

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 II – Monday, February 3, 2020

There are 20 days remaining in the 2020 30-day Legislature. As of last Saturday, there have been 328 bills introduced in the House and 239 in the Senate. The deadline for introduction of legislation is Wednesday, February 5. Last week was very busy. Some of the issues and legislation of interest include:

- The House Labor, Veterans and Military Affairs Committee approving HB 29 and HB 77, which would repeal all or part of the state income tax on Social Security income. HB 29 would exempt federally taxable Social Security income from state personal income tax. The estimate revenue loss to the state general fund should HB 29 be enacted is approximately \$145 million. HB 77 would provide for a limited exemption from personal income tax for income from Social Security retirement that is taxable for federal purposes. Each individual may claim an exemption not to exceed \$24,000. The estimated loss to the state general fund if HB 77 were enacted is \$104 million. New Mexico is one of only 13 states that tax Social Security benefits. One reason why most states do not tax Social Security benefits is to attract and retain retirees as an economic development tool. Good examples are Arizona and Florida. Think New Mexico's white paper made the point that taxing Social Security benefits undermines the purposes of the Social Security Act, which was designed to lift seniors out of poverty-not fund state government. New Mexico currently ranks third-highest in the country for the percentage of seniors living in poverty.
- Also, wonderful news, the state's two largest permanent funds will provide a record \$1.1 billion for state schools, hospitals and other programs in the

next fiscal year. The record distribution from the Land Grant Permanent Fund and Severance Tax Permanent Fund stem from investment gains and taxes and royalties from oil production in southeast New Mexico. The combined distribution amount from the two permanent funds for the budget year that starts in July will be roughly \$60 million higher than in the current fiscal year, when it exceeded the \$1 billion mark for the first time in state history. In addition, the distributions represent \$535 in tax savings for every New Mexico resident. That figure is calculated by looking at current state spending and determining how much would have to be made up through tax collection if there were no permanent fund distributions. The record distributions come as lawmakers are prepared to consider a renewed attempt to divert more money from the \$19.7 billion Land Grant Permanent Fund, the larger of the two funds, for early childhood programs. Past attempts to increase the fund's annual distribution rate from 5% to 6% have failed, where critics say it would diminish the permanent fund for future generations. But backers describe the proposal, House Joint Resolution 1, as a worthwhile investment that could eventually lower high poverty rates in New Mexico. However, the Governor has proposed an alternative approach for funding early childhood programs, although at a somewhat lower level. It calls for \$320 million of the state's budget surplus to be funneled into a new early childhood endowment fund. Overall, New Mexico's two largest permanent funds, combined, are the nation's third-largest sovereign wealth fund, behind only the funds run by Alaska and Texas.

- SB 115, a bill to legalize the recreational sale of cannabis was approved by the Senate Public Affairs Committee on a party-line vote 4-3. The bill calls for imposing a 9 percent tax on cannabis sales and the creation of a regulatory advisory committee to help develop rules for implementing the program. That implementation plan includes coming up with a way for police to conduct an oral fluid test on motorists to gauge whether they are driving under the influence of cannabis. The bill also requires law enforcement agencies to compile an annual report on the number of arrests, citations and other violations connected to those using the drug. Other stipulations in the bill include running cannabis education programs for middle and high school students and funding additional substance abuse treatment programs throughout the state. Medical cannabis providers could sell to recreational users beginning January 1, 2021, if the Department of Health determines it will not harm the supply for people in the medical program-estimated at 80,000. Regular commercial sales will start in 2022. It remains unclear whether the bill will be approved by

legislators this session. During the 2019 session, a somewhat similar bill passed the House by a slim margin, 36-34, before it died in the Senate. The major difference between 2019 and 2020-Governor Lujan Grisham is in support of the measure.

