

March 9, 2022

HOUSE EXECUTIVE MESSAGE NO. 37

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 delivered a responsive, responsible framework for navigating the end of the COVID-19 pandemic while preserving our key investments geared toward a brighter, more inclusive future for all New Mexicans. I called for investments in priority areas like public education, early childhood services, and youth, adolescent, and young adult wellbeing. My budget expanded on behavioral health across appropriate state agencies to ensure New Mexicans have access to care related to behavioral health challenges. My budget maintained vital state programs and services while still planning ahead, continuing record-setting reserves, and thinking creatively and responsibly about our fiscal situation. My budget invested in New Mexico's future through broadband expansion, green energy and getting our tourism economy back up and running. I also called for a continued investment towards the Opportunity Scholarship so all New Mexicans can have access to higher education.

Together, we can move forward from the pandemic and continue to build New Mexico's future. Consistent with my budget plan, HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE FOR HOUSE BILLS 2 & 3, as amended, with certificate of correction, also known as the General Appropriation Act of 2022 (the "Act"), appropriates significant funds for public schools, early childhood education, statewide infrastructure, and critical public safety and health initiatives. The Act moves New Mexico forward while maintaining a general fund reserve target of nearly 29% of recurring appropriations: a fiscally reasonable reserve target.

My actions on the Act continue the objectives of intelligently meeting core public responsibilities and ensuring an 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.” *State ex rel. Coll v. Carruthers*, 1988-NMSC-057, ¶ 13, 107 N.M. 439, 759 P.2d 1380.

Finally, I have 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 generally Coll*, 1988-NMSC-057, ¶¶ 11-36.

I this day SIGN and RETURN:

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE FOR HOUSE BILLS 2 & 3, as amended, with certification of correction, which was enacted during the Fifty Fifth Legislature, Second Session, 2022, except the following item or items, part or parts, which I hereby veto pursuant to the authority granted to me in Article IV, Section 22 of the New Mexico Constitution:

On page 58, line 19, I have vetoed the word “foundation”. Including the word “foundation” would violate the Anti-Donation Clause, Article IX, Section 14 of the New Mexico Constitution, by appropriating State funds to a private enterprise.

On page 82, I have vetoed lines 2 through 7.

On page 82, I have vetoed lines 8 through 12.

On page 86, line 20, I have vetoed the word “hospital”. This is a reallocation of previously appropriated Medicaid funds, not a new appropriation. As such, increasing Medicaid *hospital* provider rates alone, for which there is already a section 10 appropriation in the amount of \$28 million, would require the Human Services Department to take away funding from non-hospital providers.

On page 102, I have vetoed lines 17 through 20.

On page 112, I have vetoed lines 19 through 23.

On page 118, line 9, I have vetoed the word “evidence-based”. The vetoed language would prevent the Corrections Department from utilizing the many programming initiatives that are categorized as research-based but provide value to and are impactful for inmate populations, thereby infringing upon the executive managerial function.

On page 119, line 22, I have vetoed the words “in the other category” and the words “for care and” and on line 23, I have vetoed the word “support”. The vetoed language would have prevented the Crime Victims Reparation Commission’s ability to use appropriated funds to meet its statutory obligations and make intradepartmental transfers between victim services and victim payments categories.

On page 120, I have vetoed lines 12 through 16.

On page 130, line 14, I have vetoed the word “evidence-based”. The vetoed language would prevent the Public Education Department from utilizing practices to improve student outcomes that are categorized as research-based but provide value to affected students, thereby infringing upon the executive managerial function.

On page 130, line 25, I have vetoed the comma followed by the word “evidence-based”. The vetoed language would prevent the Public Education Department from utilizing services to at-risk students that are categorized as research-based but provide value to affected students, thereby infringing upon the executive managerial function.

On page 132, line 6, I have vetoed from the word “in” through the end of the line, and have vetoed all of lines 7 and 8. The vetoed language requires the State Budget Division to advise the Legislature on justifications for budget increases, which is unnecessary because the Legislature already has several opportunities throughout the year to monitor the progress of executive agencies on various projects.

On page 132, line 9, I have vetoed from the word “and” through the end of the line, and on line 10 I have vetoed the word “committee”. The vetoed language requires consultation with the Legislative Finance Committee, which is an unclear, ambiguous requirement that is too vague and subject to interpretation to enforce.

On page 132, line 15, I have vetoed from the second instance of the word “and” through the end of the line, and on line 16 I have vetoed the words “legislative finance committee”. The vetoed language requires an annual report to the Legislative Finance Committee, which is unnecessary because the Legislature already has several opportunities throughout the year to monitor the progress of executive agencies on various projects.

On page 133, line 24, I have vetoed the words “in the contractual services category”. The vetoed language would require distribution of funding through contracts rather than direct distributions to higher education institutions, thereby infringing upon the executive managerial function.

