

NMBA LEGISLATIVE REPORT

NEW MEXICO BANKERS ASSOCIATION
316 Osuna Rd. NE, Suite 502, Albuquerque, NM 87107

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After nine days of rigorous debate and compromise the legislature passed a solvency package for fiscal year 2017. The three bill package will raise a total of \$216 million and increase the state's reserve to 2.3 percent. The legislature agreed to scale back cuts to the economic development program that awards grants to local governments for infrastructure improvements to attract new businesses or assist business expansion. The compromise legislation cuts \$4 million from the Local Economic Development Act rather than the \$11.6 million cut originally approved by the Senate. Much of the debate on the budget fix centered on public schools. The plan passed last week will cut slightly less from public schools than what the Senate proposed at \$50 million. Under the compromise measure, the state will take only funds from school districts that have more than 3 percent in reserves or \$46 million.

The Legislature will now spend the remainder of this session working on a budget for Fiscal Year 18 which begins on July 18, 2018. Not an easy task. Senator John Arthur Smith, Chairman of the Senate Finance Committee, said last week that the state could be facing a shortfall of at least \$300 million and perhaps as much as \$500 million for the next fiscal year.

The Governor vetoed SB 176 ("feed bill") last Friday. The bill would have appropriated \$8.9 million for the expenses of the 60-day session. The bill also appropriated \$900,000 in emergency funding for the courts and \$200,000 to cover a budget shortfall at the Aging and Long-Term Services Department. In the Governor's veto message, she called the bill a "thinly veiled" attempt to increase funding for the Legislature, while using the cash-strapped courts as a cover. So it is back to the drawing board for the Legislature to prepare a revised feed bill.

The Legislature has introduced three trust and estate related bills: SB 60, Revised Uniform Fiduciary Access to Digital Assets Act; HB 76, Income Tax Deduction for Trusts; and HB 181, Uniform Partition of Heirs Property Act. These bills were endorsed by the NMBA's Trust Committee.

Representative Zach Cook has introduced HB 203 which amends the Home Loan Protection Act. The bill clarifies that a loan made under the Deed of Trust Act can be foreclosed upon utilizing non-judicial foreclosure.

On the tax front, two bills have been introduced to increase the gasoline tax by 10 cents. It is established that the increase would generate \$140 million in one year. New Mexico's gas tax is the nation's fifth-lowest. Governor Martinez has repeatedly said that she will not support legislation that increases taxes.

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>.



John W. Anderson, Esq.
Legislative Counsel
New Mexico Bankers Association

Mark Anderson
Legislative Assistant
New Mexico Bankers Association

Senate Bills and Resolutions:

SB 14: Defective Construction Actions (Payne). The current law provides that no action shall be brought to recover damages for injury to property, or personal injury or death, after ten years has passed. SB 14 adds an additional exception to the ten year limitation for actions in which the plaintiff claims that the defendant knew or should have known that the construction, design, planning, supervision, inspection or administration involved the use of defective or unsafe construction materials or products.

SB 18: Resident Business Set-Aside Act (Padilla). The bill would require state contracting agencies to set-aside 33 percent of its contracts for resident businesses as an incentive to encourage businesses to grow the state's economy.

SB 78: Private Employer Conviction Inquiries (O'Neill). This bill prohibits a private employer from making an inquiry on an applicant's conviction on a previous application, but the employer may take into consideration the applicant's conviction after the review of the applicant's written application and after discussion of employment with the applicant.

SB 166: State Employee Loan Repayment (Ortiz y Pino). This bill would allow a state employee, in collaboration with a qualified lender, to have a portion of his or her salary or wages be sent directly to a qualified lender to repay a loan.

SB 199: Reduction of Corporate Income Tax (Smith). The bill would delay the reduction of the corporate income tax rate for one year.

SB 202: Forfeiture Act (Ivey-Soto). The bill significantly revises the Forfeiture Act to provide for a revision of the distribution of proceeds from the sale of forfeited or disclaimed property. The bill revises the procedures related to the storage, transfer and destruction of seized property.

SB 212: Public Records (Griggs). The bill provides for the recording of duplicates of an instrument of writing. If an original instrument of writing is unavailable but, if it were available, would be filed and recorded, a duplicate of that instrument will be accepted for filing and recording if filed and recorded as an attachment to the duplicate. That accompanying document provides: the name, telephone number, and mailing address of the person filing and recording the duplicate; specifies the reason the duplicate is filed and recorded in lieu of the original document, and includes an acknowledged statement by the filing person that the duplicate is a true copy of the original instrument.

SM 25: Glass-Steagall Act (Soules). The memorial requests the New Mexico Congressional delegation to support the restoration of the Glass-Steagall Act.

House Bills and Resolutions:

HB 177: Auto Recyclers (Ruiloba). The bill requires auto recyclers to report all motor vehicle purchases to the Taxation and Revenue Department. The bill revises the definition of auto recycler so as to require any business selling a vehicle with a salvage title or a vehicle to be scrapped to be licenses as an auto recycler. We plan to offer an amendment to exempt banks.

