

NMBA LEGISLATIVE REPORT

NEW MEXICO BANKERS ASSOCIATION
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Volume VIII – Monday, March 13, 2017

There are 6 days remaining in the 2017 sixty-day Legislature. The 2017 Legislature will adjourn promptly on Saturday, March 18, at noon.

The Senate has approved a \$6.1 billion budget for 2017-2018 and a \$363 million tax package. Under the Senate budget bill (committee substitute for HB 2 and 3) there is little difference from the budget bill approved by the House several weeks ago. The bill cuts spending to universities, but increases funding for the judiciary. Medicaid spending would remain flat. The Senate added \$15.0 million to public education for teacher stipends and early reading intervention.

The tax package (committee substitute for HB 202) raises \$363 million by:

- Increasing the excise tax rate on sales of new and used vehicles to 4 percent from 3 percent;
- Raising the gasoline tax rate by 10 cents a gallon-from 17 cents to 27-and the diesel tax rate by 5 cents a gallon;
- Requiring out-of-state online retailers to collect gross receipts tax from New Mexico consumers;
- Imposing a two-year freeze on a corporate income tax rate cut that's being gradually implemented; and
- Raising the annual permit fee on commercial trucks from \$5.50 to \$55 per vehicle;

Another tax package (HB 412 committee substitute) that resets gross receipts tax laws by eliminating most credits, deductions and exemptions starting July 1, 2019,

cleared the House last week. In the bill, most of the state tax loopholes are eliminated and the overall state gross receipts tax rate will drop significantly to just over 3 percent. The measure would end hundreds of tax exceptions for business in dozens of industries, but is designed to be revenue neutral, meaning it would not bring in more money for the state long-term.

The Committee Substitute for HB 347 passed the House (64-2). The bill would end payday lending in New Mexico. The bill introduces a cap to the Bank Installment Loan Act (BILA) and increases the existing \$2,500 cap in the Small Loan Act (SLA). The bill requires that the loan term must be at least 120 days, with a minimum of four installments of substantially equal payments of principal and interest. In the event that there are insufficient funds to pay a check, or other type of debit by a lender, the check authorization request will not be presented more than once unless the consumer agrees in writing to an additional deposit. However, these provisions are not applicable to federally insured depository institutions. The provisions require loans made in amounts less than or equal to \$5,000 may be made only pursuant to the BILA or SLA. Loans are repayable in a minimum of four installments of substantially equal payments of principal and interest. No lender, other than a federally insured depository institution, may make a loan pursuant to the BILA (or the SLA) that has an annual percentage rate greater than 175%, calculated as defined by federal regulations at 12 CFR 1026 (Regulation Z.) This would support a usury rate of 175% APR for most loans. The legislation mandates a credit reporting requirement for loans made under the BILA and the SLA. Penalties and forfeitures have been provided for willful violation of both the BILA and the SLA. Violations constitute an unfair or deceptive trade practice pursuant to the Unfair Practices Act. The bill creates the Financial Literacy fund to be administered by the Regulation and Licensing Department. This fund is supported through the proposed \$200 annual licensing fee. The department 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 full House approved House Joint Resolution 1 by a vote of 37-32. The resolution proposes an amendment to Article, XII, Section 7 of the New Mexico Constitution, which governs distributions from the land grant permanent fund (LGPF). If approved by voters in a statewide referendum, the state constitution would require the LGPF to provide additional yearly distributions of 1 percent from the fund to educational and early childhood educational (ECE) services starting in fiscal year 2020. This would raise the overall LGPF distribution to 6 percent per year. Of the additional 1 percent funding to the permanent school fund, the resolution initially focuses 0.7 percent on education reforms and 0.3 percent ECE, then flipping those percentages in FY21, and

in FY22 and thereafter, using the entire 1 percent for ECE programs. The resolution would go before voters at the next general election. Additionally, this resolution would not take effect unless the amendment were approved by the US Congress. The Fiscal Impact Report estimates that the resolution would take \$153 million out of the fund in the 2020 fiscal year, \$158 million in the 2021 fiscal year and \$163 million in the 2022 fiscal year.