On page 134, line 7, I have vetoed from the comma through the end of the line. The vetoed language requires consultation with the Legislative Finance Committee, which is an unclear, ambiguous requirement that is too vague and subject to interpretation to enforce.

On page 135, line 13, I have vetoed from the word “who” through the end of the line, all of line 14, and on line 15 the word “department” and the words “for a maximum of sixty credit hours”. On line 16, I have vetoed from the comma through the word “applied”.

On page 135, I have vetoed lines 17 through 22. The vetoed language on page 135 is similar to certain provisions of the Opportunity Scholarship Act, Chapter 42, Laws of 2022, making the vetoes necessary to prevent a conflict with general legislation.

On page 174, line 7, I have vetoed from the comma through the end of the line, and on line 8 I have vetoed the word “committee”. The vetoed language requires a written report to the Legislative Education Study Committee and the Legislative Finance Committee, which is unnecessary because the Legislature has several opportunities throughout the year to monitor the progress of executive agencies on various projects.

On page 178, line 8, I have vetoed the word “evidence-based”. The vetoed language would prevent school districts and charter schools from utilizing practices to improve student outcomes that are categorized as research-based but provide value to affected students, thereby infringing upon the executive managerial function.

On page 178, line 10, I have vetoed the word “evidence-based”. The vetoed language would prevent school districts and charter schools from utilizing literacy interventions that are categorized as research-based but provide value to affected students, thereby infringing upon the executive managerial function.

On page 183, I have vetoed lines 14 through 17.

On page 187, line 18, I have vetoed the words “and the legislative finance committee”. The vetoed language requires an annual report to the Legislative Finance Committee, which is unnecessary because the Legislature already has several opportunities throughout the year to monitor the progress of executive agencies on various projects.

On page 188, line 5, I have vetoed the words “and the legislative finance committee”. The vetoed language requires an annual report to the Legislative Finance Committee, which is unnecessary because the Legislature already has several opportunities throughout the year to monitor the progress of executive agencies on various projects.

On page 189, I have vetoed lines 13 through 16.

On page 190, line 10, I have vetoed from the word “local” through the end of the line, and on line 11, from the beginning of the line through the word “creating”. The vetoed language would have the effect of preventing the funding of the Law Enforcement Retention Fund for Fiscal Year 2023.

On page 190, I have vetoed lines 13 through 16.

On page 192, line 13, I have vetoed from the word “to” through the end of the line and on line 14 from the beginning of the line through the word “conjunction”. The vetoed language contains a mandate for which there is no appropriation. Additionally, trail construction is outside the scope of the Outdoor Recreation Division’s purview, thereby infringing upon the executive managerial function.

On page 194, line 21, I have vetoed from the word “upon” through the word “agency”. The vetoed language requires additional legislative approval outside of the Youth Conservation Corps’ existing processes for vetting projects and agreements, thereby infringing upon the executive managerial function.

On page 197, line 21, I have vetoed from the word “generated’ through the word “state”. The vetoed language would prevent the Environment Department from addressing ozone pollution generated both inside and outside of New Mexico, thereby infringing upon the executive managerial function.

On page 207, line 19, I have vetoed from the word “the” through the end of the line and on line 20 through the period after the word “costs”. The vetoed language contains a contingency that is certain to occur. The General Services Department, Public School Insurance Authority, and Retiree Health Care Authority have been unsuccessful to date with FEMA eligibility determination. The FEMA public assistance program is for activities conducted to address immediate threats to life, public health, and safety such as vaccine distribution, support for direct patient care, and to help distribute personal protective equipment.

On page 208, line 15, I have vetoed the words “fiscal year 2021” and from the word “governor” through the end of the line. The vetoed language would prevent the Gaming Control Board from addressing shortfalls in the current fiscal year and from expenses other than Governor-exempt appointments, thereby infringing upon the executive managerial function.

On page 209, line 2, I have vetoed the words “to McKinley” and on line 3 the word “county”. The vetoed language would prevent the Intertribal Ceremonial Office from entering contracts for the intertribal ceremonial event as it determines is appropriate, thereby infringing upon the executive managerial function.

On page 209, line 14, I have vetoed from the word “supporting” through the end of the line. The vetoed language would prevent the Department of Health from leasing an automated medication dispensing system that supports centralized medication management, and that flexibility is necessary. Accordingly, the vetoed language infringes upon the executive managerial function.

On page 212, line 23, I have vetoed the words “the board” and all of line 24. The vetoed language would require to not just purchase, but implement, a gaming central monitoring system by June 30, 2023. Since appropriations in this category are otherwise available through Fiscal Year 2024, the vetoed language is unduly restrictive and infringes upon the executive managerial function.

On page 213, line 8, I have vetoed from the word “the” through the end of the line and all of lines 9 and 10. The vetoed language contains a contingency that has already been satisfied.

