

NMBA LEGISLATIVE REPORT

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

Find information about the NMBA and our services at www.nmbankers.com or



Volume I – Monday, January 22, 2018

The 30-day session of the New Mexico Legislature began at noon on Tuesday, January 19 with the State of the State address by Governor Susana Martinez. Her speech touched on:

- **Criminal justice reform:** Governor Martinez is requesting increased criminal penalties for felons in possession of a firearm and for drunken drivers with more than four convictions. Her ideas include a “three strikes” law that would impose a life sentence on people convicted of three violent offenses
- **Education reform:** The Governor favors legislation limiting administrative spending by schools, and putting that money into classrooms. Martinez will push for a 2 percent pay increase for teachers rated “exemplary” based on student data and a \$10,000 increase for exemplary high school science, math and technology teachers. She favors a \$250 tax credit for all teachers to help pay out-of-pocket for school supplies

Martinez will take a new tack in pushing to limit “social promotion” when children can’t read at grade level. She will support a “Reading Success Act”-an attempt, she said, to get children extra academic help as early as kindergarten to ensure they can read before they advance through elementary school. She supports a policy in which teachers and parents meet early to determine the best course for struggling students-and whether repeating kindergarten or the first grade is the best option

- **Taxation:** The governor will back plans to simplify New Mexico’s gross receipts tax system. One priority is to address the worst instances of “pyramiding”-or the

imposition of gross receipts taxes on each step in a larger transaction, resulting in an exponential increase in the overall taxes paid. Among other changes she will seek is to make nonprofit hospitals pay the same tax rate as for profit hospitals.

- **Budget:** The Governor's budget proposal for fiscal year 2019 totals \$6.32 billion in recurring spending. To the surprise of many legislators, during the State of the State Address, the Governor announced the amount of new money available for the next fiscal year has increased to approximately \$330 million. A rebound in the oil and gas sector has improved the financial sector, and gross receipt tax revenue is increasing faster than projected. The proposal includes:

Growing and Diversifying New Mexico's Economy

- \$12 million for New Mexico's job training program (JTIP)-the JTIP program helped New Mexico companies hire and train more than 2,000 New Mexicans in 2017 alone, and more than 10,000 since Governor Martinez took office in 2011
- \$10 million for New Mexico's closing fund, which recruits new companies to the state while helping those already here grow

Strengthening Schools and Improving Child Welfare

- \$70 million for classroom spending targeted to provide more instructional materials, increase teacher pay and reward our highest-performing teachers
- \$25 million to improve access to child care in New Mexico
- \$1 million for the Children, Youth and Families Department's Child Protective Services

Keeping our Communities Safe

- \$5 million for the Bernalillo County District Attorney's Office, as well as additional funding for New Mexico's judiciary and public defenders
- More than \$7 million for salaries for New Mexico State police officers
- \$6.8 million for targeted salary increases for corrections, probation and parole officers

The Governor's budget proposal provides funding for a 1 percent salary increase for state employees. The recommendation also includes an additional \$38 million for Medicaid.

30-Day Session

This year's 30-day session is limited by the state constitution to bills dealing with state budget issues (appropriations and tax measures), issues that the governor asks the Legislature to address, and bills vetoed by the governor in the previous legislative session. If a bill is introduced that is not in one of those categories, it will not be considered "germane" and will not be allowed to move through the process. However, this limitation does not apply to proposed constitutional amendments, which can be introduced in any legislative session, require only a majority vote in both chambers, and are not subject to approval or veto by the governor. Memorials and resolutions are also allowed in the short session.

The 112-member legislature has 70 members in the House of Representatives and 42 members in the Senate. Currently, Democrats outnumber Republicans 38-32 in the House and the Democrats hold a 26-16 advantage in the Senate.

Key Dates

- January 16: Session began
- January 31: Last day to file bills
- February 15: Session ends at noon
- March 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 2018 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

282 bills, memorials and resolutions were pre-filed before the start of this year's session. Several may have an impact on our industry including:

Senate Bills and Resolutions:

SB 19: Uniform Guardianship, Conservatorship and Other Protective Arrangement Act (White).

SB 19 covers guardianships and conservatorships for both minors and adults, as well as protective arrangements in lieu of guardianship for adults and protective arrangements in lieu of conservatorship for both adults and minors. The Act includes guidance to guardians and conservators, many of whom are lay people. Specifically, the Act clarifies how appointees are to make decisions, including decisions about medical treatment and residential placement. These clarifications are consistent with the person-centered approach embraced by the Act in that appointees are given specific guidance on involving the individual in decisions.

The Act also recognizes the role of, and encourages the use of, less restrictive alternatives, including supported decision-making and single-issue court orders instead of guardianship and conservatorship. Thus, the Act provides that neither guardianship nor conservatorship is appropriate where an adult's needs can be met with technological assistance or supported decision-making. It also provides for protective arrangements instead of guardianship or conservatorship. These alternative arrangements have the potential to reduce the extent to which individuals in need of protection are deprived of liberties. They can also reduce the time and cost associated with meeting individuals' needs. Unlike a guardianship or conservatorship, long-term monitoring and reporting will generally be unnecessary.

