

**FINANCIAL
STATEMENTS AND
REPORT OF
INDEPENDENT
CERTIFIED PUBLIC
ACCOUNTS**

**STATE OF NEW MEXICO
OFFICE OF THE SECRETARY OF STATE**

June 30, 2009

atkinson

PRECISE. PERSONAL. PROACTIVE.

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State of New Mexico
Office of the Secretary of State

OFFICIAL ROSTER

June 30, 2009

<u>Name</u>	<u>Title</u>
Ms. Mary Herrera	Secretary of State
Mr. Don Francisco Trujillo II	Deputy Secretary of State
Ms. Dianne Brown	Chief Financial Officer



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REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

Mr. Hector H. Balderas
New Mexico State Auditor
and
Ms. Mary Herrera
New Mexico Secretary of State
State of New Mexico

We have audited the accompanying financial statements of governmental activities, each major fund, the budgetary comparisons for the general fund and the major special revenue fund, and the aggregate remaining fund information of the Office of the Secretary of State (the Office), as of and for the year ended June 30, 2009, which collectively comprise the Office of the Secretary of State's basic financial statements, as listed in the table of contents. We have also audited the financial statements of each of the Office of the Secretary of State's nonmajor governmental funds presented as supplementary information in the accompanying combining and individual fund financial statements and the respective budgetary comparison as of and for the year ended June 30, 2009, as listed in the table of contents. These financial statements are the responsibility of the Office of the Secretary of State's management. Our responsibility is to express opinions on these financial statements based on our audit.

Except as discussed in the following paragraph, we conducted our audit in accordance with auditing standards generally accepted in the United States of America and with standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and the significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinions.

At June 30, 2009, the Office has certain unresolved matters in relation to an ongoing audit of the administration of payments under the Help America Vote Act (HAVA). The principal unresolved matter includes custody issues for voting machines purchased with HAVA funds. Additionally, the Office also has not received a final resolution letter of all HAVA audit issues including legislation passed by the State of New Mexico to remedy questioned costs of \$6,336,654, resulting from the audit.

As discussed in Note A1, the financial statements of the Office of the Secretary of State of New Mexico, are intended to present the financial position and changes in financial position, of only that portion of the governmental activities, each major fund, and the aggregate remaining fund information of the State of New Mexico that is attributable to the transactions of the Office of the Secretary of State. They do not purport to, and do not, present fairly the financial position of the State of New Mexico as of June 30, 2009, and the changes in financial position, for the year then ended in conformity with accounting principles generally accepted in the United States of America.

In our opinion, except for the uncertainties of matters discussed in the third paragraph, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, each major fund, and the aggregate remaining fund information of the Office of the Secretary of State, as of June 30, 2009, and the respective changes in financial position and the respective budgetary comparisons of the general fund and major special revenue fund for the year then ended in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of each non-major governmental fund of the Office of the Secretary of State as of June 30, 2009, and the respective changes in financial position and the respective budgetary comparison of the nonmajor special revenue fund for the year ended in conformity with accounting principles generally accepted in the United States of America.

In accordance with *Government Auditing Standards*, we have also issued our report dated November 19, 2009, on our consideration of the Office of the Secretary of State's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, grants agreements, and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.

Management's Discussion and Analysis on pages 6 through 11 is not a required part of the basic financial statements but is supplementary information required by accounting principles generally accepted in the United States of America. We have applied certain limited procedures, which consisted primarily of inquiries of management regarding the methods of measurement and presentation of the required supplementary information. However, we did not audit the information and express no opinion on it.

Our audit was conducted for the purpose of forming opinions on the basic financial statements, and the combining and individual fund financial statements and budgetary comparisons. The fiduciary schedule of changes in assets and liabilities – agency funds, and special appropriation schedule are presented for purposes of additional analyses and are not a required part of the financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole.


Atkinson & Co., Ltd.

Albuquerque, New Mexico
November 19, 2009

**MANAGEMENT'S DISCUSSION AND ANALYSIS
(UNAUDITED)**

Year ended June 30, 2009

Management's discussion and analysis (MDA) of the Office of the Secretary of State is designed to assist the reader in focusing on significant issues, provide an overview of the Office's financial activity, and identify changes in the Office's financial position for the fiscal year ended June 30, 2009.

This discussion and analysis is designed to focus on current fiscal year activities.

FINANCIAL HIGHLIGHTS

The Office of the Secretary of State's assets exceeded liabilities at the close of the June 30, 2009 fiscal year by \$10,546,979 (net assets) compared to \$16,715,455 at June 30, 2008. The decrease in net assets was primarily due to depreciation of capital assets of \$3,721,072 and a \$1,750,000 transfer to the State general fund from the public election fund. The Office of the Secretary of State receives its revenues from general fund appropriations and federal revenue from the Help America Vote Act (HAVA) and the U.S. Department of Health and Human Services for election assistance for individuals with disabilities.

OVERVIEW OF THE FINANCIAL STATEMENTS

The discussion and analysis are intended to serve as an introduction to the Office of the Secretary of State's financial statements. The financial statements are comprised of three components: (1) government-wide financial statements, (2) fund financial statements, and (3) notes to the financial statements. This report also contains other non-major combining fund statements. The Office has two major funds, two non-major funds, and an agency fund.

Government-wide Financial Statements

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

The statement of net assets presents information on all of the Office of the Secretary of State's assets and liabilities, with the difference between the two reported as net assets. Over time, increases or decreases in net assets may serve as a useful indicator of whether the financial position of the Office of the Secretary of State is improving.

The statement of activities presents information showing how the Office of the Secretary of State's net assets changed during the recent fiscal year. All changes in net assets are reported as soon as the underlying event giving rise to the change occurs, regardless of the timing of related cash flows.

**MANAGEMENT'S DISCUSSION AND ANALYSIS
(UNAUDITED) – CONTINUED**

Year ended June 30, 2009

Fund Financial Statements

A fund is a grouping of related accounts that is used to maintain control over resources that has been segregated for specific activities or objectives. The Office of the Secretary of State, like other state and local governments, uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements. The Office of the Secretary of State has one general fund, the general appropriation fund (Fund 18000). All State services are reflected in the general appropriation fund.

The Office of the Secretary of State adopts an annual appropriated budget for its general fund and public election fund. Budgetary comparison statements have been provided to demonstrate compliance with their budgets. The Office is in compliance with its budgetary requirements.

Notes to the Financial Statements

The notes provide additional information that is essential to fully understand the data provided in the government-wide and fund financial statements.

Federal Revenues

The Help America Vote Act (HAVA) was signed into law on October 29, 2002. It was enacted to assist states in the administration of Federal elections and to “establish minimum standards for states and units of local governments with the responsibility for the administration of Federal elections.” The Act includes provisions for statewide voter files, voting systems that are accessible to the disabled and language minorities, provisional voting, voter education, and election official training. The Act requires each state to submit a plan that meets the requirements of the Act.

The Office also has a grant from the U.S. Department of Health and Human Services to help individuals with disabilities with the election process and this activity is accounted for in the HAVA fund.

Governmental Activities

Governmental activities decreased the Office of the Secretary of State's net assets by \$6,168,476 for 2009 compared to a decrease of \$3,333,506 for 2008. Key elements of this change are as follows:

State of New Mexico
Office of the Secretary of State

**MANAGEMENT'S DISCUSSION AND ANALYSIS
(UNAUDITED) – CONTINUED**

Year ended June 30, 2009

SECRETARY OF STATE

Statement of Net Assets

	<u>2009</u>	<u>2008</u>	<u>Change</u>
Current assets	\$ 4,788,688	\$ 8,322,303	\$ (3,533,615)
Capital assets	<u>7,419,870</u>	<u>10,886,404</u>	<u>(3,466,534)</u>
Total assets	12,208,558	19,208,707	(7,000,149)
Current liabilities	1,387,854	2,469,766	(1,081,912)
Long-term liabilities	<u>273,725</u>	<u>23,486</u>	<u>250,239</u>
Total liabilities	1,661,579	2,493,252	(831,673)
Invested in capital assets	7,419,870	10,886,404	(3,466,534)
Restricted	3,564,095	5,946,483	(2,382,388)
Unrestricted deficit	<u>(436,986)</u>	<u>(117,432)</u>	<u>(319,554)</u>
Total net assets	<u>\$ 10,546,979</u>	<u>\$ 16,715,455</u>	<u>\$ (6,168,476)</u>

Statement of Activities

	<u>2009</u>	<u>2008</u>	<u>Change</u>
Expenses:			
General government	\$ (13,539,638)	\$ (11,371,746)	\$ (2,167,892)
Program revenue - federal grants	92,616	89,994	2,622
General revenues	7,306,940	9,682,499	(2,375,559)
Loss on disposal of capital assets	-	(1,571,687)	1,571,687
Reversions to the general fund	<u>(28,394)</u>	<u>(162,566)</u>	<u>134,172</u>
(Decrease) in net assets	(6,168,476)	(3,333,506)	(2,834,970)
Net assets - beginning	<u>16,715,455</u>	<u>20,048,961</u>	<u>(3,333,506)</u>
Net assets - ending	<u>\$ 10,546,979</u>	<u>\$ 16,715,455</u>	<u>\$ (6,168,476)</u>

**MANAGEMENT'S DISCUSSION AND ANALYSIS
(UNAUDITED) – CONTINUED**

Year ended June 30, 2009

Statement of Net Assets Change from Prior Year

Net assets decreased by \$6,168,476 from the prior year due to the following factors.

- Capital assets decreased by \$3,466,534 primarily due depreciation of \$3,721,072 which was slightly offset by \$254,538 in capital asset additions for fiscal year 2009.
- The decrease in current liabilities of \$1,081,912 from the prior year was primarily attributed to a decrease in amounts owed the State general fund.
- Investments in the State general fund investment pool and current assets decreased by \$3,533,615 primarily due to a transfer of \$1,750,000 from the public election fund to the State general fund for State budget purposes.

Statement of Activities Change from Prior Year

General revenues decreased from the prior year by \$2,375,559 primarily due to a \$1,750,000 transfer to the State general fund from the public election fund and decreases in State appropriations due to State budget cuts. Federal grant revenues were consistent with prior year increasing by \$2,622. General government expenditures increased by \$2,167,892 due to cost associated with the general election held in November of 2008.

