>	<u>(2,229.6)</u>	<u>(1,514.2)</u>	<u>(897.4)</u>	<u>(2,411.6)</u>	<u>(1,505.0)</u>	<u>(897.7)</u>	<u>(2,402.7)</u>
GAAP and Other Adjustments	<u>(15.5)</u>	<u>1.2</u>	<u>(14.3)</u>	<u>7.9</u>	<u>(0.7)</u>	<u>7.2</u>	<u>-</u>	<u>-</u>	<u>-</u>
Current Year Balance	<u>\$15.1</u>	<u>\$32.2</u>	<u>\$47.3</u>	<u>\$(22.4)</u>	<u>\$(15.3)</u>	<u>\$(37.7)</u>	<u>\$(31.3)</u>	<u>\$(54.9)</u>	<u>\$(86.2)</u>
Transfers (to)/from:									
Revenue Stabilization Account	(20.0)	-	(20.0)	-	-	-	69.0	-	69.0
Highway Fund	-	-	-	(6.8)	-	(6.8)	-	-	-
Education Trust Fund	40.6	(40.6)	-	(15.3)	15.3	-	(54.9)	54.9	-
Undesignated Fund Balance, June 30	<u>\$61.7</u>	<u>\$0.0</u>	<u>\$61.7</u>	<u>\$17.2</u>	<u>\$0.0</u>	<u>\$17.2</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.0</u>
Reserved for Revenue Stabilization Account	<u>\$89.0</u>	<u>-</u>	<u>\$89.0</u>	<u>\$89.0</u>	<u>-</u>	<u>\$89.0</u>	<u>\$20.0</u>	<u>-</u>	<u>\$20.0</u>
Total Equity	<u>\$150.7</u>	<u>\$0.0</u>	<u>\$150.7</u>	<u>\$106.2</u>	<u>\$0.0</u>	<u>\$106.2</u>	<u>\$20.0</u>	<u>\$0.0</u>	<u>\$20.0</u>

The following table sets forth the projected General Fund and Education Trust Fund undesignated fund balances and the amounts designated for the Revenue Stabilization Account for fiscal years 2010 and 2011 based upon the adopted operating budget for fiscal years 2010 and 2011.

**PROJECTED
GENERAL FUND AND EDUCATION TRUST FUND BALANCES
FISCAL YEARS 2010 – 2011
(GAAP Basis - In Millions)**

	<u>FY 2010</u>			<u>FY 2011</u>		
	<u>General</u>	<u>Education</u>	<u>Total</u>	<u>General</u>	<u>Education</u>	<u>Total</u>
Balance, July 1 (Budgetary)	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$1.5</u>	<u>\$0.0</u>	<u>\$1.5</u>
Additions:						
Unrestricted Revenue	1,438.7	820.4	2,259.1	1,485.9	822.9	2,308.8
Executive Orders	-	-	-	-	-	-
Other Revenue Initiatives	<u>124.1</u>	<u>80.1</u>	<u>204.2</u>	<u>116.9</u>	<u>80.0</u>	<u>196.9</u>
Total Additions	<u>1,562.8</u>	<u>900.5</u>	<u>2,463.6</u>	<u>1,602.8</u>	<u>902.9</u>	<u>2,505.7</u>
Deductions:						
Appropriations Net of Estimated Revenues	(1,527.8)	(957.0)	(2,484.8)	(1,563.1)	(957.3)	(2,520.4)
Less Lapses	<u>23.0</u>	<u>-</u>	<u>23.0</u>	<u>23.5</u>	<u>-</u>	<u>23.5</u>
Total Net Appropriations	<u>(1,504.8)</u>	<u>(957.0)</u>	<u>(2,461.8)</u>	<u>(1,539.6)</u>	<u>(957.3)</u>	<u>(2,496.9)</u>
GAAP and Other Adjustments	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Current Year Balance	<u>\$58.0</u>	<u>\$(56.5)</u>	<u>\$1.5</u>	<u>\$63.2</u>	<u>\$(54.4)</u>	<u>\$8.8</u>
Transfers (to)/from:						
Revenue Stabilization Account	-	-	-	-	-	-
Highway Fund	-	-	-	-	-	-
Education Trust Fund	<u>(56.5)</u>	<u>56.5</u>	<u>-</u>	<u>(54.4)</u>	<u>54.4</u>	<u>-</u>
Balance, June 30 (Budgetary)	<u>\$1.5</u>	<u>\$0.0</u>	<u>\$1.5</u>	<u>\$10.3</u>	<u>\$0.0</u>	<u>\$10.3</u>
Reserved for Revenue						
Stabilization Account	<u>\$20.0</u>	<u>-</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>-</u>	<u>\$20.0</u>
Balance, June 30 (GAAP)	<u>\$20.0</u>	<u>\$0.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$0.0</u>	<u>\$20.0</u>

SCHOOL FUNDING

The legislative costing committee, established under HB 927, held regular meetings and took public and expert testimony on a funding formula for an adequate education. The committee issued its report on February 1, 2008. It can be viewed in its entirety at <http://www.gencourt.state.nh.us/statstudcomm/reports/1900.pdf>. Senate Bill 539 was introduced on February 21, 2008, to implement recommendations contained in the report for the fiscal year beginning July 1, 2009. The plan is expected to cost \$940 million, approximately \$44 million more than the State now spends. Senate Bill 539 was passed by the Legislature and enacted in accordance with Article 44, Part II of the New Hampshire Constitution without the signature of the Governor on June 10, 2008.

The legislative committee reviewing the education accountability system, established under Senate Bill 539, met on a weekly basis to perform its charge of reviewing all of the State's statutes and regulations relating to accountability. The committee issued a report on November 17, 2008. The committee recommended an accountability system that demonstrates the availability of the opportunity for an adequate education through either compliance with the relevant school approval standards or a demonstration of school success on student performance measures. Generally the recommendations of the legislative committee were submitted to the Legislature for consideration during the 2009 Session in SB 180. SB 180, enacted into law as 2009 New Hampshire Laws Chapter 198, provides for an input-based school accountability system, beginning in the 2009-2010 school year, that ensures that the State's schools are providing a constitutionally adequate education. SB 180 establishes a task group to work on developing a performance-based school accountability system that will begin in the 2011-2012 school year as an alternative to the input-based accountability system. Schools will be allowed to choose which accountability system they use. The Legislature also enacted additional responsibilities for the legislative oversight committee established under RSA 198:3 to evaluate the progress and results from the two accountability systems. A constitutionally sound accountability process is the fourth mandate of the *Claremont II* decision for an adequate education system.

