

November 12, 2009

HOUSE EXECUTIVE MESSAGE NO. 5

The Honorable Ben Luján and
Members of the House of Representatives
State Capitol Building
Santa Fe, New Mexico 87501

Honorable Speaker Luján and Members of the House:

Times such as these challenge leaders to put aside pork-barrel politics, consider all options, and deliver creative, complete solutions. I admire much of the work and the dedication of our citizen legislators, who put aside personal pursuits and remuneration to selflessly serve the public during the special session. The truth is, however, that we did not completely meet the challenge.

While a good start, the fiscal year 2010 solvency bills passed during the special session did not completely bridge the budget gap. This was partly due to the Legislature's failure to put aside pork-barrel politics and void past capital appropriations. Many of those appropriations were hard to justify during times of plenty, either because they were not fully funded, not well-planned, or addressed only a marginal need. In these hard times, where core services face deep cuts, such appropriations simply cannot be justified. The Legislature also failed to duly consider the executive proposal to use supplemental severance tax bonds, which will be paid off by fiscal year end, to provide general fund operating revenue in the current fiscal year. This resulted in our trying to do a challenging job without all of the available tools.

This backdrop frames my primary objection to the House Appropriations and Finance Committee Substitute for House Bills 17 and 33, as amended ("HB 17/33"): Section 2(A)(4). That section would have reduced the operating appropriations to state agencies under my control by an aggregate of seven and six-tenths percent. Respectfully, Section 2(A)(4) is not a model of legislative draftsmanship. It would have raised substantial implementation and interpretation issues that could have engulfed my administration in controversy and potential lawsuits at a time when our focus needs to be on bridging the budget gap.

Those real issues aside, the bottom-line is that, with almost half the fiscal year gone, that cut, which amounts to approximately \$125 million, is simply too deep. Implementing it would have

caused dangerous and unacceptable harm to core services. For example, the ability of the Children, Youth, and Families Department to investigate child neglect and abuse cases and take kids into protective custody would likely have been severely compromised, putting kids at risk and jeopardizing federal funding to the State. The Department of Health would have likely been forced to temporarily close some public health offices and reduce services at school-based and rural primary care clinics, which provide services to citizens with few (if any) other options. Two adult correctional facilities probably would have been closed, resulting in hundreds of prisoners being released early with inadequate supervision and employees being put out of work.

Cuts this deep could only be justified if all other responsible options had been exhausted and we still came up short. As explained above, however, that is not the case. Consequently, I have vetoed Section 2(A)(4) of HB 17/33 in its entirety.

That does not mean, however, that I am postponing meaningful restrictions on the expenditures of agencies under my control. Today I issue an executive order that imposes such restrictions while maintaining core services at acceptable levels. These expenditure restrictions will result in general fund savings that will, along with other measures that I will propose to the Legislature, bridge the budget gap while maintaining adequate levels of services and a prudent level of reserves.

My other objections to HB 17/33 are largely constitutional.

Parts of it sought to impermissibly intrude into the Executive managerial function. Section 11 attempted to control the content of the fiscal year 2011 Executive budget recommendation. Section 2(B) tried to mandate that the vetoed appropriation reductions in Section 2(A)(4) be implemented first through cuts to the salaries and benefits of exempt employees at agencies under the control of the Governor. I strongly object to the Legislature's continuing efforts to unconstitutionally reserve onto itself close powers of supervision and micromanagement.

HB 17/33 also contains parts that would, if enacted, nullify substantive law and/or create general legislation, practices precluded by Article IV, Section 16 of the New Mexico Constitution. Of particular concern is the Legislature's continuing efforts to enact reporting requirements and institute other means of Legislative oversight beyond what exists in substantive law. The Legislature's efforts to override substantive law by limiting emergency supplemental distributions to small, rural school districts is as misguided as it is unconstitutional. As a matter of basic fairness, students in a financially needy district should not be penalized because their district is urban or large.

The Legislature has also attempted to assert control over state fiscal stabilization funds awarded to the Governor by the federal government. Our Supreme Court, however, has clearly ruled that such federal funds are beyond the Legislature's appropriation power. In addition, the Legislature's proposal to simply deposit government services funds into the general fund would have raised substantial compliance issues under the federal American Recovery and Reinvestment Act of 2009, which requires the State to specifically account to the federal government on how every dollar was spent and the impact the spending had on jobs. Depositing

the federal money into the general fund to fund all State operations would have precluded the State from complying with these stringent reporting requirements. I have vetoed the offending provisions as a matter of principle. Concerned citizens should know, however, that I will be distributing federal education stabilization funds in a timely manner to offset HB 17/33's cuts to public and higher education.

Finally, HB 17/33 would have denied the New Mexico Computing Applications Center of needed seed funding. The Center will ultimately be self-sufficient. But it needs State funding during these critical early days to get to that point.

My vetoes remedy these deficiencies.

I have this day SIGNED

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 17 AND 33, as amended

enacted during the Forty-Ninth Legislature, First Special Session, 2009, 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 Constitution of New Mexico:

On page 2, I have vetoed all of lines 6 through 23.

On page 3, I have vetoed all of line 25, and on page 4, I have vetoed all of lines 1 through 5.

On page 4, line 9, beginning with "--AMERICAN", I have vetoed the remainder of the line, and on line 10, I have vetoed "APPROPRIATIONS".

On page 4, I have vetoed all of lines 16 through 25, and on page 5, I have vetoed all of lines 1 through 6.

On page 5, I have vetoed all of lines 7 through 13.

On page 6, line 4, I have vetoed the word "small", on line 5, I have vetoed the word "rural" and, beginning with the word "with", I have vetoed through the remainder of the line, and on line 6, I have vetoed beginning with the word "six" through the word "schools".

On page 8, I have vetoed all of line 25, and on page 9, I have vetoed all of lines 1 through 11.

On page 9, I have vetoed all of lines 12 through 16.

