

March 11, 2020

HOUSE EXECUTIVE MESSAGE NO. 88

The Honorable Brian Egolf, Jr., Speaker of the House and
Members of the House of Representatives
State Capitol Building
Santa Fe, NM 87501

Dear Speaker Egolf and Members of the House:

In January, I submitted to the Legislature a budget recommendation that continued the spirit of intelligent, transformative investment we began in 2019 while maintaining the fiscal responsibility we owe to our residents. My budget plan sought to invest in initiatives: to invest in teachers, principals, and education personnel; to expand access to higher education through a New Mexico Opportunity Scholarship; and to improve public safety statewide. My budget plan created and funded the Early Childhood Trust Fund to support the cradle-to-career education of children around the state, giving them the best opportunity for a prosperous future. My budget plan also sought funds to protect our most vulnerable children and youth and to expand health care services for more New Mexicans, including those with developmental disabilities and those needing behavioral healthcare services. Finally, my budget plan sought to invest in roads around the state and develop infrastructure and business in our rural communities to ensure that meaningful economic development is not confined to larger cities.

Together, we have built on the successes of 2019 and we can look forward with optimism. Consistent with my budget plan, House Bills 2 and 3, the General Appropriation Act of 2020 (“Act”), appropriates significant funds for public schools, early childhood education, statewide infrastructure, and significant public safety and health initiatives. The Act moves New Mexico forward while maintaining a general fund reserve target of 25% of recurring appropriations: the highest in the history of our state and one of the highest in the country.

I have reviewed this Act mindful of the dual objectives of fully funding core public responsibilities while ensuring accountable and fiscally responsible government. I have exercised my constitutional veto authority to further achieve these ends.

I have vetoed parts of the Act that attempt impermissibly to create substantive law, a practice that Article IV, Section 16 of the New Mexico Constitution precludes. Similarly, I have vetoed

provisions of the Act that attempt to enact general policy by imposing, for example, reporting or other requirements that do not exist in substantive law. Such general policies are “better addressed by general legislation and [are] not suitable for inclusion in the general appropriation bill.” *New Mexico ex rel. Coll v. Carruthers*, 1988-NMSC-057, ¶ 13, 107 N.M. 439, 759 P.2d 1380.

I have also vetoed parts of the Act that impermissibly intrude into the executive managerial function. I object to provisions in the Act that unduly restrict appropriations to specified types of expenditures. These restrictions on agency functions exceed the Legislature’s proper, constitutionally defined role, unduly constraining the Executive’s ability to effectively administer programs to meet the State’s needs, in violation of the distribution of powers established by Article III, Section 1 of the New Mexico Constitution. *See Coll*, 1988-NMSC-057, ¶¶ 11-36.

Relatedly, I have vetoed parts of the Act that impermissibly attempt to appropriate or control federal funds to have been allocated to a New Mexico governmental entity. The Supreme Court of New Mexico has concluded that federal contributions are not a proper subject of the Legislature’s appropriative power, and the Legislature’s attempt to control the use of such funds infringes “the executive function of administration.” *State ex rel. Sego v. Kirkpatrick*, 1974-NMSC-059, 86 N.M. 359, 524 P.2d 975 (quotation marks and citation omitted); *see also Coll*, 1988-NMSC-057, ¶ 23.

Finally, I have vetoed inappropriate outcome measures that the Legislature unilaterally sought to impose upon various executive agencies. I particularly object to some of these efforts to circumvent the performance-based budgeting process established in the Accountability in Government Act. If the Legislature intends to enact either general policy or changes to the performance-based budgeting process, Article IV, Section 16 of the New Mexico Constitution requires that the Legislature do so by legislation separate from the General Appropriations Act.

