

NMBA LEGISLATIVE REPORT

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Volume I – Tuesday, January 22, 2019

The 2019 Legislative Session opened on Tuesday, January 15, with newly elected Governor Michelle Lujan Grisham delivering her first “State of the State” speech. The Governor reiterated her campaign pledge to deliver a moonshot for public education in the form of a half billion dollars for our classrooms. She also touched on:

- Intelligent evidence-based criminal justice reform;
- Increase in minimum wage;
- Utilization of the state’s Land Grant Permanent Fund for early childhood education programs;
- Elimination of the state’s annual \$50 million cap on the state’s film industry’s incentive tax program;
- Climate change;
- Increase salaries for state employees and teachers;
- Address gun violence in our schools and communities. With common sense reform, we can build a state where people who should not have guns don’t;
- Increasing our state’s renewable energy portfolio standard-50 percent renewable energy by 2030 and 80 percent by 2040;
- Increase spending on infrastructure-roads, bridges, water systems, school buildings and broadband internet.

The Governor's budget proposal for fiscal year 2020 includes an overall general fund recurring budget of \$7.1 billion, a 13 percent increase over this year's budget and a 25 percent general fund reserve target. The budget proposal also includes:

- More than \$500 million in additional funding for public education, a true moonshot for New Mexico's students, educators, parents and communities, which includes a 6 percent pay increase for teachers, principals and education personnel and a raise in tiered minimum salaries as well as minimum salaries for principals and a minimum wage increase for all education personnel to \$12 an hour; \$113 million to increase the at-risk index in the funding formula to provide for low-income students, minority students, English language learners and students with disabilities; \$60 million for increasing the number of pre-kindergarten slots, the number of high-quality Pre-K educators, and financial aid for early childhood educators; \$6 million for the Indian Education Fund; and \$5 million for a program to support educators who have had to fund classroom supplies out of pocket.
- A substantially increased investment in the Local Economic Development Act, to \$75 million, as well as investments in the Job Training Incentive Program, tourism marketing initiatives, Main Street and other economic development and workforce programs;
- A \$36.5 million increase in the CYFD budget, including almost \$4 million to fund more than 100 new Protective Services positions;
- Significant investments in health services, among them \$27 million for Centennial Care enrollment and utilization growth; a \$6.3 million increase for early intervention services in the Family, Infant and Toddler program; and increases to support behavioral health services within the Corrections Department as well as enhanced care coordination between group health homes across the state;
- One-time funds to repay the entirety of the state's film industry rebate backlog;
- Tiered salary increases of 4 percent for state employees making less than \$25,000; 3 percent for those making \$25,000 to \$50,000; 2 percent for those making more than \$50,000; and an across-the-board minimum wage increase for state employees to \$12 an hour.

The Legislature unveiled a \$7 billion budget plan last week for the next fiscal year. The budget increases teacher salaries, increases funding for classrooms with a high number of at-risk students, and adds 10 days to the state's current school year. The Governor's and Legislature's budget plans are similar. For example, both plans call for an increase in the public school funding formula for at-risk students. Salaries for teachers and state workers would go up under both plans. Teachers would get a 5.5 percent raise under the Legislature's plan and a 6 percent hike under the Governor's

plan. Taxpayer-funded retirement contributions for teachers and state workers would increase under both plans.

However, there are some differences which include:

- Under the Legislature's proposed budget unlike the Governor's, there is no funding to pay off an approximately \$300 million backlog in state film industry rebates;
- The state "closing fund" for economic development would get \$75 million under the Governor's plan and \$4 million under the Legislative recommendation;
- State prekindergarten programs would receive \$25 million more under the Governor's plan than under the Legislative plan.

Legislative Make-Up

The 112-member Legislature has 70 members in the House of Representatives and 42 members in the Senate. Currently, Democrats outnumber Republicans 46-24 in the House and the Democrats hold a 26-16 advantage in the Senate.

