

NMBA LEGISLATIVE REPORT

NEW MEXICO BANKERS ASSOCIATION

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There are 20 days remaining in the 2017 sixty-day Legislature. The Legislature will adjourn on Saturday, March 18 at noon.

The House last week passed a \$250 million tax package and a \$6.1 billion 2017 budget. The vote on both measures broke along party lines, 37-32. The tax bill, HB 202, will impose the gross receipts tax on internet transactions and close tax loopholes so that nonprofit hospitals and private practice health care providers would pay gross receipts tax. The bill also increases permit fees for heavy trucks, increases the excise tax on the sale of automobiles and trucks from 3 to 4 percent, and diverts funds from the legislative retirement fund to the general fund.

The \$6.1 billion budget proposal will keep state spending levels flat for the next fiscal year. High cost agencies are budgeted at:

- Higher education: 1 percent decrease (-\$7.6 million)
- Courts: 2.5 percent increase (+\$3.9 million)
- Medicaid: 0.2 percent increase (+\$2.1 million)
- State-operated prisons: 1.6 percent decrease (-\$4.6 million)
- Public education: flat

If both the budget bill and the tax package are enacted, the state's cash reserve will increase to an estimated \$149 million or 2.5 percent of state spending. But it is not clear if Governor Martinez will approve the proposals if it is enacted by the Legislature as she has vowed to veto any tax increases.

HB 347 (Lundstrom) was approved by the House Business and Industry Committee last week by a vote of 9-0. The bill amends the New Mexico Small Loan Act

and the New Mexico Bank Installment Loan Act limiting fees and charges for certain installment loans and providing for reporting to credit agencies. As proposed, this bill would substitute a fee-based financing structure for all small loans under \$5,000 and eliminate payday loans. This bill creates the Financial Literacy Fund. The proposed effective date is July 1, 2017 and the legislation would be prospective, applying only to loans made after the effective date. The Financial Literacy Fund is to be administered by the Regulation and Licensing Department (RLD). This fund is supported through a proposed \$200 annual licensing fee. The RLD and the Attorney General are tasked in developing and implementing a curriculum to carry out the purposes of the Financial Literacy Fund. Program elements must include a basic understanding of budgeting; checking and savings accounts; credit and interest; and additional considerations in the how and when financial services are used.

The Senate Finance Committee will consider SB 100 (Pirtle) this week. The bill would exempt from gross receipt tax employee wages in the form of guaranteed payments to partners. The proposed exemption in this bill is a response to audit efforts conducted by the Taxation and Revenue Department (TRD). The agency considers the guaranteed payments to partners as payments for services rendered by the partner for the partnership. Under federal and state laws, partners cannot be considered as employees and cannot have a W-2 form issued to them. Subjecting guaranteed payments to partners to the New Mexico gross receipts tax is a recent development for TRD's Audit and Compliance Division. If the proposed legislation becomes law, guaranteed payments to partners would not be subject to the gross receipts tax. According to TRD, about half of taxpayers are not registered with TRD to report and pay gross receipts tax for receiving guaranteed payments as defined by the Internal Revenue Service (IRS) and as reported by the taxpayer to the IRS. Taxpayers believe they are not engaged in business and should not be required to be registered with TRD. Pursuant to Section 7.9-3.3 NMSA 1978 and Regulation 3.2.1.12 (H) NMAC, when an owner of an entity performs services to the entity, the owner is considered to be engaged in business. To prevent evasion of gross receipts taxes and to in its administration, it is presumed that all receipts of a person engaged in business are subject to gross receipts tax. The tax consequences of this issue are huge/

The Senate Judiciary Committee approved SB 307 (R. Martinez) which amends the Oil and Gas Act relating to the enforcement and penalties pursuant to that act. The bill:

- Provides First Judicial District as the venue in which a suit may be brought;
- Clarifies that remedies in the Act do not otherwise limit any other rights or remedies of EMNRD's Oil Conservation Division (OCD) or the Oil Conservation Commission (OCC);

- Eliminates the requirement that a person act “knowingly and willfully” in determining a violation of the Act or any OCD rule, order, or permit issued under the Act;
- Clarifies that each day of a violation shall be a separate violation subject to civil penalty;
- Imposes a maximum penalty of \$10,000 for violations of the Act that pollute or threaten to pollute groundwater;
- Grants OCD or OCC authority to assess civil penalties, after notice and an opportunity for a public hearing, and consideration of “the seriousness of the violation and any good-faith efforts to comply with applicable requirement”; and
- Makes it a third degree felony if a person knowingly violates the Act or falsifies, omits, or destroys required records;