In February, 2008, the companion cases of *Worth Development Corp. v. Department of Revenue Administration* ("DRA"), *100 Market St. v. DRA*, *Lawrence P. McManus and Mary Elizabeth Herbert v. DRA*, *Dale W. Smith and Sharyn Smith v. DRA*, *Split Rock Cove Limited Partnership v. DRA*, *J.P. Nadeau v. DRA*, *Mirona Realty, Inc. v. DRA*, and *St. John's Masonic Assoc. v. DRA*, were filed. Petitioners appeal DRA's denial of their request for refund of all State Education Tax paid pursuant to RSA 76:3. Petitioners allege that the DRA's equalization process and the Tax and the system of assessment to determine the amount of Tax lack substantial uniformity and amount to intentional discrimination which results in the Petitioners being forced to pay an unjust, disproportionate, unconstitutional, and illegal tax. In June, 2008, the State filed a Motion to Dismiss the case alleging that Petitioners had failed to correctly appeal the denial of their requests for refund. The matter was heard in July, 2008, at which time, Petitioners filed a Motion to Amend their petition and added a declaratory judgment action challenging the constitutionality of the statewide education property tax. The court dismissed the RSA 21-J:28-a appeals, but allowed the declaratory judgment claim to proceed. The State filed a motion to dismiss in July, 2009, arguing that Petitioners have failed to disclose or produce any experts or expert reports supporting their claim. The State requested an expedited hearing on its motion to dismiss. A trial is scheduled for September, 2009, on the declaratory judgment claim. The State is unable to predict the outcome of this matter at this time.

Hudson School District v. State of New Hampshire and Department of Education is a constitutional challenge to Chapter 384:3 of the Laws of 2008 requiring that all school districts institute public kindergarten by the 2009-2010 school year. The Hudson School District is arguing that requiring public kindergarten is an unfunded mandate under the New Hampshire Constitution, Part 1, Article 28-A. The Hudson School District commenced this action by filing a petition for original jurisdiction in the New Hampshire Supreme Court. The Supreme Court dismissed the petition, and the Hudson School District refiled in the Superior Court. The State filed a motion to dismiss the petition which was granted in April, 2009. Petitioner and the State entered into a Stipulation requiring the Town of Hudson to institute public kindergarten beginning in the 2009-2010 school year. This matter is now closed.

STATE INDEBTEDNESS

Temporary Loans

The \$75 million general fund interfund note to the Clean and Drinking Water State Revolving Fund was paid from the General Fund to the State Revolving Fund on June 19, 2009.

Capital Budget

The following table sets out the State’s capital appropriations for the 2010-2011 biennium.

	Biennium Capital Budget	Biennium Ending <u>June 30, 2011</u>
Adjutant General.....		\$2,357,000
Administrative Services.....		31,185,202
Community-Technical College System.....		19,250,000
Corrections.....		7,469,000
Education.....		16,186,552
Environmental Services.....		11,074,720
Fish & Game.....		705,000
Health & Human Services.....		4,175,000
Liquor Commission.....		5,020,000
Police Standards & Training.....		1,440,000
Resources & Economic Development.....		19,832,000
Revenue Administration.....		7,000,000
Safety.....		8,770,000
Transportation.....		61,258,000
Veteran’s Home.....		8,300,000
University System of New Hampshire ⁽¹⁾		<u>35,000,000</u>
Gross Appropriations.....		239,022,474
Less-Federal, Local & Other Funds.....		<u>59,395,600</u>
Net Bonds Authorized.....		<u>\$179,626,874</u>
Funding of Bonds		
Highway Funded.....		14,105,000
Other Funded.....		17,447,500
General Funded.....		<u>148,074,374</u>
Net Bonds Authorized.....		<u>\$179,626,874</u>

⁽¹⁾ This appropriation was made in the capital budget adopted in 2005 for the 2010-2011 biennium.

In addition to the capital budget for fiscal years 2010 and 2100 (Chapter 145, Laws of 2009), legal authority to bond for the school building aid program is set forth in Chapter 144, Laws of 2009. School building aid for fiscal years 2009, 2010, 2011 will be bonded in the amounts of \$40 million, \$44.9 million, and \$46.3 million, respectively. This authority is not included in the capital budget schedule above. The law specifies that the debt service payments for school building aid bonding will be paid from meals and rooms tax revenues. The General Fund unrestricted revenue estimate for meals and rooms tax is net of the amounts required for school building aid debt service payments in fiscal year 2010 and 2011. The Treasury operating budget includes a designation of a portion of meals and rooms tax revenues as restricted revenues sufficient to cover school building aid debt service for fiscal years 2010 and 2011.

In addition to the 2010-2011 capital budget, Section 2 of Chapter 259 of the Laws of 2005 appropriates a total of \$109.5 million to the University System of New Hampshire over an eight-year period. This appropriation is non-lapsing and shall not exceed \$35 million for the biennium ending June 30, 2011 (which is included in the table above), and \$35 million for the biennium ending June 30, 2013.

Chapter 1 of the Laws of 2008 Special Legislative Session appropriated \$10.0 million for the renovation of the new Pease Community College System campus location which will be funded through bond proceeds, if necessary. The first \$3.0 million appropriated is to be funded from the sale of the former community college campus location in Stratham. The next \$5.0 million is to be funded \$2.5 million from the sale of the Stratham campus and \$2.5 million from college tuition and fees. The last \$2.0 million is to be funded by the General Fund. The Community College System has signed a purchase and sale agreement to sell the Statham campus for \$5.5 million by June 30, 2010. It is anticipated that the State will use the proceeds from the sale to fund construction renovation at the Pease Campus and issue bonds for the remaining \$4.5 million. Through June 30, 2009, there has been \$8.7 million expended toward this renovation project.

STATE RETIREMENT SYSTEM

Financing

The financing of the New Hampshire Retirement System (the “System” or “NHRS”) is provided through both member and employer contributions from the State and political subdivisions. The member contribution is set by State statute. Chapter 144, Laws of 2009, amends RSA 100-A:16, I(a) increasing the member contribution from State employees hired after June 30, 2009 from 5% to 7% of earnable compensation. The employer contribution rate is based on a biennial actuarial valuation performed by an independent actuary and then certified by the NHRS Board of Trustees. The State Constitution provides that the employer contribution certified as payable to the System to fund the System’s liabilities, as determined by “sound actuarial valuation and practice,” shall be appropriated each fiscal year in the amount so certified.