Individual Funds Balances and Analysis

General Fund

Significant balances and changes from the prior year are reported below:

	<u>2009</u>	<u>2008</u>	<u>Change</u>
Investment in State general fund pool	\$ 2,365,897	\$ 5,603,876	\$ (3,237,979)
Accounts payable	569,522	690,296	(120,774)
Fund balance	1,107,066	3,150,000	(2,042,940)

Cash and fund balance decreased due to an increase in expenditures related to the general election. Accounts payable decreased due to a decrease unpaid bills outstanding at June 30, 2009 compared with June 30, 2008.

**MANAGEMENT'S DISCUSSION AND ANALYSIS
(UNAUDITED) – CONTINUED**

Year ended June 30, 2009

Public Election Fund

Significant balances and changes from the prior year are reported below:

	<u>2009</u>	<u>2008</u>	<u>Change</u>
Investment in State general fund pool	\$ 2,157,972	\$ 2,318,128	\$ (160,156)
Fund balance	2,134,102	2,455,790	(321,688)

The public election fund balance remained consistent with prior year as appropriations of \$1,500,000 were offset by a transfer of \$1,750,000 to the State general fund to reduce budget deficits.

Capital Assets

Excluding the voting machines, the Office of the Secretary of State's investment in capital assets consists of computer equipment and software to improve the election reporting process. The current year additions were \$254,538 compared to \$378,070 for 2008. The fiscal year 2009 additions related to the statewide voter system hardware and software. Depreciation expense for the years ended June 30, 2009 and 2008 was \$3,721,072 and \$3,684,821, respectively.

Voting Machines

Included in capital assets is \$17,373,510 of voting machines purchased on behalf of 33 counties in the State of New Mexico in fiscal years 2007 and 2006. There were no additions to the voting machines in fiscal year 2009.

Long-term Debt

The Office's long-term debt consist of Board of Finance loans in the amount of \$250,411 not expected to be repaid until fiscal year 2010 and the long-term portion of compensated absences in the amount of \$23,314.

Budgetary Highlights

General Fund - Final budgeted revenues and expenditures were higher than original budgeted revenues and expenditures due to approved budget adjustment request for cost associated with the 2008 general election held in November of 2008.

**MANAGEMENT'S DISCUSSION AND ANALYSIS
(UNAUDITED) – CONTINUED**

Year ended June 30, 2009

Public Election Fund - Final budgeted revenues and expenditures were equal to original budgeted revenues and expenditures.

Budget Analysis

General Fund - In fiscal year 2009 actual revenues were equal to final budgeted revenues and actual expenditures were lower than budgeted expenditures. The lower expenditures were primarily attributed to lower than anticipated costs for the 2010 primary election during FY 2009.

Public Election Fund - In fiscal year 2009, actual revenues were very close to budgeted revenues and actual expenditures were lower than budgeted expenditures due to lower than anticipated distributions to candidates running for office. Expenditures in the public election fund relate to monies distributed to certified candidates running for covered offices who request to receive financing pursuant to the Voter Action Act.

Currently Known Facts and Conditions

During fiscal year 2007, the U.S. Election Assistance Commission (EAC) conducted an audit of the administration of payments received under the Help America Vote Act (HAVA) at the request of the current Secretary of State, Mary Herrera. The HAVA funds were expended by the previous administration of the Secretary of State's Office by December 31, 2006. The final report identified questioned costs of \$6,336,564. A final determination report from the Executive Director of the EAC was issued on August 12, 2008. The letter contained a listing of options to resolve the questioned cost. In a response letter dated November 14, 2008, the Office chose to resolve the questioned cost through the legislative process by amending the wording of previously issued legislation in order to broaden the scope of permissible use of an \$11,000,000 special appropriation that was expended in fiscal year 2007. On March 20, 2009, the legislature passed house bill 864, which amended Laws of 2006, Chapter 111, Section 67, to allow the appropriation to be expended for election related advertising, voter education costs, and reimbursement to San Juan County for costs incurred prior to the availability of HAVA funds. This action prevented the loss of \$6.3 million in general fund monies that would have to be paid to the federal government.

Requests for Information

This financial report is designed to provide a general overview of the Office of the Secretary of State's finances for all those with an interest in the Office of the Secretary of State's finances. Questions concerning any of the information provided in this report or requests for additional financial information should be addressed to the Office of the Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, New Mexico 87503.

State of New Mexico
Office of the Secretary of State

STATEMENT OF NET ASSETS

Year ended June 30, 2009

	<u>Governmental Activities</u>
ASSETS	
Current assets:	
Investments in state general fund pool	\$ 4,580,840
Due from Federal government	195,944
Accrued interest receivable	342
Prepaid expenses	<u>11,562</u>
Total current assets	4,788,688
Capital assets:	
Voting machines held for counties at year end	17,373,510
Computer equipment	1,196,981
Less: accumulated depreciation	<u>(11,150,621)</u>
Total capital assets, net of depreciation	<u>7,419,870</u>
Total assets	<u><u>\$ 12,208,558</u></u>
LIABILITIES	
Current liabilities:	
Advance from the Board of Finance (34100)	\$ 550,105
Payroll related liabilities	122,372
Accounts payable	569,522
Due to state general fund (35000)	52,594
Compensated absences, current portion	<u>93,261</u>
Total current liabilities	1,387,854
Long-term liability:	
Compensated absences - less current portion	23,314
Loans payable to Board of Finance-less current portion	<u>250,411</u>
Total liabilities	1,661,579
NET ASSETS	
Invested in capital assets	7,419,870
Restricted for 2008 primary election	1,000,000
Restricted for campaign reporting	161,500
Restricted for political financial reporting upgrade	15,566
Restricted for public election fund	2,134,102
Restricted for HAVA program	222,772
Restricted for arbitration fund	30,155
Unrestricted deficit	<u>(436,986)</u>
Total net assets	<u>10,546,979</u>
Total liabilities and net assets	<u><u>\$ 12,208,558</u></u>

The accompanying notes are an integral part of this financial statement.

State of New Mexico
Office of the Secretary of State

STATEMENT OF ACTIVITIES

Year ended June 30, 2009

	<u>Governmental Activities</u>
EXPENSES	
Other	\$ 5,947,860
Contractual	1,195,681
Personnel cost	2,675,025
Depreciation expense	<u>3,721,072</u>
Total expenses	13,539,638
 PROGRAMS REVENUES - federal grants	 <u>92,616</u>
Net program expense	(13,447,022)
 GENERAL REVENUES	
State general fund appropriations	7,460,500
Other financing sources	1,556,500
Other financing uses	(1,750,000)
Other income	<u>39,940</u>
Total general revenues	7,306,940
Reversions to state general fund-FY09	<u>(28,394)</u>
Net general revenues	<u>7,278,546</u>
Changes in net assets	(6,168,476)
Net assets - beginning of year	<u>16,715,455</u>
Net assets - end of year	<u><u>\$ 10,546,979</u></u>

The accompanying notes are an integral part of this financial statement.

State of New Mexico
Office of the Secretary of State

BALANCE SHEET – GOVERNMENTAL FUNDS

Year ended June 30, 2009

	Major Funds			Total
	General Fund (SHARE 18000)	Public Election Fund (SHARE 81200)	Other Governmental Funds	
ASSETS				
Investment in state general fund pool	\$ 2,365,897	\$ 2,157,972	\$ 56,971	\$ 4,580,840
Due from federal government	-	-	195,944	195,944
Accrued interest	-	330	12	342
Prepaid expenses	11,562	-	-	11,562
	<u>\$ 2,377,459</u>	<u>\$ 2,158,302</u>	<u>\$ 252,927</u>	<u>\$ 4,788,688</u>
 LIABILITIES AND FUND BALANCES				
Liabilities				
Advance from the Board of Finance (34100)	\$ 550,105	\$ -	\$ -	\$ 550,105
Accounts payable	569,522	-	-	569,522
Payroll related liabilities	122,372	-	-	122,372
Due to state general fund	28,394	24,200	-	52,594
	<u>1,270,393</u>	<u>24,200</u>	<u>-</u>	<u>1,294,593</u>
 Fund balances				
Reserved for:				
Laws of 2009, general election	1,000,000	-	-	1,000,000
Campaign reporting	161,500	-	-	161,500
Political financial reporting upgrade	15,566	-	-	15,566
HAVA program	-	-	222,772	222,772
Public election fund	-	2,134,102	-	2,134,102
Arbitration fund	-	-	30,155	30,155
Unreserved deficit	(70,000)	-	-	(70,000)
	<u>1,107,066</u>	<u>2,134,102</u>	<u>252,927</u>	<u>3,494,095</u>
	<u>\$ 2,377,459</u>	<u>\$ 2,158,302</u>	<u>\$ 252,927</u>	<u>\$ 4,788,688</u>

The accompanying notes are an integral part of this financial statement.

State of New Mexico
Office of the Secretary of State

**RECONCILIATION OF THE GOVERNMENTAL FUNDS
BALANCE SHEET TO THE STATEMENT OF NET ASSETS**

Year ended June 30, 2009

Amounts reported for governmental activities in the statement of net assets are different because:

Total fund balance - total governmental funds	\$ 3,494,095
Capital assets used in governmental activities are not financial resources and therefore are not reported in the funds. These assets consist of:	
Voting machines held on behalf of counties	17,373,510
Computer, software and furniture	1,196,981
Less: accumulated depreciation	<u>(11,150,621)</u>
Net capital assets	7,419,870
Board of finance loans not expected to be repaid with current financial resources and therefore are not reported in the funds.	(250,411)
Compensated absences payable are long-term obligations and therefore, not reported on the balance sheet of the governmental funds	<u>(116,575)</u>
Net assets of governmental activities	<u>\$ 10,546,979</u>

The accompanying notes are an integral part of this financial statement.