There have been at least nine bills calling for an increase in the state minimum wage introduced during this session, and one, SB 286 (C. Sanchez) appears to have gained momentum. The bill was approved by the Senate Public Affairs Committee last week, 9-0. The bill raises the statewide minimum wage rate to \$9 per hour and permits employers to pay “training employees” a minimum wage of \$8 per hour for up to 60 days from the date of hire. It defines a training employee as an employee who is being trained to perform the job for which the employee was hired. The bill raises the minimum wage for employees who customarily and regularly receive more than \$30 per month in tips from \$2.13 to \$2.63 per hour. The bill’s minimum wage rates would go into effect July 1, 2017.

The full Senate approved SB 78 (O’Neill) 34-2 last week. The bill prohibits a private employer using a written employment application from inquiring about an applicant’s prior convictions. After review of the application and discussion of employment with the applicant, a private employer may then take prior convictions into consideration. The law does not prohibit an employer from notifying the applicant that law or the employer’s policy could disqualify an applicant with a criminal history from qualifying for positions with the employer. Nine states currently have similar laws. The 2010 state legislature passed legislation prohibiting state agencies from inquiring about a criminal conviction unless the job applicant is selected as a finalist.

The full House approved HB 25 (Barnes) 57-9 last week. The bill proposes to create a new section in the State Procurement Code requiring state contracting agencies to set-aside 33 percent of its contracts for resident businesses as an incentive to encourage businesses to grow and expand the state’s economy.

Key Dates:

- March 18: 2017 session ends
- April 7: Deadline for governor to act on most legislation approved during the 2017 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 417: Create Business Recruitment Fund (Munoz). The bill would create the business recruitment fund. The money in the fund is appropriated to the economic development department for the purpose of contracting for an independent agent to recruit businesses to locate to New Mexico. One million dollars would be appropriated from the general fund to the business recruitment fund for the fiscal year 2018 and subsequent fiscal years to contract for an independent agent to recruit businesses to locate to New Mexico.

SB 425: Enhanced Enterprise Zone Act (Sanchez). The bill would enact the Enhanced Enterprise Zone Act to provide tax collection abatement for the development or improvement of property within designated economically underperforming areas. There are areas in the state that may need assistance in overcoming conditions such as unemployment, migration of the population, and deterioration of business districts. Enhanced enterprise zones, by providing qualified participants with property tax relief at

the state and local levels, may provide incentives for the development and improvement of property and promote economic development.

SB 436: Gas and Tax Distributions (Campos). This bill would increase the gasoline and special fuel excise tax by six cents. It would distribute one-third of the new revenue to the pre-kindergarten funds, one-third to the general fund and one-third to the state road fund and the local governments road fund.

SB 438: New Jobs and Investment Tax Credit (Munoz). This bill would create the New Jobs and Investment Tax Credit. The purpose of the this tax credit is to encourage businesses to start, relocate or expand their operations in New Mexico. Under the bill, a taxpayer that creates and maintains new jobs and makes a capital investment in the state may apply for a credit against the taxpayer's tax liabilities. To be eligible for the tax credit, a taxpayer must create 250 fifty new jobs and make a capital investment of at least \$50,000,000. To remain eligible for the tax credit, a taxpayer must maintain two hundred and 250 in each reporting period.

SB 452: Public Use and "Eminent Domain" (Munoz). This bill enacts a new section of the Eminent Domain Code, which governs takings (condemnations) of private property by the State and its political subdivisions. The new section:

- Limits condemnations to those authorized by law and for a public use;
- Excludes from public use the public benefits of economic development, including increases in tax bases, tax revenues, employment or general economic health;
- Requires compensation for a taking to be the amount of the property owner's initial purchase price or the current appraised value, whichever is greater;
- Entitles a property owner to just compensation when value is diminished by a land use law ("regulatory taking"), except when the law:

- Is narrowly tailored to protect public health and safety;

- Limits or prohibits uses or divisions that: constitute public nuisances under common law and are for the purpose of housing sex offenders, selling illegal drugs, liquor control, pornography, obscenity, nude or topless dancing or other adult-oriented businesses if the law is consistent with federal or state constitutional provisions;

- Established locations for utility facilities;

- Is required by federal law;

- Does not directly regulate an owner's real property.