The pension plan is divided into two membership groups. Group I consists of State and local employees and teachers. Group II consists of firefighters and police officers. The postemployment health plan is divided into four groups: 1) State employees, 2) political subdivision employees, 3) teachers, and 4) police and fire. The State funds 100% of the employer cost for both plans for all State employees, and through June 30, 2009, funded 35% of the employer cost for teachers, firefighters and police officers employed by political subdivisions. Chapter 144, Laws of 2009, amends RSA 100-A:16, II and reduces the State’s share of employer contributions for teachers, firefighters and police officers employed by political subdivisions to 30% in fiscal year 2010 and 25% in fiscal year 2011. The law restores the State’s share to 35% in fiscal year 2012. It is estimated that employer contributions made by the State on behalf of the political subdivisions will be reduced by \$27.7 million over the biennium as a result of this change in law.

The State’s annual required contribution (“ARC”) shown below represents both pension and postemployment health plans at rates required by statutes.

<u>Fiscal Year</u>	<u>Total State Contribution</u>	<u>Percent of ARC</u>
2007	\$78.1 million	100%
2008	\$106.8 million	75%
2009	\$111.6 million (estimated)	75%
2010	\$128.2 million (estimated)	100%
2011	\$134.0 million (estimated)	100%

As discussed below under “Implementation of GASB 43 – Changes to Postemployment Health Benefit Plan,” starting in fiscal year 2007, changes were made to the way the Postemployment Health Benefit Plan was accounted for and funded. For years prior to fiscal year 2008, and in accordance with State statute, 25% of employer contributions were credited to the 401(h) Postemployment Health Benefit Plan when received; the pension plan was then made whole by transferring assets from a Medical Special Account to the pension plan. On the advice of NHRS counsel, the NHRS stopped this practice effective for fiscal year 2008.

As a result of this changed practice, as reported in the June 30, 2008 actuarial valuation discussed below, only 75% of the ARC was contributed in fiscal year 2008. While the State and all other employers had consistently paid 100% of the rates certified by the NHRS Board of Trustees, the rates certified by the NHRS Board of Trustees in 2005 with respect to fiscal years 2008 and 2009 did not include a separate component for the funding of the postemployment health benefit plan. At the time such rates were certified in 2005, the NHRS Board of Trustees was not aware that the pension plan would only be credited with 75% of the ARC for fiscal years 2008 and 2009, as a result of the change in practice with respect to the postemployment health plan described above, which first took effect in fiscal year 2008. The fiscal year 2009 contribution by the State will also be approximately 75% of the ARC.

The difference between the State's ARC and the actual State contributions for fiscal years 2008 and 2009, approximately \$27 million and \$28 million, respectively, will be accrued as a liability in the State's government-wide financial statements as a net pension obligation and will be funded through future employer contributions.

Results of Actuarial Valuations

The NHRS has actuarial valuations performed biennially in each odd-numbered year. In light of the many legislative changes to the System (see "Legislative Activity" below) and volatile investment market activity, the Board of Trustees voted to have an interim valuation performed as of June 30, 2008. It is not anticipated that the results of the June 30, 2009 actuarial valuation will be available until the fall of 2009. As such, the actuarial value of net assets, the actuarial value of accrued liabilities and the funding ratios presented here for the period ended June 30, 2009 are estimated and subject to change. Amounts set forth herein from the June 30, 2008 actuarial valuation were approved by the Board in November 2008.

As of June 30, 2009, the net assets available to pay pension benefits, at actuarial value, are estimated to be \$4,939 million. The total pension liability at June 30, 2009 is estimated to be \$8,425 million, resulting in an estimated unfunded pension liability of \$3,486 million and a estimated funding ratio of 58.6% as of June 30, 2009. As of June 30, 2008, the net assets available to pay pension benefits, at actuarial value, were \$5,302.0 million. The total pension liability at June 30, 2008 was \$7,821.3 million, resulting in an unfunded pension liability at June 30, 2008 of \$2,519.3 million and a funding ratio of 67.8%.

The results of the biennial actuarial valuations performed in each odd-numbered year are used to determine the employer contribution rate for the next succeeding biennium. The June 30, 2007 valuation was used to determine the required contributions for fiscal years 2010 and 2011. Neither the June 30, 2008 valuation nor the June 30, 2009 valuation will be used to change the fiscal years 2010 and 2011 employer contribution rates certified by the Board of Trustees in September 2008. The June 30, 2007 and June 30, 2008 System actuarial valuations can be viewed in their entirety at www.nhrs.org.

Chapter 144, Laws of 2009, requires that employer contribution rates for fiscal years 2010 and 2011 be recalculated to reflect the change in the percentage the State will share in local employer contributions. The rates have been recalculated and employers have been notified.

The actuarial valuation dated June 30, 2009 to be performed during the first half of fiscal 2010 will be used to determine rates for the fiscal years 2012 and 2013. The actual employer contribution rates will depend on many factors, including the market value of assets, the resulting actuarial asset values, experience of the members and beneficiaries and the actual employer contributions made by the State.

Implementation of GASB 43 – Changes to Postemployment Health Benefit Plan

To comply with GASB 43, the System received opinions from its legal counsel about the statutory construction of the postemployment health medical subsidy plans. Counsel concluded the System administers four medical subsidy plans: (1) Group II covering law enforcement and fire safety employees, (2) Teachers, (3) Employees of Political Subdivisions and (4) Employees of the State. These opinions resulted in a shift in the way the medical plans have been defined, accounted for and valued since inception. In the course of restructuring the accounting in accordance with GASB 43, it became apparent that contributions to the Political Subdivision Employee Group

medical plan have subsidized medical benefits paid for the State Employee Group by approximately \$17 million since inception. Chapter 144, Laws of 2009 requires the NHRS to recalculate its employer OPEB contribution rates assuming a State OPEB balance of \$0.0. NHRS is working with the State and legal counsel to implement this provision.

Legislative Activity

The 2009 Legislature made several changes to plan provisions which are summarized below.