Key Dates

- January 15: Opening day (noon)
- February 14: Deadline for introduction of legislation
- March 16: Session ends at noon
- April 5: Legislation not acted upon by governor is pocket vetoed. Last day for governor to sign legislation.
- June 14: Effective date of legislation not a general appropriation bill or a bill carrying an emergency clause or other specified date

The New Mexico Bankers Association will prepare a weekly LEGISLATIVE REPORT throughout the 2019 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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House Bills and Resolutions

HB 6: Tax Reform (J. Trujillo). The bill represents a major tax reform for the state. It provides for:

- Amending personal income tax brackets;
- Limiting the capital gains deduction from net income;
- Forgiving penalties and interest for certain income tax liabilities;
- Requiring combined reporting for a unitary group;
- Changing requirements for corporations to file a consolidated return;
- Amending and adding definitions pursuant to the corporate income and franchise Tax Act;
- Amending the Uniform Division of Income For Tax Purposes Act to determine in-state sales of intangibles and services based on market sourcing rather than cost of performance;
- Reducing the gross receipts tax rate; providing that the compensating tax rate shall be imposed at the same rate as the gross receipts tax rate;
- Providing for taxation of certain internet sellers pursuant to the Gross Receipts and Compensating Tax Act;
- Amending sourcing rules from the place of business of the seller to destination-based sourcing;
- Providing for the taxation of for-profit, nonprofit and government hospitals pursuant to the Gross Receipts and Compensating Tax Act;
- Providing gross receipts tax deductions for temporary services and certain nonprofit organizations;

- Increasing the rate of the motor vehicle excise tax to equal the gross receipts tax rate;
- Increasing the gasoline tax and the special fuel excise tax and distributing the revenue from those increases to new state and local transportation infrastructure maintenance funds;
- Imposing a local option compensating tax;
- Limiting the hold harmless distributions to local governments;
- Reducing, then eliminating, premium tax credits;
- Increasing motor vehicle registration fees; and
- Imposing an additional registration fee on electric and hybrid vehicles;

HB 31: Minimum Wage (M. Garcia). The bill increases the state's minimum wage in phases from \$10 an hour to \$12 an hour. As of July 1, 2022 and on July 1 of each successive year, the \$12 minimum wage will be increased by a cost of living adjustment. The bill also removes the minimum wage exception for tipped employees.

HB 46: Minimum Wage (Caballero). The bill would increase minimum wage to \$7.50 an hour. After January 1, 2020, the minimum wage would be increased to \$15.00. On January 1, 2021, and thereafter, the minimum wage would be subject to a cost-of-living increase. The bill also eliminates the separate state minimum wage for employees who regularly receive tips.

HB 63: Hemp Study (C. Trujillo). The bill would provide an appropriation from the general fund to NMSU to study how to develop the production and sale of industrial hemp in the state.

HB 75: Emergency Repairs of Homes Occupied by Low-Income Persons (Gonzales). Bill would appropriate \$2 million from the general fund for the NM Mortgage Finance Authority to provide for emergency and minor repairs of homes occupied by low-income persons.

HB 97: Public Finance (Salazar). The bill provides that the ERB, PERA and the state investment council may remit money to the state treasurer for investment in the local government investment pool.

HB 150: Installment and Small Loan Revisions (Louis). The bill makes significant amendments to the New Mexico Bank Installment Loan Act of 1959 and the New Mexico Small Loan Act of 1955.

HB 163: Tax Deduction for Non-Resident Trust Beneficiary (J. Trujillo). The bill creates a new section of the Income Tax Act to provide a deduction from net income of an estate or trust for certain income sequestered within the overall trust or estate that is set aside for future distributions to a nonresident 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 by allowing the trustee to hold and invest income sequestered in the trust by not having to distribute that income to non-resident trust beneficiaries in the year of receipt.