SB 457: Gross Receipts Tax Changes (Smith). This bill proposes leveling the playing field in the healthcare industry through comprehensive healthcare tax reform and creation of a 60% “universal deduction”.

- Brings non-profit hospitals into the gross receipts tax base. This will increase state and local government gross receipts tax revenue.
- Brings governmental hospitals into the governmental gross receipts tax (GGRT) base but distributes this additional revenue to the general fund, increasing state but not local GRT revenues.
- Allows all hospitals a deduction of 60% of net patient care revenues. The GRT or the GGRT will not be collected from non-profit or governmental hospitals on any other source of revenue, such as grants, research contracts, mill levies, or sales of tangibles (unless governmental hospitals are already paying GGRT on the sales of tangibles from facilities open to the general public).
- Repeals the for-profit hospital tax credit 7-9-96.12 NMSA 1978.
- Repeals the Medicare deduction (7-9-77.1 NMSA 1978) applied to listed healthcare practitioners in favor of allowing a 60% deduction from all revenues. Some categories of practitioners and entities allowed the current Medicare deduction will not be allowed the 60% deduction. These include home healthcare services, nursing homes, hospice organizations, and dialysis centers.
- Repeals the healthcare services hold harmless distributions to counties and municipalities. Although this feature may have substantially differing impacts on individual counties and municipalities, the overall impact is positive for the repeal of hold harmless, the change in deductions for healthcare practitioners, and bringing the non-profit hospitals and government hospitals into the gross receipts tax base.

SB 467: Rights of Redemption for Property Debtors (Sanchez). This bill amends sections of the Deed of Trust Act to eliminate assignees from the list of persons entitled to exercise a right of redemption after sale of real estate in a foreclosure proceeding or after a trustee’s sale.

SB 477: Title Insurance Market Stabilization Act. This bill would enact the Title Insurance Market Stabilization Act. It would also create the New Mexico title insurance pool.

SB 482: Employee Preference Act (Burt). This bill would prohibit membership in a labor organization as a condition of employment. It would also prohibit the deduction of dues or fees to a labor organization from the compensation of employees without written authorization.

SB 488: Uniformity of Employment Law Terms (Burt). This bill stipulates that a political subdivision of the state may not adopt a law, policy or resolution that:

- Regulates or attempts to regulate the hours, scheduling or leave that a for-profit or not-for profit private-sector employer provides its employees; or
- Requires or attempts to require a for-profit or not-for-profit private-sector employer to provide an employee:
 - paid or unpaid leave;
 - a fringe benefit;
 - a benefit for which the employer would incur an expense.

House Bills and Resolutions:

HB 475: Modify Crime of Concealing Identity (Rehm). Concealing one's true name or identity with the intent of obstructing the law and to interrupt a public officer's duties would be guilty of a petty misdemeanor. Disguising oneself with a mask or costume with the intent to intimidate a person in the exercise of the person's rights would result in a misdemeanor.

HB 480: Small Loan Interest Rates (Roybal). This bill amends the New Mexico Installment Loan Act of 1959, the New Mexico Small Loan Act of 1955, and Section 56-8-9 NMSA 1978, the Money, Interest, and Usury statute. The bill established an interest rate cap of 36 percent per year, with an exception allowing a higher cap in the event that the U.S. prime lending rate exceeds ten percent, and requires that the calculation of interest to include interest, finance charges, other products or services, and charges and fees that are included in the terms of the loan.

HB 487: Tax Gas at the Rack (Townsend). This bill moves the collection point of the gasoline excise tax, the special fuel excise tax and the petroleum products loading fee from the "distributor level" to the "terminal rack level" or to the point when the fuels are imported into New Mexico, beginning July 1, 2018. This bill also replaces the Gasoline Tax Act and the Special Fuels Supplier Tax Act with a new Motor Fuel Taxes Act.

The bill identifies the following transactions as exempt from the motor fuels tax:

- Fuel sold to the United States for exclusive use by government.
- Fuel sold to the State of New Mexico, all local governments and any agency or instrumentality thereof, for exclusive use by those governments;

- Fuel sold by an Indian nation, tribe or pueblo for the exclusive use by the member;
- Exported fuel;
- Fuel moved between suppliers;
- Dyed special fuel sold or delivered between suppliers;
- Dyed special fuel sold by a supplier or permissive supplier to a distributor or by a distributor to another distributor; and
- Dyed special fuel delivered by a license holder into the fuel supply tanks of railway engines, motorboats or refrigeration units or other stationary equipment powered by a separate motor from a separate fuel supply tank.

