

Tax Matters

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GOVERNOR ACTS ON SPECIAL SESSION LEGISLATION – NO SURPRISES



The 2011 Special Session of the New Mexico Legislature began at noon on Tuesday, September 5 and ended Saturday September 24 when the House adjourned in the afternoon, preceded by the Senate, which adjourned that morning. The primary purpose of the session was to redraw legislative and congressional boundaries following the 2010 annual census. More information on redistricting can be found on the Legislative Council Service website [here](#). New Mexico has an uncompensated volunteer legislature comprised of a 70 member House of Representatives and a 42 member Senate. Legislative sessions alternate between

30-day budget related sessions in even numbered years, and unconstrained 60-day sessions in odd-numbered years.

In addition to calling for bills to redistrict and pay for the session, the Governor's Proclamation added the issues she had previously signaled, as everyone expected. It asked for eleven other bills: eliminating driver's licenses for undocumented workers; eliminating "social promotion" for third graders who can't read at grade level; a cleaned-up in-state procurement preference for state purchases; state and local government authority to restrict fireworks sales; capital outlay, restoration of funding for a supplemental food stamp program; and, specified government restructuring. Specifically, the Proclamation requested bills consolidating the Tourism and Cultural Affairs Departments into a Department of Tourism and Cultural Affairs, integrating the Department of Information and Technology as a division into the General Services Department, and placing the Department of Homeland Security and Emergency Management into the General Services Department as a division. The Proclamation can be seen on the Governor's website [here](#).

To Recap:

A total of 50 House and 41 Senate bills were introduced in the Special Session. Of those, only nine bills passed both houses, the Senate having a much higher batting average, passing six bills, while only three House bill passed both Houses. Of those, one, [House Bill 1](#), was the "feed bill", authorizing payment of the session's expenses, including legislators' per diem. The other two bills passing the house were redistricting bills; one, [House Bill 16](#), redistricts the House, and was passed along party lines. The other, [House Bill 39](#), was a measure redistricting the Public Education Commission, and was passed unanimously by both Houses.

Of the six Senate bills passing, three related to redistricting. [Senate Bill 33](#) redistricts the Senate and, like the House bill redistricting itself, it passed along party line votes. Similarly, [Senate Bill 24](#) redistricting the Public Regulation Commission was passed along party line votes. [Senate Bill 41](#) redistricts certain precincts in Bernalillo County. Of the non-redistricting proposals, the in-state procurement preference proposal by Senator Tim Keller and Rep. Larry Larranaga, [Senate Bill 1](#), passed both houses unanimously. Senator Lovejoy's [Senate Bill 3](#), the proposal to appropriate \$450K in supplemental food stamp funding, passed both houses, also unanimously. A capital outlay bill in the form of the Senate Finance Committee Substitute for Senator

Cisneros's [Senate Bill 10](#) was the only other Senate bill to escape both houses, with Senator Adair and Representative Kintigh casting the only token "no" votes for the measure.

Final Disposition:

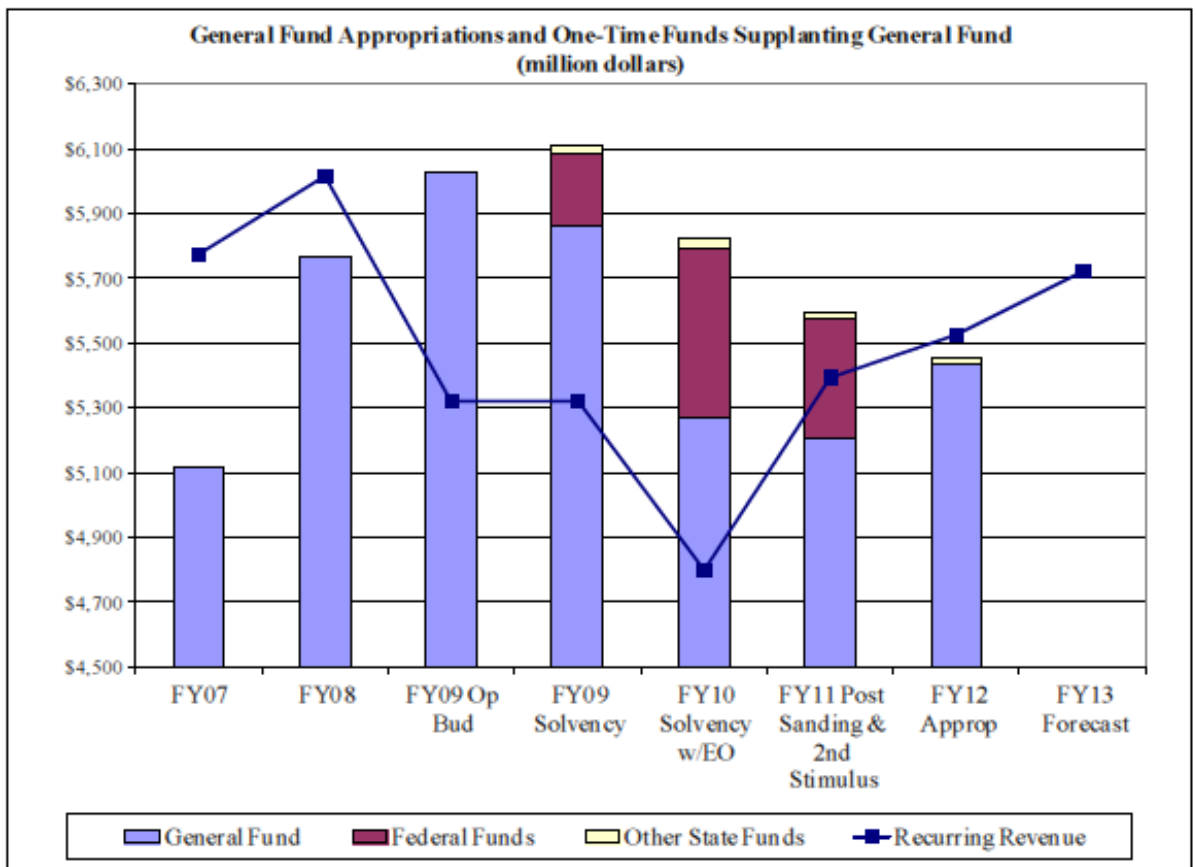
As expected, and in addition to House Bill 1, the "feed bill", the Governor used her pen to act on all pending passed legislation. She signed the four bills enjoying strong bipartisan support: [Senate Bill 1](#), Senator Keller's in-state procurement preference, and one redistricting bill, [House Bill 39](#), which pertained to the Public Education Commission districts. The other two proposals to be signed into law was Senator Cisneros's amended capital outlay proposal in his [Senate Bill 10](#), and Senator Lovejoy's [Senate Bill 3](#), the uncontroversial proposal to appropriate \$450K in trapped funds for supplemental food stamp funding. All other passed legislation was vetoed by Governor Martinez.

