

Legislative Round Up

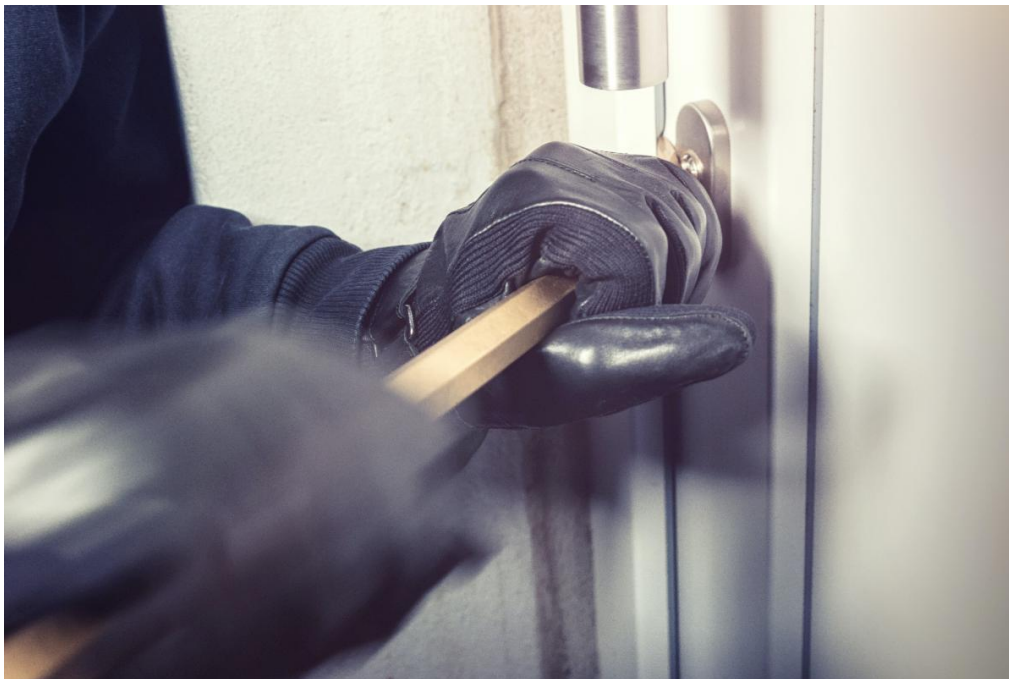
56th Legislature, Second Session

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Day Seventeen

Welcome to the Legislative Roundup, your update on the most important news from the Legislature

In Committees



Organized Retail Crime Bill Dies on a Tie

A bill aiming to crack down on repeat retail thieves died on a tie vote in the Senate Health and Public Affairs Committee today. In two motions for a Do Pass and a Do Pass Without Recommendation, Sens. Antonio Maestas (D-Bernalillo), Brenda McKenna (D-Bernalillo), Bill Tallman (D-Bernalillo) and Gerald Ortiz y Pino (D-Bernalillo) voted against Senate Bill 195.

Organized retail crime was a big topic of discussion last legislative session – HB 234 passed, creating a new crime of organized retail crime and a new crime of aggravated shoplifting, which allows for the aggregation of the value of merchandise stolen over a period of time. But retail crime still plagues our community's stores. "This is a massive problem for retailers, to the point that people don't want to visit these retailers," said bill co-sponsor Michael Padilla (D-Bernalillo).

SB 195, also co-sponsored by Sen. George Muñoz (D-Cibola, McKinley and San Juan) proposes a new fourth-degree felony of entering a retail establishment **after being explicitly prohibited from returning** and with the intention of committing theft or any felony.

A few legislators questioned the “intent” aspect, noting that proving intent can be almost impossible. But Sen. Greg Nibert (R-Chaves) explained that the bill really targets the most brazen repeat offenders, people who have been caught before and banned – meaning when they’re caught stealing from the same store again, it’s hard to argue they went there for any other reason.

The Chamber spoke in support of the bill. “It is essential to send a message New Mexico is NOT open for thieves who steal the livelihoods of our business owners, drive prices up for our consumers and too often put employees and shoppers at risk,” said Chamber Senior Vice President Sara Fitzgerald. “This bill’s language narrowly targets only those individuals who have been told to leave and not come back, and yet they do so with the express intent of committing theft or another felony.”