I this day SIGN and RETURN:

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE FOR HOUSE BILL 2 AND 3, as amended, with certificate of correction, which was enacted during the Fifty-Fourth Legislature, Second Session, except the following item or items, part or parts, which I hereby veto pursuant to the authority granted me in Article IV, Section 22 of the New Mexico Constitution:

On page 55, I have vetoed lines 11 through 16. The vetoed language creates an exception to existing state law concerning use of the Fire Protection Fund. As such, this language impermissibly attempts to create substantive law, a practice precluded by Article IV, Section 16 of the New Mexico Constitution.

On page 63, line 14, I have vetoed the word “in” and on line 15 I have vetoed starting with the words “Santa Fe” through the word “counties”. The vetoed language would have unduly constrained the Department of Cultural Affairs’ flexibility to use appropriated funds, thereby infringing the executive managerial function.

On page 73, I have vetoed lines 15 through 17. The vetoed language would have unduly constrained the Office of the State Engineer’s flexibility to use appropriated funds, thereby infringing the executive managerial function.

On page 81, I have vetoed lines 17 through 19. The vetoed language is a proposed performance measure for the Early Childhood Education and Care Department's home visiting program, but it is erroneously placed here in the child care assistance program.

On page 82, line 4, I have vetoed the word "fall-". The vetoed language would have required a school readiness assessment in the fall, but the Early Childhood Education and Care Department needs the flexibility to assess in the spring. There is also no tool called the "school readiness fall-preschool assessment tool," so deleting this language avoids confusion.

On page 82, I have vetoed lines 13 through 15. The vetoed language would have imposed an impracticable condition on the Early Childhood Education and Care Department's ability to ensure prekindergarten access in public schools, thereby infringing the executive managerial function.

On page 86, line 19, starting with the word "prioritizing" I have vetoed through the number "2016". On line 20, I have vetoed the words "safety net care pool" and starting with the word "pursuant" I have vetoed through the end of the line, and have vetoed lines 21, 22, and 23. The vetoed language would create an inflexible requirement on the Human Services Department, constraining the department's discretion to assess and provide rates based on comparative analysis. As such, the vetoed language impermissibly intrudes on the Human Services Department's executive managerial function.

On page 90, line 24, I have vetoed the words "design and" and I have also vetoed the word "comprehensive". The vetoed language would have imposed an impracticable condition that would unduly restrict the Human Services Department from using appropriated funds to focus on implementation of a community-based mental health system. The design phase is complete, and deleting this language avoids confusion.

On page 91, line 4, I have vetoed the words "to be matched with federal funds". The vetoed language is redundant, and deleting this language avoids confusion.

On page 97, line 4, I have vetoed the words "excluded from" and on line 5, I have vetoed from the word "state" through the word "funds". The vetoed language would unduly constrain the Division of Vocational Rehabilitation's ability to receive federal funds on which the Division primarily relies for operations. As such, the vetoed language impermissibly intrudes on the Division of Vocational Rehabilitation's executive managerial function.

On page 118, line 23, I have vetoed the word "biannual". The vetoed language would impose a constraint that impermissibly infringes on the Corrections Department's executive managerial function to administer risk-needs assessments.

On page 135, line 20, I have vetoed the words "lottery tuition scholarships, other" and the words "institutional financial aid," and the word "private". On line 21, I have vetoed the words "financial aid is used," and I have vetoed the words "Pell grant". The vetoed language would have imposed impracticable conditions on the Higher Education Department's ability to provide opportunity scholarship funding to intended recipients of the legislation. As such, the vetoed language impermissibly intrudes on the Higher Education Department's executive managerial function.

On page 176, line 10, I have vetoed the words “starting a” and on line 11, starting with the word “new” I have vetoed through the first instance of the word “program”. The vetoed language impermissibly intrudes on the Public Education Department’s executive managerial function.

On page 176, line 21, I have vetoed starting with the word “and” through the word “reduction”. The vetoed language would unduly limit the options available to the Public Education Department to achieve the special education maintenance of effort requirements under the federal Individuals with Disabilities Education Act. As such, the vetoed language impermissibly intrudes on the Public Education Department’s executive managerial function.

