

NMBA LEGISLATIVE REPORT

NEW MEXICO BANKERS ASSOCIATION
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The 60-day session of the New Mexico Legislature began at noon on Tuesday, January 17 with the State of the State address by Governor Susana Martinez. The Governor announced her fiscal year 2018 budget proposal, which closes the current budget deficit caused in part by the sharp decline in oil and gas prices without raising taxes. Her proposed \$6.09 billion budget for FY 18 maintains the cuts adopted by the Legislature in the 2016 special session. It also includes cuts to agencies that were not impacted during the special session, consolidates certain state agencies, modernizes the state tax code and eliminates subsidies for counties and municipalities that have already raised taxes on their residents.

The Governor's solvency legislation package includes:

- Sweeping \$268.5 million in various cash and fund balances from across state government, including \$12.5 million of lawmakers' personal retirement accounts.
- Sweeping \$120 million in administration funds within our school districts that are not being used in the classrooms. This does not have an impact on classrooms. With the sweep, the fund will still have \$132 million and would allow school districts to keep their reserves at 5 percent as currently directed.
- Reducing the gross receipts tax "hold harmless" distribution to those counties and municipalities that have already raised taxes on their citizens. This will save \$9 million.
- Reducing budgets for the Legislature and Higher Education, from 3 percent and 5 percent respectively, to the 5.5 percent the majority of other agencies that have been cut (total of \$4 million recurring).

- The proposal includes a 3.5 percent retirement swap from state employer contribution to state employee contribution.
- The elimination of some credits and assessments paid by Medicaid to the New Mexico Health Exchange and New Mexico Medical Insurance Pool (total of \$17 million recurring).

The day after the Governor's address, both the House and Senate introduced bills to balance the current budget. The Senate approved and sent to the House 4 bills that will erase the projected \$70 million deficit. The House Appropriation and Finance Committee approved the House's version of a solvency package. The House bills provide:

- Taking unspent funds for certain public works projects and using those funds for day-to-day state operations.
- Sweeping money from dozens of state accounts, including money from capital building repairs, wildlife protection and Local Economic Development Act. Some \$11 million would come from special initiatives in the Public Education Department for teacher merit pay and a program to provide extra help for students.
- Moving some \$49 million of unspent balances from charter schools and public school districts into the state general fund.

One of the points of contention is whether to take funds earmarked for the state economic development program that is used as a closing fund to assist new and expanding businesses in New Mexico. The grants are allocated to local communities to build the public infrastructure required by businesses. Economic development grants were expanded to \$50 million in 2013. The Governor opposes any transfer from the economic development account. She insists the \$50 million fund is permanent, with money staying at the state Economic Development Department, even if it is not all allocated, as an incentive for business recruitment. \$34 million of the fund has not been designated for projects.

Not included in the solvency bills moving forward in the Legislature is the Governor's proposal to decrease the state's contribution to public employee pensions by 3.5%.

Other Non-Budgetary Issues That Will be Considered by the 2017 Legislature:

- Legalization of recreational use of cannabis;
- Tax increases to include gasoline and special fuels;
- Creation of Ethics Commission;
- Renewal of the solar tax credit;
- Require governments to award no less the one-third of certain types of contracts to New Mexico businesses;
- Elimination of all gross receipts tax deductions and credits and a reduction of the state gross receipts tax rate;
- Imposition of a gross receipts collection requirement on online retailers;
- Increase in state minimum wage; and
- Imposition of an interest rate cap on certain loans

House of Representatives:

The New Mexico House of Representatives will be under the control of the Democrats with a 38-32 majority. Presiding over the House will be a new Speaker of the House, Representative Brian Egolf (Santa Fe). Representative Sheryl Williams Stapleton (Albuquerque) will serve as Majority Leader. The Republicans have selected Representative Nate Gentry (Albuquerque) to serve as Minority Leader and Representative Rod Montoya (Farmington) as Minority Whip.

