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Dancing Toward the Middle New Mexico's Budgetary and Political Deliberations, FY2013–2014

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Introduction

On January 12, 2013, New Mexico completed its year-long centennial celebration. As it began its one hundred and first year as a state, New Mexico could lay claim to a slowly recovering economy, a healthy oil and gas industry, a fresh set of congressional representatives and senators, and a predictable set of ongoing legislative disputes. As the centennial birthday party celebrations came to a close, legislators and the governor suited up for their annual boxing match, the convening of the annual legislative session. Sixty days and \$5.9 billion later, the legislature enacted a surprising amount of substantive legislation, came close to passing more, and laid the groundwork to avoid a budget veto.

The Landscape

The Demographic Landscape

New Mexico is the country's fifth largest state by land area, though its resident population of just over two million people makes it 36th in population. The state continues to reflect its historic origins with a Hispanic population of almost 47% and a Native-American population of over 10%. More than a third of New Mexicans speak a language other than English at home, though the state is home to fewer foreign-born citizens than the national average (The US Census reports 9.8% of New Mexicans are foreign-born compared to the US average of 12%) (Census Bureau, 2013).

A large state with a small population, much of New Mexico is rural with population centers clustered in three distinct areas, the Albuquerque metro area, the Santa Fe County area, and in the south, the Dona Ana County/Las Cruces area. These areas are home to many of the state's major employers, government offices, research universities, and military installations. They also form the electoral hubs for the state's three congressional districts.

The Political Landscape

New Mexico has long been a home to divided government and the 2012 general elections did not change the trend. At the national level, the state became more blue, voting to return President Obama to the White House by a 10-point margin—the first time in 12 years that the state backed

a Democrat in successive presidential elections (Monteleone 2012). In congressional races, 2012 saw the retirement of its long-time senior senator, Jeff Bingaman who was succeeded by Democratic Congressman Martin Heinrich. Heinrich beat moderate Republican Heather Wilson by six percentage points. In doing so the Democrats' solidified their hold on both US Senate seats. This was the third consecutive year that two Democrats had controlled the Senate delegation—a reversal of the previous two-decade trend of divided political representation in the Senate.

Changes were also afoot in the US House districts as Democrats held the Albuquerque-based seat when Michelle Lujan Grisham was elected to fill the Heinrich seat to continue the 2–1 (D-R) ratio in New Mexico's congressional delegation. In the south, Republican Steve Pearce fended off a weak challenge to maintain his hold on the state's only Republican congressional seat. Pearce is a conservative from the southeastern oil patch. Incumbency and well-financed campaigns have allowed him to maintain his seat in a district where Democrats out register Republicans 43% to 36% (NM Secretary of State 2013). Democratic strength continues to climb as the state population moves to urban, more Democratic centers. Additionally, eight in 10 new residents identify themselves as Hispanic, a voting block that registers Democratic 70% of the time (Monteleone 2012).

While New Mexico Democrats solidified their hold on national seats, Democratic representation has thinned in the state capitol. Democrats continue to maintain majorities in the New Mexico House and Senate but the state's Republican governor entered the 2012 election fray targeting recalcitrant Democratic leaders and lawmakers with significant political resources. Elected in 2010, Republican Governor Susana Martinez has been frustrated in her failure to advance her top legislative priorities—particularly her proposed repeal of driver's licenses for undocumented residents and her education proposal to end the practice of "social promotions"¹ in the third grade.

As the 2012 election season unfolded, Martinez and her conservative political action committee spent large amounts of money to try to win more Republican seats in the legislature. Groups associated with the governor raised \$1.6 million to defeat Democrats in state legislative races (Uribe 2012). The efforts were partially successful and resulted in the defeat of Democratic Senate President Pro Tem Timothy Jennings who, after decades in office, lost his re-election bid to a young Republican in a conservative east side district. Martinez had specifically targeted the president pro tem, in part because of the Senate's unwillingness to enact her legislative agenda. Governor Martinez also targeted Senate Majority Leader, Michael Sanchez, but she was unsuccessful and the Democratic Majority Leader retained his seat.

Despite the infusion of significant Republican money, Democrats retained control of both chambers of the legislature. Democrats picked up two House seats to strengthen a six seat majority; there are currently 38 Democrats and 32 Republicans. The governor was able to trim party margins in the state Senate, however, picking up three Senate seats for a chamber ratio of 25 Democrats to 17 Republicans.