State of New Mexico
Office of the Secretary of State

**STATEMENT OF REVENUES, EXPENDITURES AND
CHANGES IN FUND BALANCES – GOVERNMENTAL FUNDS**

Year ended June 30, 2009

	Major Funds			Total Governmental Funds
	General Fund (SHARE 18000)	Public Election Fund (SHARE 81200)	Other Government Funds	
Revenues				
Federal revenues	\$ -	\$ -	\$ 92,616	\$ 92,616
Miscellaneous revenues	-	19,630	-	19,630
Interest	-	18,699	1,611	20,310
Total revenues	-	38,329	94,227	132,556
Expenditures				
Current expenditures				
Personnel services	2,675,882	-	-	2,675,882
Contractual services	1,195,681	-	-	1,195,681
Other costs	5,618,650	110,017	219,193	5,947,860
Capital outlay	254,538	-	-	254,538
Total expenditures	9,744,751	110,017	219,193	10,073,961
Excess (deficiency) of revenues over expenditures	(9,744,751)	(71,688)	(124,966)	(9,941,405)
Other financing sources (uses)				
State general fund appropriations	7,423,300	-	37,200	7,460,500
Other financing uses	-	(1,750,000)	-	(1,750,000)
Other financing sources	56,500	1,500,000	-	1,556,500
Other financing sources-loan proceeds	250,411	-	-	250,411
Other expenditures-reversion-FY09	(28,394)	-	-	(28,394)
Net other financing sources (uses)	7,701,817	(250,000)	37,200	7,489,017
Net change in fund balance	(2,042,934)	(321,688)	(87,766)	(2,452,388)
Fund balance, beginning of year as previously stated	3,150,000	2,455,790	340,693	5,946,483
Fund balance, end of year	\$ 1,107,066	\$ 2,134,102	\$ 252,927	\$ 3,494,095

The accompanying notes are an integral part of this financial statement.

State of New Mexico
Office of the Secretary of State

**RECONCILIATION OF THE CHANGE IN FUND BALANCES OF
GOVERNMENTAL FUNDS TO THE STATEMENT OF ACTIVITIES**

Year ended June 30, 2009

Net change in fund balances - total governmental funds	\$ (2,452,388)
Amounts reported for governmental activities in the statement of activities are different because:	
Capital outlay additions are recorded as expenditures in the government funds but capitalized in the statement of net assets	254,538
Depreciation expense is recorded in the statement of activities but not recorded as a expenditure in the governmental funds	(3,721,072)
Net increase in long-term loans from board of finance	(250,411)
Net decrease in compensated absences recorded in the statement of activities as a reduction in expense but not recorded in the governmental funds as a reduction in expenditures	<u>857</u>
Change in net assets of governmental activities	<u>\$ (6,168,476)</u>

The accompanying notes area an integral part of this financial statement.

State of New Mexico
Office of the Secretary of State

**STATEMENT OF REVENUES AND EXPENDITURES (BUDGETARY BASIS)
MAJOR GOVERNMENTAL FUNDS – GENERAL FUND**

Year ended June 30, 2009

	Budget Original	Budget Final	Actual Amount Budgetary Basis	Variance Favorable (Unfavorable)
<u>General Fund (SHARE 18000)</u>				
Revenue				
General fund appropriations	\$ 7,530,000	\$ 7,423,300	\$ 7,423,300	\$ -
Board of Finance short-term loans	-	250,411	250,411	-
Compensation allowance	56,500	56,500	56,500	-
Total revenue	7,586,500	7,730,211	7,730,211	-
Fund balance carry forward	3,220,000	3,220,000	3,150,000	(70,000)
Total revenues budgetary basis	\$ 10,806,500	\$ 10,950,211	10,880,211	\$ (70,000)
Expenditures				
Personal service/employee	\$ 2,689,300	\$ 2,694,600	2,675,794	\$ 18,806
Contractual services	693,700	638,400	638,308	92
Other	889,200	832,500	828,262	4,238
2008 general election	4,736,700	4,987,111	4,927,795	59,316
2010 primary election	1,000,000	1,000,000	-	1,000,000
Campaign reporting	176,500	176,500	5,000	171,500
Political financial reporting	58,654	58,654	58,654	-
Limited partnership software	150,000	150,000	144,895	5,105
VRMS	412,446	412,446	396,743	15,703
Total expenditures (single year)	\$ 10,806,500	\$ 10,950,211	9,675,451	\$ 1,274,760
Excess of revenue and other financing sources over expenditures	\$ -	\$ -	1,204,760	\$ 1,204,760
Less: Request to pay prior year bills included in accounts payable			(69,300)	
Less fund balance carry forward			(3,150,000)	
Less reversion FY09			(28,394)	
Change in fund balance per statement of revenues, expenditures and changes in fund balance (GAAP Basis)			\$ (2,042,934)	

The accompanying notes are an integral part of this financial statement.

State of New Mexico
Office of the Secretary of State

**STATEMENT OF REVENUES AND EXPENDITURES (BUDGETARY BASIS)
MAJOR GOVERNMENTAL FUNDS – PUBLIC ELECTION FUND**

Year ended June 30, 2009

Public Election Fund (SHARE 81200)	Budget Original	Budget Final	Actual Amount Budgetary Basis	Variance Favorable (Unfavorable)
Revenues				
Other financing sources	\$ 1,500,000	\$ 1,500,000	\$ 1,500,000	\$ -
Miscellaneous revenues	-	-	19,630	19,630
Interest	-	-	18,699	18,699
Prior year fund balance		1,750,000	1,750,000	-
Total revenues	\$ 1,500,000	\$ 3,250,000	\$ 3,288,329	\$ 38,329
Expenditures				
Personal service/employee benefits	\$ -	\$ -	\$ -	\$ -
Contractual services	-	-	-	-
Other costs	1,500,000	1,500,000	110,017	1,389,983
Transfers	-	1,750,000	1,750,000	-
Total expenditures (single year)	\$ 1,500,000	\$ 3,250,000	1,860,017	\$ 1,389,983
Excess of revenue and other financing sources over expenditures and transfers			1,428,312	
Less prior year fund balance not revenue for GAAP purposes			(1,750,000)	
Change in fund balance per statement of revenues, expenditures and changes in fund balance (GAAP Basis)			\$ (321,688)	

The accompanying notes are an integral part of this financial statement.

State of New Mexico
Office of the Secretary of State

**STATEMENT OF FIDUCIARY ASSETS AND LIABILITIES –
AGENCY FUND (79900)**

Year ended June 30, 2009

	<u>Agency Fund</u>
Assets	
Investment in State general fund pool	<u>\$ 744,218</u>
Liabilities	
Due to State general fund (85300)	<u>\$ 744,218</u>

The accompanying notes are an integral part of this financial statement.

NOTES TO FINANCIAL STATEMENTS

June 30, 2009

NOTE A – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The financial statements of the Office of the Secretary of State have been prepared in conformity with generally accepted accounting principles (GAAP) as applied to governmental units. The Governmental Accounting Standards Board (GASB) is the accepted standard setting body for establishing governmental accounting and financial reporting principles. The more significant of the Office's accounting policies are described below.

1. Reporting Entity

In accordance with the constitution and laws of the State of New Mexico, the Secretary (the Office) shall supervise, administer, and furnish supplies for elections; publish the statistical Blue Book; act as depository for legislative records; supervise the publication of Session Laws; record and file all public official bonds, oaths, and executive names and trademarks; commission notaries public; serve as statutory agent for service of process for nonresident motorists and foreign corporations; publish the Election Code and State Constitution with amendments; file musical copyrights; handle trading stamp registrations; administer Uniform Commercial Code, etc.; file instruments for Public Utilities and Railroads; furnish and file forms relating to the Conflict of Interest Act; and administer the Lobbyist Registration Act.

The financial reporting entity as defined by GASB 14 consists of the primary government, organizations for which the primary government is financially accountable and other organizations whose exclusion from the financial reporting entity would cause the financial statements to be misleading.

A primary government is any state government or general-purpose local government and the organizations that make up its legal entity. The Office is not included in any other governmental "reporting entity" as defined by GASB. The Secretary is elected by the public and has decision making authority, the power to designate management, the ability to significantly influence operations, and primary accountability for fiscal matters.

Criteria for determining the entity for financial reporting purposes are whether the governing body exercises oversight responsibility. Oversight responsibility includes financial interdependency, selection of governing authority, designation of management, ability to significantly influence operations, and accountability for fiscal matters. The financial statements include all the fund and account groups of the Office over which the Secretary exercises operating control. The Office has no blended or discretely present component units during the year ended June 30, 2009.

The Secretary of State is a component unit of the State and these financial statements include all funds and activities over which the Secretary of State has oversight responsibility.

NOTES TO FINANCIAL STATEMENTS – CONTINUED

June 30, 2009

NOTE A – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES – CONTINUED

2. Government-Wide and Fund Financial Statements

Governmental Accounting Standards Board Statement No. 34 – As of fiscal year ended June 30, 2003 and forward, the Office follows GASB Statement No. 34, *Basic Financial Statements – and Management’s Discussion and Analysis – for State and Local Governments* (GASB 34) as amended by GASB Statement 37 and 38. This statement affects the manner in which the Office records transactions and presents financial information. State governments have traditionally used a financial reporting model substantially different from the one used to prepare private-sector financial reports. GASB 34 establishes a new reporting model, much like private-sector financial reports, for the annual financial reports of state governments. The new format was developed to make annual reports of state governments easier to understand and more useful to users of governmental financial information.

Management’s Discussion and Analysis – GASB 34 requires the financial statements be accompanied by a narrative introduction and analytical overview of the Office’s financial activities in the form of management’s discussion and analysis (MD&A). This analysis is similar to the analysis provided in the annual reports of private-sector organizations.

Basic financial statements consist of the following:

- Government-wide financial statements,
- Fund financial statements, and
- Notes to the basic financial statements.

The government-wide financial statements (the statement of net assets and the statement of activities) report information of all the nonfiduciary activities of the Office, thus the agency fund is not included. The effect of material interfund activity has been removed from these government-wide statements.

The statement of activities demonstrates the degree to which the direct expenses of a function are offset by program revenues. Direct expenses are those that are clearly identifiable with a specific function. Program revenues include grants and contributions that are restricted to meeting the operational requirements of the Office. Taxes, if any, and other items not properly included among program revenues are reported instead of general revenues. The Office does not allocate general government expenses to other functions other than to administrative services. The Office does not apply FASB pronouncements issued after November 30, 1989.