- The Senate Public Affairs Committee approved SB 5, the Extreme Risk Firearm Protection Order Act, along party lines 4-3. The bill would allow for court-ordered firearm seizures from persons deemed to pose a threat to themselves or others. The bill has divided New Mexico's law enforcement agencies. Thirty of the state's 33 county sheriffs oppose SB 5, while the State Police and Albuquerque Police Department support the measure. Under the bill, a relative, household member or law enforcement officer would be able to file a petition in state court for an order to prohibit someone from possessing firearms. If a judge found probable cause that an individual posed a threat to themselves or others, an emergency 15-day order requiring them to relinquish their firearms would be issued. A one-year order could then be imposed after a court hearing. Similar laws have been enacted in 17 states and the District of Columbia. A similar measure passed the House in 2019 before being stalled in the Senate.
- On the medical front, HB 292 was introduced last week by Representative Micaela Cadena and Senator Daniel Ivey-Soto to cap out-of-pocket costs at \$50 per month for patients to fulfill all insulin medicine needed to treat diabetes. According to the Center for Disease Control and Prevention, one in seven adults with diabetes does not take medication as prescribed due to costs. To date, Colorado and Illinois have enacted insulin price caps.
- Also, last week, the governor announced that she is working the Legislative Finance Committee to address the water rights litigation, Texas v. New Mexico. The litigation's history dates back to 1930 when the Rio Grande Compact established an agreement in which Colorado, New Mexico and Texas were allocated a certain amount of water from the river. The Texas-New Mexico conflict began in 2013 when Texas learned New Mexico farmers were using a greater amount of water than allowed by the Compact. In 2017, the U.S. Supreme Court denied New Mexico's motion to dismiss the Texas case. The Governor and Legislature fear a significant judgment imposed by the court against New Mexico. Their plan would allow water users in the Southern part of the state to determine when to leave a certain portion of their land fallow to conserve ground and surface water. There are discussions for a pilot program which would initially fallow 5,000 acres out of an irrigation area of 72,000 acres. The

state engineer said that while the plan in itself is a solid step toward conserving water, the shadow of the legal fight over the Rio Grande-litigation that is pending before the U.S. Supreme Court-adds urgency to the action. The Governor is proposing a \$10 million allocation in next year's budget for a year's implementation of the pilot program. The legislature's \$30 million proposal takes a three-year approach to the plan.

Key Session Dates:

- December 16, 2019-January 17, 2020: Legislation may be pre-filed
- January 21: Opening day (noon)
- February 5: Deadline for introduction of legislation
- February 20: Session ends at noon
- March 11: Legislation not acted upon by governor is pocket vetoed.
- May 20: Effective date of legislation which is not a general appropriation bill or a bill carrying an emergency clause or other specified date

Bill Finder:

The New Mexico Bankers Association will prepare a weekly LEGISLATIVE REPORT throughout the 2020 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 1: Wholesale Prescription Drug Importation (Papen). The Act appropriates \$350 thousand from the general fund to the Department of Health for the purpose of setting

up a program whereby the state would import prescription medications from Canada (and perhaps other countries) through a wholesaler or wholesalers for resale to New Mexico consumers. Such a program depends on federal implementation of a law passed by Congress in 2003 to allow drug importation from Canada. The law required the secretary of the federal Department of Health and Human Services establish regulations for such a program before it could be placed into effect, but that is not anticipated to happen until spring or summer 2020.

The act would require NM DOH to convene an interagency committee composed of the secretaries of Health, Human Services and General Services departments, the executive director of the Board of Pharmacy, and the superintendent of insurance, to oversee the design and creation of a program to obtain wholesale prescription drugs in Canada or in other countries allowed by federal law to export drugs into the United States.

Drugs eligible for importation would not violate federal patent law, could not be controlled substances, would generate significant cost savings for New Mexicans, and, would meet U.S. federal drug administration standards for safety and effectiveness. Wholesalers would have to assure that they would comply with federal law on tracking and tracing imported drugs. Drugs obtained could not be re-distributed beyond the state's borders. Mark-ups by intermediaries would not be allowed to jeopardize cost savings to consumers.

Implementation of the plan would require approval by the secretary of the federal Department of Health and Human Services. Once federal approval was obtained, NM DOH would have up to six months to implement the program. Implementation would also include contracting with one or more wholesalers and one or more Canadian suppliers, consultation with stakeholders (including pharmacies, insurance plans, healthcare providers and consumers), developing a process to register health plans, pharmacies and providers wanting to act as intermediaries, and making a list of eligible drugs and their prices for consumers and all stakeholders.

SB 3: Early Childhood Education (Smith). The bill creates the Early Childhood Education and Care Fund, a funding source that would create a long-term, revenue-generating asset for early childhood and care services and programs. The bill appropriates \$320 million from the general fund to the Early Childhood Education and Care Fund for the purposes of the Act. HB 83 is a duplicate of SB 3.