Legislative Finance Committee Hears Revised Revenue Forecast



The Secretary of the Department of Finance and Administration, Dr. Thomas E. Clifford, along with Taxation and Revenue Secretary Demesia Padilla presented the states latest revenue forecast as rendered by the consensus revenue forecasting process, and the revisions were mixed. The revenue forecast (estimate of actual revenue) for the year ended June 30, 2011 was revised *upward* by \$113 million to account for stronger than expected year end oil and gas payments not reflected in the July forecast. Fourth quarter gross

receipts tax payments were also revised upward due to unexpected strength in fourth quarter payments. The report further noted that the an estimated one-third of the growth in taxable gross receipts (TGR) was attributable to the mining sector, which includes oil and gas, and driving TGR growth to 4.5% (compared to 2.6% wage and salary growth). While general sales tax (GRT) revenue was up \$195 million (11.6%) over FY10, much of that increase is attributable to the .125% statewide increase in the gross receipts tax rate. Corporate tax revenues were revised upward \$50 million to account for better than expected corporate profits and lower than anticipated film credit payments (film credits are netted against corporate income tax revenue on the state's books). The add-back of itemized state income taxes for federal purposes appears to have raised \$50 million in revenue, as opposed to the anticipated \$65 million.



Source: October Revised Consensus Revenue Forecast prepared by LFC

For the current year, FY12, the news is less rosy. Estimators reduced the expectation of 2012 general fund revenues by \$22 million, and by \$124 million in FY13. While corporate revenue expectations were revised upward as mentioned earlier, personal income tax projections were taken down to reflect lower personal income forecasts. That means “new money” available for appropriation in FY13 is reduced to \$245 million. That number is likely to be reduced to approximately \$195 million if the “retirement swap” is discontinued. That “swap” required state employees to pay an additional 1.75% in retirement plan contributions rather than the state. That ends by statute in FY12 if the December 2011 forecast projects FY12 reserves to be more than 5% and the forecast estimates revenues exceeding \$100 million over the estimate used to determine FY12 appropriations (which is apparently going to happen). However, a similar 1.5% retirement swap will remain in place until FY14. For FY12, the forecasters also raised appropriation levels \$110 million to account for anticipated Medicaid deficiencies.

While the reduced availability of anticipated revenue for 2013 will limit the options available for its use, policy makers are no doubt already thinking about the how the money can be spent, be it healthcare, education, general government or tax reductions. The latter is likely of greatest interest to the current administration, so talk of taxes will not go away.

[NMTRI note: New Mexico and the United States has certainly already “bottomed-out” economically speaking, but the purgatory of anemic growth against a backdrop of market volatility everywhere one looks leaves little room for celebration. The forecast revisions were

not huge, and softness in personal income tax revenues are to be expected until the anticipated improvement in personal income and employment materialize. The sky did not fall although the clouds got a little darker... but it's darkest before the dawn and revenue estimators appear to be cautious. Accordingly, look for the upcoming December revision to remain similar or to show modest improvement over current forecast revenues... unless something really bad on the national/international front occurs of course.]