NOTES TO FINANCIAL STATEMENTS – CONTINUED

June 30, 2009

NOTE A – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES – CONTINUED

2. Government-Wide and Fund Financial Statements – Continued

Net assets are restricted when constraints placed on them are either externally imposed or are imposed by constitutional provisions or enabling legislation. Resources created by enabling legislation are “legally enforceable”, meaning that the government can be compelled by an external party such as citizens or public interest groups to use the resources for the purposes specified by the legislation. Internally imposed designations of resources are not presented as restricted net assets. When both restricted and unrestricted resources are available for use, generally it is the Office’s policy to use restricted resources first, then unrestricted resources as they are needed. Investments in capital assets reflect the portion of net assets which are associated with non-liquid, capital assets. Unrestricted net assets consist of net assets that do not meet the definition of “restricted” or “invested in capital assets.”

Governmental funds are reported as major funds in the accompanying financial statements if they meet both of the following criteria.

- *Ten percent criterion.* An individual governmental fund reports at least 10 percent of any of the following: a) total governmental fund assets, b) total governmental fund liabilities, c) total governmental fund revenues, or d) total governmental fund expenditures.
- *Five percent criterion.* An individual governmental fund reports at least 5 percent of the total for both governmental and enterprise funds of any one of the items for which it met the 10 percent criterion.

The Office’s two major governmental funds are the following:

General Fund (SHARE 18000) – The general fund is the general operating fund of the Office and is used to account for all financial resources except those required to be accounted for in another fund. It is accounted for using the modified accrual basis of accounting. Revenues are recognized when they become measurable and available as net current assets. Any unused funds revert to the State general fund.

Public Election Fund (SHARE 81200) – The public election fund is funded through State appropriations and was established by legislation of 1-19A-10 NMSA for the purposes of:

- a. Financing the election campaign of certified candidates for covered offices;
- b. Paying administrative and enforcement costs of the Voter Action Act (1-19A-1 to 1-19A-17 NMSA 1978); and
- c. Carrying out all other specified provisions of the Voter Action Act.

NOTES TO FINANCIAL STATEMENTS – CONTINUED

June 30, 2009

NOTE A – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES – CONTINUED

2. Government-Wide and Fund Financial Statements – Continued

This is a non-reverting fund. The fund receives certain fee income from inspection and supervision fees pursuant to 62-8-8 NMSA 1978, utility and carrier inspection fees pursuant to 63-7-20 NMSA 1978 and insurance premium tax pursuant to 59A-6-2 NMSA 1978. See 1-19A-10D NMSA 1978.

The Office's non-major special revenue governmental funds are as follows:

Arbitration Fund (SHARE 02500) – Chapter 112 Laws 1997 – An arbitration hearing shall be conducted by a single arbitrator selected within ten days by the person against whom the penalty has been imposed from a list of five arbitrators provided by the Secretary of State. Neither the Secretary of State nor a person subject to the Lobbyist Regulation Act, Campaign Reporting Act or Financial Disclosure Act may serve as an arbitrator. Arbitrators shall be considered to be independent contractors, not public officers or employees, and shall not be paid per diem or mileage. This is a non-reverting fund.

Help America Vote Act Fund (HAVA) (SHARE 90300) — The HAVA fund is the special revenue fund used to account for the Federal funds received relating to the Help America Vote Act of 2002. Federal funds received in advance are recorded as deferred revenue. Revenue is recorded when the expenditure is incurred, using the modified accrual basis of accounting. The HAVA fund also receives State funds pursuant to federal matching requirements. This is a non-reverting fund, restricted to specified purposes by the Help America Vote Act.

The Office's fiduciary fund is as follows:

Fiduciary Fund Type (SHARE 79900) – Notary Public and other fees, an agency fund is used to report assets held for others and are not available to support Office activities. The agency fund is accounted for an accrual basis of accounting and is used to account for the collection of various fees that are remitted to State general fund.

3. Measurement Focus, Basis of Accounting and Financial Statement Presentation

Government-Wide Financial Statements – The government-wide financial statements are reported using the economic resources measurement focus and the accrual basis of accounting. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows. Grants and similar items are recognized as revenues as soon as all eligibility requirements imposed by the provider have been met.

NOTES TO FINANCIAL STATEMENTS – CONTINUED

June 30, 2009

NOTE A – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES – CONTINUED

3. Measurement Focus, Basis of Accounting and Financial Statement Presentation – Continued

Governmental Fund Financial Statements – The financial activities of the Office are recorded in individual funds, each of which is deemed to be a separate accounting entity. The Office uses fund accounting to report on its financial position and results of operations. Fund accounting is designed to demonstrate legal compliance and to aid financial management by segregating transactions related to certain government functions or activities. A fund is a separate accounting entity with a self-balancing set of accounts.

The measurement focus is on the flow of expendable financial resources, rather than on net income determination. The following are the governmental fund types used:

The Governmental fund types (general and special revenue) use a current financial resources measurement focus and are accounted for using the modified accrual basis of accounting. Under the modified accrual basis of accounting, revenues are recognized when susceptible to accrual (when they become both measurable and available). “Measurable” means the amount of the transaction can be determined. “Available” means collectible within the current period or soon enough thereafter (60 days at most) to be used to pay liabilities of the current period. Revenues, which are recognized when they become both measurable and available, include intergovernmental revenues and interest earnings. Expenditures are recorded when the related fund liability is incurred. Exceptions to this general rule include: accrued vacation and sick leave which are recorded when payable from current available financial resources.

Revenues derived from federal and State grants are recognized and recorded as receivables when the related expenditures are incurred and all other eligibility requirements are met. Amounts expended under federal and State grants for which payment is not expected to be received within 60 days are recorded as deferred revenue. Likewise, amounts received from federal and State grants which have not been expended are recorded as deferred revenue. Interest income is recorded when earned.

4. Budgets and Budgetary Accounting

The Office follows these procedures in establishing the budgetary data reflected in the financial statements:

NOTES TO FINANCIAL STATEMENTS – CONTINUED

June 30, 2009

NOTE A – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES – CONTINUED

4. Budgets and Budgetary Accounting – Continued

- a. Prior to September 1, the Office submits to State Budget – Financial Control Division, Department Finance and Administration (DFA), and the Legislative Finance Committee (LFC) an appropriation request for the fiscal year commencing the following July 1. The appropriation request includes proposed expenditures and the means of financing them.
- b. Following their budget hearings with the Office, the DFA and the LFC prepare their own budget recommendations to the legislature.
- c. Budget hearings are then scheduled before the finance committees of the New Mexico House of Representatives and Senate. The final outcome of these hearings is incorporated into the general appropriations act.
- d. The Office then submits, on or before May 1, an annual operating budget request to the State Budget Division who reviews the request and subsequently approves the budget based upon the appropriation made by the legislature. The DFA approved operating budget becomes effective on July 1. All subsequent budget transfers and increases must be authorized by the Director of the State Budget Division.
- e. Budgetary control is exercised by the Office at the appropriation unit level. Budget Adjustment Requests (BARs) are approved by the DFA Budget Division.
- f. Legal budget control for expenditures and encumbrances is by category of line item.
- g. The non budgeted funds for the Office are the Arbitration and the Agency funds.
- h. Appropriations lapse at the end of the fiscal year except for those amounts related to goods and services received by June 30th or are multi-year appropriations.
- i. In accordance with the requirements of Section 2.2.2 10.A (2) (b) of 2.2.2. NMAC *Requirements for Contracting and Conducting Audits of Agencies* and the requirements established by GASB 34 footnote 53, the budgetary comparison statement for the general fund has been included as part of the basic financial statements.

NOTES TO FINANCIAL STATEMENTS – CONTINUED

June 30, 2009

NOTE A – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES – CONTINUED

5. Modified Accrual and Budgetary Basis of Accounting

Per the General Appropriation Act, Laws of 2007, Chapter 28, Section 3, item N, “For the purpose of administering the General Appropriation Act of 2007 and approving operating budgets, the State of New Mexico shall follow the modified accrual basis of accounting for governmental funds in accordance with the manual of model accounting practices issued by the department of finance and administration.” The budget is adopted on the modified accrual basis of accounting except for accounts payable accrued at the end of the fiscal year that do not get paid by the statutory deadline per Section 6-10-4 NMSA 1978. Those accounts payable that do not get paid timely must be paid out of the next year’s budget. Encumbrances related to single year appropriations lapse at year end. Appropriation periods are sometimes for periods in excess of twelve months (multiple-year appropriations). When multiple-year appropriation periods lapse, the authority for the budget also lapses and encumbrances can no longer be charged to that budget. For fiscal year 2009, there was \$69,300 of accounts payable paid past the statutory deadline. Reconciling items between GAAP and the budgetary basis for budgeted funds for the general fund and public election funds are presented on the face of the statements. There was no budget for the arbitration fund for fiscal year 2009 due to a low volume of expected activity.

6. Capital Assets

Capital assets, which include computer equipment and voting machines, are reported in the governmental activities columns in the government-wide financial statements. Capital assets are defined by the State as assets which have a cost of \$5,000 or more at the date of acquisition, pursuant to Section 12-6-10 NMSA 1978. Assets purchased before 2006 were capitalized if cost exceeded \$1,000. Purchased and constructed capital assets are valued at historical cost or estimated historical cost. Donated capital assets are recorded at their fair market value at the date of donation. Capital assets acquired in the current year in the governmental funds are recorded as capital outlay expenditures in the governmental fund financial statements.

Capital assets of the Office are depreciated on the straight-line method over the estimated useful life of three years for computer equipment, and over five years for voting equipment held for counties.

NOTES TO FINANCIAL STATEMENTS – CONTINUED

June 30, 2009

NOTE A – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES – CONTINUED

7. Accrued Compensated Absences

The Office accrues vacation and sick time liability in the government-wide financial statements. The governmental fund financial statements record the expenditure when the employees are paid or when compensated absences are expected to be liquidated with expendable available financial resources in the governmental funds. Vacation and sick leave earned and not taken is cumulative; however, sick pay up to 600 hours is forfeited upon termination of State service and vacation is limited to 240 hours. Sick leave accumulated in excess of 600 hours, not to exceed 120 hours, is payable semiannually to qualified employees at a rate equal to 50 percent of their hourly rate. Upon retirement, sick leave is limited to 400 hours accumulated in excess of 600 hours at the 50 percent hourly rate. Historically, all compensated absences have been paid out of the general fund.

8. Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts to assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

9. Fund Balances/Net Assets

Reservations of fund balance in the governmental fund statements are created to satisfy legal covenants that require that a portion of the fund balance be segregated or not available for expenditure. Specific reservations of fund balance accounts are summarized below:

Reserved for appropriations - Represents fund balance that is segregated for special appropriations that carry over to future years.

Unreserved - Designated for subsequent years' expenditures - represents that portion of fund balance that is segregated for obligations for which a contract has not been finalized.

In the government-wide financial statements net assets consist of three components: invested in capital assets, net of related debt; restricted; and unrestricted. The Office has no debt related to capital assets; therefore, net assets invested in capital assets equal the capital assets, net of accumulated depreciation. Capital assets are defined as those tangible or intangible assets used in operations and having a useful life greater than a single reporting period.

NOTES TO FINANCIAL STATEMENTS – CONTINUED

June 30, 2009

NOTE A – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES – CONTINUED

9. Fund Balances/Net Assets - Continued

Net assets are reported as restricted when constraints are placed on net asset use that are externally imposed by creditors (such as through debt covenants), grantors, contributors, or laws or regulations of other governments or imposed by law through constitutional provisions or enabling legislation.

Legal enforceability means that a government can be lowered by an external party – such as citizens, public interest groups or the judiciary – to use resources only for the purposes specified by the legislation.

The amount of net assets restricted by enabling legislation is at June 30, 2009 is summarized below:

Restricted for 2009 primary election	\$ 1,000,000
Restricted for campaign reporting	161,500
Restricted for political financial reporting upgrade	15,566
Restricted for public election fund	2,134,102
Restricted for HAVA program	222,772
Restricted for arbitration fund	<u>30,155</u>
	<u>\$ 3,564,095</u>

10. Due from Federal Government

The balance consists of qualified voting disability related expenditures in connection with election assistance grants for individuals with disabilities in accordance with Section 261 of the Help America Vote Act.

NOTE B – INVESTMENTS, STATE TREASURER

Investments of the Office consist of its interest in the State general fund investment pool, which is managed by the New Mexico State Treasurer by statute. The fair value of the investments maintained at the New Mexico State Treasurer’s Office at June 30, 2009 is as follows:

SHARE FUND NO.	Fund Description	Fair Value June 30, 2009
18000	General fund	\$ 2,365,897
81200	Public election fund	2,157,972
90300	HAVA fund	26,821
02500	Arbitration fund	<u>30,150</u>
Total interest in investment pool per governmental funds		<u>\$ 4,580,840</u>

NOTES TO FINANCIAL STATEMENTS – CONTINUED

June 30, 2009

NOTE B – INVESTMENTS, STATE TREASURER – CONTINUED

The Office did not have any other investments during the year ended June 30, 2009. For additional GASB 40 disclosures information related to the above investment pool, including interest rate risk, and credit risk, the reader should refer to the separate audit report of the New Mexico State Treasurer for the fiscal year ended June 30, 2009. There were no reconciling items at June 30, 2009.

NOTE C – CAPITAL ASSETS

The following is the capital assets activity for the year ended June 30, 2009.

	Balance June 30, 2008	Additions	Deletions	Balance June 30, 2009
Computer equipment, software and furniture	\$ 942,443	\$ 254,538	\$ -	\$ 1,196,981
Voting equipment held for counties	<u>17,373,510</u>	<u>-</u>	<u>-</u>	<u>17,373,510</u>
Total capital asset	18,315,953	254,538	-	18,570,491
Less accumulated depreciation				
Computer equipment, software and furniture	(480,145)	(246,370)	-	(726,515)
Less accumulated depreciation				
Voting equipment held for counties	<u>(6,949,404)</u>	<u>(3,474,702)</u>	<u>-</u>	<u>(10,424,106)</u>
Total accumulated depreciation	<u>(7,429,549)</u>	<u>(3,721,072)</u>	<u>-</u>	<u>(11,150,621)</u>
Net capital assets	<u>\$ 10,886,404</u>	<u>\$ (3,466,534)</u>	<u>\$ -</u>	<u>\$ 7,419,870</u>

Depreciation expense was \$3,721,285 for fiscal year 2009. The Office does not own any infrastructure assets or nondepreciable assets as of June 30, 2009.

NOTES TO FINANCIAL STATEMENTS – CONTINUED

June 30, 2009

NOTE D – CHANGES IN LONG-TERM OBLIGATION

The following is a summary of transactions for the compensated absences for the year ended June 30, 2009, which the general fund will pay for in future years.

	Balance June 30, 2008	Additions	Deletions	Balance June 30, 2009
Accumulated annual and sick leave	\$ 117,432	\$ 107,473	\$(108,330)	\$ 116,575

The current portion of the compensated absences obligation is \$93,261.

NOTE E – ADVANCE LOANS FROM BOARD OF FINANCE

Balance June 30, 2008	Additions	Deletions	Balance June 30, 2009	Short Term	Long Term
\$ -	\$ 150,000	\$ -	\$ 150,000	\$ -	\$ 150,000
-	41,111	-	41,111	-	41,111
-	59,300	-	59,300	-	59,300
550,105	-	-	550,105	550,105	-
\$ 550,105	\$ 250,411	\$ -	\$ 800,516	\$ 550,105	\$ 250,411

In fiscal year 2008, the Office received emergency loans in the amount of \$550,105 for cost associated with the primary election held in June 2008. The loan is expected to be repaid in fiscal year 2010.

In fiscal year 2009, the Office received \$150,000 for purposes of paying for additional ballots used in the general election. The loan is expected to be repaid in fiscal year 2011 and will require the appropriation of additional funds.

In fiscal year 2009, the Office received \$41,111 for purpose of paying for an election recount. The loan is expected to be repaid in fiscal year 2011 and will require the appropriation of additional funds.

In fiscal year 2009, the Office received \$59,300 to pay for Oracle licensing fees for VREMS and maintenance and support services for the public financial reporting system. The loan is expected to be repaid in fiscal year 2011 and will require the appropriation of additional funds.

NOTES TO FINANCIAL STATEMENTS – CONTINUED

June 30, 2009

NOTE F – SPECIAL APPROPRIATIONS

The Office received special appropriations in fiscal year 2008 pursuant to the Laws of 2008, chapter 3, section 5, item 42, in the amount of \$3,000,000 for costs associated with the general election. The Office expended the entire amount in fiscal year 2009.

The Office received special appropriations in fiscal year 2008 pursuant to the Laws of 2008, chapter 3, section 7, item 19, in the amount of \$150,000 for costs associated with enhancing the Office's limited partnership software. The Office expended \$144,895 during fiscal year 2009.

The Office received special appropriations in fiscal year 2009 pursuant to Laws of 2008, chapter 7, senate bill 23, in the amount of \$1,637,400 for costs associated with the general election. The Office expended \$1,637,384 in fiscal year 2009.

The Office received general fund appropriations in fiscal year 2009 pursuant to Laws of 2008, chapter 3, section 4, in the amount of \$4,109,000 for general operating purposes. The Office expended \$4,085,864 in fiscal year 2009.

The Office received compensation allowance appropriations in fiscal year 2009 pursuant to Laws of 2008, chapter 3, section 8, in the amount of \$56,500. The Office expended the entire amount in fiscal year 2009.

The Office received special appropriations in fiscal year 2009 pursuant to Laws of 2009, chapter 124, section 6, item 10, in the amount of \$99,300 for costs associated with the 2008 general election. The entire amount was expended in fiscal year 2009.

The Office received special appropriations in fiscal year 2009 pursuant to Laws of 2008, chapter 3, section 7, item 18, in the amount of \$112,000 for political financial reporting upgrades. The Office expended \$53,346 in prior years and \$58,654 in fiscal year 2009.

The Office was authorized special appropriations in fiscal year 2009 pursuant to Laws of 2007, senate bill 826, chapter 321, section 305, for costs associated with the electronic reporting system. The Office expended \$69,864 in fiscal year 2009.

The Office received special appropriations in the amount of \$150,000 for cost associated with the voting registration management system. The Office expended \$96,654 in fiscal year 2008 and \$37,780 in fiscal year 2009.

NOTES TO FINANCIAL STATEMENTS – CONTINUED

June 30, 2009

NOTE F – SPECIAL APPROPRIATIONS-CONTINUED

The Office received special appropriations in the amount of \$37,200 pursuant to Laws of 2009, chapter 124, section 5, item 22, to provide matching funds for a federal grant through the Help America Vote Act. There was no expenditure activity in fiscal year 2009.

NOTE G – RETIREMENT AND POST RETIREMENT BENEFITS

1. PERA Pension Plan

Plan Description – The Office’s full-time employees participate in a public employee retirement system authorized under the Public Employees Retirement Act (Chapter 10, Article 11 NMSA 1978). The Public Employees Retirement Association (PERA) is the administrator of the plan, which is a cost-sharing multiple-employer defined benefit retirement plan. The plan provides for retirement, disability benefits, survivor benefits and cost-of-living adjustments to plan members and beneficiaries. As of June 30, 2008, there were 28 participants eligible to receive benefits. PERA issues a separate, publicly available financial report that includes financial statements and required supplementary information for the plan. That report may be obtained by writing to PERA, P.O. Box 2123, Santa Fe, New Mexico 87504-2123. The report is also available on PERA’s website @ www.pera.state.nm.us.

Funding Policy – Plan members are required to contribute 7.42% of their gross salary. The Office is required to contribute 16.59%. The contributions requirements of plan members and the Office were established under Chapter 10, Article 11 NMSA 1978. The requirements may be amended by acts of the legislature. The Office’s contributions to PERA for the years ended June 30, 2009, 2008 and 2007 were \$313,942, \$267,730 and \$219,776, respectively, equal to the amount of the required contributions for each year.

2. Post Employment Benefits

Plan Description. The Office of the Secretary of State contributes to the New Mexico Retiree Health Care Fund, a cost-sharing multiple-employer defined benefit postemployment healthcare plan administered by the New Mexico Retiree Health Care Authority (RHCA). The RHCA provides health care insurance and prescription drug benefits to retired employees of participating New Mexico government agencies, their spouses, dependents, and surviving spouses and dependents. The RHCA Board was established by the Retiree Health Care Act (Chapter 10, Article 7C, NMSA 1978). The Board is responsible for establishing and amending benefit provisions of the healthcare plan and is also authorized to designate optional and/or voluntary benefits like dental, vision, supplemental life insurance, and long-term care policies.

