

2016 New Mexico Legislative Update



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The 2016 New Mexico Legislature convened on January 19 and adjourned on February 18. This legislative session was limited by the New Mexico Constitution to “budgets, appropriations and revenue bills; bills drawn pursuant to a special message by the governor; and bills of the last previous regular session vetoed by the governor.” Therefore, this legislative session focused primarily on state finances including the general appropriations budget, capital outlay bills and generally the state’s revenue crisis.

Below we have provided an overview of the state budget process and results, as well as selected pieces of legislation that do not involve budgetary issues. For any detailed information on these or any other pieces of legislation, please contact us.

The New Mexico State Budget

General Appropriations Act

Developing the state budget during the 2016 legislative session was dominated by an increasingly declining estimate of state revenues. In August of 2015, it was estimated that there would be an additional \$293 million in new revenue to be appropriated by the Legislature over the previous year's receipts. However, due to declining state revenue, this figure was reduced to \$231.7 million in December of 2015. Then, in the middle of the 2016 legislative session, around February 1, this estimate was further reduced to \$30 million. Finally, in the final week of the legislative session, it was deemed necessary to reduce the estimated revenues for the next fiscal year by another \$125 million, which resulted in an estimated projected deficit between anticipated revenues and current expenditures for FY 2017 of \$95 million. These striking reductions in estimated revenues were caused primarily by the price of oil and gas, upon which the state relies for a large portion of tax revenues, plus reduction in gross receipts and income tax receipts due to the condition of the state's overall economy.

This unprecedented reduction of the estimate of state revenue receipts obviously was not only a problem for the next fiscal year, FY 2017 beginning on July 1, 2016. As revenues were previously projected to be higher for the current fiscal year, FY 2016, when the Legislature was developing this year's budget during the 2015 legislative session, declining revenues were clearly having a similar effect on the current state of state revenue receipts. Realizing this, the Legislature adjusted projected state revenue for the current fiscal year downward by \$125 million as well. This meant the Legislature had to make up deficits in this fiscal year's expected revenues of \$125 million in addition to next year's deficit of \$95 million.

Faced with the unpleasant task of having to raise taxes or reduce spending in order to deal with the fiscal deficit, the Legislature and administration took an alternate route. House Bill 311 was introduced that "swept" \$129.5 million in existing funds from various state agency cash accounts into the state's general fund where it could be used by the Legislature for general appropriations. This procedure reduced the revenue deficit to \$7.2 million. Total FY 2017 general fund appropriations were then set at \$6.228 billion, down \$7.2 million from the FY 2016 operating budget, of which the governor line item vetoed \$4.1 million. Including the release of \$101.7 million set aside to address a contingent liability in the FY 2014 general fund audit and \$129.5 million of cash balances swept into the general fund pursuant to HB 311, reserve balances are projected to be 5.5 percent at the end of FY 2017. This is down from 11.5 percent for FY 2015 and is under the 10 percent figure that is considered optimum to have reserved by the state each year. Additionally, due to the falling revenue estimates, the General Appropriation Act of 2016 (GAA) requires the governor to reduce FY 2016 general fund revenues in agency operating budgets by \$31 million. The GAA also authorized \$62 million of general fund reductions in FY 2017 if revenues continued to fall, but this provision was line item vetoed by the governor.

Capital Outlay Legislation

Two major capital outlay bills were passed to authorize \$332.2 million to provide capital for state-owned and local projects statewide. Earmarked senior severance tax bond capacity for deposit into water project, colonias, and tribal infrastructure funds will provide an additional \$35.7 million for

infrastructure allocations during the interim. Approximately \$14 million from supplemental severance tax bond capacity is designated for public school construction. House Bill 219 authorized \$157.8 million, approximately \$114.8 million from severance tax bond (STB) capacity and \$43 million “other state funds” for 647 capital outlay projects statewide. The bill authorizes \$84 million for state agencies to address critical infrastructure needs at state-owned facilities and nearly \$73.8 million for local projects statewide. The governor line item vetoed \$8.1 million out of the capital outlay bills that were designated for 154 projects. Senate Bill 122 authorized the issuance of \$174.3 million from general obligation bond capacity for four bond issues, including \$15.2 million for senior citizen center improvements and equipment statewide; \$10 million for public, public school, academic, and tribal libraries; \$131.1 million for higher education, tribal, and special school facility infrastructure improvements; and \$18 million for public safety issues. Issuance of the general obligation bonds requires approval by the voters in the November 2016 general election. The governor vetoed \$8 million for the Health Sciences Center West education building, \$2 million for the Magdalena Ridge Observatory interferometer, and \$900,000 for the Santa Fe Indian School. Senate Bill 172 reauthorized 102 projects funded in previous years. The reauthorizations vary and include changing the administering agency, changing or expanding the purpose of the project, or extending the reversion date. Current balances as of February 2016 indicate approximately \$49.2 million is being reauthorized for projects originally authorized between 2004 and 2015.

Other Nonfinancial Legislation

During the 2016 New Mexico legislative session, 1,020 pieces of legislation were introduced including 722 bills, 27 joint memorials, 46 joint resolutions, 221 memorials limited to one House, two resolutions and one Senate concurrent resolution.

101 bills passed both houses, including 49 House bills and 52 Senate bills, and were sent to the governor for action. The governor signed 92 of these bills, vetoed eight and pocket vetoed one.

In addition to this legislation, one House joint resolution proposing a constitutional amendment was passed and will be on the ballot for approval of the voters in the 2016 general election.