HB 489: Exclude Greenfield Areas from TIDD Act (Romero). This bill would exclude greenfield areas from the Tax Increment for Development Act. A greenfield area consists of land, the majority of which has not been previously developed and is not currently served by municipal or county public infrastructure adequate to serve the potential project development or for which the potential project would primarily rely on the development of new structures and the infrastructure required to support them, rather than the development of existing structures.

HB 494: Taxpayers' Rights Advocate Office Act (Powdrell-Culbert). The bill would establish the Taxpayers' Rights Advocate Office Act. The act would establish procedures for an independent review of department actions for a taxpayer with an unpaid tax or lien that requests such a review. The taxpayer would be entitled to only one review with respect to the taxable period to which the unpaid tax or lien relates. The taxpayers' rights advocate would develop and implement a taxpayer and information program. The bill would also allow a taxpayer to demonstrate that a failure to pay taxes was without intent to evade or defeat a tax. It would also convene a meeting with interested parties to make recommendations to increase fairness and efficiency in administering New Mexico's tax laws.

HB 497: Communication With PRC Commissioners (Montoya). This bill would amend a section of the Public Regulation Commission Act to govern for parties of interest communications with public regulation commissioners. A commissioner may not initiate, permit or consider a communication directly or indirectly with a party or the party's representative outside the presence of the other parties concerning a pending rulemaking after the record has been closed or within thirty days prior to a hearing in a pending adjudication when a final decision is expected or will be considered.

HB 513: Public Funds (Egolf). The bill clarifies the authorization for the use of letters of credit issued by a federal home loan bank for securitization of public fund deposits in New Mexico.

Status of Senate Bills and Resolutions Previously Summarized:

SB 1: Combined Reporting (Wirth). Committee Substitute bill referred to Senate Finance Committee

SB 14: Defective Construction Actions (Payne). Senate Corporations Committee

SB 15: Usury (Soules). Senate Corporations Committee

SB 18: Resident Business Set-Aside Act (Padilla). Senate Judiciary Committee

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

SB 60: Uniform Fiduciary Access to Digital Assets Act (Wirth). Passed Senate (41-0). House Business and Industry Committee

SB 78: Private Employee Repayment (O'Neill). Passed Senate (34-2). House Business and Industry Committee

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

SB 166: State Employee Loan Repayment (Ortiz y Pino). Senate Corporations Committee

SB 199: Reduction of Corporate Income Tax (Smith). Senate Corporations Committee

SB 202: Forfeiture Act (Ivey-Soto). Passed Senate (40-0). House Judiciary Committee

SB 211: Liquor Dispenser License Privilege Leases (Griggs). Tabled in Senate Corporations Committee

SB 212: Public Records (Griggs). Passed Senate (31-0). House Judiciary Committee

SB 215: Renewable Energy Financing Districts Act (Wirth). Tabled in Senate Corporations Committee

SB 255: Crime of Audit Obstruction (Cervantes). Senate Judiciary Committee

SB 264: Taxation of Internet Sales (White). Senate Finance Committee

SB 278: Cannabis Revenue and Freedom Act (Ortiz y Pino). Senate Judiciary Committee

SB 280: Employee Credit Information Privacy (Tallman). Senate Corporations Committee

SB 288: Taxes and Surtaxes for Early Childhood Education (Padilla). Senate Conservation Committee

SB 296: Use of Nationwide Mortgage Lending System (Sharer). Senate Corporations Committee

SB 321: Raise Minimum Wage (Campos). Senate Public Affairs Committee

SB 326: Frontier Community Investment Tax Credits (Campos). Senate Corporations Committee

SB 330: Mortgage Foreclosure Deficiency Judgments (Stewart). Senate Corporations Committee

SB 339: Multiple Source Contract Dollar Limits (Payne). Senate Corporations Committee

SB 342: Community Solar Gardens (Lopez). Senate Conservation Committee

SB 345: Medical Marijuana Tribal Agreement (Shendo). Senate Public Affairs Committee

SB 350: Agriculture Land Valuations (Wirth). Senate Finance Committee

SB 356: Notifications of Public Improvement Districts (Rodriguez). Passed Senate (31-0). House Labor and Economic Development Committee

SB 368: Five Percent Biodiesel Standard (Ingle). Senate Conservation Committee

SB 377: Uniform Money Services Act (Munoz). Senate Public Affairs Committee

SB 382: Local Government Investment Pool Changes (Munoz). Senate Public Affairs Committee