Senate:

Democrats control the State Senate, 26-16. Senator Mary Kay Papen (Las Cruces) will continue as Senate President Pro Tempore. Senator Peter Wirth (Santa Fe) replaces Michael Sanchez as Senate Majority Leader. Sanchez was defeated in his reelection bid in the November general election. Senator Michael Padilla (Albuquerque) will remain as Minority Whip. For the Republicans, Stuart Ingle (Portales) will continue to serve as Minority Leader and Bill Payne (Albuquerque) as Minority Whip.

The chairmen of the Senate Committees will be the same as in 2016.

Key Dates:

- January 17: Session begins
- February 16: Last day to introduce legislation

- March 18: Session ends
- April 7: Deadline for governor to act on most legislation approved during the session

The New Mexico Bankers Association will prepare a weekly LEGISLATIVE REPORT throughout the 2017 Legislative Session. When a bill affecting our industry is first introduced, its pertinent provisions will be summarized. Thereafter, any further action taken on the bill will be reflected in subsequent reports. At any time you should desire a copy of a bill or additional information concerning any legislative matter, please direct your inquiry to the NMBA office at (505) 822-7900. To get copies of House and Senate bills online, go to <http://legis.state.nm.us> and then click on 'bill locator'. For a full text of the governor's "State of the State" address visit: <http://www.governor.state.nm.us>.



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Senate Bills and Resolutions:

SB 1: Combined Reporting (Wirth). The bill would require that a unitary group that is subject to taxation under the NM Corporate Income and Franchise Tax Act file a water's edge or a worldwide combined report.

A unitary group is a group of corporations, a captive real estate trust, but not an S corporation, that is related through common ownership and by a preponderance of evidence are economically interdependent with one another as evidenced by central management, functional integration or economic scale.

A worldwide combined report is a combination of the income and activities of all members of a group of corporations irrespective of the country in which the corporations are incorporated or conduct business activity. A water's edge combined report is a report combining the income and activities of all members of a group that are:

- corporations organized or incorporated in the United States, including those corporations qualifying for the Puerto Rico and possession tax credit pursuant to Section 936 of the Internal Revenue Code; and
- corporations organized or incorporated outside of the United States meeting the threshold level of business activity; and
- an affiliated group electing to file a water's edge combined report pursuant to this proposed bill.

SB 15: Usury (Soules). The bill set an interest rate cap of 36% on loans made under the New Mexico Bank Installment Loan Act of 1959 and the New Mexico Small Loan Act of 1955. The limitation on interest under the bill does not apply to federally insured depository institutions.

SB 36. Minimum Wage (Soules): The bill raises the state minimum wage to \$8.45 an hour and requires an annual cost of living adjustment. The bill allows local governments to set a higher minimum wage.

SB 41: Solar Market Development Tax Credit (Stewart). This is the same bill as HB 61.

SB 60: Revised Uniform Fiduciary Access to Digital Assets Act (Wirth). The bill would enact the Revised Uniform Fiduciary Access to Digital Access Act. Collectively, a person's digital property and electronic communications are referred to as digital assets and the companies that store those assets on their servers are called custodians. Access to digital assets is usually governed by a terms-of-service agreement rather than by property law. This creates problems when Internet users die or otherwise lose the ability to manage their own digital assets. The act extends the traditional power of a fiduciary to manage tangible property to include management of a person's digital assets. The act allows fiduciaries to manage digital property like computer files, web domains, and virtual currency, but restricts a fiduciary's access to electronic communications such as e-mail, text messages, and social medial accounts unless the original user consented in a will, trust, power of attorney, or other record.

SB 85: Uniform Environmental Covenants Act (R. Martinez). The bill would enact the Uniform Environmental Covenants Act. The act allows for the long-term enforcement of clean-up controls to be contained in a statutorily-defined agreement known as an environmental covenant which will be binding on subsequent purchasers of the property and be listed in the local land records. The fundamental purpose of this act is to remove various legal impediments to the use of such restrictions and to lessen liability concerns of sellers and lenders associated with the redevelopment and sale of "brownfields" while at the same time requiring state approval of the remediation and

control plan as well as notice to surrounding landowners, local governments, and other parties of interest.