The Act expands the procedural rights for respondents with the aim of ensuring that respondents' rights are fully respected and that guardianships and conservatorships are only imposed when less restrictive alternatives are not feasible. In expanding these protections, the Act strikes a balance between the need to provide meaningful procedural rights for individuals alleged to need a guardian or conservator, and the need to avoid making the appointment process overly complex or expensive.

The Act also provides for enhanced monitoring of guardians and conservators to ensure that such appointees are complying with their fiduciary duties and that individuals subject to guardianship and conservatorship are protected against exploitation. The Act allows the court to identify people who are to be given notice of certain key changes or suspect actions, and who can therefore serve as an extra set of eyes and ears for the court.

The Act provides enhanced procedural rights for individuals subject to guardianship and conservatorship. Key requirements include a provision that the court provide such individuals with plain-language notice of key rights, the addition of provisions for attorney representation of individuals subject to guardianship and conservatorship, greater scrutiny of the guardian or conservator's ability to charge fees to oppose the individual's efforts to alter the appointment, and additional triggers for reconsideration of an appointment.

The Act also creates a new mechanism for protecting individuals from exploitation. The Act allows a court, without imposing a guardianship or conservatorship or ruling on the individual's abilities, to restrict access to the respondent or the respondent's property by a specified person that the court finds by clear-and-convincing evidence: through fraud, coercion, duress, or the use of deception and control, caused, or attempted to cause, an action that would have resulted in financial harm to the respondent or the respondent's property; and poses a serious risk of substantial financial harm to the respondent or the respondent's property. This allows courts to create tailored orders to protect vulnerable individuals at risk of substantial exploitation even though the individual might not have the level of limitation in abilities necessary to impose a conservatorship or guardianship.

SB 39: Prohibited Broadband Services Act (Morales). This bill is the same as House Bill 95.

SB 48: Personal Loan Benefit for State Employees (Tallman). The bill provides for a program through which participating state employees have portions of their salaries or wages deducted and disbursed for the repayment of personal loans.

SB 50: Credit and Debit Card Campaign Contributions (McSorley). The bill provides requirements for contributions made to a candidate or a political committee via the internet by credit or debit card. Under the bill the contributor must provide the card security code imprinted on the card and either the billing address associated with the card, which must be within the United States. If the contributor is a United States citizen living outside of the U.S., the contributor must provide his or her mailing address used for voter registration.

SB 59: Credit Report Freezes for Minors (McSorley). The bill changes the definition of "consumer" to specifically allow parents or guardians to request a security freeze of a minor's or protected person's credit report. The definition of consumer is expanded to include the parent or guardian of a person who is a minor at the time a request for the placement of a security freeze is made; an incapacitated person or a protected person for whom a guardian or conservator has been appointed; or an individual who is under the jurisdiction of the children, youth and families department and is in foster care at the time a request for placement of a security freeze is made.

SB 70: Affordable Housing Act Oversight Duties (Ingle). This bill appropriates \$250,000 to the department of finance for expenditure by the New Mexico mortgage finance authority in fiscal year 2019 and subsequent fiscal years for the purpose of funding the oversight of the Affordable Housing Act.

SB 76: Regional Housing Authority Oversight (Papen): This bill appropriates \$300,000 to the department of finance for expenditure in fiscal year 2019 and subsequent fiscal years of the purpose of funding the oversight of the regional housing authorities by the New Mexico mortgage finance authority.

SB 81: Individual Development Account Provisions (Tallman). This bill appropriates \$500,000 to the workforce solutions department for expenditure in fiscal year 2019 and subsequent fiscal years to carry out the provisions of the Individual Development Account Act.

SB 90: Financial Services Campaign Contributions (Lopez). This bill defines prohibited contributions by financial service vendors to include contributions to a campaign or political committee associated with a recipient to whom contributions are otherwise prohibited.

SB 93: Liquor Dispenser's License Changes (Griggs). This bill stipulates that a liquor dispenser's license that, under previous law, lost the privilege to sell alcoholic beverages in unbroken packages for consumption and not for resale off the licensed premises as a result of transferring out of its original local option district to have the privilege reinstated if the licensee pays \$75,000 to the department of alcohol and gaming.

SB 94: General Obligation Bonds (Cisneros). This bill authorized the issuance and sale of capital projects general obligation bonds in the amount of \$49 million to make capital expenditures for construction and improvement of roads in all 6 department of transportation districts.

SB 101: Uniform Directed Trust Act (Ingle). The Uniform Directed Trust Act addresses a common arrangement in contemporary estate planning and asset management known as a directed trust. In a directed trust, the terms of the trust grant a person other than a trustee a power over some aspect of the trust's administration. There is no consistent vocabulary to describe the person other than a trustee that holds a power in a directed trust. Under SB 10, a power over a trust held by a non-trustee is called a "power of direction". The holder of a power of direction is called a "trust director". A trustee that is subject to a power of direction is called a "directed trustee". The main contribution of the act is to address the many complications created by giving a power of direction to a trust director, including the fiduciary duty of a trust director and the fiduciary duty of a directed trustee.