SB 12: Unemployment Comp During Apprenticeship (Padilla). This bill would allow apprentices to qualify for unemployment compensation during periods of apprenticeship-related instruction.

SB 17: Tax Deductions for Broadband Infrastructure (Padilla). This bill proposes a gross receipts tax and compensating tax deduction for the value of broadband telecommunications network facilities components. The purpose of the deduction is to promote the deployment of broadband telecommunications services in the state. The deduction is to be separately stated, but there is no penalty for failure to separately state the value of the deduction. The taxation and revenue department is required to gather the data and report annually to the legislature as to the cost and benefits of the deduction. The technical requirement is that network facilities must meet or exceed the federal communications commission “connect America” standards.

SB 18: Renewable Energy Production Tax (Padilla). This bill creates the new “Renewable Energy Production Tax Act”. This act taxes renewable energy production from resources including solar, wind, hydropower, geothermal or biomass (agriculture or animal waste, small diameter timber, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico, landfill gas and anaerobically digested waste biomass). This act imposes an excise tax at a rate of 2.5 percent of the taxable value of each mega-watt hour generated in New Mexico. The taxable value for electricity generated from renewable energy resources will be the wholesale value of the electricity established by the United States Energy Information Administration for the Southwest regional wholesale market.

SB 24: Individual Development Account Act (Tallman). This bill appropriates \$1 million from the general fund to the Workforce Solutions Department (WSD) to carry out provisions of the Individual Development Account Act. Individual development accounts are an asset building tool designed to enable low-income families to save toward a targeted amount, usually used for building assets in the form of home ownership, post-secondary education and small business ownership. The appropriation of \$1 million contained in this bill is a recurring expense to the general fund.

SB 30: Research Grants Closing Fund (Soules). This bill creates a non-reverting fund, the Research Grants Closing Fund (fund). The bill appropriates \$10 million from the general fund to this fund for the purpose of providing researchers at New Mexico’s public post-secondary educational institutions with research grant matching funds. The Research Grants Closing Fund will be administered by the Higher Education Department.

SB 43: Oversight of the Regional Housing Authorities (Papen). This bill, endorsed by the Mortgage Finance Authority Act Oversight Committee, appropriates \$300,000 from the general fund to the Department of Finance and Administration for expenditure in fiscal year 2021 and subsequent fiscal years for the purpose of funding the oversight of the regional housing authorities by the New Mexico Mortgage Finance Authority.

SB 49: Types of Federally Insured Obligations (Rodriguez). This bill proposes to make a technical amendment to NMSA 1978, Section 6-10-10(F) (3) by removing the phrase “registry service” and replacing it with the phrase “placement services.” Counties and municipalities would be expressly authorized to invest funds in “certificate of deposit account placement services.” As both the currently-permitted certificate of deposit account registry service and the proposed certificate of deposit account placement services to allow depositors to invest with a participating FDIC-insured depository institution to avoid having funds above the Federal Deposit Insurance Corporation (FDIC) deposit insurance limit in any one bank, this appears to be a technical correction that would have the effect of providing greater flexibility to county and municipal treasurers.

SB 120: Public Finance (Candelaria). The bill would allow county and municipal treasurers with the advice and consent of their respective boards of finance to invest in mutual funds or exchange-traded funds that substantially track or match the components of the indices of the pooled investment funds managed by the state investment officer; provided that the board of finance of the county or municipality may allow reasonable administrative and investment expenses to be paid directly from the income or assets of these investments.

SB 136: Public Investments (Campos). The bill would increase the percent from 9 to 11 of the value of the severance tax permanent fund that can be invested in New Mexico private equity funds or New Mexico businesses.

SB 139: Medical Cannabis (Ortiz y Pino). The bill would prohibit out-of-state residents from participating in the New Mexico medical cannabis program.

House Bills and Resolutions:

HB 24: Telecommunication Cramming and Slamming (Ruiloba). This bill amends the Cramming and Slamming Act by clarifying the definition of cramming. The bill changes the definition of “cramming” to include charging a customer for goods and services that are not telecommunications services and were not authorized by the customer.