- Chapter 144 – Increases member contribution rates for state employees hired after June 30, 2009 from 5% to 7%.
- Chapter 158 – exempts any Group II Accidental Disability retiree from limits of gainful occupation income once reaching age 45 with 20 years total pre and post retirement. Actuaries project slight rate increase in employer contribution rates.
- Chapter 12 – provided new language to include small number of members who were inadvertently omitted in 2008 legislation to receive medical subsidy benefits contingent on July 1, 2009 or earlier retirement. Costs were accounted for in fiscal 2010 and 2011 rate setting.
- Chapter 164 – extended for one year the opportunity for “vested deferred” members to retire and receive the medical subsidy benefit if otherwise eligible.
- Chapter 289 – NHRS must determine the method to assess employers for excess benefits charged pursuant to last year’s “anti-spiking” legislation, but which accounts for the portion of the present value of the member’s retirement benefit attributable to the compensation above base pay, as determined by the retirement system, that has been funded through the normal employer contributions, including the state share of such contributions, and the employee contributions. The retirement system shall submit a report regarding this methodology to the speaker of the house of representatives, the president of the senate, and the chairpersons of the house and senate executive departments and administration committees no later than December 1, 2009.
- Chapter 234 – To comply with federal HEART ACT, the legislation provides for an ordinary death benefit to survivors of members who die while performing qualified military service. Actuaries project slight rate increase in employer contribution rates.
- Senate Bill 160 – In the case of accidental death of either a Group I member or a Group II member, any surviving spouse is entitled to continue to receive benefits, even in the case of a remarriage. Costs are accounted for in current employer contribution rates. This bill has passed both houses of the Legislature and is awaiting signatures by the Senate President and Governor.
- As of July 1, 2009, retirees or beneficiaries will receive a 1.5% increase added to their base pension for the first \$30,000 of their pension amount. In addition, 3 additional lump sum allowances were provided:
 1. Only for the fiscal year beginning July 1, 2009 - a supplemental allowance of \$1,000 for any retired member who has been retired at least 12 months whose annual retirement is based on at least 15 years of service and is \$20,000 or less;
 2. Only for the fiscal year beginning July 1, 2009 - a supplemental allowance of \$500 for any retired member who retired prior to January 1, 1993 or any beneficiary of such member;
 3. For the fiscal years beginning July 1, 2009 up to and including the fiscal year beginning July 1, 2011 – a temporary supplemental allowance of \$500 for retirees taking a one-person medical benefit and \$1,000 for retirees taking a 2-person medical benefit; provided, however, that once a

recipient is entitled to Medicare, the additional allowance shall be reduced to 60 percent of the non-Medicare eligible retiree amounts.

The effects of fiscal year 2009 legislation will be reflected in the June 30, 2009 actuarial valuation of the System.

Current Market Conditions

The System's investment program is diversified across many asset classes, including domestic and international equities and fixed income; real estate; and alternative investments. During the fiscal year ended June 30, 2008, the investment markets declined driven by a depressed housing market, a liquidity crisis in the mortgage and credit markets and rising energy costs. For the fiscal year ended June 30, 2008, the System's total fund investment return declined 4.6% and net assets available for benefits declined \$370 million or 6.2%.

The period since June 30, 2008 was marked by severe turmoil in the global financial markets. Broad diversification offered little protection in light of diminished or negative investment performance. Both U.S. and global investment markets have experienced significant declines since June 30, 2008. Based on unaudited and preliminary results through the close of business on June 30, 2009, the System's net assets available for benefits had declined by \$1.2 billion or 20.8%, as compared to the June 30, 2008 value. Based on the System's current asset allocations and market index returns over the same period, the System's investment returns are consistent with investment market returns. The System is a long-term investor. No prediction can be made of the short-term or long-term investment prospects for the System's investment portfolio.

NEW HAMPSHIRE RETIREMENT SYSTEM
TEN YEAR HISTORY OF PLAN FUNDING STATUS
FISCAL YEARS 2000-2009

(All Dollar Amounts in Thousands, FY 2009 Data is estimated and subject to change)

	Estimated Fiscal Year Ended 6/30/09	Fiscal Year Ended 6/30/08	Fiscal Year Ended 6/30/2007	Fiscal Year Ended 6/30/2006	Fiscal Year Ended 6/30/2005	Fiscal Year Ended 6/30/2004	Fiscal Year Ended 6/30/2003	Fiscal Year Ended 6/30/2002	Fiscal Year Ended 6/30/2001	Fiscal Year Ended 6/30/2000
Long Range Pension Cost:										
Actuarial Accrued Liability	\$8,425,000	\$7,821,316	\$7,259,715	\$6,402,875	\$5,991,026	\$5,029,877	\$4,669,192	\$4,196,314	\$3,842,602	\$3,460,259
Actuarial Valuation Assets	\$4,939,000	5,302,034	4,862,256	3,928,270	3,610,800	3,575,641	3,500,037	3,443,395	3,264,901	3,109,734
Unfunded (Excess) Actuarial Accrued Liability	\$3,486,000	2,519,282	2,397,459	2,474,605	2,380,226	1,454,236	1,169,155	752,919	577,701	350,525
Pension Plan Funded Status	58.6%	67.8%	67.0%	61.4%	60.3%	71.1%	75.0%	82.1%	85.0%	89.9%
Long Range Post Employment Health Cost:										
Actuarial Accrued Liability	\$737,000	669,874	\$638,410	\$986,502	\$930,675	\$731,021	\$701,408	\$576,770	\$429,773	\$273,087
Actuarial Valuation Assets	\$135,000	175,187	156,976	445,860	445,918	441,936	415,046	437,478	336,078	311,538
Unfunded (Excess) Actuarial Accrued Liability	\$602,000	494,687	481,434	540,642	484,757	289,085	286,362	139,292	93,695	(38,451)
Post Employment Health Plan Funded Status	18.3%	26.2%	24.6%	45.2%	47.9%	60.5%	59.2%	75.8%	78.2%	114.1%

NOTE: Liabilities for fiscal years 2009, 2008 and 2007 will be or were determined under the entry age normal actuarial cost method. Liabilities for fiscal year 2006 and prior were determined under the projected unit credit actuarial cost method. Comparisons between 2006 and prior and years since 2006 may not be meaningful.