NOTES TO FINANCIAL STATEMENTS – CONTINUED

June 30, 2009

NOTE G – RETIREMENT AND POST RETIREMENT BENEFITS-CONTINUED

2. Post Employment Benefits – Continued

Eligible retirees are: 1) retirees who make contributions to the fund for at least five years prior to retirement and whose eligible employer during that period of time made contributions as a participant in the RHCA plan on the person's behalf, unless that person retires before the employer's RHCA effective date, in which event the time period required for employee and employer contributions shall become the period of time between the employer's effective date and the date of retirement; 2) retirees defined by the Act who retired prior to July 1, 1990; 3) former legislators who served at least two years; and 4) former governing authority members who served at least four years.

The RHCA issues a publicly available stand-alone financial report that includes financial statements and required supplementary information for the postemployment healthcare plan. That report and further information can be obtained by writing to the Retiree Health Care Authority at 4308 Carlisle NE, Suite 104, Albuquerque, NM 87107.

Funding Policy. The Retiree Health Care Act (Section 10-7C-13 NMSA 1978) authorizes the RHCA Board to establish the monthly premium contributions that retirees are required to pay for healthcare benefits. Each participating retiree pays a monthly premium according to a service based subsidy rate schedule for the medical plus basic life plan plus an additional participation fee of five dollars if the eligible participant retired prior to the employer's RHCA effective date or is a former legislator or former governing authority member. Former legislators and governing authority members are required to pay 100% of the insurance premium to cover their claims and the administrative expenses of the plan. The monthly premium rate schedule can be obtained from the RHCA or viewed on their website at www.nmrhca.state.nm.us.

The Retiree Health Care Act (Section 10-7C-15 NMSA 1978) is the statutory authority that establishes the required contributions of participating employers and their employees. The statute requires each participating employer to contribute 1.3% of each participating employee's annual salary; each participating employee is required to contribute .65% of their salary.

Employers joining the program after January 1, 1998, are also required to make a surplus-amount contribution to the RHCA based on one of two formulas at agreed-upon intervals.

The RHCA plan is financed on a pay-as-you-go basis. The employer, employee and retiree contributions are required to be remitted to the RHCA on a monthly basis. The statutory requirements for the contributions can be changed by the New Mexico State Legislature.

The Office's contributions to the RHCA for the year ended June 30, 2009, 2008, and 2007 were \$21,269, \$18,421, and \$16,174, respectively, equal to the required contributions.

NOTES TO FINANCIAL STATEMENTS – CONTINUED

June 30, 2009

NOTE H – REVERSION AND DUE TO STATE GENERAL FUND

The current year reversion due to the State general fund from the Office’s general fund is \$28,394. The balances due to the State general fund at June 30, 2009 consist of the following:

General Fund 18000	
Reversion payable 2008	\$ 951,376
Add: Reversion expense 2009	28,394
Deduct operating transfers to State general fund	(153,802)
Deduct notary fees deposited in general fund and transferred to notary fund	<u>(797,574)</u>
Reversion and due to State general fund payable 2009	28,394
Public Election Fund 81200	
Misuse of election funds	
Fine levied and collected	<u>24,200</u>
Total	<u><u>\$ 52,594</u></u>

NOTE I – COMMITMENTS AND CONTINGENCIES

1. Risk Management

The Office is exposed to various risks of loss for which the Office carries insurance (Auto; Employee Fidelity Bond; General Liability, Civil Rights, and Foreign Jurisdiction; Money and Securities; Property; and Workers’ Compensation). The Office obtains its coverages with the State of New Mexico Risk Management Division. Any claims are processed through R.M.D. There are no material matters outstanding at June 30, 2009.

2. Operating Leases

The Secretary of State leases certain equipment under operating leases. Leases are subject to future appropriations and as such are cancelable by the Secretary of State at the end of a fiscal year. Rental expense under operating leases for the year ended June 30, 2009 was \$42,780. Future lease payments are as follows:

2010	\$ 16,916
2011	16,916
2012	<u>13,272</u>
Total	<u><u>\$ 47,104</u></u>

NOTES TO FINANCIAL STATEMENTS – CONTINUED

June 30, 2009

NOTE J – TRANSFERS

		<u>Transfers to other agencies</u>			
From		To			
Fund	Agency	Fund	Transfer Amount	Purpose of the Transfer	
81200	State General Fund	85200	\$ 1,750,000	To reduce state budget deficits	

		<u>Transfers from other agencies</u>			
To		From			
Fund	Agency	Fund	Transfer Amount	Purpose of the Transfer	
18000	DFA	85300	\$ 7,423,300	State Appropriations	
18000	DFA	85300	56,500	Compensation allowance	
18000	DFA	85200	250,411	Board of Finance loan proceeds for general election costs	
81200	DFA	85300	1,500,000	Voter Action Act	
90300	DFA	85300	37,200	State matching funds for HAVA	

NOTE K – SUBSEQUENT EVENTS

Subsequent events are events or transactions that occur after the balance sheet date, but before financial statements are issued. The Office recognizes in the financial statements the effects of all subsequent events that provide additional evidence about conditions that existed at the date of the balance sheet, including the estimates inherent in the process of preparing the financial statements. The Office's financial statements do not recognize subsequent events that provide evidence about conditions that did not exist at the date of the balance sheet, but arose after the balance sheet date and before financial statements are available to be issued.

The Office has evaluated subsequent events through November 19, 2009, which the date the financial statements are available to be issued.

Following items are disclosed as significant:

- Outstanding issues for HAVA include voting machine custody and property management issues and an overall final resolution letter for the audit. Legislation introduced to give ownership of voting machines to the Office of the Secretary of State and maintenance responsibilities for the machines to counties did not pass the legislature in 2009.
- In fiscal year 2008 the U.S. Election Assistance Commission appropriated \$1,319,881 in requirements payment for the State of New Mexico's HAVA program. The Office is expected to receive the monies in fiscal year 2010 once certain eligibility requirements required for funding have been met.

SUPPLEMENTARY INFORMATION

State of New Mexico
Office of the Secretary of State

BALANCE SHEET
NON-MAJOR GOVERNMENTAL FUNDS – SPECIAL REVENUE FUNDS
Year ended June 30, 2009

	<u>HAVA</u> <u>(SHARE 90300)</u>	<u>Arbitration</u> <u>(SHARE 02500)</u>	<u>Total</u>
Assets			
Investments, State Treasurer	\$ 26,821	\$ 30,150	\$ 56,971
Due from federal award	195,944	-	195,944
Accrued interest	<u>7</u>	<u>5</u>	<u>12</u>
 Total assets	 <u>\$ 222,772</u>	 <u>\$ 30,155</u>	 <u>\$ 252,927</u>
 Liabilities and fund balance			
Accounts payable	\$ -	\$ -	\$ -
Fund balance	<u>222,772</u>	<u>30,155</u>	<u>252,927</u>
 Total liabilities and fund balances	 <u>\$ 222,772</u>	 <u>\$ 30,155</u>	 <u>\$ 252,927</u>

State of New Mexico
Office of the Secretary of State

**STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCE – NON-MAJOR
GOVERNMENTAL FUNDS – SPECIAL REVENUE FUNDS**

Year ended June 30, 2009

	<u>HAVA</u> <u>(SHARE 90300)</u>	<u>Arbitration</u> <u>(SHARE 02500)</u>	<u>Total</u>
Federal revenues	\$ 92,616	\$ -	\$ 92,616
Revenues - interest income	<u>1,387</u>	<u>224</u>	<u>1,611</u>
Total revenues	94,003	224	94,227
Expenditures	<u>219,193</u>	<u>-</u>	<u>219,193</u>
Excess revenues over expenditures	(125,190)	224	(124,966)
Other financing sources			
State general fund appropriations	<u>37,200</u>	<u>-</u>	<u>37,200</u>
Net changes in fund balances	(87,990)	224	(87,766)
Fund balance, beginning of year	<u>310,762</u>	<u>29,931</u>	<u>340,693</u>
Fund balance, end of year	<u>\$ 222,772</u>	<u>\$ 30,155</u>	<u>\$ 252,927</u>

State of New Mexico
Office of the Secretary of State

**STATEMENT OF REVENUES AND EXPENDITURES (BUDGETARY BASIS)
NONMAJOR GOVERNMENTAL FUNDS – HAVA FUND (SHARE 90300)**

Year ended June 30, 2009

HAVA Fund (SHARE 90300)	Budget Original	Budget Final	Actual Amount Budgetary Basis	Variance Favorable (Unfavorable)
Revenue				
Federal funds	\$ -	\$ -	\$ 92,616	\$ 92,616
State appropriations	-	-	37,200	37,200
Other financing sources	-	-	-	-
Interest	-	-	1,387	1,387
Total revenue	-	-	131,203	131,203
Fund balance carry forward	<u>222,772</u>	<u>222,772</u>	<u>222,772</u>	<u>-</u>
Total revenues (budgetary basis)	<u>\$ 222,772</u>	<u>\$ 222,772</u>	<u>\$ 353,975</u>	<u>\$ 131,203</u>
Expenditures				
Personal service/employee benefits	\$ -	\$ -	\$ -	\$ -
Contractual services	-	-	-	-
Other costs	-	222,772	219,193	3,579
Total expenditures (single year)	<u>\$ -</u>	<u>\$ 222,772</u>	<u>\$ 219,193</u>	<u>\$ 3,579</u>
Excess of revenue and other financing sources over expenditures			\$ 134,782	
Fund balance carry forward			(222,772)	
Change in fund balance per statement of revenues, expenditures and changes in fund balance (GAAP Basis)			<u>\$ (87,990)</u>	

OTHER SUPPLEMENTARY INFORMATION

State of New Mexico
Office of the Secretary of State

**SCHEDULE OF CHANGES IN ASSETS AND LIABILITIES –
AGENCY FUND (79900)**

Year ended June 30, 2009

	<u>June 30, 2008</u>	<u>Additions</u>	<u>Deletions</u>	<u>June 30, 2009</u>
Assets - Due from general fund	<u>\$ 52,091</u>	<u>\$ 1,851,404</u>	<u>\$ 1,159,277</u>	<u>\$ 744,218</u>
Liabilities - Due to State general fund	<u>\$ 52,091</u>	<u>\$ 1,851,404</u>	<u>\$ 1,159,277</u>	<u>\$ 744,218</u>