We know that organized retail crime is often linked to a slew of other criminal activities – it’s often a revenue stream that sustains the crime rings responsible for the car theft, influx of drugs, and violence plaguing our communities. An additional charge would make it just a little more likely that we can keep these bad actors off our streets – and in doing so, cut down on other crime, too. We’re disappointed at this bill’s fate, but we’ll continue to advocate for legislation that protects our community’s businesses from organized retail crime.



Bail Reform Amendment Tabled

The House Government, Elections and Indian Affairs Committee decided Friday that voters will not get a chance to right the unintended wrongs that have occurred since they approved bail reform in 2016.

House Joint Resolution 3, a constitutional amendment sponsored by Rep. William "Bill" R. Rehm (R-Bernalillo), would have allowed New Mexico voters to decide if it is time to shift the burden of proof to a defendant charged with a violent crime to demonstrate that there are conditions of release that would keep the community safe. Currently the burden is on prosecutors to show there are no conditions of release that will keep the community safe.

Sherman McCorkle (chairman, CEO and co-founder of Sandia Science & Technology Park Development Corporation and our Legislative Session and Local Government Advocacy Chair), testified in person for the Greater Albuquerque Chamber of Commerce:

“A few years ago when voters supported a constitutional amendment on bail reform, it was with the understanding that money would no longer decide who stays behind bars and who goes free before trial – that public safety would.

“But that hasn’t happened. Every day in our state, violent criminals awaiting trial commit serious crimes. In the Albuquerque area, prosecutors move to detain defendants in just 16% of felony cases - and yet judges release half of them. Twice a day, police arrest someone on pre-trial

release for committing a new crime.

"This system creates new victims daily and allows defendants to stack up charges.

"The reforms in HJR 3 are essential to restoring public safety. The Legislature sent bail reform to the voters with the best of intentions, but the robberies, assaults, murders and mayhem prove beyond a shadow of a doubt that things have gone terribly wrong. Please help right them with HJR 3."

Representatives from the New Mexico State Police and the New Mexico Business coalition also testified in support of HJR 3, with an NMSP officer saying "night after night, officers come across a violent repeat offender," and Larry Sonntag of the coalition adding New Mexico's crime rate has made national news and become an embarrassment, with businesses leaving for safer states. He pleaded with the committee to "allow voters to fix our bail system."

Committee member Rep. Martin R. Zamora (R-Curry, DeBaca, Guadalupe, Roosevelt and San Miguel) said "it is time to look more at the safety of New Mexicans" and shared that the sheriff in Guadalupe County told him "if I could take 12 individuals out of this county I wouldn't have the issues that I have today." Rehm said the same holds true in Bernalillo County, where a small number of people are driving the majority of crime; HJR is designed to target them.

Rep. John Block (R-Otero) applauded the effort, recounting the violent defendant who had been released pending trial who got a sawed off shotgun and went to a party where there were drugs (both violations of release presumably) and ended up leading officers on a chase, then fatally shot one of them. The current system of justice has left "a huge hole" in Block's community.

The state Office of the Public Defender and American Civil Liberties Union both testified against HJR3, saying the 2016 bail changes had not increased crime, that crime in fact is actually going down, and the bill would make New Mexico less safe.

Committee Chairwoman D. Wonda Johnson (D- McKinley and San Juan) and Vice Chair Natalie Figueroa and Reps. Janelle Anyanonu, Gail Chasey and Dayan Hochman-Vigil (all D-Bernalillo) voted to table the bill. Their concerns included the language that expands the crimes involved to some misdemeanors (Rehm countered that these are only violent misdemeanors, such as criminal sexual contact), the cost of incarceration (an estimated \$90 a day at the Bernalillo County Metropolitan Detention Center) and shortage of corrections officers. Chasey argued that beyond the \$90 is the cost of lost income and lost employment for defendants, and Figueroa added that longer incarcerations in fact increase crime and decrease public safety.

Rep. Charlotte Little (D-Bernalillo) broke party ranks and joined Rehm, Zamora and Block to vote against tabling. We commend her willingness to step up and try to address the unpleasant reality that crime in the Albuquerque area is at critical mass.