HEALTH CARE COVERAGE FOR RETIRED EMPLOYEES

Chapter 144, Laws of 2009, amends RSA 100-A:54 and requires State retirees under the age of 65 years to contribute \$65 per month for each retiree and \$65 per month for the spouse effective July 1, 2009. This change has been challenged in court. See "Litigation."

House Bill 514 providing for the establishment of an irrevocable trust fund which the State and other political subdivisions could use to pay OPEB benefits did not pass during the 2009 legislative session; it was re-referred to the appropriate policy committee for additional work.

EMPLOYEE RELATIONS

In January 2009, the New Hampshire Supreme Court overruled the decision of the Public Employee Labor Relations Board ("PELRB") to grant the petitions of approximately 600 employees of the Department of Corrections to be allowed to vote to determine whether they should be represented by a new union, the New England Police Benevolent Association (the "NEPBA") or whether they would continue to be represented by their current union, the State Employees' Association of New Hampshire Inc.-SEIU Local 1984 (the "SEA"). The Supreme Court based the decision upon the "contract bar" rule and remanded the case to the PELRB. The PELRB vacated the certifications of the Corrections units and both units are again represented by the SEA. The employees of the University System, the Community College System of New Hampshire and the NH Retirement System are not included in any of these bargaining units. The next round of negotiations with the State's three unions for the 2009 – 2011 collective bargaining agreements began in December 2008. The State has collective bargaining agreements with the SEA, the New Hampshire Troopers Association (the "NHTA"), and the NEPBA that were effective July 1, 2007 and expired on June 30, 2009. The State has reached a Tentative Agreement with the SEA which if ratified by the union, will be implemented for the period of July 1, 2009 to June 30, 2011. This Agreement maintains employee health benefits but does not contain a wage increase. The Agreement also freezes step increments in the second year and requires employees to take 18 unpaid furlough days during the two years of the contract. The State continues to negotiate with the remaining two unions, the NHTA and the NEPBA, and their expired contracts will continue in effect until new contracts are finalized. At this time, it is not possible to estimate what the provisions of their new contracts would include.

LITIGATION

In *New Hampshire Association of Counties, et al. v. Commissioner of Department of Health and Human Services*, some of the State's ten Counties (the "Plaintiff Counties") challenged the Department of Health and Human Services' ("DHHS") decision holding them responsible for paying a share of the cost of Medicaid payments for clients receiving Old Age Assistance ("OAA") or Aid to the Permanently and Totally Disabled ("APTD"). Under RSA 167:18-b, the counties are liable for one-half of the State's expenditures for OAA and APTD recipients who are "in nursing homes." DHHS believed that RSA 167:18-b also allowed it to bill the Plaintiff Counties for nursing services that are provided to recipients who are in institutions, such as rehabilitation hospitals, that are not licensed as "nursing homes" but are certified under Medicaid as nursing facilities authorized to provide nursing level care. DHHS has been billing the Plaintiff Counties for these services since at least 2002.

The second issue raised by the Plaintiff Counties in their suit is whether DHHS exceeded the statutory cap on the total amount that the Plaintiff Counties can be billed under RSA 167:18-b in fiscal year 2004. RSA 167:18-b establishes a \$60 million cap on the total liability for the Plaintiff Counties under this section of the statute. The legal dispute in this case involves whether that figure should be interpreted as a gross amount or a net amount. In 2004, the total amount of the bills sent to the Plaintiff Counties for their share of payments under RSA 167:18-b was approximately \$62.1 million. However, DHHS gave the Plaintiff Counties approximately \$2.1 million in statutory credits, thereby bringing the total owed to \$60 million. The Plaintiff Counties refused to pay the total amount, claiming that the statute limits the total amount that can be "billed" to the Plaintiff Counties at \$60 million, and therefore the credits should have been subtracted from the \$60 million, thereby limiting their liability to \$57.9 million.

The parties filed cross-motions for summary judgment and on October 27, 2006, the Merrimack County Superior Court granted summary judgment in favor of the Plaintiff Counties on both issues. DHHS filed a notice of appeal in November, 2006.

On August 17, 2007, the Supreme Court issued an order in which it vacated the majority of the lower court's decision, affirmed it in part, and remanded it back to the lower court for additional factual findings. Most significantly, the Supreme Court held that the term "nursing home" in RSA 167-18-b means any institution certified by the federal Medicaid program to provide nursing facility services. The result is that the vast majority of the bills which were submitted to the Plaintiff Counties were appropriate and legal, and therefore the Plaintiff Counties will not be entitled to any reimbursement from the State of those amounts paid. In addition, the State will be able to demand payment for certain bills which the Plaintiff Counties refused to pay.

The Supreme Court also ruled that the cap provisions should be understood as limiting the Counties overall liability at \$58 million. The Supreme Court held that since there was insufficient evidence in the record as to how much the Plaintiff Counties have reimbursed the State during the relevant period, the matter would need to be sent back to the trial court for further proceedings. The matter was remanded to the Merrimack County Superior Court, and cross motions for summary judgment were filed on January 31, 2008. On May 4, 2009, the Merrimack County Superior Court granted the State's motion for summary judgment finding the Counties incorrectly withheld \$2,109,886.56, which the Counties had agreed not to appeal. However, on June 17, 2009, the Court issued a Final Judgment awarding the State \$2,109,886.56 in damages plus \$460,966.86 in statutory interest. The Counties filed a motion for reconsideration asking the Court to reconsider awarding statutory interest in the matter. The Superior Court issued an order withdrawing its award of \$460,966.86 based on the fact that it was a declaratory judgment matter, under which interest is not typically awarded.

The Plaintiff Counties filed a second lawsuit in Merrimack County Superior Court, *New Hampshire Association of Counties, et al. v. Commissioner of Department of Health and Human Services ("NHAC II")*, challenging the manner in which the State assesses the Plaintiff Counties a portion of the cost for long-term care. In this lawsuit, the Plaintiff Counties claim that budget law Chapter 262 of the Laws of 2007 ("Chapter 262") violates Article 28-a of the New Hampshire Constitution in that it constitutes an "unfunded mandate."

Chapter 262 sets out a multi-year approach to this problem. In the first year, it continues the existing relationship with the Counties with regard to the sharing of the costs of long-term care. In the subsequent years, the new law changes the relationship between the Counties and the State, shifting certain costs onto the Counties, but taking other responsibilities away from the Counties.