HB 180: Revised Uniform Limited Liability Act (Cook). The bill would enact the Revised Limited Liability Company Act. Significant changes found in the revised act include:

- The operating agreement, rather than the certificate of organization, determines whether an LLC is member-managed or manager-managed. The act also makes it clear that the operating agreement is binding on the LLC even in the case of a single member LLC and even if the LLC has taken no formal action to adopt the operating agreement.
- An LLC is not restricted to for-profit business activities. It can have “any lawful purpose”, regardless of whether for profit.” This expands the availability of LLCs to activities that are not traditional businesses, such as ownership of a family vacation home and, subject to other federal and state laws, allow an organization whose activities might be classified as non-profit to select an LLC as its form of entity.
- The act contains a basic set of internal affairs default rules governing the relationship of members and managers of an LLC between themselves and each other, most of which can be varied by the operating agreement.

HB 181: Uniform Partition of Heirs Property Act (Cook). The Uniform of Heirs Property Act helps preserve family wealth passed to the next generation in the form of real property. Affluent families can engage in sophisticated estate planning to ensure generational wealth, but those with smaller estates are more likely to use a simple will or to die intestate. For many lower and middle-income families, the majority of the estate consists of real property. If the landowner dies intestate, the real estate passes to the landowner’s heirs as tenants-in-common under state law. Tenants-in-common are vulnerable because any individual tenant can force a partition. Too often, real estate speculators acquire a small share of heirs’ property in order to file a partition action and force a sale. Using this tactic, an investor can acquire the entire parcel for a price well below its fair market value and deplete a family’s inherited wealth in the process. The Act provides a series of simple due process protections: notice, appraisal, right of first refusal, and if the other co-tenants choose not to exercise their right and a sale is required, a commercially reasonable sale supervised by the court to ensure all parties receive their fair share of the proceeds.

HB 182: UCC (Cook). The bill amends UCC Section 55-3-309 to provide that the transferee of a note can enforce it if a direct or indirect transferor could have enforced it. The bill also provides a lost-note affidavit.

HB 192: Film Production Tax Credit (Ely). The bill would raise the maximum payouts to qualifying film and television productions to \$53.7 million from \$50 million for the fiscal year beginning July 1, 2017. This adjusts for an inflationary decrease in value since the current cap was enacted in July 2011.

In all subsequent fiscal years, the maximum number of tax credits to be paid out would be determined by a formula tied to the consumer price index, a federal statistical measure of retail price changes. No other state or jurisdiction has yet married its film incentive program to a market index. But a similar proposal to tie annual film incentive payouts to the consumer price index is under legislative consideration in New York, where the annual cap on tax credits for film production is \$420 million.

HB 192: Solar Taxation (Ely). The bill would make the solar market development income tax permanent. The bill also creates a solar market development corporate income tax credit.

HB 205: Deed of Trust Foreclosure (Cook). The bill amends the Home Loan Protection Act to clarify that the Home Loan Protection Act does not affect the foreclosure process pursuant to the Deed of Trust Act.

HB 239: State Employees' Loan Repayment (Ferrary). The bill provides a state employee with the option of having certain loan repayments paid directly out of the employee's salary or wages.

HB 251: Public Finance (Stapleton). The bill provides that the Educational Retirement Board, the Public Employees Retirement Association and the State Investment Council participate in the local government investment pool.

HB 276: Uniform Money Services Act (Strickler). The bill increases the threshold amount of revenue earned from \$500 to \$2,000 check cashing within a 30-day period to require a person to be licensed pursuant to the Uniform Money Services Act. The bill also decreases the application fee and license fee under the act from \$2,000 to \$250. The fee is payable to the state Financial Institution Division.

Status of Senate Bills and Resolutions Previously Summarized:

SB 1: Combined Reporting (Wirth). Senate Corporations and Transportation Committee

SB 15: Usury (Soules). Senate Corporations Committee

SB 36: Minimum Wage (Soules). Senate Corporations Committee

SB 41: Solar Market Development Tax Credit (Stewart). Senate Corporations Committee

SB 60: Revised Fiduciary Access to Digital Access Act (Wirth). Senate Public Affairs Committee

SB 85: Uniform Environmental Covenants Act (R. Martinez). Senate Conservation Committee

SJR 3: Funding for Early Childhood Education (Padilla). Senate Rules Committee

HB 15: Data Breach Notification Act (Rehm). House Judiciary Committee

HB 26: Small Loan Interest Caps (Roybal-Caballero). House Businesses and Industry Committee

HB 27: Minimum Wage (Roybal-Caballero). House Businesses and Industry Committee

HB 48: Small Business Income Tax Deduction (Barnes). House Taxation and Revenue Committee

HB 67: Minimum Wage (M. Garcia). House Business and Industry Committee

HB 76: Income Tax Deduction for Trusts (J. Trujillo). House Business and Industry Committee

HB 82: Solar Market Development Tax Credit (McQueen). House Labor and Economic Development Committee

HB 100: Positive Credit Reporting (J. Martinez). House Consumer and Public Affairs Committee

HB 128: Economic Development-Severance Tax Permanent Fund (C. Trujillo). House Labor and Development Committee

HJR 1: Distribution of Permanent Fund for Early Childhood Education (Maestas). House Education Committee

HJR 2: Economic Stimulus Programs (McCamley). House Labor and Economic Development Committee

Save the Date:

106th NMBA Annual Convention

**June 8-9, 2017
Inn of the Mountain Gods**