Zamora closed his comments by saying it is time to stop looking at the cost of incarceration and "flip the coin over. ... Look more at the (cost of not maintaining the) safety of our citizens."

Perhaps enough lawmakers will consider that next session.



This Bill Makes the Punishment Fit the Crime

This evening, the Senate Health and Public Affairs Committee passed a bill that increases basic sentences for some of the most serious crimes on the books, second-degree murder and attempted murder. The committee passed the bill on a 6-3 vote with Sens. Brenda McKenna (D-Bernalillo and Sandoval), Antoinette Sedillo Lopez (D-Bernalillo), and Gerald Ortiz y Pino (D-Bernalillo) voting "no."

Bill sponsor Sen. Antonio Maestas (D-Bernalillo) explained that Senate Bill 96 is aimed at correcting some serious inconsistencies in sentencing – unreasonably low minimum sentences are often a sucker punch to murder victims' families who only want justice, he said.

"It is a shock to the conscience," he told the committee. "It is an injustice, and this bill corrects that injustice."

Currently, first-degree murder is punishable by 30 years to life in prison. Meanwhile, the sentence for second-degree murder is a maximum of 15 years - but as little as **no jail time at all**. "You can get more time in prison for a subsequent armed robbery where the victim is not even touched or harmed," Maestas said.

SB 96 would increase the basic sentence for second-degree murder to a range of nine to 15 years, to make it the second-highest penalty, appropriate for the second-most serious crime on the books. The only difference between first- and second-degree murder is that first-degree murder is premeditated, he said. In both cases, the defendant had intent to kill.

In addition, the bill increases the penalty for attempted murder as well. Currently, the maximum sits at three years behind bars. SB 96 would raise that maximum to nine years.

The Chamber showed support of the bill today, with SVP Sara Fitzgerald saying:

"Our law enforcement agencies are doing everything they can to keep our streets safe, but our laws need improvement. This bill helps address some serious discrepancies as you heard, and it will mean that more murderers are held accountable for the crimes they commit in our state. And, while the punishment should be more severe when someone takes a life, no one should get off with a slap on the wrist just because they didn't succeed in their attempt. We need to send a message: don't even try it."

In a state that continues to grapple with violent repeat offenses, we need to ensure the punishment fits the crime. We'll be at the bill's next stop in the Senate Judiciary to advocate for this important bill's passage.



Penalties for Violating Pretrial Release Pass

We've called for changes to how defendants charged with violent or other serious crimes are held or released before their trial. One policy we're actively advocating for is a rebuttable presumption of detention – a "default setting" of awaiting trial in jail when the defendant is charged with a serious felony, like what's described in Senate Bill 122, sponsored by Sen. Craig Brandt (R-Sandoval).

Today, the Senate Health and Public Affairs Committee considered a different approach in an impromptu hearing of Senate Bill 271. Sen. Daniel Ivey-Soto (D-Bernalillo) explained his bill provides for a defendant to be held automatically without bail if they're arrested for a subsequent felony while they're on pretrial release for a previous felony. A quick committee amendment clarifies the court issues an order to bring the defendant back, not the clerk, whom a committee member pointed out doesn't have the authority to do this.

This one is a no-brainer for us. If a defendant shows the court they have so little respect for the conditions of their pretrial release that they violate them by committing another serious crime, they should lose the privilege of awaiting trial without maximum supervision. They've proven their detention is necessary to keep the community safe.

Sen. Antonio Maestas (D-Bernalillo) even said it's sometimes best for defendants to be behind bars, where they can't do any more damage to others or themselves. "Someone who gets multiple arrests, back to back to back – there's something wrong," he said.

The bill got a surprise hearing, so there was little in the way of public comment. Only a lone law

enforcement rep was in the room to speak up in support. But if you can't tell, the Chamber is in full support of this common-sense bill that puts reasonable consequences in place for defendants who won't (or can't) learn from their mistakes. SB 271 passed 8-1, with only Sen. Brenda McKenna (D-Bernalillo and Sandoval) voting against it. We'll be at the bill's next hearing in Senate Judiciary with bells on.