On page 213, line 12, I have vetoed from the second instance of the word “the” through the word “inspection”. The vetoed language contains apparently erroneous references to another agency’s project that is not related to the Commissioner of Public Land’s information technology project, and it should be deleted to eliminate confusion.

On page 222, I have vetoed lines 4 through 7. I have already approved a 0% health insurance premium increase for Fiscal Year 2023.

On page 223, line 9, I have vetoed starting with the word “the” through the second instance of the word “for”. The vetoed language would require that the appropriation be used only in furtherance of the “rural infrastructure accelerator grant program,” the precise name of which does not appear to exist outside of the Act. Similarly named federal programs likely do not have matching funds available for these purposes, so vetoing this language is necessary to provide clarity and to fulfill the intent of this appropriation.

On page 225, line 20, I have vetoed the word “evidence-based” and the word “stipends”. On line 23 I have vetoed from the comma through the first instance of the word “year”. On page 226, line 1, I have vetoed from the comma through the end of the line and on line 2 from the beginning of the line through the first instance of the word “year”. On line 6 I have vetoed from the word “community-oriented” through the word “of” and from the comma through the end of the line, and on line 7 from the beginning of the line through the first instance of the word “year”. On line 9, I have vetoed from the word “that” through the end of the line and on line 10 from the beginning of the line through the word “policing”. I have also vetoed on line 10 beginning with the word “stipends” through the end of the line and on line 11 from the beginning of the line through the first instance of the word “year”. I have vetoed references to “evidence-based” criminal justice reform efforts and police trainings as well as to “community-oriented policing.” This vetoed language would prevent the Department of Finance and Administration from considering effective reform efforts and police training methods that are categorized as research-based, as well as effective policing philosophies that are not explicitly categorized as “community-oriented.” The vetoed language also contains strict fiscal year spending limits. Together, all of this vetoed language creates inflexible standards that hinder police training, recruitment, and retention efforts, thereby infringing upon the executive managerial function.

On page 226, I have vetoed line 25, and on page 227, I have vetoed lines 1 through 3.

On page 227, I have vetoed lines 4 through 11.

On page 227, I have vetoed lines 12 through 15.

On page 229, line 4, I have vetoed from the first instance of the word “in” through the word “county”. The vetoed language would support studio facilities located exclusively in Albuquerque, where the main branch of the Film Division will be located, but it would not allow for a satellite campus in Las Cruces, as planned.

On page 229, line 15, I have vetoed the words “public health orders”.

On page 229, line 19, I have vetoed the words “public health orders”. The vetoed language requires explicitly linking revenue losses to “public health orders” instead of COVID-19 generally, which is an unclear, ambiguous requirement that is too vague and subject to interpretation to enforce.

On page 230, line 23, I have vetoed the word “financial” and from the word “of” through the word “household” and on line 24, I have vetoed from the word “that” through the word “aid”. The vetoed language would unduly constrain the Human Services Department’s ability to deliver aid to state residents in need, thereby infringing upon the executive-managerial function.

On page 231, line 1, I have vetoed the word “evidence-based”.

On page 231, line 2, I have vetoed the word “evidence-based”.

On page 231, line 4, I have vetoed the word “evidence-based”.

On page 231, line 5, I have vetoed the word “evidence-based”. These four references to “evidence-based” would prevent the Human Services Department from utilizing the many behavioral health and community child welfare services that are categorized as research-based but provide value to and are impactful for children and families in need, thereby infringing upon the executive managerial function.

On page 231, line 15, I have vetoed the word “evidence-based”. The vetoed language would prevent the Department of Workforce Solutions from utilizing reemployment case management strategies that are categorized as research-based but provide value to and are impactful for individuals seeking employment, thereby infringing upon the executive managerial function.

On page 231, I have vetoed lines 22 through 25.

On page 232, line 21, I have vetoed the words “who are”, all of line 22, and on line 23 from the beginning of the line through the word “department”. On line 23 I have also vetoed the words “for a maximum of sixty credit hours”. On line 24, I have vetoed from the comma through the end of the line and all of line 25. On page 233, I have vetoed lines 1 through 3 and on line 4 from the beginning of the line through the number “2022”. The vetoed language is similar to certain provisions of the Opportunity Scholarship Act, Chapter 42, Laws of 2022, making the vetoes necessary to prevent a conflict with general legislation.

On page 246, line 4, I have vetoed the words “for claims”. The vetoed language would prevent the Environment Department from requesting budget increases from the corrective action fund for purposes other than claims, thereby infringing upon the executive managerial function.

Respectfully yours,

Michelle Lujan Grisham
Governor

RECEIVED FROM THE OFFICE OF THE GOVERNOR

Time: _____ a.m. p.m.

Date: _____ 2022

By _____
Secretary of State

Time: _____ a.m. p.m.

Date: _____ 2022

By _____
Chief Clerk of the House