The Plaintiff Counties filed a petition seeking a declaratory judgment and injunctive relief, and seeking to be excused from having to contribute to the cost of long-term care for patients on Medicaid. The Plaintiff Counties currently pay approximately \$70 million per year towards long-term care under Medicaid.

The parties filed cross-motions for summary judgment on November 7, 2007, and a hearing was held on February 13, 2008. The State prevailed on summary judgment and the Plaintiff Counties appealed to the New Hampshire Supreme Court. On January 16, 2009, the New Hampshire Supreme Court affirmed the decision of the Merrimack County Superior Court finding no violation of Article 28-a.

Two cases in the New Hampshire Supreme Court involved rates paid by the Division of Children, Youth and Families ("DCYF"). The first, *Appeals of: Chase Home for the Children, Child and Family Services; Hannah House, NFI North, Odyssey Home, Orion House, and Pine Haven Boys Center*, involves the fiscal year 2004-2005 rates paid to residential child care facilities. The Hearings Panel, established pursuant to RSA 170-G:4-a, ruled that DCYF should have set the rates in accord with certain administrative rules. The hearings officer ordered DCYF to pay the higher rates but determined that he had no authority to order DCYF to pay them retroactively. The facilities appealed the ruling regarding denial of the retroactive payments. The second case is *Petition of the Division of Children, Youth and Families*, in which DCYF challenged a decision by the Hearing Panel ruling that DCYF is required to pay a 5% rate increase using the administrative rules rate as the base rate. And, the Hearings Panel ordered DCYF to pay the higher rate retroactive to July 1, 2005. DCYF appealed so that the issues on appeal

include whether the 5% rate increase should be calculated from the administrative rules rate as the base rate and whether the State may be required to pay retroactively. Both sides filed briefs and oral argument occurred in April, 2007.

In the first case, *Appeals of: Chase Home, et al.*, the Supreme Court held, on June 8, 2007, that the hearings officer had the authority to establish residential rates and determine when the rates become effective, but did not have the authority to order DHHS to make retroactive payments at the recalculated rate levels. The Supreme Court declined to decide what further remedies are available to the facilities, such as whether the petitioners could obtain relief in a civil action in superior court. No payment by the State was ordered.

In the second case, *Petition of the Division of Children, Youth and Families*, the Supreme Court held, on June 15, 2007, that the hearing officer's decision to establish the rate at the 2005 calculated rate plus 5%, and to set the effective date of the rate at July 1, 2005, were proper, but that the hearing officer's order requiring DCYF to render payment was beyond the scope of its authority and vacated that part of the decision. The Supreme Court declined to decide what further remedies are available to the facilities, such as whether the petitioners could obtain relief in a civil action in superior court, and no payment by the State was ordered.

These cases are now concluded and no payment was ordered. However, on November 7, 2007, the seven residential childcare providers initiated a new suit in Merrimack County Superior Court against DCYF, *Chase Home et al v. DCYF*. The claims include (1) breach of contract, (2) breach of implied covenant of good faith and fair dealing, (3) unconstitutional taking, and (4) deprivation of rights under 42 U.S.C. §1983. The petitioners seek retroactive payment of more than \$3 million as well as costs and attorneys' fees. The State filed a motion for summary judgment on the grounds that DCYF does not have a contractual relationship with the providers, and that it has not engaged in any unconstitutional taking of property. On December 5, 2008 the petitioners filed a motion to amend their complaint to state a separate claim based on statutory violations created by DCYF's statutory obligation to pay for residential childcare services provided under certain provisions of State law. Following the petitioner's motion to amend its complaint, DCYF withdrew its motion for summary judgment and the trial was continued from January 2009 to June 2009. The first mediation session took place on December 31, 2008 and the parties have agreed to continue mediation. DCYF filed its motion for summary judgment on March 2, 2009. The petitioners sought to amend their complaint again to include allegations that the Medicaid provider services agreements are express contracts. The Court allowed them to amend and the parties are required to re-file motions for summary judgment by July 20, 2009. A hearing on the motions for summary judgment was heard on July 31, 2009 and a decision is pending. The trial is scheduled for November 2009. At this time, it is not possible to predict the outcome of these matters or the amount, if any, DCYF will be required to pay.

Bel Air Associates v. Department of Health and Human Services was decided by the Supreme Court in September 2006 and involved certain restrictions on the rates paid by the Department of Health and Human Services ("DHHS") to nursing home providers. The Supreme Court held that DHHS' capital costs cap and its budget neutrality factor should have been created by administrative rule. The Supreme Court further held that because they were not created as rules, they could not be applied against Bel Air Associates. The Supreme Court did not order any damages against DHHS, as it did not allow a late attempt by Bel Air Associates to add a breach of contract claim. Bel Air Associates, however, filed a separate breach of contract claim in Merrimack County Superior Court in late November 2006 alleging approximately \$600,000 in damages. The parties filed cross-motions for summary judgment in June 2007 and the Court granted the State's motion for summary judgment in late December 2007. Bel Air Associates appealed the decision to the New Hampshire Supreme Court. The Supreme Court issued a decision on November 20, 2008, reversing the decision of the trial court and remanding the case for further proceedings. The Supreme Court held that the Medicaid provider agreement constitutes a contract, but remanded the case for the superior court to consider whether Bel Air's claim is nevertheless barred by res judicata and the statute of limitations. The parties attempted to mediate the case in April, but mediation was unsuccessful. The State filed a motion to dismiss on the grounds that Bel Air's claim is barred by res judicata. At this time, it is not possible to predict the outcome of this matter or the amount, if any, that DHHS will be required to pay.

The State of New Hampshire v. Phillip Morris USA, RJ Reynolds, Inc. and Lorillard Tobacco Company is a petition for a declaratory order. The defendants are signatories to the Tobacco Master Settlement Agreement under which the defendants are required to make annual payments to all of the states, including the State of New

Hampshire. The annual payments received since 2006 have been approximately \$5.0 million below the required amount. On June 5, 2006 the Superior Court ordered the case to arbitration under the terms of the Master Settlement Agreement. A notice of appeal was filed to the New Hampshire Supreme Court on August 11, 2006. Briefs were filed and oral argument occurred in March, 2007. The Supreme Court affirmed the ruling of the trial court on June 22, 2007. The arbitrations for all states is expected to begin in the Spring of 2010, and is expected to last at least six months. The State is unable to predict the outcome at this time.