A full copy the revised revenue forecast presentation can be found on the Legislative Finance Committee's website [here](#).

KNICK KNACKS

New Mexico Proposing One New Tax Regulation

The New Mexico Taxation and Revenue Department ("NMTRD") had set a public hearing for a proposed regulation on November 17, 2011, in the Secretary's conference room, located on the third floor of the Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico.

The proposal clarifies that a taxpayer's Postal Service change of address may substitute for the department's address change form, and advises that change of address information provided by the U.S. Postal Service to the NMTRD satisfies the taxpayer's obligation of notifying the department about a change in address. The proposal also cleans up some antiquated refund language and clarifies some aviation fund distribution language. Curiously, the proposal also narrows the field of taxpayers required to report to an "out-of-state" location code by removing "itinerant peddler(s)" and "and other employees such as service technicians" from the exceptions to the requirements.

Copies of these proposed regulations can be found on the New Mexico Register website or on the Taxation and Revenue Department's website [here](#).

Legislative Tax Committee Meeting

Chaired by Albuquerque Senator Tim Eichenberg, the interim Revenue Stabilization and Tax Policy Committee is meeting Monday and Tuesday in Room 307 of the Capitol in Santa Fe. The agenda includes a second presentation of the October revision of the consensus revenue forecast by Taxation and Revenue Department Secretary Padilla and LFC chief economist Elisa Walker-Moran, a presentation on local government hold-harmless provisions, and presentations on liquor taxes, gaming taxes and credits, and horse racing. Also on the agenda is NMTRI's Richard Anklam to describe the genesis, intent, and progress thus far of the business tax competitiveness study currently underway.

A copy of the complete agenda can be found on the legislative website [here](#).

Know what 9-9-9 is?

Most don't. It's an income tax, a broad based sales tax, and subtraction method value added tax (that's the "business tax") all rolled into one. The Tax Policy Center has prepared testimony, overviews, and taken a stab at distribution tables, all of which can be seen on their website [here](#).

[NMTRI note: what's amusing is the reluctance on the part of campaigners to call something what it is (it's a value added tax!). Granted, to pass any new revenue proposal it would likely have to be branded "Patriot Tax" or the like. While Cain's proposal is hugely regressive but fixable in its current form, it's welcome to see real discussion of real tax reform, although clarity would be more welcome. The merits of a 9% VAT on top of a 9% broad sales tax (plus what the states and local governments do) is of course another question entirely.]

TPC Sponsors Panel on the Canadian Experience

The Tax Policy Center, a joint venture between the Urban and Brookings Institutions, and the Institute for Research on Public Policy (Montreal) are sponsoring a panel discussion on October 27 titled "Fixing U.S. Budget Policy: What Can the United States Learn from Canada?"

According to their flyer:

"In the mid-1990s, Canada faced a dire fiscal problem. Budget deficits reached almost 6 percent of GDP, the public debt had doubled in just ten years, and GDP growth was a full percentage point below that of the United States. In a remarkable turnaround, federal spending was cut from 21 percent of GDP to 16 percent of GDP in just five years, resulting in annual budget surpluses that continued until the 2008–09 recession. Perhaps more importantly, fiscal responsibility gained the strong support of Canadian voters across the political spectrum. Come learn how Canada did it."

Speaker:

- **Thomas Courchene**, Senior Scholar, Institute for Research on Public Policy and Jarislowsky-Deutsch Professor of Economics and Financial Policy, Queen's University.

Discussants:

- **Chris Edwards**, Director of Tax Policy Studies, Cato Institute.
- **Rudolph Penner**, Institute Fellow, Urban Institute; Arjay and Frances Miller chair in public policy.
- **Paul Posner**, Director, Graduate Public Administration Program, George Mason University.

Moderator:

- **Edward Alden**, Bernard L. Schwartz Senior Fellow, Council on Foreign Relations."

At the Urban Institute

2100 M Street N.W., 5th Floor, Washington, D.C.

A light lunch will be provided at 11:45 a.m. (EST) The forum will begin promptly at noon.

You can read about it and find out how to participate on the Tax Policy Center website [here](#).

TAX QUOTABLE:

“The art of taxation consists in so plucking the goose as to obtain the largest amount of feathers with the least amount of hissing.”

~Jean-Baptiste Colbert



COMMENTS: Your suggestions and comments on this newsletter, the conferences (past or future), the Distinguished Lectures Series, our research or any aspect of NMTRI’s operation and programs are welcome. Please send them to richard.anklam@nmtri.org, call 505-269-6791 or mail them to P.O. Box 91657, Albuquerque, New Mexico 87199-1657. We genuinely solicit your input and thank you for your support.



"The power to tax involves the power to destroy" - McCulloch v. Maryland, 17 U.S. 316 (1819), Chief Justice John Marshall.

“Taxes are what we pay for civilized society” *Campañía General de Tabacos v. Collector*, 275 U.S. 87, 100 (1927), Justice Oliver

Wendell Holmes, dissenting.
Join NMTRI today!