HB 172: Student Loans (Caballero). The bill would enact the Student Loan Bill of Rights Act. The bill would provide in part that any person may not act directly or indirectly as a student loan servicer without first obtaining a license pursuant to the provisions of the Act. Banks, wholly owned subsidiaries of banks and operating subsidiaries of banks are exempt from the provisions of the Act.

HB 191: UCC Secured Transactions (Cook). The bill amends articles 3 and 9 of the UCC. Section 1 of the bill is limited in scope to transfers of negotiable instruments. It is intended to reject the result in the case of *Dennis Joslin Co. v. Robinson Broadcasting Corp.*, 977 F. Supp. 491 (D.D.C. 1997). The court held that a transferee of a negotiable instrument need prove only that its transferor was entitled to enforce, not that the transferee was in possession at the time the instrument was lost, which is what the section provides before this proposed amendment. The protections of Section 55-3-620 should also be available when negotiable instruments are lost during transit, because whatever the precise status of ownership at the point of loss, either the sender or the receiver ordinarily would have been entitled to enforce the instrument during the course of transit. The amendment is not intended to alter in any way the rules that apply to the preservation of checks in connection with truncation or any other expedited method of check collection or processing.

Section 3 and 4 explicitly exclude public finance transactions from the coverage of the UCC. Public finance transactions are already excluded from the UCC in other sections.

The uniform amendments in Section 4 and 5 are intended to preserve the “pick your partner” principle in New Mexico statutes governing general and limited partnerships and LLCs. Generally, those statutes allow partners and members to pledge their business interests as collateral, but allow them to restrict the rights of the secured party. In the event of default, the secured party is entitled only to receive the financial benefit (or “transferable interest”), and does not receive any management rights. Without these amendments, the UCC arguably invalidates those restrictions which are expressly permitted by New Mexico general and limited partnership and LLC statutes.

HB 203: Economic Development (Small). The bill expands the Statewide Economic Development Act to include agricultural enterprises.

HB 214: Public Audits (R. Martinez). The Bill requires ERB, the state Treasurer, PERA and the State Investment Council to submit their current annual audits to the state Board of Finance.

HB 219: Angel Investment Tax Audit (Small). The bill would allow the angel investment income tax credit to be refundable.

HJR 1: Early Childhood Education (Maestas). The resolution proposes an amendment to Article 12, Section 7 of the Constitution of New Mexico, subject to the approval of Congress, to provide for additional annual distributions of the permanent funds, including distributions from the Permanent School Fund, for early childhood education programs.

Senate Bills and Resolutions

SB 6: Taxation (Wirth). The bill amends the Uniform Division of Income for Tax Purposes Act to determine in-state sales of intangibles and services based on market source rather than cost of performance.

SB 7: Affordable Housing (Wirth). The bill allows a municipality or county that imposes an occupancy tax to use up 50% of the proceeds from the occupancy tax attributable to short-term occupancy rentals to defray the costs of providing affordable housing. A short-term occupancy rental is lodging offered for rent for less than 30 days per transaction.

SB 19: Liquor License (Griggs). The bill provides that a dispenser’s license transferred outside its local option district shall entitle that licensee to either sell, serve or permit the consumption of alcoholic beverages by the drink on the licensed premises (current law) or sell alcoholic beverages in unbroken packages (a new option).

SB 36: Pre-Purchase Homebuyers Education Program (Padilla). The bill appropriates funds from the general fund for the Mortgage Finance Authority to create and implement a statewide pre-purchase education program for first-time home buyers.

SB 40: Regional Housing Authorities (Papen). The bill appropriates funds for the oversight of the regional housing authority by the Mortgage Finance Authority.

SB 56: Appraisal Management Company (Rue). The bill would eliminate the authority of an appraisal management company to remove an independent appraiser from its appraisal panel without notice.

SB 57: Public Audits (Rue). Bill is the same as HB 214.