Timothy Hallam and Joseph Laramie v. Shawn Stone and Todd Connor, Merrimack County Superior Court, is a wrongful termination action that was filed by two corrections officers against the Department of Corrections, the former warden of the state prison, and two corrections officers. Summary judgment was granted in favor of the Department and former warden, and the case proceeded to trial against two corrections officers. The plaintiffs asserted claims of intentional interference with employment relations and false light invasion of privacy, alleging that the defendants lied about them, causing them to be dismissed from employment with the Department. The jury found for the plaintiffs, awarding Timothy Hallam \$1.3 million and Joseph Laramie \$650,000 in damages. The defendants filed post-trial motions, including a motion for a new trial, motion for remittitur, and motion to apply the statutory cap of \$475,000 per claimant. The court denied these motions in October, 2008. The State has appealed the verdict to the Supreme Court. The briefing schedule has been stayed pending resolution of an issue with the transcripts. At this time it is not possible to predict the outcome of the case.

In *New Hampshire Health Care Association, Genesis Pleasant View, Villa Crest, Greenbriar Terrace Healthcare v. Governor Lynch and Commissioner of DHHS*, in February 2009, a group of private nursing homes and an industry association petitioned the New Hampshire Supreme Court for a writ of mandamus and declaratory relief alleging that Chapter 129 of the Laws of 2007 provided that any funds remaining in the nursing home appropriation of the State budget at the end of fiscal year 2007 were to be paid to the nursing homes as supplemental Medicaid reimbursements. The Governor received the Legislative Fiscal Committee's approval to eliminate these payments as part of a budget reduction process. Approximately \$2.217 million in State general fund money remained in the account at the end of fiscal year 2007. In 2007 the source of funds for nursing home Medicaid payments was 50% Federal, 25% State and 25% County. Under certain conditions, the State is required to pay the counties' share of nursing home expenses if the counties have reached the established cap for their payments. If the counties had met their cap in fiscal year 2007, it is possible that the State may be responsible for the combined \$4.434 million payment. The nursing homes also challenge another \$2 million reduction of State funds in their fiscal year 2009 appropriation. The nursing homes allege that these actions by the Governor, with the Legislative Fiscal Committee's approval, violate the New Hampshire Constitution by infringing on the legislative power of the Legislature requiring a need for mandamus relief. Upon motion by the State, the New Hampshire Supreme Court dismissed the case without prejudice to the plaintiffs refiling in Superior Court.

On or about May 19, 2009, the same plaintiffs refiled their action in the New Hampshire Superior Court, again seeking mandamus and declaratory relief. The plaintiffs also requested a preliminary injunction temporarily enjoining the lapse of the disputed funds. On June 30, 2009, the Superior Court issued a preliminary order enjoining the lapse of the Chapter 129 funds pending the outcome of the litigation. The Court found that the plaintiffs had shown a likelihood of success on the merits of their claim to the Chapter 129 funds but not as to the remainder of their lawsuit, including their challenge to the authority of the Governor, with the approval of Fiscal Committee, to implement budget reductions. On July 9, 2009, the State moved to clarify the Court's preliminary injunction order to indicate that only \$2.217 million of the total \$8.8 million appropriation constituted State general funds subject to the non-lapse order. That motion remains pending. At this time, the State cannot predict the outcome of this matter or the State's potential exposure.

By letter dated June 3, 2008, the Department of Health and Human Services received a confidential draft report from the Office of Inspector General ("OIG") regarding an audit of the Department's bioterrorism and emergency preparedness funds for the period of July 1, 2003, through June 30, 2007. The draft report found that \$9,167,761 in compensation costs was not allowable on grounds that the amount claimed was not supported by employee certifications and \$114,135 constituted inappropriate charges due to clerical errors. The draft report recommended that a total of \$9,281,896 be refunded to the Federal Government. The Department responded to the confidential draft report on July 23, 2008, stating its disagreement with the draft findings and recommendation. The Department also indicated that the \$114,135 had been refunded. OIG issued a final audit report on September 24, 2008. OIG reduced its recommendation by \$15,148 to reflect a portion of the amount previously refunded by

DHHS. DHHS responded to the final audit report stating its disagreement with the findings and recommendation. By letter dated April 6, 2009, the CDC informed the State that the CDC has determined that the \$9,167,761 in salary costs charged to the grants is allowable and chargeable to the grants. Therefore, the CDC indicated that no further action by the State is necessary at this time with respect to the recommendation for reimbursement of these funds. With respect to the remaining \$98,987, the CDC found that the State had already removed the cost from the grant and therefore no further action on the part of the State is necessary at this time. Finally, the CDC concluded that the State's implementation of a certification process for applicable employees satisfied the recommendation of the auditors, subject to actual implementation. This matter is now closed.

By letter dated July 22, 2008, the New Hampshire Department of Health and Human Services ("DHHS") received a confidential draft report from the Office of Inspector General ("OIG") regarding an audit of DHHS's Medicaid payments for skilled professional medical personnel at the enhanced rate for the period from October 1, 2004 through September 30, 2006. The draft report found that \$1,091,343 was unallowable on grounds that the State should have claimed these costs at the standard 50-percent rate rather than at the enhanced 75-percent rate. The draft report recommended that this amount be refunded to the Federal Government and that DHHS develop an approved methodology to allocate costs for personnel whose time and effort are split between different functions. DHHS responded to the confidential draft report on September 24, 2008 stating its disagreement with the draft findings and recommendation. OIG issued a final report reiterating its findings and recommendations from the draft report. OIG recommended that the State refund personnel costs claimed at the enhanced rate in the amount of \$1,091,343. At this time it is not possible to predict whether or to what extent CMS will take action with regard to disallowance of any federal financial participation.