SB 384: Hospital Billing Guides (Brandt). Senate Public Affairs Committee

SB 386: Raise Minimum Wage and Allow Trainee Wage (Sanchez). Senate Corporations Committee

SB 388: Installment Loan Fee Limits (Sanchez). Senate Corporations Committee

SB 390: Film Tax Credit "Production Facility" (Steinborn). Senate Corporations Committee

SB 391: Captive Estate Investment Trust Income (Wirth). Senate Corporations Committee

SB 408: Limit Capital Gains Deduction From Income (Wirth). Senate Corporations Committee

SB 414: Disclosure of Tax Refund Loan Fees (Munoz). Senate Corporations Committee

SB 415: Uniformity of Employment Law Terms (Munoz). Senate Corporations Committee

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

Status of House Bills and Resolutions Previously Summarized:

HB 15: Data Breach Notification Act (Rehm). Committee Substitute passed House (68-0). Senate Public Affairs 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 Taxation and Revision 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). Passed House (54-11). Senate Corporations Committee

HB 177: Auto Recyclers (Ruiloba). House Judiciary Committee

HB 180: Revised Uniform Limited Liability Act (Cook). House Judiciary Committee

HB 181: Uniform Partition of Heirs Property Act (Cook). House Floor

HB 182: UCC-Lost Negotiable Instrument (Cook). Tabled in House Judiciary Committee

HB 192: Film Production Tax Credit Increase (Ely). House Taxation and Revenue Committee

HB 193: Solar Taxation (Ely). House Business and Industry Committee

HB 205: Deed of Trust Foreclosure (Cook). House Business and Industry Committee

HB 239: State Employees' Loan Repayment (Ferrary). House Labor and Economic Development Committee

HB 251: Public Finance (Stapleton). House Taxation and Revenue Committee

HB 276: Uniform Money Services Act (Strickler). House State Government, Indian and Veteran Affairs Committee

HB 281: Transfer of Car Titles Upon Death of Owner (Herrell). House Judiciary Committee

HB 289: Agriculture in Economic Development Finance Act (Small). House Business and Industry Committee

HB 318: Student Loan Bill of Rights Act (Caballero). House Education Committee

HB 325: Securities Violation Penalties (Barnes). House Judiciary Committee

HB 326: Protection of Vulnerable Adults (Barnes). House Judiciary Committee

HB 327: Minimum Wage for Persons with Disabilities (Ferrary). House Health and Human Services Committee

HB 329: Unclaimed Property Sales by Peace Officers (Ruiloba). House Judiciary Committee

HB 331: Landlord Return of Tenant Deposit (Thomson). House Business and Industry Committee

HB 334: Local Approval of Marijuana Locations (Townsend). House Labor and Economic Development Committee

HB 335: Resolution of Prevailing Wage Complaints (McCamley). House Judiciary Committee

HB 347: Financial Institutions (Lundstrom). House Judiciary Committee

HB 356: Local Economic Development Act (R. Martinez). House State Government Indian, and Veteran Affairs Committee

HB 361: State Banks (Cook). House Business and Industry Committee

HB 368: Reporting Requirements for Small Loan Act (Lente). House Business and Industry Committee

HB 378: Promote NM Agriculture Products (Romero). House Appropriations and Finance Committee

HB 382: Mineral Lease Districts Act (Nibert). House Energy Committee

HB 401: Manufactured Home Definition (Sweetser). House Business and Industry Committee

HB 412: Tax Reform (Harper). House Taxation and Revenue Committee

HB 413: Rental Property Writs of Restitution (Baldonado). House Business and Industry Committee

HB 432: Employee Preference Act (Townsend). House Labor and Economic Development Committee

HB 438: Disclosure of Tax Refund Loan Fees (Ruiloba). House Business and Industry Committee

HB 442: Minimum Wage (Rodella). House Judiciary Committee

HB 467: Benefit Corporation Act (Cook). House Business and Industry Committee

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

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

HJR 9: Term Limits (R. Montoya). Tabled in House State Government, Indian and Veteran Affairs Committee

HJM 4: Infrastructure Funding Intervention Committee (Ely). Passed House (35-33). Senate Rules Committee

HJM 7: Impact of Affordable Care Act Repeal (Thomson). House floor

HM 7: State-Owned Bank Study (L. Trujillo). House floor

