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New Mexico Notes

The New Mexico Legislature ended its 30 day session on February 18, 2016, at noon and here are some of the legislative measures that passed:

SJR 1, cosponsored by Senator Peter Wirth (D-Santa Fe) and Representative Moe Maestas (D-Bernalillo), proposes a constitutional amendment to be voted on at the November election. Supreme Court Justice Charles Daniels has been the prime mover behind this effort. The resolution contains two parts:

Part 1 – provides authority for judges to hold violent offenders without bail if it is demonstrated that the offender is a threat to the community.

Part 2 – provides that offenders who are not a threat to the community nor pose a flight risk shall not be held without bail solely because they cannot afford bail. The Senate gave final approval to the resolution today on a vote of 36 to 0.

The ability to retain violent offenders behind bars until trial is a huge step forward for public safety. Also, the ability to release offenders charged with minor crimes but who can't afford bail is a positive step that will save taxpayers money. For example, it is estimated that in Bernalillo County about 500 people are currently in jail that would be eligible for release under Part 2 of the resolution. At \$125 per day, that's \$60,000 a day to incarcerate people who don't need to be in jail.

On a vote of 57-10, the House agreed with Senate amendments to HB 2 and sent the FY 17 budget to the Governor for her action. House Appropriations and Finance Committee Chair Larry Larranaga (R-Bernalillo) explained what's in the bill and answered questions. Many Democrats expressed displeasure with the budget, arguing that "revenue enhancements," i.e. tax increases, are needed to fully fund all programs.

Public education: \$6.8 million in new general fund appropriations, .2% increase, including funds for \$2,000 salary increases for level 2 and 3 teachers. Below the line appropriations for K-3 Plus, Prekindergarten, early literacy and New Mexico Reads to Lead held steady. Allows the PED to retain \$1.5 million in unspent funds from FY 16 to be used for teacher supplies and teacher advisory and training support.

- **Early Childhood Initiatives: additional \$750,000 for prekindergarten and additional \$900,000 for home visiting.**

- **Public Safety: \$298.1 million increase for Department of Corrections for salary increases for correctional officers and other prison needs. Department of Public Safety**

receives \$120.6 million increase, mainly for state police salary increase and for recruiting new officers.

- **Children, Youth and Families:** additional \$4.6 million mostly for the protective services program for the care and support of children in custody and for additional social workers.
- **Economic Development:** \$6 million for JTIP job training and \$1.3 million for the Rapid Response Workforce Program to aid in recruiting and training workforce for business expansion and location. The Tourism Department receives an additional \$600,000 for advertising and event sponsorship.

HB 123, sponsored by Representative Jason Harper (R-Sandoval), cleared the Senate today on a vote of 41-0. The bill contains \$123 million in funds to be invested in various state construction projects around the state. The funds are generated through sale of bonds that are repaid from taxes and fees levied on the sales of oil and gas.

This is one of two capital outlay projects, the other being the general obligation bond capital outlay bill, SB 122, sponsored by Senator Carlos Cisneros (D-Los Alamos, Rio Arriba, Santa Fe and Taos), which passed the House today 65-0 and will also be sent to the Governor for signature. This proposes to submit to voters in November the issuance of \$186.3 million in general obligation bonds to fund senior center, higher education, library and public safety projects. Like the budget, these were two very important bills to complete before adjournment of the session.

SB 113, as amended, sponsored by Senate President Pro Tempore, Mary Kay Papan (D-Dona Ana), modeled after Kendra's Law in New York State, creates the authority for a district court judge in New Mexico to order people meeting certain criterion who are diagnosed with mental illnesses into mandatory "Assisted Outpatient Treatment" programs for up to one year. The House Judiciary Committee passed the bill this afternoon; the House "rolled the clock," and approved the bill on the floor on a vote of 63-3 and sent it to the Governor.