State of New Mexico
Office of the Secretary of State

SUPPLEMENTAL SCHEDULE INCLUDING SPECIAL APPROPRIATIONS

Year ended June 30, 2009

Description	Authority	SHARE Fund	Total Original Appropriation
For 2008 general election	Laws of 2008 Chapter 3 Section 5 Item 42	18000	\$ 3,000,000
To enhance limited partnership software	Laws of 2008 Chapter 3 Section 5 Item 43	18000	150,000
Electronic reporting system for public inspection	Laws of 2007 SB 826, Chapter 321, Section 305	18000	70,000
2008 general election costs	Laws of 2008, Chapter 7 SB 23	18000	1,637,400
Fiscal year 2009 appropriation	Laws of 2008, Chapter 3, Section 4	18000	4,109,000
Compensation appropriation	Laws of 2008, Chapter 3, Section 8	18000	56,500
For the 2008 general election	Laws of 2009, Chapter 124 section 6 item 10	18000	99,300
For cost associated with the 2010 primary election	Laws of 2009, Chapter 124 section 5 item 21	18000	1,000,000
Maintenance & support services for voter registration election management system software used but not paid for in prior years.	Laws of 2009 Chapter 124 section 6 item 09	18000	289,100
Campaign reporting	Laws of 2008, Chapter 3 Section 7 Item 17	18000	176,500
Political financial reporting upgrades	Laws of 2008, Chapter 3 Section 7, Item 18	18000	112,000
Voter registration management system	Laws of 2008 Ch 3 Section 7 Item 19	18000	150,000
For 2008 general election	Board of finance loan proceeds	18000	191,111
To pay Oracle licensing fees	Board of finance loan proceeds	18000	59,300
To provide matching funds for federal grant	Laws of 2009, Chapter 124 section 5 item 22	90300	37,200

<u>Appropriation Period</u>	<u>Prior Year Expenditures</u>	<u>Current Year Expenditures</u>	<u>Current Funds not Expended</u>	<u>Outstanding Encumbrances</u>	<u>Current Year Reversion Amount</u>	<u>Unencumbered Balances</u>
2008-2009	\$ -	\$ 3,000,000	\$ -	\$ -	\$ -	\$ -
2008-2009	-	144,895	5,105	-	5,105	-
2008-2009	-	69,864	136	-	136	-
2008-2009	-	1,637,384	16	-	16	-
2008-2009	-	4,085,864	23,136	-	23,136	-
2008-2009	-	56,500	-	-	-	-
2008-2009	-	99,300	-	-	-	-
2009-2010	-	-	1,000,000	-	-	1,000,000
2008-2009	-	289,099	1	-	1	-
2008-2010	-	15,000	161,500	-	-	161,500
2008-2010	53,346	58,654	-	-	-	-
2008-2010	96,654	37,780	15,566	-	-	15,566
2009-2010	-	191,111	-	-	-	-
2009-2010	-	59,300	-	-	-	-
2009-2010	-	-	37,200	-	-	37,200
	<u>\$ 150,000</u>	<u>\$ 9,744,751</u>	<u>\$ 1,242,660</u>	<u>\$ -</u>	<u>\$ 28,394</u>	<u>\$ 1,214,266</u>



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INDEPENDENT AUDITORS' REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS

Mr. Hector Balderas
New Mexico State Auditor
And
Ms. Mary Herrera
New Mexico Secretary of State
State of New Mexico

We have audited the basic financial statements of the governmental activities, each major fund, the budgetary comparisons for the general fund and the major special revenue fund, and the aggregate remaining fund information of the Office of the Secretary of State (the Office), as of and for the year ended June 30, 2009, which collectively comprise the Office's basic financial statements as listed in the table of contents, and have issued our report thereon dated November 19, 2009. We have also audited the financial statements of the Office's non-major governmental funds and the respective budgetary comparison presented as supplementary information in the accompanying combining and individual fund financial statements as of and for the year ended June 30, 2009, as listed in the table of contents.

We have issued our report dated November 19, 2009 which has qualified because the Office has certain unresolved matters in relation to an ongoing audit of the administration of payments under the Help America Vote Act (HAVA). We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Internal Control Over Financial Reporting

In planning and performing our audit, we considered the State of New Mexico, Office of the Secretary of State's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Office's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the Office's internal control over financial reporting.

Our consideration of the internal control over financial reporting was for the limited purpose described in the preceding paragraph and would not necessarily identify all deficiencies in internal control over financial reporting that might be significant deficiencies or material weaknesses. However, as discussed below, we identified a deficiency in internal control over financial reporting that we consider to be a significant deficiency.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the Office's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the Office's financial statements that is more than inconsequential will not be prevented or detected by the Office's internal control. We consider the deficiency described in the accompanying schedule of findings and responses to be significant deficiency in internal control over financial reporting. This item can be referenced as finding 07-03.

A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected by the Office's internal control.

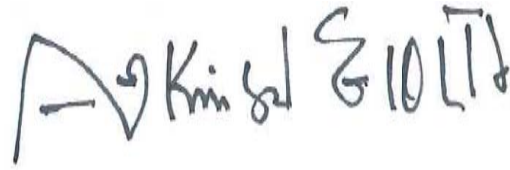
Our consideration of the internal control over financial reporting was for the limited purpose described in the first paragraph of this section and would not necessarily identify all deficiencies in the internal control that might be significant deficiencies and, accordingly, would not necessarily disclose all significant deficiencies that are also considered to be material weaknesses. However, we believe the significant deficiency described above is not a material weakness.

Compliance and Other Matters

As a part of obtaining reasonable assurance about whether the Office's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our test disclosed instances of noncompliance or other matters that are required to be reported under Government Auditing Standards and which are described in the accompanying schedule of findings and responses at items 09-01, 09-02 and 07-03.

The Office's responses to the findings indentified in our audit are described in the accompanying schedule of findings and responses. We did not audit the Office's response and, accordingly, we express no opinion on it.

This report is intended solely for the information and use of the Office of the Secretary of State, Office's management, the Office of the State Auditor, the New Mexico Legislature, Department of Finance and Administration and federal awarding agencies and pass through entities, and is not intended to be and should not be used by anyone other than these specified parties.

A handwritten signature in black ink, appearing to read "Atkinson & Co., Ltd." with a stylized initial "A" on the left.

Atkinson & Co., Ltd.

Albuquerque, New Mexico
November 19, 2009

State of New Mexico
Office of the Secretary of State

SCHEDULE OF FINDINGS AND RESPONSES

Year ended June 30, 2009

FINANCIAL STATEMENTS

Type of auditor's report issued: Qualified

Internal control over financial reporting:

Material weaknesses identified? No

Significant deficiencies identified not considered to be material weaknesses? Yes

Noncompliance material to financial statements noted? Yes

CURRENT YEAR FINDINGS

Compliance Audit Finding Required by Government Auditing Standards

09-01 Election System & Software – Procurement Violations

09-02 File One Inc. – Procurement Violation

PRIOR YEAR FINDINGS

Findings in Accordance with OMB Circular A-133

07-03 Noncompliance with HAVA – Equipment Management – Significant Deficiency – Repeated

Findings in Accordance with 2.2.2. NMAC

08-01 Noncompliance with State Audit Deadlines – Resolved

08-02 Reversions – Resolved

07-14 Reversions – Resolved

Financial Statement Audit Findings Required by *Government Auditing Standards*

07-17 Improper Posting of Notary Fees – Resolved

SCHEDULE OF FINDINGS AND RESPONSES – CONTINUED

Year ended June 30, 2009

CURRENT YEAR FINDINGS

09-01 Election System & Software – Procurement Violations

Condition:

During our procurement test-work we noted Election Systems & Software (ES&S) continued to provide software maintenance for the Voting Registration Management System (VREMS) without a properly executed contract in place. The services were provided from July 1st of 2008 through October 31st 2008 and ES&S billed the Office \$61,583 for software maintenance services rendered. The prior administration's contract with ES&S expired on January 6th 2008 and was not renewed; however a price agreement was established through State purchasing on November 1, 2008. The Office paid the vendor \$61,583 on January 21, 2009.

In addition we noted ES&S continued to provide software maintenance for VREMS from January 1, 2009 to June 30, 2009 without a properly executed contract in place. ES&S billed the Office \$92,375 for software maintenance services rendered. The current administration's price agreement with ES&S expired on December 31, 2008 and has not been renewed as of the date of this report. The Office paid the vendor \$92,375 on August 28, 2009. The Office has worked with State Purchasing and as of November 2009, has established a Price Agreement (as ES&S has been determined to be a sole-source provider) until such time as a contract is finalized.

Criteria:

13-1-95 (c) NMSA 1978 requires all procurements not otherwise excepted by the code be conducted by the State purchasing division and State purchasing agent. All qualified State procurements are conducted through contract arrangements.

Effect:

Procurement violations significantly delay payments to vendors who provide vital services in good faith. Vendors who are not contractually obligated to provide these services could elect to not provide these services due to nonpayment. Lack of software maintenance for VREMS could lead to errors in the Office's computerized database of statewide registered voters. Errors in the database could impair the Office's ability to properly administer State and federal elections.

Cause:

The management of ES&S changed in fiscal year 2008 and lawyers representing the State of New Mexico and Election Systems & Software (ES&S) could not agree on contract clauses pertaining to indemnification and liability. ES&S is a sole source provider.

SCHEDULE OF FINDINGS AND RESPONSES – CONTINUED

Year ended June 30, 2009

CURRENT YEAR FINDINGS – CONTINUED

09-01 Election System & Software – Procurement Violations – Continued

Recommendation:

We recommend the Office continue to work with the new management of Election Systems & Software (ES&S) to ensure contracts are renewed timely and in accordance with state procurement laws.

