

March 16, 2001

HOUSE EXECUTIVE MESSAGE NO. 23

The Honorable Ben Lujan and
Members of the House of Representatives
Executive-Legislative Building
Santa Fe, New Mexico 87503

Honorable Speaker and Members of the House:

I have this day SIGNED HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE FOR HOUSE BILLS 2, 4, 5, 6, 7 and 8 and HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR HOUSE BILL 3, as amended, passed by the Forty-Fifth Legislature, First Session, 2001, but have VETOED the following item or items, part or parts:

On page 1, I have vetoed all of lines 6 through 7.

On page 1, I have vetoed all of lines 10 through 11.

On page 1, I have vetoed all of lines 15 through 17.

On page 1, I have vetoed all of lines 20 through 23.

On page 2, I have vetoed all of lines 16 through 25.

On page 3, I have vetoed all of line 1.

On page 3, line 5, I have vetoed through the word “measure;”.

On page 4, I have vetoed all of lines 12 through 19.

On page 5, I have vetoed all of lines 3 through 9.

On page 5, I have vetoed all of lines 18 through 19.

On page 15, I have vetoed all of lines 4 through 5.

On page 16, I have vetoed all of lines 18 through 19.

On page 21, I have vetoed all of lines 3 through 11.

On page 21, I have vetoed all of lines 23 through 24.

On page 27, I have vetoed all of lines 6 through 7.

On page 33, I have vetoed all of lines 15 through 17.

On page 35, I have vetoed all of lines 15 through 19.

On page 36, I have vetoed all of lines 1 through 3.

On page 39, I have vetoed all of lines 10 through 16.

On page 40, I have vetoed all of lines 17 through 19.

On page 42, I have vetoed all of lines 15 through 20.

On page 43, I have vetoed all of lines 25.

On page 44, I have vetoed all of lines 1 through 3.

On page 45, I have vetoed all of lines 6 through 8.

On page 45, I have vetoed all of lines 13 through 14.

On page 45, I have vetoed all of lines 16 through 18.

On page 45, I have vetoed all of lines 24 through 25.

On page 46, I have vetoed all of lines 1 through 5.

On page 46, I have vetoed all of lines 7 through 25.

On page 47, I have vetoed all of lines 17 through 24.

On page 50, I have vetoed all of lines 4 through 9.

On page 50, I have vetoed all of lines 11 through 12.

On page 51, I have vetoed all of line 17.

On page 51, I have vetoed all of lines 23 through 24.

On page 52, line 1, after the word “includes”, I have vetoed the remainder of line 1 and through the word “accreditation;” on line 2.

On page 52, line 5, after the word “patients” I have vetoed the remainder of line 5 and through the word “pediatrics” on line 6.

On page 52, I have vetoed all of lines 7 through 9.

On page 52, I have vetoed all of lines 13 through 14.

On page 52, I have vetoed all of lines 20 through 22.

On page 54, I have vetoed all of lines 1 through 6.

On page 54, line 11, after the word “products” I have vetoed the remainder of line 11, all of line 12, and through the word “control” on line 13.

On page 54, I have vetoed all of lines 16 through 22.

On page 55, I have vetoed all of lines 11 through 12.

On page 55, I have vetoed all of lines 24 through 25.

On page 56, I have vetoed all of line 1.

On page 56, I have vetoed all of lines 3 through 4.

On page 56, I have vetoed all of line 21.

On page 56, I have vetoed all of lines 23 through 24.

On page 57, I have vetoed all of lines 1 through 7.

On page 57, I have vetoed all of line 25.

On page 58, I have vetoed all of line 1.

On page 58, I have vetoed all of line 24.

On page 60, I have vetoed all of lines 20 through 21.

On page 61, I have vetoed all of lines 20 through 25.

On page 62, I have vetoed all of lines 1 through 12.

On page 63, I have vetoed all of lines 9 through 10.

On page 63, I have vetoed all of lines 18 through 25.

On page 64, I have vetoed all of lines 1 through 25.

On page 65, I have vetoed all of lines 1 through 5.

On page 66, I have vetoed all of lines 16 through 17.

On page 68, I have vetoed all of lines 20 through 22.

On page 72, line 21, I have vetoed the number “5%”.

On page 72, I have vetoed all of lines 24 through 25.

On page 73, I have vetoed all of lines 1 through 2.

On page 73, line 3, I have vetoed the number “3%”.

On page 73, line 17, after the word “program” I have vetoed the remainder of line 17, all of lines 18 through 20, and on line 21 I have vetoed through the word “Albuquerque”.

On page 74, I have vetoed all of lines 17 through 21.

On page 77, line 10, I have vetoed the words “in the risk reserve”.

On page 84, I have vetoed all of lines 20 through 23.

On page 85, I have vetoed all of lines 12 through 15.

On page 87, I have vetoed all of lines 20 through 22.

On page 90, line 21, starting with the word “one” I have vetoed through the word “and”.

On page 93, line 17, after the word “include” I have vetoed through the word “and”.

On page 93, I have vetoed all of lines 21 through 24.

On page 94, line 23, starting with the word “seventy” I have vetoed through the word “and”.

On page 97, I have vetoed all of lines 1 through 5.