In quick action by both the Senate and the House today, SB 214, sponsored by Senator Jacob Candelaria (D-Bernalillo) was passed and sent to the Governor. The vote in the Senate was 38-1 and the vote in the House was 66-1. According to both the Court of Appeals and the Supreme Court, current law gives only two choices when drugs or alcohol are involved in a worker's injury: either the worker gets no compensation if the injury was "occasioned (or totally occasioned by) intoxication or drug use; or the worker can have benefits reduced by 10% if drug or alcohol use was a contributing cause, even if it was 99% of the cause. SB 214, as amended, would eliminate the problem by providing that indemnity benefits of an intoxicated worker will be reduced between 10 percent and 90 percent based on the degree the worker's intoxication or influence of drugs contributes to the accident.

Senate Judiciary Committee substitute for SB 118, as amended, sponsored by Senator George Munoz (D-Cibola, McKinley and San Juan) and Representative Sarah Maestas Barnes (R-Bernalillo), has changed the original bill substantially, as described below. The Senate passed the bill and sent it to the House on a vote of 34-2. Senator Bill Sharer (R-San Juan) successfully added a floor amendment that increases the penalty for vehicular homicide or causing great bodily harm while under the influence from a third-degree to a second-degree felony, a provision that was in the original bill. This amendment easily passed the Senate on a voice vote. The House passed the measure on a vote of 53 to 12, sending the bill to the Governor.

The committee substitute removed all the increased penalties for fourth through seventh DUI convictions, but it retains an increased penalty for an eighth or subsequent conviction of 12 years, 10 years of which shall not be suspended, deferred or taken under advisement. Sadly, in our state, prosecutors must deal with many offenders who have eight or more DUI convictions.

Consider this example. According to the Las Cruces Sun News (9-4-10), Michael David Chavez was sentenced to a 4-year term after his 11th DWI arrest. Chavez was driving a borrowed sports car (no ignition interlock device) at 92 mph in a 55 mph zone with an open bottle of vodka in the vehicle. This incident occurred shortly before noon on April 8, 2010.

It turns out that Chavez had a blood alcohol concentration level of .28, which is three times the legal limit. He had at least eight prior DUI convictions that could be proven. He was charged with an aggravated DUI (7th or subsequent offense), which is a third degree felony (maximum 3-years) and driving on a revoked license, which is a misdemeanor (maximum 1-year). Between these two offenses, the maximum possible sentence was 4-years. He was convicted and he received the maximum sentence of 4 years.

Chavez had not only the eight proven prior DUI convictions but also convictions for excessive speeds. Between the excessive speeds and alcohol, Chavez' vehicle was essentially a bullet whizzing through Dona Ana County for two decades. It is fortunate that he didn't kill anyone.

Had SB 181 been law, his eighth DUI or subsequent offense would have resulted in a 12-year sentence instead of a 3-year sentence – that's a big difference in terms of keeping him off the streets and keeping the public safer.

Committee substitute for HB 127, sponsored by Representative David Adkins (R-Bernalillo) would require all current and future public school employees, charter school employees and regional education cooperative employees and anyone who is unsupervised around children at school to satisfactorily clear fingerprint-based background checks. It also expands existing reporting requirements to require all employees to report any known felony conviction or misdemeanor conviction involving moral turpitude of a licensed employee that results in any action against that employee. The bill closes some loopholes in the law whereby some school employees did not have to pass fingerprint background checks. The House Education Committee approved the measure 7 – 0.

On a vote of 37-0, the Senate passed House Regulatory and Public Affairs Committee (HRPAC) substitute for House Bill 336, sponsored by Representative Nate Gentry (R-Bernalillo) which will create a criminal records database, commonly called the clearinghouse. The clearinghouse will merge criminal records data from multiple databases and give courts and law enforcement agencies access to comprehensive criminal background records of criminal suspects and defendants. The Secretary of the Department of Public Safety (DPS) will be responsible for maintaining the database and DPS has the authority to create the clearinghouse.

Upcoming Events

The NMPMA Convention and Trade show will be held August 22-24 at Sandia Resort and Casino in Albuquerque, NM.