Governors in New Mexico have long fought with legislative leaders, but rarely have governors taken to the campaign trail to actively work to defeat legislators who oppose their views. Governor Martinez, a popular first-term governor from southern New Mexico did just that and put significant political capital and financial resources to work to achieve her goals. In a trend reflected in other states, campaign expenditures for legislative seats included significant out-of-state contributions (Brooks 2012). The New Mexico legislature is one of the country's few remaining "citizen legislatures" where members of the body do not receive a salary, but merely

¹ Social promotions are when students advance from one grade to the next despite not having met the minimum educational requirements to do so.

receive per diem and mileage during days of legislative service. Nonetheless, some legislative campaigns spent tens of thousands of dollars to secure the unpaid, part-time positions (Cole 2012).

Issues Facing the 2013 NM State Legislature

New Leadership and Financial Surprises

When the newly elected members of the New Mexico Legislature were called to order on January 15, 2013 to begin their 51st legislative session, they selected new leaders, bade farewell to some old faces, and welcomed the largest class of freshmen legislators since 1985. A new Speaker of the House was elected to fill the shoes of recently retired and now deceased Speaker Ben Lujan. The Senate also elected a new President Pro Tem, Senator Mary Kay Papen of Las Cruces (Boyd Jan. 13, 2013). Rounding out the leadership roster were new House majority and minority leaders and three new whips. This being an odd-numbered year, legislators booked in for a 60-day “long” session, open to any and all legislative issues and ideas. Long sessions run from mid-January to mid-March, and there are no restrictions on the type of bills that may be considered, though the primary obligation is to pass an annual state budget.

The new leadership had barely taken their seats when a pair of financial surprises started the session with a bang. On one front, the legislature received a report that the state’s cash surplus was less than anticipated (NM Legislative Council Service 2013). The actual amount of the surplus remains unknown as executive appointees, the Department of Finance and Administration (DFA), and the independently elected State Treasurer have been unable to reconcile cash accounts to bank statements. The problem stretches back several years. Critics cite the failure of the state to implement a piece of an accounting management and reporting system as one of the possible causes. The end result was a nervous question mark and an adjusted year-end reserve balance that made budget building more uncertain.

On a second fiscal front, the state received notification that it may have failed to meet special education maintenance-of-effort levels required in return for accepting federal special education funding. The Public Education Department and the legislature have applied for a waiver, but the potential shortfall (up to \$103 million) is significant (NM Legislative Council Service 2013).

The beginning of session financial surprises were new, but many of the issues on the legislative agenda were returning players, including shoring up public employee pension funds, tapping the state’s permanent funds for early childhood education, education retention and evaluation policy, economic development, tax policy, dealing with Medicaid and Affordable Health Care Act implementation, and personal and corporate income taxes and deductions.

Employment and Employee Issues

A great deal of work during the 2013 legislative session was devoted to employment related issues, especially with regard to large employers and public employees. The legislature passed major legislation aimed at shoring up underfunded public employee pension systems. The state runs two large public pension systems, one for education workers, the NM Educational Retirement Board (ERB) and another for general government workers, the Public Employees Retirement Association (PERA). The ERB currently has an unfunded liability of \$5.9 billion (Boyd Nov. 29, 2012).

As of Sept. 30, 2012, the pension fund had a total balance of about \$9.8 billion. The funded ratio of ERB was just 63% percent, meaning the ERB fund has 63 cents in invested assets for every \$1 in retirement benefits it owes to members. Both the ERB and the PERA are currently underfunded. The PERA system covers 31,000 retirees and 55,400 current government employees. As of October 2012, the PERA fund totals just over \$12.1 billion in investments, but has an unfunded liability of \$4.9 billion dollars (Boyd, Oct. 3, 2012). Both funds have suffered a great deal from plunging investment values and questionable investment decisions made during the previous decade.

Pension reform has been on the agenda for several years but it was the 2013 legislature that managed to enact two bills to stabilize each system. For workers covered by the PERA, legislators voted to trim benefits, enact stricter retirement eligibility for new hires, and increase both employer and employee contributions. In shoring up the education workers' pension program (ERB), the legislature enacted legislation increasing employee contributions, imposing a minimum retirement age of 55, and deferring cost of living adjustments for certain workers (Baker March 17, 2013). A similar fix was enacted for the smaller judicial retirement system, though the governor chose to veto the judicial system fix citing taxpayer cost. The enactment of public employee pension legislation is significant as previous attempts had been unsuccessful, failing to garner a majority of legislative or gubernatorial support in several prior sessions.

Pension reform was not the only important employment legislation on the legislative table. Legislators passed legislation making extensive changes to the Unemployment Compensation Act by reworking the formula calculating employer contribution rates for unemployment compensation insurance. Changes were also made to the Minimum Wage Act and the Workers' Compensation Act. Legislators passed the Fair Pay for Women Act prohibiting wage discrimination on the basis of gender and establishing enforcement mechanisms. Perhaps most significantly, the legislature enacted an increase in the state minimum wage to \$8.50 an hour, but that legislation fell victim to the governor's veto (NM Legislative Council Service 2013).

