

New Mexico Notes by Ruben Baca

New Mexico is like most states in the Southwest. With the collapse of the oil and gas industries, the unemployment rate is at a record high. Add to that the COVID-19 pandemic, and the Governor shutting down most businesses, and it looks like a bleak future for New Mexico. I am hopeful that we can get back to a somewhat normal economic growth for the state. New Mexico did have to call a special session to deal with a budget that was passed last year before the full impact of this shutdown was felt. I have included the results of the Special Session.

The special legislative session, which officially ended Monday evening, 6/22/20, was called to address significant budget issues as well as some needs by businesses hurt by the economic shutdown.

Unsustainable budget increases have had a negative impact on the state's budget. With the downturn of the oil and gas industry and the shutdown of the economy due to the novel coronavirus, New Mexico needed to address a budget shortfall of about \$374 million for the current fiscal year ending on 6/30/20 and almost \$2 billion shortfall for the 2021 fiscal year beginning 7/1/20. That 2021 shortfall is after cuts made in the special session.

You'll recall that the legislature was asked in both the 2019 and 2020 regular legislative sessions to minimize budget expansion due to the oil and gas surplus that was not anticipated to be ongoing. Unfortunately, the budget was expanded significantly in both sessions – at an almost 14% increase, or \$872 million. Since Governor Lujan Grisham took office, the Legislature has increased total General Fund spending by \$3.1 billion (after the special session trimming).

Due to the ongoing coronavirus limitations, the public was not allowed to attend the session and had little chance to provide comment or testimony. If you weren't already connected with key legislators, it was almost impossible to know exactly what was going on and when it was going to happen.

Special interest initiatives were fast tracked and, as a result, legislation was passed without proper committee oversight and vetting, without public input, with limited expert analysis, and with very little time for legislators to review and process the complexity of the bills discussed.

The good news is that small businesses from across the state will be spared from massive tax increases just as they are starting to get back to work, penalties and interest will be waived, and local governments will have some financing options.

The bad news for the special session – worse than the budget issues left unaddressed – was the continuation of highly partisan operations that were also seen in the 2020 regular legislative session. Party politics began with the governor refusing to allow any bills on her call list unless she or a member of her party originated them. The partisanship continued through many of the votes on bills that passed. The minority party went in to work largely handicapped with not having seen most of the legislation they would be voting on until a few hours AFTER the special session had officially started.

Besides the budget issues, there were other non-urgent issues addressed during the session that could have and, quite honestly, should have waited for the next regular session. Here's a recap of what happened:

Legislation Passed in 2020 Special Session

HB 1 General Appropriation Act Sanding. Representative Lundstrom: Trimming the state budget for FY 2021 budget savings of \$600 million and closing the FY 2020/2021 shortfall. This plan falls far short of what needed to occur and the heavy lifting will still need to be done in the 2021 legislative session. To accomplish what it did, this plan will draw down reserves and use federal funds and other state funds to bridge some of the gaps.

General spending “cuts” included the following General Fund FY 2021 appropriations of:

- 1%** for the State Equalization Guarantee (SEG) for K-12 public school funding;
- 2%** for the Department of Health; **3%** for Medicaid;
- 4%** for all other state entities and departments; and
- 6%** for categorical and “below the line” spending items related to public schools and higher education.

Selected spending reductions for specific items within state agencies and departments, including a \$7 million reduction in the Governor's new Opportunity Scholarship programs.

Several reductions in General Fund appropriations for agencies and departments who received significant funding increases from the federal CARES Act.

The budget legislation with spending and cuts became largely partisan with Democrats supporting the bill and Republicans voting against it because, they correctly said, it didn't go far enough to address the state's deficits.

HB 5: NM Civil Rights Commission, Representative Egolf, Bash, Senator Ortiz y Pino: This bill creates the New Mexico Civil Rights Commission, a nine-member body to review and develop policies for the creation of a civil right of action for the deprivation of any right secured by the constitution. It also allows rights of action as well as monetary damages, including punitive damages. It further requires a review of the qualified immunity as a defense to liability by an employee of a public body.

While good on the surface, it's important to note that in setting up the commission, there is a funding requirement, and no appropriation was made. In addition, it does away with qualified immunity for law enforcement, which could be a big problem for recruiting law enforcement professionals who have, until now, been protected. It's more complicated than we can get into here, but simplistically speaking, taking away qualified immunity means that police officers can now be sued personally in civil court (with their own money on the line) for actions they take while on duty.

This bill largely passed on a partisan vote with Democrats in both Chambers voting for the bill and Republicans voting against it due to the unfunded mandate and the law enforcement issue noted above.

HB 6: Temporary Tax Waivers and Distributions, Representative Chandler, Akhil, J. Martinez, Senator Wirth: Temporary waiver of interest and penalties for late tax payments related to the COVID-19 pandemic and allowing for increased temporary state payments to help cities and counties if federal funds aren't available.