SJR 3: Funding for Early Childhood Education (Padilla). The proposed Constitutional Amendment would provide for an additional distribution of one and one-half percent of the permanent fund to be used for early childhood education.

House Bills and Resolutions:

HB 15: Data Breach Notification Act (Rehm). The bill would enact the Data Breach Notification Act. The bill provides that a person who owns or maintains records containing personal identifying information of a New Mexico resident must arrange for proper disposal of the records when they are no longer needed for business purposes. A person who owns or maintains elements that include personal identifying information of a New Mexico resident must provide notification to each resident whose personal information is reasonably believed to have been breached. Notification must be within 30 days following discovery of the breach. The bill outlines the methods of notification allowed and certain exceptions for notification. The bill also sets forth the required information to be contained in the notification. A person that is required to issue notification of a breach as a result of a security breach involving a credit card number or debit card number must notify each merchant service provider to which the person transmuted the number within 10 business days following the discovery of the breach.

The provisions of the Data Breach Notification Act do NOT apply to persons (banks) subject to the federal Gramm-Leach-Bliley Act.

HB 26: Small Loan Interest Rate Caps (Roybal-Caballero). The bill amends the New Mexico Bank Installment Loan Act of 1959 and the New Mexico Small Loan Act of 1955 to set an interest rate cap of 36%. Loans made after July 1, 2017 under those acts having an interest rate in excess of 36% shall be void as to interest and principal.

The limitation on interest for the extension of credit in the bill does NOT apply to federally insured depository institutions or government-issued bonds.

HB 27: Minimum Wage (Roybal Caballero). Until January 1, 2018 the state minimum wage is increased to \$7.50 an hour (currently \$6.50). After that date, the minimum wage increases to \$15.00 per hour. The bill also provides for an annual cost of living adjustment starting on January 1, 2019. The bill also eliminates the separate minimum wage current provision for employers who regularly receive tips.

HB 48: Small Business Income Tax Deduction (Barnes). The bill creates a small business income tax deduction for small businesses with certain base incomes as provided in the bill and that employ at least one full-time equivalent employee.

HB 67: Minimum Wage (M. Garcia). The bill increases the minimum wage as follows: July 1-December 31, 2017-\$7.50 per hour; 2018-\$8.40 per hour; 2019-\$9.20 per hour; 2020-\$10.10 per hour. The bill also provides for an annual cost of living adjustment to be utilized on and after January 1, 2018.

HB 76: Income Tax Deduction for Estates or Trusts (J. Trujillo). The bill provides that a taxpayer that is an estate or trust may claim a deduction from net income in an amount equal to the income that is set aside from future distribution to a nonresident beneficiary under the terms of the governing instrument. The calculation for the deduction excludes income derived from real property located in New Mexico mineral, oil and gas interests located in the state and water rights located in New Mexico.

This NMBA-supported and drafted bill is intended to assist the expansion of trust and estate business in New Mexico.

HB 82: Solar Market Development Tax Credit (McQueen). The bill extends the solar market tax development tax credit and incrementally reduces the amount of the credit.

HB 100: Positive Credit Reporting (J. Martinez). The bill requires the reporting of positive credit of borrowers to nationwide consumer reporting agencies by installment loan payday and automobile title lenders. Positive credit means financial records solely related to the existence of the borrower's loan and timely performance by the borrower payments on the loan.

HB 128: Economic Development (C. Trujillo). The bill requires the state investment council to invest one-quarter percent of the market value of the severance tax permanent fund in state businesses that are approved by technology research collaboratives.

HJR 1: Distributions of Permanent Fund for Early Childhood Education (Maestas). The proposed constitutional amendment provides for an additional distributions of the state's permanent fund in fiscal years 2020 and 2021 for certain educational programs and early childhood educational services and in subsequent fiscal years for early childhood educational services only.

HJR 2: Economic Stimulus Programs (McCamley). The proposed constitutional amendment would require the withdrawal of \$7 billion from the land grant permanent fund for economic stimulus programs over an 8 year period for: \$4 billion for

infrastructure and energy projects; \$2 billion for applied research in clean energy and water technologies; and \$1 billion for early childhood services.