HB 26: Highway and Transportation Project Funds (Lundstrom). This bill creates the Highway Project Fund, changes the “Local Government Transportation Project Fund” to the “Transportation Project Fund”, and allows an Indian nation, tribe or pueblo projects to be funded by the Transportation Project Fund. If, by June 30 of each fiscal year, the net receipts for that fiscal year of the money received by the state pursuant to the federal Mineral Leasing Act exceed the annual average amount, seventy-five

percent of the excess shall be distributed to the state road fund and twenty-five percent of the excess shall be distributed to the transportation project fund.

HB 27: Public Project Revolving Fund Projects (Lundstrom). This bill authorizes the New Mexico Finance Authority to make loans for public projects from the public project revolving fund.

HB 28: Division of Land for Oil or Gas Operations (Nibert). This bill creates an exception to the New Mexico Subdivision Act for parcels divided for oil or gas operations. The bill clarifies that “subdivision” does not include the division of land for oil and gas operations; provided the land continues to be used for oil and gas operations.

HB 29: Social Security Income Tax Exemption (Brown). This bill exempts social security income from state income tax.

HB 44: Retirement (T. Salazar). The bill would enact the New Mexico Work and Savings Act. The Act creates a system of voluntary state-sponsored Individual Retirement Accounts that private-sector workers can contribute to through their jobs using automatic payroll deductions. Participation is voluntary for both businesses and workers. Businesses choose whether they would like to offer IRAs to their workers, and workers choose whether or not to participate and how much they would like to save from each paycheck. Employers pay no fees and provide no matching contributions. All a participating business has to do is share information about the program with their employees and set up the automatic payroll deductions.

The Work and Save IRAs would be similar to the 529 college savings plans that have been available in all 50 states for the past two decades. A 529 plan is an individual investment account where people can save for college expenses for their children or grandchildren. Like 529 accounts, Work and Save retirement accounts would be overseen by a public board whose members have relevant financial and investment management qualifications. The board would select default investment management qualifications, diversified target retirement accounts, and provide financial literacy tools. The cost of the program will be covered by small fees on the accounts, capped at 1%, not taxpayer dollars. A crisis is growing in New Mexico. In 2018, researchers at the University of New Mexico released a report showing nearly 80% of New Mexicans working in the private sector have less than \$10,000 saved for retirement. About two-thirds have nothing saved.

HB 48: Furnace Replacement Program Funding (Alcon). This bill appropriates \$2 million from the general fund to the Department of Finance Administration for the New Mexico Mortgage Finance Authority (MFA) to expend in fiscal year 2021 for the purpose

of developing and implementing a furnace replacement program to replace low-efficiency furnaces with high-efficiency furnaces for low-income persons in New Mexico.

HB 57: Unemployment Compensation for Apprenticeships (Trujillo). This bill allows apprentices to qualify for unemployment compensation during training periods of apprenticeship-related instruction.

HB 60: Differential Rate Investments (Stapleton). The bill mandates that the state investment officer invest no less than one percent of the market value of the severance tax permanent fund in one or more of the following renewable energy businesses, projects and bonds:

- A New Mexico renewable energy business;
- A New Mexico renewable energy project, provided that such investment shall not exceed fifty percent of the estimated cost of the project;
- Bonds issued under the Renewable Energy Financing District Act;
- Energy efficiency bonds issued under the Energy Efficiency and Renewable Energy Bonding Act;
- Utility revenue bonds issued by a municipality or county for acquiring, extending, enlarging, bettering, repairing or otherwise improving a facility, the primary purpose of which is the generation, storage or transmission of renewable energy;
- Renewable energy transmission bonds issued under the New Mexico Renewable Energy Transmission Authority Act; or
- A New Mexico renewable energy private equity fund.

HB 77: Social Security Income Tax Exemption (Ely). This bill proposes a limited exemption from Personal Income Tax for income from social security retirement that is taxable for federal purposes. Each individual may claim an exemption not to exceed \$24,000. If both partners filing a married joint return individually receive Social Security benefits, then each recipient is entitled to the limited exemption. Individuals claiming this exemption are not permitted to simultaneously claim the Over 65 and Blind Exemption.

HB 78: Expand Phone Solicitation Restrictions (McQueen). This bill expands the restrictions on telephone solicitations to include wireless and voice over internet protocol voice services.

HB 81: Lower Small Loan APR Rate (Roybal Caballero). This bill lowers the maximum annual percentage rate for loans pursuant to the New Mexico Bank Installment Loan Act of 1959 and the New Mexico Small Loan Act of 1955 from 175 percent to 36 percent.