The waiving of penalties and interest was applied to:

- 1) Personal and corporate income taxes due between April 15, 2020 and July 15, 2020;
- 2) Withholding taxes due between March 25, 2020 and July 25, 2020;
- 3) Oil and gas proceeds and pass-through entity withholding taxes due between April 15, 2020 and July 25, 2020;
- 4) Gross receipts and compensating taxes due between April 25, 2020 and July 25, 2020;
- 5) Property taxes due April 10, 2020; and
- 6) Managed audits performed between September 3, 2019 and January 3, 2020.

As long as the failure to pay was not an intentional attempt to evade the tax bill due in the second quarter of 2020, the interest and penalties will be waived. Payment of the taxes in full is required within one year.

This bill had almost unanimous bipartisan support in both chambers.

SB 3: Small Business Recovery Act of 2020, Senator Candelaria, Sapient, Rue, Representative Ely, Matthews: Establishing a loan program and authorizing the state to make low-interest loans of up to \$400 million to help small businesses and \$50 million for local governments. Money to fund these loans would come from the Severance Tax Permanent Fund.

After months of work, I am pleased to tell you that New Mexico businesses scored a victory in the Special Legislative Session. Through the efforts of all, Rep Montoya, Senator Sanchez and the agreement of Senator Candelaria, the bill was amended to include a reprieve from skyrocketing Unemployment Insurance (UI) rates. This was specifically designed to hold employers harmless from COVID-related layoffs and furloughs. It will also hold the reserve factor at the 2019 rate through June 2021.

Unfortunately, the state has no procedure to begin processing the loan requests at this time. I will update when this information becomes available.

What does this mean? Some businesses will be able to get low interest rate loans from the state and EVERY business could benefit from the work on the UI rates. The amendment removes the COVID-related layoffs and furloughs from businesses' experience. It also freezes the reserve factor for a period of time. Combined, these two measures will provide huge relief to UI rates for over a year.

Special thanks to Rep Rod Montoya for sponsoring the legislation in the House. And much gratitude to Senator Clemente Sanchez for sponsoring the Senate version. Neither bill was allowed to be heard because the Governor refused to put the subject on the Call. Senator Sanchez, however, determined to address this critical issue, spoke to SB 3 bill sponsors. They agreed to include our UI language as an amendment to SB 3. The Governor's office assisted with the amendment which helped carry the legislation to victory.

The majority of Senate Republicans voted against the bill due to lack of proper underwriting controls on the business loans. The bill was almost unanimously supported in the House.

SB 4: Temporary Election Changes, Senator Ivey-Soto, Ramos, Representative Trujillo, Johnson: Enacting temporary changes for the 2020 general election and permanently allowing independent voters to change their party affiliation at polling sites in future primary elections.

The Senate removed the all mail-in provision and instead provided the option for clerks to mail out applications for absentee ballots. This had already been decided by the state Supreme Court, but was a big change for the Senate, which also added a provision that allows unaffiliated voters to participate in a primary election. It requires them to register with the party of the primary they are voting in.

This bill passed the Senate almost unanimously, but the vote was very interesting in the House and ultimately led to a 'do over.' The bill failed in the first House vote 32 to 38 with 14 Democrats voting with Republicans to kill the bill. The Democrats were immediately taken to the wood shed in caucus and returned to pass the bill 44 to 26 with two Democrats holding to their original vote against passage.

SB 5: Solvency Measures, Senator Munoz, Ingle: Generating an estimated \$141 million in savings by canceling stalled capital outlay and road projects, among other provisions. The bill contained the following provisions:

- **Voided** about \$14 million in General Fund capital outlay projects that were not started. Local entities have 90 days to show these voided projects are proceeding and keep the funding.
- **Allowed** the issuance of short-term severance tax bonds; swapped \$75 million in general funds for road projects with the issuance of new state transportation bonds;
- **About** \$26 million in reversions in FY 2020 from various state programs and agencies.

The bill was largely supported on a bipartisan basis in the Senate and was almost unanimously approved in the House.

SB 8: Law Enforcement Body Cameras, Senator Cervantes: Requires law enforcement officers to wear cameras and directs a state board to revoke the certification of any officer convicted of unlawful use of force. The most unfortunate part of this legislation from Section I B :

“Peace officers who fail to comply with the policies and procedures required to be adopted pursuant to Subsection A of this section shall be presumed to have acted in bad faith and shall be deemed liable for the independent tort of negligent spoliation of evidence or the independent tort of intentional spoliation of evidence.”

A House floor amendment was introduced that would have assured the measure was funded, workable, and did not jeopardize the privacy of individual citizens. That amendment failed on a party line vote with all Republicans supporting it.

The measure passed, largely on a partisan vote, in both chambers with Democrats supporting and Republicans opposing. The main opposition was the unfunded mandate and the issue highlighted above; it was not concerning the required use of body cameras.

Bills that failed during the session:

SB 2: Governor’s Emergency Powers, Senator Papen

HB 15: Reduce Institutional Racism, Representative Roybal Caballero, J. Martinez, and Senator Lopez

SB 7: Reduce Institutional Racism, Representative Roybal Caballero, J. Martinez, and Senator Lopez.