Education, Taxes, and Health Care

Education, taxes, and health care are perennial legislative issues and the 2013 legislative session was predictable in this regard. Legislators turned their hand to both education policy and education financing. At the higher education level, lawmakers shored up the shrinking state lottery scholarship fund to temporarily ensure continued payment of lottery scholarships to New Mexico high school graduates attending state colleges and universities.

At the other end of the educational spectrum, lawmakers thwarted a concerted effort by early childhood education advocates to divert money out of the state's rainy day fund to increase state expenditures on early childhood education programs. Supporters proposed a constitutional amendment to divert an annual percentage of the state's land grant permanent fund, but the proposal failed in the final days of the session. Constitutional amendments to restructure university boards of regents also failed to pass.

In the area of K-12 education policy, the legislature once again refused to endorse the governor's plan to end social promotions for underachieving third graders. The legislature also refused to confirm the governor's nominee for cabinet secretary of the Public Education Department, preferring to withhold a Senate floor vote on the nomination for the third year.

Taxes are always an important part of the mix in legislative sessions as gross receipts and personal and corporate income taxes provide more than 60% of the state revenue stream. As the 2013 legislature convened, Governor Martinez proposed a reduction in the corporate income tax

that passed in the last moments of the session; legislators offered the eleventh-hour compromise to avoid a threatened budget veto. The legislature passed the omnibus tax bill in the closing minutes of the legislature, reducing the corporate tax rate from 7.6% to 5.9% over five years and tightening several current deductions (Baker March 17, 2013).

Medicaid continues to occupy an ever increasing piece of the state budget. This year was no different as the legislature enacted legislation to participate in the federal Affordable Care Act. Legislation was enacted creating a health insurance exchange, and an online shopping mart for health insurance plans was established. Just prior to the beginning of the session the governor signaled her intent to “opt-in” (on behalf of the state) to expanded Medicaid provisions made available by the Affordable Health Care Act (Quigley 2013).

While deliberations inside the chambers seemed less acrimonious than years past, demonstrations outside the doors were as vocal as ever. Diverse groups from early childhood activists to gun rights supporters and gay pride activists marched the circle of grounds surrounding the “Round House.” The majority of marchers were disappointed as legislators failed to enact much of the legislation they called for.

Legislative Defeats

Sometimes the failed legislation list is as important as the enacted list, and this may be especially true in 2013. Once again, the governor failed to convince lawmakers to repeal legislation authorizing driver’s licenses for undocumented residents. The repeal was opposed by the Democratic Party and leaders of the Catholic Church. The push for repeal has topped the Martinez agenda since her election in 2010 and the legislature has denied the governor in three consecutive sessions (Santos 2013). The legislature also failed to pass legislation reducing penalties for marijuana possession, expanding background checks on sales at guns shows, banning assault weapons, outlawing texting while driving, and increasing penalties for animal cruelty and repeat DWI offenders (Baker March 17, 2013).

Budgets and Economic Forecasts

While the issues facing the legislature vary from year to year, the primary obligation of the legislature does not. It must pass an annual state budget. Budget preparation for Fiscal Year 2014 began in the fall of 2012 with the submission of executive agency budget requests and the development of economic revenue forecasts. In December 2012, revenue forecasters projected \$5.933 billion in revenue for FY 2014 (July 1, 2013–June 30, 2014), 3.9% over projected revenue for FY 2013. Forecasters simultaneously revised FY 2012 recurring revenues up by \$274 million and FY 2013 revenues up by \$38 million. The resulting projection meant lawmakers would have \$283 million in “new money” available for budgets in FY 2014 (Padilla 2012).

In presenting the consensus revenue forecasts, executive and legislative economists identified strengths and weaknesses in the state economic outlook. In the strength column, oil and gas production continues to drive economic growth in New Mexico. Taxable gross receipts for these goods were up by \$3 billion in FY 2012, accounting for one-third of increases in gross receipts. There was also modest growth in overall gross receipts revenues, and manufacturing was up, as was personal income tax collection. Overall, general fund revenues show modest strength and reflect six fiscal years of recurring growth.

In the weak column, revenue forecasters identified “weak” construction receipts, “anemic” retail trade gross receipts, and excess supplies of domestic natural gas that drove down prices.