HB 82: Increase Minimum Wage (Roybal Caballero). The bill would raise the minimum wage to \$12.00 per hour beginning January 1, 2022 and raise the minimum

wage to at least \$15.00 per hour beginning January 1, 2024. On or after January 1, 2025, and on January 1 of each successive year, the minimum wage will be increased by the increase in the cost of living.

HB 93: Efficient Use of Energy Act Changes (McQueen). This bill makes a single amendment to the Efficient Use of Energy Act (EUEA) concerning a rate adjustment mechanism which results in utility recovery of commission approved revenue per customer without regard to the quantity of energy actually sold by the public utility. The amendment expands the type of energy sold to both electricity and natural gas.

HB 94: Capital Outlay Reporting (McQueen). The bill requires the Legislative Council Service to publish on the Legislative website a list of capital projects that passed the legislature and the names of the legislators or governor who allocated a portion of that capital outlay appropriation or bond authorization for each project and the amount of the allocation designed by each legislator or governor.

HB 99: Renewable Energy Investment Policy Funding (Sanchez). This bill appropriates \$50 thousand to the state investment office to spend in fiscal years 2020 and 2021 to create a strategic plan for growing the state's renewable energy industry.

HB 118: Designation as Benefit Corporation (Cook). The bill enacts a new section of the Business Corporation Act that allows a for-profit business or professional corporation to elect to be designated a "benefit corporation." In addition to the business purpose for which it was organized, a benefit corporation is required to consider the public good in making business decisions, rather than solely the profit interests of shareholders. In discharging their duties, directors and officers of a benefit corporation must take into consideration the interests of stakeholders, employees, workforce and customers as beneficiaries of the corporation's public benefit purpose, community and societal factors, the local and global environment, the short and long term interests of the corporation, and the ability of the corporation to accomplish its general and specific purposes.

HB 146: Biomass (J. Martinez). The bill extends the biomass income tax credit for 10 years to 2030. The credit offsets the cost to transport agricultural biomass from a dairy or feedlot to a biomass facility. There are several facilities in the state that use the biomass to generate renewable energy. SB 84 is a duplicate bill introduced in the Senate.

HB 169: Medical Cannabis Water Utilization (Chandler). The bill requires a cannabis producer to only use water obtained under a valid water right. In New Mexico, it is illegal to irrigate cannabis or other crops with domestic well water. But the Department of Health license for medical cannabis producers does not require proof of commercial water rights, which are necessary to grow an agricultural product for commercial use. The bill would add water protections to the DOH program. The bill would require current

and future cannabis farmers to show that their irrigation water stems from a valid water right. The Office of the State Engineer determines validity and decides whether the water use would impair the community.

HB 173: Gas Tax (McQueen). The bill creates a new gasoline and special fuel surtax of 10 cents per gallon starting in fiscal year 21. The surtax is to increase by 5 cents per gallon on July 1 of each following year until July 1, 2026. The overall effect of the bill is to increase taxes on gasoline, special fuel and to apply the new revenue to the Clean Infrastructure Act, the State Road Fund and provide a rebate for low-income taxpayers.

Status of Senate Bills and Resolutions Previously Summarized:

SB 49: Public Funds Investments (Rodriguez). Senate Public Affairs Committee

SB 68: Social Security Taxation (Padilla). Senate Corporations Committee

SB 81: Social Security Taxation (White). Senate Corporations Committee

SB 102: Natural Resources (Neville). Senate Committee's Committee

Status of House Bills and Resolutions Previously Summarized:

HB 29: Social Security Taxation (Brown). House Taxation and Revenue Committee

HB 77: Social Security Taxation (Ely). House Taxation and Revenue Committee

HB 82: Minimum Wage (Caballero). House Rules Committee

HB 120: Public Funds Investments (Cook). House Rules Committee

HB 123: Conservatorship Liability (Ely). House Rules Committee

HB 130: Social Security Taxation (G. Armstrong). Tabled in House Labor Committee

HJR 1: Permanent Funds for Early Childhood Education (Maestas). House Commerce and Economic Development Committee



Save the Date

The 109th NMBA Annual Convention

June 4-6, 2020

The Ritz Carlton Orlando Grande Lakes

Orlando, Florida