SB 79: Liquor Licenses (Soules). The bill allows a municipality that is or that is located in a local option district to request the director of alcohol and gaming to issue, for each twenty thousand inhabitants of the municipality, a municipal dispenser's license. The municipality may lease the municipal dispenser's license to a qualified lessee. The license can only be leased, not transferred, and will not expire. A qualified licensee means a person that possesses the same qualifications required of a person to obtain a regular dispenser's license.

SB 93: Municipal Liens (Tallman). The bill removes the statute of limitations in causes of action regarding municipal liens.

SB 96: Employment of Ex-Convicts (O'Neill). The bill provides that if a private employer uses a written or electronic employment application, the employer may not make an inquiry regarding an applicant's conviction on the employment application but may take into consideration an applicant's conviction after review of the applicant's application and upon discussion of employment with the applicant. The bill does not prohibit an employer from notifying an applicant that the law or the employer's policy could disqualify an applicant who has a certain criminal history from employment in particular positions with that employer.

SB 160: Student Loan Bill of Rights (Tallman). The bill is same as HB 172.

SB 168: Corporations (Sanchez). The bill provides for the registration of alternative entity names. For example, the articles of incorporation must set for the name of the corporation and, if different, the name under which it proposes to transact business in New Mexico.

SB 169: Limit Liability Company (Sanchez). The bill requires that the articles of organization for a limited liability company must include the names and addresses of each member of the LLC.

SB 176: Consumer Privacy (Padilla). The bill is patterned after the California Consumer Privacy Act which has been referred to as arguably the most significant U.S. privacy development ever. The bill would:

- Introduces consumer rights regarding personal information:
 - Consumers may request their personal information at no cost and which needs to be delivered within 45 days. The bill regulates:
 - Categories of personal information are those that have been disclosed, collected, or sold for a business purpose;
 - Categories of sources in which personal information was collected;
 - The business purpose for disclosing, collecting, or personal information;
 - The categories of third parties which the business shares or sells personal information; and
 - The specific pieces of personal information the business has collected about a consumer
 - The customer's right to have any personal information deleted about that customer
 - There are a few exceptions including to *detect security incidents and protect against malicious, deceptive, fraudulent, or illegal activity.*
 - The right of that consumer to opt out of sale of the consumer's personal information or authorize another person to opt out on the consumer's behalf
 - Disclosure by third party of right to opt out
- Require notification to consumers that a business collects a consumer's personal information
- Require online notification of privacy policy
- Prohibition of sale a of minor's personal information unless the consumer's parent or legal guardian has affirmatively authorized the sale
- Provide a new private right of action with damages up to \$750 per single occurrence

- Allow Attorney General to file actions for intentional violations-up to \$10,000 for each violation
- Creates a consumer privacy fund

The bill, if passed into law, would become effective July 1, 2020 except for some rulemaking requirements which would become effective earlier (July 1, 2019).

SB 210: Liquor License (Griggs). The bill would provide for a new type of restaurant license that allows for the sale of alcoholic beverages as well as what current law allows-beer and wine.

SB 212: Housing Trust Fund (Rodriguez). The bill would appropriate \$10 million to the New Mexico Housing Trust Fund.

SB 217: Eminent Domain (Stefanics). The bill provides that if the parties in an eminent domain matter are unable to negotiate a settlement and prior to the condemnor filing a condemnation act, the parties shall have the property appraiser to determine fair market value.

SB 237: Surveyors (Cisneros). The bill provides that no action against a professional surveyor to recover damages for negligence, errors or omissions in the making of a survey or for contribution or indemnity related to such acts, errors or omissions may be brought after ten years from the date of signature and seal of the professional surveyor on the completed survey, or delivery of the completed survey, whichever date occurs first.

SB 252: Local Government Investment Pool (Munoz). The bill increases the allowable use of income from charges for local government investment pool services by the state treasurer by providing that balances from those charges not be used to offset the charges for investment pool and related services, but, rather, be used for the office's operations.