

April 4, 2019

HOUSE EXECUTIVE MESSAGE NO. 23

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

Honorable Speaker Egolf and Members of the House:

In January, I submitted to the Legislature a budget recommendation that announced a new day in New Mexico and provided a plan for the positive change our state both needs and deserves. My budget plan sought to invest in initiatives: to invest in teachers, principals, and education personnel; to provide for sustainable multicultural and multilingual education; to expand learning time and college preparation; and to ensure at-risk students have a more-than-sufficient education. My budget plan also sought funds to protect our most vulnerable children and youth and to expand health care services for more New Mexicans. Further, my budget plan sought to lay the groundwork for a 21st century economy, with a focus on investing in our workforce and creating a prosperous environment for film and television, intelligent manufacturing, sustainable and green energy, tourism, agriculture, and the outdoor economy. Last, my budget plan provided for rebuilding our state government by lowering the vacancy rates in key areas and providing for salary increases to attract and retain our talented and hard-working state employees.

Together, we have taken path-breaking strides in the right direction. Consistent with my budget plan, House Bill 2, the General Appropriation Act of 2019 (“Act”), appropriates significant funds for public schools, early childhood education, child protective services, medical care for low-income New Mexican families, and real economic development that guarantees environmentally responsible, high-wage jobs. The Act realizes our common goal to lift up New Mexico, while maintaining a fiscally responsible general fund reserve target of 20% of recurring appropriations.

My actions on the Act continue the objectives of intelligently meeting core public responsibilities and ensuring accountable and fiscally responsible government. I have exercised my constitutional veto authority to further achieve these ends, without eliminating any appropriation of significance.

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 generally 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, NMSA 1978, §§ 6-3A-1 to -8 (1999, as amended 2004). 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, as amended, which was enacted during the Fifty-Fourth Legislature, First Session, 2019, 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 20, line 24, beginning with the word “The” I have vetoed the remainder of the line and line 25. On page 21, I have vetoed line 1. The vetoed language imposes a new reporting requirement, amounting to an attempt to enact general policy not suitable for the inclusion in the General Appropriations Act.

On page 36, I have vetoed lines 8 and 9. The vetoed language is an attempt to impose new performance measures on the facilities management program outside of the performance-based budgeting process established in the Accountability in Government Act.

On page 66, I have vetoed lines 10 through 14. The vetoed language attempts to control federal funds that have been allocated pursuant to the federal Pittman-Robertson Wildlife Restoration Act and the federal Dingell-Johnson Sport Fish Restoration Act.

On page 103, I have vetoed lines 9 and 10. The vetoed language would impose new performance measures on the department of health outside of the performance-based budgeting process established in the Accountability in Government Act. Further, these metrics are not sound indicators of the department's performance.

On page 117, line 11, I have vetoed the word "private". The vetoed language restricts the corrections department from using public facilities before transferring inmates to private facilities and, therefore, unduly infringes upon the executive managerial function.

On page 117, I have vetoed lines 12 and 13. The vetoed language impermissibly intrudes on the corrections department's oversight of private prisons housing inmates. Moreover, under Article IV, Section 16 of the New Mexico Constitution, the vetoed language is an improper attempt to enact general legislation within the General Appropriations Act.

On page 127, I have vetoed lines 6 through 11. The vetoed language attempts to impose new performance measures on the public education department outside of the performance-based budgeting process established in the Accountability in Government Act.

On page 129, I have vetoed lines 16 through 19. The vetoed language would unduly constrain the secretary of public education's ability to provide expenditures for prekindergarten programs in rural areas, thereby infringing the executive management function.

On page 145, I have vetoed lines 8 and 9. The vetoed language is an attempt to enact general legislation that authorizes the department of agriculture at New Mexico state university to promulgate certain regulations regarding seed. This legislative effort is not appropriate to the General Appropriations Act under Article IV, Section 16 of the New Mexico Constitution.

On page 167, line 18, beginning with the ",", I have vetoed the remainder of the line, all of lines 19 and 20, and line 21, beginning with the word "differential" through "1978". The vetoed language imposes an unfunded mandate on the public education department. I strongly support physical education for New Mexico's students, and an unfunded requirement does not provide a reliable means to ensuring this vital educational goal.