On page 179, I have vetoed lines 20 through 22. The vetoed language attempts to create an inflexible requirement on the Secretary of the Public Education Department, constraining his discretion over reimbursement requests from school districts and charter schools. As such, the vetoed language impermissibly intrudes on the Public Education Department’s executive managerial function.

On page 189, I have vetoed lines 19 through 22.

On page 189, I have vetoed lines 23 through 25.

On page 190, I have vetoed lines 8 through 12.

On page 190, I have vetoed lines 13 through 17.

On page 194, I have vetoed lines 2 through 4.

On page 200, I have vetoed line 25, and on page 201, I have vetoed lines 1 through 2.

On page 201, line 4, I have vetoed the words “and study”. On line 6, starting with the word “by” I have vetoed through the end of the line and on line 7, I have vetoed starting with the first instance of the number “1” through the word “and”. Also on line 7, I have vetoed starting with the fourth instance of the word “the” through the end of the line. On line 8, starting with the word “among” I have vetoed through the word “participants”. The vetoed language would require a study that would delay the Corrections Department implementing re-entry programs centered on counseling, housing assistance and case management for offender populations, limiting access to these services. As such, the vetoed language impermissibly intrudes on the Corrections Department’s executive managerial function.

On page 205, line 3, starting with the word “the” I have vetoed through the end of the line, line 4, and through the first instance of the word “appropriation” on line 5. The vetoed language would prevent schools that cannot produce local matches from utilizing the funding, creating unnecessary disparities in school safety across the state.

On page 206, line 5, I have vetoed the words “shall ensure” and on line 6, starting with the word “summer” I have vetoed through the word “and”. The vetoed language would require Indian impacted school districts and school districts with a membership of fewer than two hundred to have at least twenty-five days of instruction for summer extended learning opportunities, a metric that is impractical for such schools to reach and that unduly limits the Public Education Department’s ability to collaborate with these schools and create pilot programs.

On page 206, line 25, I have vetoed the word “fully” and the words “all provisions of”. On page 207, line 4, starting with the word “and” I have vetoed through the end of the line and on line 5, starting with the word “programs” I have vetoed through the word “level”. The vetoed language unduly constrains the Public Education Department’s flexibility in implementing K-12 plus programs as well as the scope of those programs. As such, the vetoed language impermissibly intrudes on the Public Education Department’s executive managerial function.

On page 218, line 17, starting with the third instance of the word “the” I have vetoed through the end of the line, line 18 and line 19. The vetoed language contains unclear, ambiguous standards of “successful implementation of the pilot” and “federal approval” that make the requirements on the Children, Youth and Families Department too vague to enforce.

On page 220, line 17, I have vetoed the word “average” and on line 18, I have vetoed the word “salary”.

On page 220, line 22, I have vetoed the words “average salary”.

On page 221, line 4, I have vetoed the words “average salary”.

On page 221, line 16, I have vetoed the word “salary”. I have vetoed the words “average salary” on pages 220 and 221 to ensure that every employee contemplated by Sections 8(A)(1), 8(A)(2) and 8(A)(4) of the General Appropriations Act receives a four percent salary increase, and I have vetoed the word “salary” on page 221 to consistently refer to these increases.

On page 233, line 6, I have vetoed beginning with the word “other” through the word “into”. The vetoed language contains an erroneous characterization of how budget adjustment authority relates to the Ute Construction Fund.

On page 235, line 8, I have vetoed beginning with the word “from” through the word “fund”. The vetoed language is a reference to the Food Service Sanitation Fund, which no longer exists following passage of House Bill 312 in 2020.

Respectfully yours,

Michelle Lujan Grisham
Governor

RECEIVED FROM THE OFFICE OF THE GOVERNOR

Time: _____ a.m. p.m.
Date: _____ 2020

By _____
Secretary of State

Time: _____ a.m. p.m.
Date: _____ 2020

By _____
Chief Clerk of the House