The following is a very brief description of some of the higher-profile legislation that was enacted and is not meant to be a comprehensive description of the legislation. As noted above, 92 bills were eventually enacted into law this session. For questions or more information on these, please contact us.

Criminal Justice Legislation

SJR 1 Bail Constitutional Amendment

Senate Joint Resolution 1 proposes to amend the New Mexico Constitution in two ways. First, it allows a court to deny bail pending trial for a defendant charged with a felony if there is clear and convincing evidence that no release conditions will reasonably protect the safety of any other person in the community. And, second, it provides that a defendant who is not detained on the grounds of dangerousness and is not a flight risk in the absence of bond and is otherwise eligible for bail shall not be detained solely for financial inability to post a money or property bond. The proposed amendment will be on the ballot for approval by the electorate on Nov. 8, 2016.

HB 65 Child Pornography Images as Individual Offenses

HB 65 creates a new sentencing structure increasing penalties for child exploitation offenses, which is defined as intentionally possessing, distributing, producing or manufacturing any obscene visual or print media depicting any prohibited sex act or simulation of such an act when at least one participant is below the age of 18. The bill further provides that each separate pornographic image shall be prosecutable as an individual criminal offense.

HB 72 Allow Use of Juvenile Disposition and Evidence

This legislation allows a court when considering the setting of bail or other conditions of release of a person charged with a felony to consider the juvenile disposition of a youthful offender and any evidence given in a hearing in court for a youthful offender with certain restrictions.

SB 118 Increase Penalties for DWI

This legislation increases the penalty from a third degree felony to a second degree felony for homicide or great bodily harm by motor vehicle while under the influence of intoxicating liquor or while under the influence of any drug or while driving recklessly as well as increasing penalties for repeat DWI offenders.

Business Related Legislation

HB 63 Workers' Compensation Benefits and Intoxication

HB 63 provides that workers' compensation benefits otherwise due from an employer to a worker shall be reduced by the degree to which intoxication or influence of alcohol or drugs contributed to the worker's injury or death. Such reduction can be no lower than 10 percent and no greater than 90 percent of the compensation due.

HB 270 Out-of-State Health Care Provider Access

HB 270 requires New Mexico courts to enforce exclusive forum selection and choice of law provisions in lawsuits alleging professional health care malpractice. The intent of the legislation is that physicians in other states treating patients from New Mexico may ask those patients to sign statements indicating that the patient agrees that should the patient feel they have suffered injury from the physician's negligence, that the patient will agree to seek damages in the state where the physician provided the services. The provisions of the bill are subject to a sunset clause effective July 1, 2019.

HB 99 Compliance with the Federal Real ID Act

HB 99 provides for two tiers of driving documents and identification cards and creates drivers' licenses and identification cards that meet the federal Real ID Act. Proof of lawful status in the United States is required to obtain a driver's license or identification cards that meet the requirements of the Real ID Act. A driver's authorization card is provided for those who do not meet the requirements for a Real ID compliant driver's license or identification card. The intent of the legislation is to bring New Mexico into compliance with the federal Real ID Act and regulations.

SB 92 Rapid Workforce Development Act

SB 92 creates the Rapid Workforce Development Fund and Rapid Workforce Development Act aimed at implementing a recruiting program that will fill workforce gaps that would prevent a company from locating or expanding in New Mexico. A board, consisting of the secretaries of the departments of Economic Development (EDD), Higher Education, and Workforce Solutions (WSD) will guide the program. The intent of the legislation is that the board will identify workforce needs of a prospective employer, evaluate available workforce education and training programs, and, if appropriate, create a new technical or vocational education or training program at a New Mexico institution of higher learning that would address the deficiency. The provisions of the legislation will sunset on July 1, 2023.

HB 168/SB 254 Transportation Network Companies Services Act

HB 168 and SB 254 regulate “ride-sharing” companies such as Uber and Lyft by creating the Transportation Network Company Services Act to ensure the safety, reliability and cost-effectiveness of transportation network company services and to preserve and enhance access to transportation options. The act is to be administered and governed by the New Mexico Public Regulation Commission.

HB 283 Unemployment Compensation Contribution Rates

HB 283 caps the amount that unemployment insurance taxes can be increased at 2 percent per year (with approval from U.S. Department of Labor) and changes the business history used to establish the rate from three years to “all” years. This provision is intended to allow the unemployment insurance trust fund to build back a reserve large enough to withstand future economic downturns. The fund balance currently sits at approximately \$247 million. The goal is to increase the fund to about \$400 million. Each year, approximately \$190 million is paid out of the fund in benefits.

Notable Business Losses

The Legislature once again failed to adopt business-related bills that would signal that New Mexico has a positive climate for business and job creation. Those provisions include HB 211 that would have precluded local governments from developing local labor ordinances inconsistent with state provisions, HB 200 that would have removed school and road projects from the prevailing wage rate and, again, SB 269, which would implement a right-to-work law in New Mexico.

2016 Legislative Elections

Every legislative seat, including 42 Senate seats and 70 House seats, is up for election in 2016. Many proposed legislative measures are determined solely by the outcome of the election. With political control of both houses at stake, it would be an understatement to suggest that the 2016 legislative elections are important.

Currently, Republicans hold a 37–33 majority in the House of Representatives, and Democrats hold a 24–18 edge in the Senate. This year’s legislative elections will be the most hotly contested ever given the relatively slim majorities in each house and what is at stake. A relatively few number of key legislative seats will determine which party controls each house. The New Mexico primary election is scheduled for June 7 and the general election is scheduled for November 8.