Housing Fund Bill on the Move to the Floor

On Friday, the House Appropriations and Finance Committee passed on House Bill 195, short title Housing Fund and Changes, sponsored by Rep. Linda Serrato (D-Santa Fe) and Reps. Meredith A. Dixon and Joy Garratt and Sen. Michael Padilla (all D-Bernalillo).

The bill expands on 2022 Serrato-Dixon legislation that has successfully focused on rehabbing and building commercial projects. That program, the Opportunity Enterprise Act, drew 33 applications (42 percent from rural areas) and has seven projects in the pipeline – including breweries, restaurants and entrepreneurs. The sponsors and their expert witness from the New Mexico Finance Authority testified in an earlier committee that the housing component was removed from that original legislation, and now that the commercial program is proving itself, it's time housing was included.

The Chamber heartily agrees. The dire lack of housing, especially affordable housing, carried the testimony again. The sponsors have said this program is specifically designed “to help increase the production of housing.”

As with its earlier hearing in House Consumer and Public Affairs Committee, there was zero testimony in opposition. Representatives of Bernalillo County, realtors and home builders all testified in support of the bill, and explained it is an essential piece to address both infrastructure that's needed for housing projects as well as to assist the “missing middle,” folks who don't qualify for housing assistance but can't afford their own home.

Dixon explained there is money in House Bill 2 for the program, which is designed to have \$75 million for housing development projects in addition to \$100 million for commercial enterprise development projects.

An interesting aside in the testimony came from New Mexico Homebuilders, saying if local governments are truly concerned about the lack of housing they'll streamline their systems and be more efficient in getting things moved from proposals into projects.

D'Val Westphal, Executive Vice President of Policy and Programs for the Greater Albuquerque Chamber of Commerce, testified again in support of HB 195, stating this bill is all about:

1. Partnering with the private sector to create and expand affordable and workforce housing
2. Providing a mechanism to make loans of up to 40 years to development partners

3. Beefing up the oversight board with the Executive Director of NMFA and two gubernatorial appointees with experience in housing, building or development
4. And expanding that board's powers to include evaluating partners and projects for suitability for assistance.

Westphal said the bottom line of HB 195 comes down to “We need more housing, and encouraging partnerships with the private sector to get it is a win-win.”

HB 195 is now headed to the House floor and then the Senate, where we hope it continues to “build” momentum so it can get to the governor’s desk for her signature.

On the Senate Floor



Senate Sends Public Safety Return-To-Work to House

This afternoon, Senate Bill 87 passed the Senate Floor by a vote of 33-3. Sponsored by Sen. Craig Brandt (R-Sandoval), this bill will allow some retired public safety employees to return to work under carefully crafted guardrails to not only protect their pension fund but also current mid-level and new incoming employees. Rehired retired employees can:

- Return to work while still collecting their pension for three years. They and their employer would pay into the pension fund, but the employee would not accrue service credit. At the end of three years, they could opt to continue working and stop collecting their pension or leave.
- Only fill entry-level, front-line positions provided the vacancy rate of the hiring entity is greater than 10 percent. The “retired member shall have no seniority based on pre-retirement employment for purposes of selecting shifts.”
- Be considered for rehire if they retired prior to Dec. 31, 2023, and subsequent employment begins prior to July 1, 2027.

Two floor amendments were adopted during the discussion of the bill today. The first amendment clarifies that paramedics are included under the definition of emergency medical dispatcher that is already in the bill. It also adds certain investigators appointed by a district attorney or the attorney general to a list of eligible positions.

The second amendment adds certain hard-to-fill positions at Children, Youth, and Families Department (CYFD) to the list of positions included for rehire. CYFD is another agency plagued

by high vacancies, in fact, they are currently short 220 employees.

The list of eligible positions now includes the following:

- adult correctional officer
- adult detention officer
- courthouse security officer
- emergency medical dispatcher
- emergency medical technician
- firefighter
- juvenile correctional officer
- juvenile detention officer
- municipal police officer
- public safety telecommunicator
- sheriff's deputy
- State Police officer
- CYFD employees
- Peace officers

Given how hard it is for our law enforcement agencies and jails to hire and retain officers, we think this is an important tool that can be used to incentive and help encourage trained officers to return to work or move to New Mexico to continue their public safety career. This legislation can help reduce the number of vacancies in public safety-related positions, providing much-needed relief to our police departments and other law-enforcement agencies. The bill now moves to the House.