Last week, the Governor signed her first non-budget related bills passed this session. The bills, HB 60 and HB 113, are intended to speed up the development of broadband internet access in the state. HB 60 incorporates broadband into the definition of economic development. That allows state and local governments as well as the Department of Transportation to permit private companies to take advantage of open trenches to install fiber-optic cable. HB 113 amends the Department of Information Technology Act, which defines a “telecommunication network” and directs the state chief information officer to develop a statewide broadband network plan in conjunction with public institutions and broadband service providers. Under the bill, the Department of Information Technology can provide a broadband network to education institutions, apply for reimbursements from the Federal Telecommunications Act of 1996, and charge institutions for participating in the network. The bill allows Indian nations, tribes, and pueblos to connect to the network in exchange for right of way.

The House, by a narrow margin, approved HB 6 (36-31). The bill reinstates the Solar Market Development Tax Credit. Rather than the 10 percent credit of the original 2006 credit, this bill gradually reduces the credit percentage for projects completed prior to January 1, 2025. The maximum tax credit remains \$9,000 for each system. This bill also combines the current maximum annual aggregate tax credits of \$2 million for solar thermal systems and \$3 million for photovoltaic systems to create a cap of \$5 million for both solar thermal and photovoltaic systems. The federal solar tax credit of 30 percent for residential solar thermal and photovoltaic systems, which was set to expire on December 31, 2016, was extended in December 2015 until December 31, 2019 with a phase-down of the credit from 30 percent to 22 percent through December 31, 2022.

The House last week approved 66-0 House Joint Resolution 8, which would create a State Ethics Commission as an independent state agency under the direction of seven commissioners. The resolution specifies the commissioners be qualified electors and have other qualifications as provided by law. Commissioner appointments would be made by various elected officials. The resolution proposes the State Ethics Commission may initiate, shall receive and investigate, and may adjudicate complaints alleging violations of standards of ethical conduct and other standards of conduct and reporting requirements as provided by law for state officers or employees of the executive or legislative branches of government, candidates or other participants in elections, lobbyists or government contractors or seekers of government contracts. The

resolution authorizes the State Ethics Commission to adjudicate complaints alleging violations for which civil penalties or sanctions may be imposed and refer complaints alleging criminal violation of the law to the appropriate prosecutorial authority. The Ethics Commission would also have authority to issue advisory opinions, promulgate rules, issue subpoenas, and recommend a matter to the Legislature for consideration for impeachment proceedings. It requires the State Ethics Commission impose penalties and sanctions as provided by law upon the presentation of clear and convincing evidence to the State Ethics Commission in a public hearing.

The Senate last week passed a sharp increase in taxes on cigarettes and other tobacco products. SB 231 would increase the taxes on a pack of cigarettes by 90 percent. Specifically, the bill amends the Cigarette Tax Act to increase the excise tax on cigarettes, amends the Tobacco Products Act to include e-cigarettes and other vapor products, and taxes tobacco products at an increased rate. The bill:

- Increases the excise tax on packs of 25 cigarettes by \$1.88 and on packs of 20, 10, and 5 cigarettes by \$1.50;
- Increases the tobacco products tax from 25 percent to 76 percent of the product value of the tobacco products;
- Revises the cigarette tax distributions with the intent of new revenues from the tax increase to be distributed to the public school fund; and
- Expands the definition of “tobacco product” significantly, to include:

-A product that is made of or derived from tobacco or nicotine and that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means;

-An electronic device that delivers nicotine or other substances to the person inhaling from the device; and

-A cigar, chewing tobacco, pipe tobacco, snuff, electronic cigarette, electronic cigar, or electronic pipe.

It is estimated that if enacted and approved by the governor, the bill would raise \$90 million per year.

The Senate Corporations Committee approved SB 415 last week by a vote of 5-2. The bill prohibits New Mexico cities, local governments, and state institutions from enacting laws to regulate the hours, scheduling or leave that private-sector employers must provide their employees. It also bars state entities from requiring private-sector

employers to provide workers with paid or unpaid leave, fringe benefits or benefits that would incur an expense. Nothing in SB 415, however, prohibits municipalities from adopting minimum wage rates that are higher than the statewide minimum wage rate.