On page 169, I have vetoed lines 12 through 14. The vetoed language attempts to create an inflexible requirement on the secretary of the department of public education, constraining her discretion over reimbursement requests from school districts and charter schools. As such, the vetoed language impermissibly intrudes on the public education department's executive management function.

On page 170, I have vetoed all of lines 15 through 18. While I fully support the public education department's efforts to ensure that every student is proficient in science, the vetoed language would impose new targets that are not only disproportionate to the performance standards in mathematics, but also incommensurate with targets that the public education department can feasibly achieve next fiscal year.

On page 183, I have vetoed lines 12 through 17.

On page 184, line 14, beginning with the word "in" I have vetoed the remainder of the line and line 15, beginning with the word "state" through the word "providers". The vetoed language would impose a constraint that impermissibly infringes on the aging and long-term services department and the department of finance and administration's executive managerial discretion to develop a process allowing network providers to receive emergency advancements.

On page 191, line 6, beginning with the ",", I have vetoed the remainder of the line, line 7, and line 8, beginning with the word "eight" through "2019".

On page 191, line 10, beginning with the ",", I have vetoed the remainder of the line, line 11, and line 12, beginning with the word "hundred" through "2019".

On page 191, line 16, beginning with the ",", I have vetoed the remainder of the line, line 17, and line 18, beginning with the word "thousand" through "2019".

On page 191, line 20, beginning with the ",", I have vetoed the remainder of the line, line 21, and line 22, beginning with the word "thousand" through "2019".

On page 191, line 24, beginning with the ",", I have vetoed the remainder of the line and line 25, and, on page 192, line 1, I have vetoed the word "seven" through "2019".

On page 192, line 3 beginning with the ",", I have vetoed the remainder of the line, line 4, and line 5, beginning with the word "thousand" through "2019".

On page 192, line 8 beginning with the ",", I have vetoed the remainder of the line, line 9, and line 10, beginning with the word "hundred" through "2019". The vetoed language on pages 191 and 192 would have imposed an impracticable condition on the administrative office of the courts to certify reversion amounts to the department of finance and administration before May 1, 2019, thereby jeopardizing deficiency appropriations necessary for the operation of the courts.

On page 195, line 19, I have vetoed the words "the insurance premium tax program in". The vetoed language would have unduly infringed the taxation and revenue department's executive discretion to make particular improvements in the tax administration software system.

On page 200, line 21, I have vetoed the words "average salary".

On page 200, line 25, I have vetoed the words "average salary".

On page 201, line 2, I have vetoed the words “average salary”.

On page 201, line 6, I have vetoed the words “average salary”.

On page 201, line 10, I have vetoed the words “average salary”. I have vetoed the words “average salary” on pages 200 and 201 to ensure that every employee contemplated by Section 8(A)(1)-(4) of the General Appropriations Act receives a four percent salary increase.

On page 202, line 2, I have vetoed the word “salary”. The vetoed language would have unduly constrained the department of finance and administration’s ability to ensure that agencies that are not funded by general fund appropriations may, like agencies that are funded through general fund appropriations, revise their budgets to plan for both salary increases and employer-paid pension increases.

On page 202, line 6, beginning with the word “in” I have vetoed the remainder of the line and, on line 7, from the word “positions” through “3”.

On page 210, line 15, beginning with the word “from” I have vetoed the remainder of the line and, on line 16, I have vetoed from the word “financial” through the word “requirements”. The vetoed language would have unduly constrained the state auditor’s discretion to request budget adjustments to provide for necessary agency functions.

On page 218, I have vetoed lines 8 through 12.

Respectfully yours,

Michelle Lujan Grisham
Governor

RECEIVED FROM THE OFFICE OF THE GOVERNOR

Time: _____ a.m. p.m.

Date: _____ 2019

By _____
Secretary of State

Time: _____ a.m. p.m.

Date: _____ 2019

By _____
Chief Clerk of the House