Lawmakers Put All the Cards on the Table

In a first-ever such meeting, members of the House Taxation and Revenue Committee and the Senate Tax, Business and Transportation committees came together this morning to exchange proposals that could likely be included in the final "tax package" to be sent to the governor. House Chair Rep. Derrick Lente (D-Rio Arriba, Sandoval and San Juan) and Senate Chair Sen. Benny Shendo (D-Bernalillo, McKinley, Rio Arriba, San Juan and Sandoval), are striving to avoid a last-minute fumble on the goal line through better communications and collaboration. The starting point for, and likely the main substance of, the tax package are the items included in last year's tax bill, most of which was line-item vetoed by the governor. The Legislative Finance Committee determined that \$200 million is the upper limit on tax changes. The executive budget contemplates \$500 million for this purpose.

House Proposals

- Reform personal income tax brackets without any tax increases
- Include additional 5,000 health care practitioners in rural health care tax credit
- Extend angel investment tax credit sunset from 2025 to 2030
- Allow utility scale energy storage facilities to be eligible for IRBs
- Have tax credits for victims of Calf Canyon fire to rebuild homes
- Add GRT deduction for privately operated child care centers
- Add GRT deduction for Medicaid recipients home renovations
- Change capital gains deduction from 40% to \$2,500 or 40% for sale of a New Mexico business valued at not more than \$1 million
- Eliminate lower corporate income tax bracket, making a flat 5.9% rate for all corporate income

Senate Proposals

- Eliminate sunset date for armed forces income exemption up to \$30,000 of income
- Have IRB treatment for utility scale energy storage facilities - same as House
- Go to a flat corporate income tax rate - same as House
- Increase tax credit for adoption of special needs child from \$1,000 to \$1,500
- Add a tax credit for teachers purchasing classroom supplies - initially \$500 moving up to \$1,000 in future years
- Give a 1.5 cent per kilowatt hour tax credit for both corporate and personal income taxpayers for geothermal development
- Add a geothermal heat pump tax credit up to 30% of cost
- Include a GRT deduction for use of dyed diesel fuel for agricultural purposes only
- Increase solar market tax credit cap from \$12 million to \$30 million
- Conform foreign entity income tax treatment to align with federal law

The estimated sum total is somewhere north of the \$200 million target ceiling established by the LFC. However, it appears there are ways to cap or other limit the scope of the proposals to meet the target.

Governor's Proposals

Apparently, there are two initiatives the governor is championing that are not now included in the House and Senate proposals. The first is about \$50 million worth of tax credits to encourage purchase of electric vehicles contained in House Bill 140, sponsored by Rep. Dayan Hochman-Vigil (D-Bernalillo). That bill is currently before the House Taxation and Revenue Committee. The second is a tax credit for manufacturing equipment used in the production of advanced energy equipment as specified in the federal tax act (centered around photovoltaic solar equipment). House Bill 274, sponsored by Rep. Linda Seratto (D-Santa Fe), contains this initiative and is currently before the House Energy, Environment and Natural Resources Committee. There is no FIR available from which to determine the costs of this proposal.

The bottom line here is that the governor's proposals aren't yet included in the tax package. To the extent they are added, then the \$200 million target ceiling will be significantly exceeded. This leaves the Legislature in the position of reducing or eliminating its own proposals, exceeding the target and taking the difference out of reserves or finding an additional source of revenue. Rep. Lente alluded to this possibility but said it's only something he's heard.

No Significant Tax Reductions

As we mentioned in an earlier Legislative Roundup, the \$200 million ceiling just doesn't permit doing any significant tax reform such as reducing the GRT, fixing GRT tax pyramiding or giving tax rebates. We continue to be baffled why so little money has been set aside to give all taxpayers a break in this era of high inflation. With over \$3 billion in so-called "new money," you'd think taxpayers certainly deserve a larger slice of the pie. Sorry to say, this is the government-knows-best approach.