The Governor has vetoed HB 144 which required the New Mexico Department of Agriculture to institute and administer an industrial hemp research program for the purpose of studying the growth, cultivation, and marketing of industrial hemp in New Mexico or any other purpose allowed by federal regulation or law. The bill defined “industrial hemp” as the plant *Cannabis sativa* L. and any part of the plant, whether growing or not, containing a delta-9-tetrahydrocannabinol (THC) concentration of no more than 0.3 on a dry weight basis. The Governor vetoed a similar bill in 2015.

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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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 Judiciary Committee

SB 78: Private Employee Repayment (O'Neill). Passed Senate (34-2). House Judiciary 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 Corporations Committee

SB 280: Employee Credit Information Privacy (Tallman). Senate Judiciary 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 Corporations 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). Passed Senate (38-0)

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

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

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

SB 356: Notifications of Public Improvement Districts (Rodriguez). Passed Senate (31-0). Passed House (59-0).

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

SB 377: Uniform Money Services Act (Munoz). Senate floor

SB 382: Local Government Investment Pool Changes (Munoz). Passed Senate (37-0). House floor

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

SB 386: Raise Minimum Wage and Allow Trainee Wage (Sanchez). Passed Senate (24-6). House Judiciary Committee

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

SB 390: Film Tax Credit “Production Facility” (Steinborn). Passed Senate (37-2). House Business and Industry Committee

SB 391: Captive Estate Investment Trust Income (Wirth). Passed Senate (33-0)

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

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

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

SB 417: Create Business Recruitment Fund (Munoz). Senate Corporations Committee

SB 425: Enhanced Enterprise Zone Act (Sanchez). Senate Judiciary Committee

SB 436: Gas and Special Fuels Tax Distribution (Campos). Senate Corporations Committee

SB 438: New Jobs and Investment Tax Credits (Munoz). Senate Corporations Committee

SB 452: Public Use and Eminent Domain (Munoz). Senate Corporations Committee

SB 457: Gross Receipts Tax Changes (Smith). Senate Corporations Committee

SB 467: Right of Redemption for Assignees in Foreclosure Proceedings (Sanchez). Senate Corporations Committee

SB 477: Title Insurance Market Stabilization Act (Stefanics). Senate Public Affairs Committee

SB 482: Employee Preference Act (Burt). Senate Public Affairs Committee

SB 488: Uniformity of Employment Law Terms (Burt). Senate Public Affairs 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 Judiciary Committee

HB 26: Small Loan Interest Caps (Roybal-Caballero). Tabled in 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). Passed House (65-0). Senate Public Affairs Committee

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 floor

HB 251: Public Finance (Stapleton). Passed House (65-0). Senate Finance Committee

HB 276: Uniform Money Services Act (Strickler). Passed House (64-0)

HB 281: Transfer of Car Titles Upon Death of Owner (Herrell). Passed House (62-0). Senate Judiciary Committee

HB 289: Agriculture in Economic Development Finance Act (Small). Passed House (59-1). Senate Corporations 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 floor

HB 327: Minimum Wage for Persons with Disabilities (Ferrary). House Judiciary 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). Passed House (64-2)

HB 356: Local Economic Development Act (R. Martinez). House floor

HB 361: State Banks (Cook). Passed House (55-11). Senate Public Affairs 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). Passed House (63-0). Senate Corporations Committee

HB 413: Rental Property Writs of Restitution (Baldonado). House Judiciary Committee

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

HB 438: Disclosure of Tax Refund Loan Fees (Ruiloba). House Judiciary Committee

HB 442: Minimum Wage (Rodella). Passed House (37-30). Senate Public Affairs Committee

HB 467: Benefit Corporation Act (Cook). House floor

HB 475: Modify Crime of Concealing Identity (Rehm). House Judiciary Committee

HB 480: Small Loan Interest Rates (Roybal). House Business and Industry Committee

HB 487: Tax Gasoline at the Rack (Townsend). House Transportation Committee

HB 489: Exclude Greenfield Areas from TIDD Act (Romero). House Judiciary Committee

HB 494: Taxpayers' Rights Advocate Office Act (Powdrell—Culbert). House Taxation and Revenue Committee

HB 513: Public Funds (Egolf). Passed House (63-0). Senate Corporations Committee

HJR 1: Distribution of Permanent Fund for Early Childhood Education (Maestas). Passed House (37-32). Senate Rules Committee

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

Save the Date:

106th NMBA Annual Convention

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