By validating terms a trust that grant a trust director a power of direction, the Act promotes settlor autonomy in accordance with the principle of freedom of disposition. The act imposed a mandatory minimum of fiduciary duty on both a directed trustee and a trust director in accordance with the traditional principle that a trust is a fiduciary relationship.

Under the Act, a trust director has the same default and mandatory fiduciary duties as a trustee in a like position and under similar circumstances. In complying with a trust director's exercise of a power of direction, a directed trustee is liable only for the trustee's own willful misconduct. The rationale behind these rules is that in a directed trust the trust director functions much like a trustee in an undirected trust. Thus, the trust director should have the same duties as a trustee in the exercise or non-exercise of the director's power of direction, and the fiduciary duty of the directed trustee is reduced with respect to the director's power of direction.

Under the Act, a beneficiary's main recourse for misconduct by a trust director is an action against the director for breach of the director's fiduciary duty to the beneficiary. The beneficiary also has recourse against a directed trustee, but only to the extent of the trustee's own willful misconduct. Compared with a non-directed trust in which a trustee holds all power over the trust, a directed trust subject to this act provides for more aggregate fiduciary duties owed to a beneficiary. All of the usual duties of trusteeship are preserved in the trust director, and in addition the directed trustee has a duty to avoid willful misconduct.

Hous Bills and Resolutions

HB 36: Reinstate Solar Market Development Tax Credit (Trujillo, Ruiloba, and Rodella). The bill reinstates the solar market development tax credit. A taxpayer who follows an individual New Mexico income tax return beginning on or after January 1, 2018 and who purchases a solar thermal system on or after January 1, 2018, may apply for a solar market development tax credit of up to ten percent of the purchase and installation costs of the system. The power from the system must be used primarily for consumption on the site where the system is allowed in order to earn the tax credit.

HB 60: Increase Minimum Wage (Roybal Caballero). The bill increases the minimum wage, provides for an annual cost-of-living increase in the state minimum wage, and eliminates the separate minimum wage for employees who regularly receive tips. The bill would raise the minimum wage to \$15.00 per hour by January 1, 2019. Also, as of January 1, 2020, employers would pay an employee the prior year's minimum wage increased by a percentage equal to the percentage increase in the cost of living.

HB 82: Reduce Quarterly Workers' Comp Fee (Crowder). The bill reduces the quarterly workers' compensation administration fee imposed on employees. It would also restrict the use of money in the workers' compensation administration fund. There is a current fee of \$2.00 assessed against each employee covered by the Workers' Compensation Act on the last working day of each quarter. This bill would lower the fee to \$1.50.

HB 83: Estate or Trust Distribution Tax Deduction (Trujillo). This bill revises the state Income Tax Act to create a new deduction from net income for an estate or trust for certain income sequestered within the overall trust or estate that is set aside for future distributions to a non-resident individual. The deduction would not include income from allocable sources of income occurring in New Mexico such as income derived from real property, mineral, oil and gas interests and water rights, but would allow the deduction for business income that would be apportioned to the non-resident's state of residence were the income directly distributed to the beneficiary rather than flowing through the trust. The purpose of the deduction is to assist in the expansion of the trust and estate business in New Mexico.

HB 95: Broadband Access Unfair Trade Practices (McCamley). This bill declares it an unfair and deceptive trade practice for any person providing broadband internet access services to block lawful content, applications, services or use of a non-harmful device, except as necessary for reasonable network management. It also declares impairing lawful internet content, engaging in paid prioritization, and interfering with a user's ability to select content as deceptive trade practices.

HB 110: Rental Property (Baldonado). The bill amends the Uniform Owner-Resident Relations Act to lift the stay of execution on an appeal by a resident of a writ of restitution and allowing a court to require an appellant to post a bond pending the appeal. The amendment states that the defendant will be prohibited from re-entering the premises without permission of the owner for 180 days following the execution of the writ.

HB 113: Remove Film Tax Credit Annual Cap (Maestas). The bill removes the annual aggregate cap for the film and television tax credit. The cap on expenditures is currently \$50,000,000.

HJR 1: Land Grant Fund Distributions (Maestas and Martinez). This joint resolution provides additional annual distributions of the permanent funds, including distributions from the permanent school fund in fiscal years 2020 and 2021 for public school educational programs and early childhood educational services and in subsequent fiscal years for early childhood educational services.

HJR 2: Land Grant Fund for Public Safety (Ely). This joint resolution requires an additional distribution of one-half percent of the land grant permanent fund for criminal justice and public safety purposes, only if the average of the year-end market values of the fund for the immediately preceding five calendar years is at least fifteen billion dollars. This distribution would specifically fund education programs, law enforcement offices, courts, corrections facilities, pretrial and post-trial services for criminal offenders, and behavioral health programs.

HJR 3: Severance Tax Fund for Public Safety (Ely). This joint resolution requires an additional distribution from the severance tax permanent fund for criminal justice and public safety purposes, only if the average of the year-end market values of the fund for the immediately preceding five calendar years is at least five billion dollars. This distribution would specifically fund education programs, law enforcement offices, courts, corrections facilities, pretrial and post-trial services for criminal offenders, and behavioral health programs.