Around the Roundhouse



Native American Day

Today, the Legislature honored and celebrated Native American tribes, pueblos and nations by welcoming Native American leaders from throughout the state. As was often said, every day should be Native American day given the rich cultural heritage brought to the Land of Enchantment. During the celebration, D. Wanda Johnson (D-McKinley and San Juan) assumed the Speaker's chair and conducted the proceedings. We wish to express our appreciation for all of our Native American colleagues, including Mike Canfield of the Indian Pueblo Cultural Center who serves on our Board of Directors.

Is the Legislature Drawing the Line?

In today's Santa Fe New Mexican, there is an editorial titled "Balance of Power in Play This Legislative Session", click [here](#) to read it. In the piece, several examples are provided to illustrate how the Legislature may be attempting to clip the wings of the governor:

- The Senate passed by a 36-1 vote a proposed constitutional amendment to eliminate the Secretary of Education, reinstate the State Board of Education and take public education out of the hands of the governor.
- Sen. Gerald Ortiz y Pino (D-Bernalillo) has a bill to yank the CYFD out of the governor's Cabinet and place it under an independent commission that would hire a professional to manage the department.
- The LFC recommended, and the House has passed, a significantly lower level of general fund spending than the governor recommended.
- The House adopted a bipartisan amendment to the budget to halt PED's effort to end-run the Legislature, requiring every school district to adopt a 180-day school year.
- And there's a bipartisan proposal amending the state's constitution to eliminate the governor's pocket veto.

We might add to the list today's joint House-Senate tax meeting. The governor's initiatives weren't included in the list of either House or Senate proposals, and one of the proposals has yet to gain approval of the first committee to which it has been referred. Could it be that the governor's line-item vetoing last year of nearly all the Legislature's tax priorities, but leaving her own initiatives, has become the catalyst for drawing the line?

Also brewing in the budget pot are concerns expressed by Senate Finance Chair George Muñoz (D-Cibola, McKinley and San Juan) that certain budget items passed by the House are unconstitutional because they enact policy, which is explicitly prohibited in an appropriations bill. Adhering to that viewpoint could mean that the governor's initiatives to achieve tax credits for electric vehicles or advanced energy manufacturing couldn't just be slipped into the budget because there is no statutory authority passed by the Legislature. There are bills to provide such

statutory authority, but will they be enacted in the next 13 days?

Tension between the fourth floor and the Legislature is inherent in a system built on checks and balances. We might be witnessing a little checking and balancing before our very eyes.

Signing Off From Santa Fe



Punxsutawney Phil didn't see his shadow in Pennsylvania this morning, thereby forecasting an early spring. Yeah, well old Phil's job is a piece of cake compared to a New Mexico groundhog (probably a prairie dog in our case). If you don't like the weather here, stick around for an hour and it'll be entirely different. Whatever the prediction, what we can always use is more rain and snow - let's go with that! What seems like another version of Groundhog Day (the movie) is the defeat of criminal justice reforms that would keep bad guys off the streets and bring greater justice to victims and their families. The prevailing notion that punishment and incarceration don't work is tone deaf to public sentiment and blind to the reality of what prosecutors and law enforcement officers experience every day. And the defeat of such legislation has happened every year for many years now - it is indeed Groundhog Day!

Nevertheless, tomorrow is another day. Top on the agenda is the Senate Finance Committee hearing of Senate Bill 3, Paid Family and Medical Leave, identical to House Bill 6. We won't be sending out a Legislative Roundup tomorrow, but we will send out a breaking news announcement to let you know how the vote goes and who voted in favor and who opposed. Stay tuned. The House will be back in session at 11:30 tomorrow morning. The third reading file (final action) is filling up, and there are a lot of controversial bills to be considered that may take the full three hours of debate allowed under House Rules, so we expect a long floor session tomorrow. The Senate is back at 1 p.m., and its calendar is very light. We'll catch you up with any important action in Monday's Legislative Roundup. We hope you have a wonderful weekend with family, friends and fun things to do.

The Legislative Roundup, published during the New Mexico Legislative Session by the Greater Albuquerque Chamber of Commerce, provides information on local and state public policy and business issues that affect you.

For questions, please email D'Val Westphal at dwestphal@greaterabq.com.



Working to make our city and state a great place to start and grow a business and a safe, exciting place to work and raise a family.

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