Management's Response:

Regrettably, despite our best efforts to negotiate with the vendor, their attorneys refused to accept New Mexico contract clauses pertaining to Indemnification, and Liability. Our legal counsel has conferred with general counsel for DOIT and GSD and to date a contract has not been agreed upon or signed. However, as of November 2009, in working with State Purchasing, a price agreement has been established until a contract may be finalized.

Please know that despite an unsigned agreement, ES&S has acted in good faith and provided the New Mexico Office of the Secretary of State and all New Mexico counties with maintenance and support for the aforementioned applications under the time period defined. It is always our intent to follow the established New Mexico Procurement Code and unfortunately due to circumstances beyond our control we were unable to do so in this particular case.

ES&S owns the system and has proprietary rights to the source code. No other vendor can maintain the system as trade secrets and source code are protected under Statute 9-15-18 Proprietary Information (1991) of the NM Procurement Code. ES&S continued providing services in good faith in order for the Office of the Secretary of State and county clerk offices to remain in full operation for the benefit of the citizens we serve. The system was procured through the RFP process by the prior administration.

All procurement procedures were followed in attempting to establish a contract with ES&S. Their refusal to accept constitutionally mandated Indemnification and Liability clauses is the reason the contract has not been finalized. Despite the absence of a contract, ES&S continued to provide services to the Office of the Secretary of State and county clerk offices in order for the Office to remain in full operation and serve the public.

SCHEDULE OF FINDINGS AND RESPONSES – CONTINUED

Year ended June 30, 2009

CURRENT YEAR FINDINGS – CONTINUED

09-02 File One Inc. – Procurement Violation

Condition:

During our procurement test-work we noted File One, Inc. continued to provide software maintenance related to various systems used by the Office including the Uniform Commercial Code module, Political Financial Reporting system, and the Agricultural Liens module without a properly executed contract in place. The services were provided from January 1, 2009 to June 30, 2009 and File One, Inc. billed \$115,193 for maintenance services rendered. On November 20, 2009, the Office paid File One, Inc. \$115,193.

Criteria:

13-1-95 (c) NMSA 1978 requires all procurements not otherwise excepted by the code be conducted by the State purchasing division and State purchasing agent. All qualified State procurements are conducted through contract arrangements.

Effect:

Procurement violations significantly delay payments to vendors who provide vital services in good faith. Vendors who are not contractually obligated to provide these services could elect to not provide these services due to nonpayment. Lack of software maintenance for the Uniform Commercial Code module could impair the ability of the Office to properly administer the Uniform Commercial Code which has an important impact on the economy and the rights of the public.

Cause:

The management of File One, Inc. (owned by ES&S) changed in fiscal year 2008 and lawyers representing the State of New Mexico and File One Inc. could not agree on contract clauses pertaining to indemnification and liability. File One, Inc. is a sole source provider.

Recommendation:

We recommend the Office continue to work with the new management of ES&S (parent company to File One, Inc.) to ensure contracts are renewed timely and in accordance with state procurement laws.

SCHEDULE OF FINDINGS AND RESPONSES – CONTINUED

Year ended June 30, 2009

CURRENT YEAR FINDINGS – CONTINUED

09-02 File One Inc. – Procurement Violation – Continued

Management's Response:

Regrettably, despite our best efforts to negotiate with the vendor, their attorneys refused to accept New Mexico contract clauses pertaining to the Indemnification and Liability. Our legal counsel has conferred with general counsel for DOIT and GSD and to date a contract has not been agreed upon or signed. However, as of September 2009, in working with State Purchasing, a price agreement has been established until a contract may be finalized. The amount billed to the Office of the Secretary of State for services rendered January 1 thru June 30, 2009 totaled \$115,193 and covered the time period after the expiration of the contract term of December 31, 2008. This amount was justified since this was the cost for the previous six month period under the contract.

Although the Office of the Secretary of State and our legal counsel (with input from DOIT's General Counsel and General Services Department's General Counsel) worked to negotiate a contract, no agreement was reached due to attorneys from ES&S's (File One, Inc.'s parent company) refusal to accept the State of New Mexico's terms regarding indemnification and liability. These two clauses are constitutionally mandated in all New Mexico State contracts.

File One, Inc. owns the system and has proprietary rights to the source code. No other vendor can maintain the system as trade secrets and source code are protected under Statute 9-15-18 Proprietary Information (1991) of the NM Procurement Code. File One, Inc. continued providing services in good faith in order for the Office of the Secretary of State to remain in full operation for the benefit of the citizens we serve. The system was procured through the RFP process by the prior administration.

The following actions were taken beginning December 3, 2008 to date in attempting to complete the contract with File One, Inc.

- On December 3, 2008 a new contract to continue service begun in 2003 for File One, Inc. was initiated.
- The contract was forwarded to DOIT for review. The term of the contract was to be from January 1, 2009 until June 30, 2010.
- Requisition #937000010 in the amount of \$115,193.16 was established and approved encumbering the monies required (covered the last six months of maintenance for Fiscal Year 2009- January 1 thru June 30, 2009).
- The contract was returned by DOIT with approval to collect signatures from all required parties.
- The contract was electronically forwarded to File One, Inc. for review.
- The contract was returned by File One, Inc. with a request for changes.
- Legal Counsel for the Office of the Secretary of State contacted DOIT's General Counsel to discuss changes File One, Inc. had requested.

SCHEDULE OF FINDINGS AND RESPONSES – CONTINUED

Year ended June 30, 2009

CURRENT YEAR FINDINGS – CONTINUED

09-02 File One Inc. – Procurement Violation – Continued

Management's Response – Continued:

- SOS Legal Counsel sent the contract to the Office of the Secretary of State with their comments from DOIT's legal counsel.
- File One, Inc. returned the contract with a request for changes.
- Legal Counsel for the Office of the Secretary of State reviewed the File One, Inc. contract and conducted discussions with DOIT's General Counsel and GSD's General Counsel.
- SOS Legal Counsel met with SOS staff to discuss the File One, Inc. contract
- SOS Legal Counsel consulted with DOIT's and GSD's General Counsels and negotiated with File One, Inc.'s legal counsel.
- SOS Legal Counsel visited the SOS Office to conduct a conference call with File One, Inc. to negotiate the terms and conditions of the contract. Included in the conference call were: Ben Hartmere from File One, Inc. and Bill Vlach from ES&S, SOS Legal Counsel, and the Deputy Secretary of State. Although some minor agreements were reached as a result of the conference call, the vendor remained adamant about requiring indemnification and a release of liability from the State of New Mexico in the File One, Inc. contract.
- There have been continued communications between counsels regarding the contract, to no avail.

All procurement procedures were followed in attempting to establish a contract with File One, Inc. Their refusal to accept constitutionally mandated Indemnification and Liability clauses is the reason the contract has never been finalized. Despite the absence of a contract, File One, Inc. continued to provide services to the Office of the Secretary of State in order for the Office to remain in full operation and serve the public. Their request for payment is justified in the amount of \$115,193.22 for the six month period from January 1, 2009 thru June 30, 2009.

SCHEDULE OF FINDINGS AND RESPONSES – CONTINUED

Year ended June 30, 2009

PRIOR YEAR FINDINGS

07-03 Noncompliance with HAVA – Equipment Management – CFDA 90.401 – Significant Deficiency

Condition:

During fiscal year 2007, a prior administration did not notify county governments that title to the voting equipment purchased with HAVA funds and transferred to the counties was to be vested in the counties. County governments have not uniformly accepted title to the voting equipment, including maintenance responsibilities. Attempts to clarify ownership and corresponding responsibilities between the Office and County government are unresolved.

Criteria:

Ownership should be clearly communicated to avoid risk of loss and to properly record capital assets for financial reporting purposes. 41 CFR 105-71.132(d)(1) stipulates that property record information must be maintained.

Effect:

Voting equipment financed with HAVA funds was at risk of loss and responsibility was not assigned as voting equipment was not recorded in the property records of the counties or the Office of the Secretary of State. Noncompliance could affect the financial statements of the Office if the Grantor requested repayment.

Cause:

The Office's intentions with respect to the acquired voting equipment were not communicated timely to the counties. A transfer plan was not in effect.

Questioned Costs:

None

Recommendation:

Future purchases of equipment on behalf of the counties should be pursuant to an approved plan that defines whether or not the title vests with the counties or the Office of The Secretary of State. A transfer plan would include proper accounting for the equipment including maintenance.

SCHEDULE OF FINDINGS AND RESPONSES – CONTINUED

Year ended June 30, 2009

PRIOR YEAR FINDINGS - CONTINUED

07-03 Noncompliance with HAVA – Equipment Management – CFDA 90.401 – Significant Deficiency – Continued

Management's Response:

We agree with the aforementioned recommendation; however, because the prior administration did not follow state statute when the current voting machines were purchased in 2006, the State finds itself in a legal grey area that requires a legislative fix in statute. The statute that was not followed by the prior administration is NMSA 1978 § 1-9-8. Instead of following the lease purchase procedure through the New Mexico Board of Finance, the prior administration purchased the voting machines directly from the vendor. During the 2009 legislative session, the current administration worked closely with various state agencies and New Mexico County Clerks to establish a law clarifying that all voting machines would be property of the State and that the responsibility of the care and custody would lie with the county clerks. HB698 pertaining to all voting machines purchased in 2006 and HB838 dealing with any voting machines purchased after 2006 and future purchases, both failed legislative passage. Unfortunately, the issue remains unresolved and it is our intent, in conjunction with the New Mexico County Clerks, to continue our strong effort in pursuing the legislation needed to resolve this issue in the 2010 regular legislative session. As a result, the current law remains unchanged and in effect.

FINANCIAL STATEMENT PREPARATION AND EXIT CONFERENCE

Year ended June 30, 2009

Financial Statement Preparation

The financial statements were prepared with the assistance of the independent certified public accounting firm performing the audit. Management is responsible for ensuring that the books and records adequately support the preparation of financial statements in accordance with generally accepted accounting principles and that records are current and in balance. Management has reviewed and approved the financial statements.

Exit Conference

An exit conference was held on November 20, 2009, to discuss the audit. The following individuals were in attendance:

State of New Mexico - Office of the Secretary of State

Don Francisco Trujillo, II – Deputy Secretary of State
Dianne Brown – CFO

Independent Auditor - Atkinson & Co., Ltd.

Martin Mathisen, CPA, Audit Director
Morgan Browning, CPA, Audit Senior

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