Economists pointed out sagging corporate income tax revenues, and forecasters worried that uncertain resolution of the national fiscal and tax picture was a drag on New Mexico's economy. New Mexico continues to rely heavily on federal expenditures, and federal budget woes and uncertainty provoke nervous anxiety in New Mexico budget planners and forecasters (Padilla 2012).

Following the release of the consensus estimates and prior to the legislative session, Governor Martinez issued her executive proposals and Budget-in-Brief. The executive proposed budget included increases in spending of 4.1%. The bulk of the increase, \$101 million dollars, would go to public K-12 schools with the governor targeting certain programs for increases, especially early reading programs. Additionally, she proposed \$60 million to shore up public employment pension systems, pay for Medicaid increases, and to meet increased health insurance costs. She also proposed cutting corporate income taxes (reducing the amount of available revenue) and maintaining reserves at 10% (Martinez January 2013).

New Mexico is rare in that both the governor and the legislative branch propose comprehensive state budgets to the legislature. When the legislature convenes and the executive budget is introduced, the legislative budget recommendations are also published and considered. Influenced by session deliberations, the governor's budget is eventually substituted and replaced by legislative recommendations. For FY 2014, the legislative recommendations were, in large part, similar to the governor's with the legislature recommending an increase for K-12 schools of \$91 million (up 3.7%), a public employee pay raise of 1%, (the first since 2008), a proposed 3.7% increase for higher education, and a 3.9% increase for Medicaid. The legislative budget recommended general fund reserves of 12%, but did not propose tax decreases (Abbey January 9, 2013).

As the legislative session unfolded, budget deliberations shared the limelight with many significant policy debates as legislators considered a variety of contentious bills including such topics as guns, health care, ethics, election reform, public pensions, spaceport liability, marijuana, and DWI. Legislators plowed through the pile and as the 60-day session drew to a close, lawmakers forwarded a \$5.9 billion budget to the governor. The budget included a 1% percent raise for state workers and teachers and a 4% raise for some law enforcement workers. Lawmakers passed \$274 million in pork barrel projects funded largely by severance tax bonds. These range from school buildings and senior centers to water systems and parks. The governor used her line item veto to strike about \$4.4 million worth of projects from the bill (NM Legislative Council Service 2013).

Initially, the legislative budget did not appear to meet the governor's approval and there was speculation that the governor would veto the budget and call a special session. In the closing minutes of the session, lawmakers offered up an unexpected omnibus tax bill. The bill was so last minute it was introduced with less than an hour to go, and a bill drafter explained its contents. Many legislative observers and a few legislators thought the clock had tolled the noon close of the session.

Nonetheless, legislative action ensued and both chambers passed the last-minute tax bill. The bill appeared to mollify the governor, and she indicated her intent to sign it along with the general appropriation act. As the governor had proposed earlier, the omnibus tax bill reduced corporate income tax rates over a five-year period, reducing the rate to an eventual 5.9%. The new act phased out certain "hold harmless" payments to cities and counties and tightened existing tax breaks. A film tax credit, advocated by the legislature and opposed by the governor was part of the final deal (Baker March 17, 2013).

Conclusion

New Mexico appears to be experiencing moderate, but solid economic growth, perhaps signifying it is past the worst effects of the economic recession. The multiple special sessions and budget-cutting days of the 2009, 2010 and 2011 legislatures are fading into the history books, and conservative money watchers in the legislature feel secure enough to authorize phased-in corporate income tax cuts and small public employee raises while maintaining (at least in theory) significant state general fund reserves at 10% to 12%.

The 2013 legislature tackled a number of old contentious issues. Public employee pension reform and increased minimum wage legislation have been unsuccessful in many prior sessions. The minimum wage legislation was ultimately unsuccessful this session, too, falling victim to the governor's veto. Multiple vociferous advocates always accompany both topics. A new Speaker of the House and a new President Pro Tem both demonstrated impressive legislative prowess negotiating successful enactment of reform legislation. Working with each chamber's budget leaders, their session-closing tax/budget compromise maneuver was worthy of an "art of compromise" award. Recent legislative relations have been strained with Governor Martinez. This session may signal a turn in relations for New Mexico's institutions of government.

Finally, it appears that in her third year as governor, Republican Susana Martinez is dancing to the middle. Whether it was President Obama's ten-point general election win or her own, largely unsuccessful, efforts to enter the legislative election process, Governor Martinez exhibited less of a pugilistic approach to governance during the 2013 legislative session. Though her signature legislative offerings related to immigrant driver's licenses and third grade retention continue to fail in the state legislature, she is exhibiting signs of an interest in compromise and legislative deal making. And, according to most observers, the art of legislative deal-making was practiced at the level of fine art in Santa Fe in the winter of 2013.

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