By letter dated March 25, 2009 the New Hampshire Department of Health and Human Services ("DHHS") received a confidential draft report from the Centers for Medicare and Medicaid Services (CMS) regarding an audit of the State's Nursing Facility Quality Assessment (NFQA) for the period from October 1, 2004 through September 30, 2006. Funds generated by the NFQA are a source to fund the Medicaid Quality Incentive Program (MQIP) supplemental payments to nursing facilities. CMS estimated that the NFQA collected for the period of the review was approximately \$93 million. In the draft report CMS found that two nursing facilities, Crotched Mountain Rehabilitation Center and Glencliff Home for the Elderly, were not participating in New Hampshire's NFQA in violation of the broad-based component of the tax regulations for permissible health care related taxes. CMS recommended that the State retroactively tax the excluded providers. DHHS responded to the confidential draft audit report on June 23, 2009 stating its disagreement with the draft findings and recommendations. DHHS indicated that status of Crotched Mountain has been addressed through legislation pursuant to which Crotched Mountain is paying the NFQA and that Glencliff, as a State-owned and operated facility, is not subject to the NFQA. CMS issued a final report on July 17, 2009, in which it accepted the State's response. CMS found that the actions taken by the State and the State's explanation negate any further need for corrective action by the State. This matter is now closed.

The consolidated cases of *Georgia Tuttle, M.D., et al v. NH Medical Malpractice Joint Underwriting Association, et al*, and *Georgia Tuttle, M.D., et al v. State*, raise constitutional challenges to Chapter 144, Laws of 2009 ("HB 2"), approved on June 30, 2009, as part of the State's budget for the 2010 -2011 biennium. Under Section 1 of HB 2 ("Chapter 144:1"), the Legislature appropriated \$110 million from the New Hampshire Medical Malpractice Joint Underwriting Association (the "JUA") to be deposited in the General Fund and used for "the purpose of supporting programs that promote access to needed health care for underserved persons." Of the \$110 million, \$65 million was scheduled to be transferred to the General Fund by July 31, 2009. The JUA is a medical malpractice insurer, created in accordance with RSA 404-C, to provide medical malpractice insurance to the State's health care providers. The JUA fund has accumulated more than \$150 million, much of which has been determined to be surplus. The Legislature found that \$110 million, distributed over three years, would not impact the stability of the JUA fund or its responsibilities to its policyholders.

Petitioners in these cases are JUA policyholders who claim that they have rights to dividends from any surplus held in the JUA fund. Petitioners have brought a petition for declaratory judgment finding Chapter 144:1 unconstitutional; a petition for mandamus and restraining order to prevent the transfer of the JUA funds to the General Fund and a request that a dividend be ordered to the policyholders; and a petition to attach with notice the JUA fund. The Superior Court established an expedited briefing schedule in this matter, determining that the

petitions raise constitutional issues that can be decided without developing a factual record. On July 29, 2009, the Superior Court found the transfer of \$110 million from the JUA to the General Fund under HB 2 unconstitutional. The Court found that the JUA is not a State entity and that the JUA policyholders have a vested property right in the funds held by the JUA. On August 4, 2009, the State filed a notice of appeal with the New Hampshire Supreme Court and a motion for expedited appeal requesting that the briefing schedule be abbreviated. The Supreme Court granted, in part, the motion for expedited appeal, and issued a somewhat expedited briefing schedule with oral argument scheduled for October 15, 2009. The State cannot predict the outcome of this matter.

Cloutier v. State and Judicial Retirement System - Former Judge Cloutier is challenging RSA 100-C, Judicial Retirement Plan, enacted in 2003. The Judicial Retirement Plan created by RSA 100-C limits a judge's retirement to 75% of the salary earned in the judge's last year of service, instead of 75% of the current salary level that was in effect prior to July 1, 2003 when RSA 100-C took effect. The plaintiff is arguing that he was a permanent employee when the statutory change was made and therefore he has a vested right in the previous system. The parties have agreed to submit the case on pleadings with an agreed-to statement of facts. The State cannot predict the outcome of this matter.

SEA v. State and Judicial Retirement System - The SEA, on behalf of its retired members, is challenging the section of Chapter 144, Laws of 2009 that requires retirees under the age of 65 years old to pay a portion of their health care benefits. The parties will be filing a motion requesting permission to submit this case on pleadings with an agreed-to statement of facts. The State cannot predict the outcome of this matter.

American Federation of Teachers - New Hampshire, et al v. State, Retirement System and Lisa Shapiro, Individually - A group of 12 plaintiffs, seeking class certification for all of the other New Hampshire retirees, filed suit August 7, 2009 challenging the changes to the retirement system made pursuant to Chapter 300, Laws of 2008, that affect (1) earnable compensation; (2) COLA payments; and (3) medical subsidies. The State does not have a return date on this suit yet but expect to be able to proceed in a similar manner to the others with a slightly expedited schedule and submittal of the case on pleadings. The State cannot predict the outcome of this matter.

MISCELLANEOUS

Any provisions of the constitution of the State, of laws and of other documents set forth or referred to in the Information Statement and this Supplement are only summarized, and such summaries do not purport to be complete statements of any of such provisions. Only the actual text of such provisions can be relied upon for completeness and accuracy.

The Information Statement and this Supplement contain certain forward-looking statements that are subject to a variety of risks and uncertainties that could cause actual results to differ from the projected results, including without limitation general economic and business conditions, conditions in the financial markets, the financial condition of the State and various state agencies and authorities, receipt of federal grants, litigation, arbitration, force majeure events and various other factors that are beyond the control of the State and its various agencies and authorities. Because of the inability to predict all factors that may affect future decisions, actions, events or financial circumstances, what actually happens may be different from what is set forth in such forward-looking statements. Forward-looking statements are indicated by use of such words as “may,” “will,” “should,” “intends,” “expects,” “believes,” “anticipates,” “estimates” and other similar words.

All estimates and assumptions in the Information Statement and this Supplement have been made on the best information available and are believed to be reliable, but no representations whatsoever are made that such estimates and assumptions are correct. So far as any statements in the Information Statement and this Supplement involve any matters of opinion, whether or not expressly so stated, they are intended merely as such and not as representations of fact. The various tables may not add due to rounding of figures.

Neither the State’s independent auditors, nor any other independent accountants, have compiled, examined, or performed any procedures with respect to the prospective financial information contained herein, nor have they expressed any opinion or any other form of assurance on such information or its achievability, and assume no responsibility for, and disclaim any association with, the prospective financial information.

The information, estimates and assumptions and expressions of opinion in the Information Statement and this Supplement are subject to change without notice. Neither the delivery of this Supplement nor any sale made pursuant to any offering document of which the Information Statement and this Supplement are a part shall, under any circumstances, create any implication that there has been no change in the affairs of the State or its agencies, authorities or political subdivisions since the date of this Supplement, except as expressly stated.

THE STATE OF NEW HAMPSHIRE

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