On page 104, I have vetoed all of lines 14 through 17.

On page 107, I have vetoed all of lines 4 through 9.

On page 108, line 18, after the word “includes” I have vetoed the remainder of line 18, all of lines 19 and 20, and through the word “county;” on line 21.

On page 109, line 3, after the word “activities” I have vetoed the remainder of line 3 and all of line 4 through the second occurrence of the word “center”.

On page 110, I have vetoed all of lines 10 through 12.

On page 111, I have vetoed all of lines 6 through 18.

On page 111, line 23, after the word “services;” I have vetoed the remainder of line 23, all of lines 24 and 25, and on page 112, all of lines 1 and 2, and through the word “Act;” on line 3.

On page 113, I have vetoed all of lines 8 through 10.

On page 114, I have vetoed all of lines 19 through 22.

On page 117, line 12, under the general fund column, I have vetoed the number “800.0”.

On page 117, I have vetoed all of lines 15 through 18.

On page 122, I have vetoed all of lines 17 through 21.

On page 124, I have vetoed all of lines 15 through 18.

On page 126, I have vetoed all of lines 3 through 6.

On page 126, line 11, after the word “programs” I have vetoed the remainder of line 11 and on line 12, through the word “incarcerated”.

On page 128, I have vetoed all of lines 15 through 17.

On page 128, I have vetoed all of lines 20 through 23.

On page 130, line 1, I have vetoed the number “3”.

On page 130, line 3, I have vetoed the number “0”.

On page 130, line 5, I have vetoed the number “3”.

On page 136, I have vetoed all of lines 22 through 25 and on page 137, all of lines 1 through 3.

On page 137, I have vetoed all of lines 23 through 25 and on page 138, all of lines 1 through 2.

On page 139, line 15 after the word “includes” I have vetoed the remainder of line 15, all of lines 16 through 17, and through the second occurrence of the word “and” on line 18.

On page 142, I have vetoed all of lines 23 through 25 and on page 143, all of line 1.

On page 147, I have vetoed all of lines 6 through 7.

On page 151, I have vetoed all of lines 15 through 16.

On page 157, line 15 after the word “includes” I have vetoed the remainder of line 15, all of line 16, and through the word “and” on line 17.

On page 157, line 19 after the word “university” I have vetoed the remainder of line 19 through the word “university” on line 20.

On page 158, I have vetoed all of lines 19 through 25.

On page 159, I have vetoed all of lines 1 through 2.

On page 159, I have vetoed all of lines 5 through 7.

On page 159, I have vetoed all of lines 11 through 12.

On page 159, I have vetoed all of lines 18 through 21.

On page 159, I have vetoed all of line 25 and on page 160, all of line 1.

On page 160, I have vetoed all of lines 11 through 25, and on page 161, all of lines 1 through 8.

On page 161, I have vetoed all of lines 15 through 23.

On page 162, I have vetoed all of lines 3 through 6.

On page 162, I have vetoed all of lines 14 through 20.

On page 162, I have vetoed all of lines 23 through 25, and on page 163, all of lines 1 through 6.

On page 163, I have vetoed all of lines 12 through 13.

On page 163, I have vetoed all of lines 21 through 22.

On page 164, I have vetoed all of lines 8 through 19.

On page 165, I have vetoed all of lines 16 through 25, and on page 166, all of lines 1 through 4.

On page 166, I have vetoed all of lines 12 through 16.

On page 166, I have vetoed all of lines 23 through 25, and on page 167, all of lines 1 through 4.

On page 167, I have vetoed all of lines 8 through 19.

On page 168, I have vetoed all of lines 2 through 25, and on page 169, all of lines 1 through 4.

On page 169, I have vetoed all of lines 13 through 25, and on page 170, all of lines 1 through 10.

On page 171, I have vetoed all of lines 15 through 20.

On page 172, I have vetoed all of lines 12 through 13.

On page 172, I have vetoed all of lines 23 through 25, and on page 173, all of lines 1.

On page 174, I have vetoed all of lines 2 through 25, and on page 175, all of lines 1 through 7.

On page 175, line 22, after the word “plan.” I have vetoed the remainder of line 22, all of lines 23 through 25, and on page 176, I have vetoed all of lines 1 through 11.

On page 177, line 3, after the word “center.” I have vetoed the remainder of line 3, all of line 4, and through the first occurrence of the word “department.” on line 5.

On page 177, line 11, after the word “Act.” I have vetoed the remainder of line 11, and through the first occurrence of the word “department.” on line 12.

On page 178, I have vetoed all of line 6 through the first occurrence of the word “department.” on line 7.

On pages 182 through 187, I have vetoed all of Section 9.

For the past three months my administration has consistently communicated to the legislature the essential parameters of the financial plan for the State of New Mexico for 2002. These parameters included a recurring, across-the-board income tax cut for all taxpayers with a reasonable reduction in the top income tax rate, and a reasonable spending level that could be sustained in future years. Sustaining adequate operating reserves, providing protection against falling energy prices, and allowing future growth of general fund recurring appropriations, were also required.

I have met directly with the leadership of the legislature throughout the current session. A great deal of excellent communication has occurred. Cooperation and goodwill has been put forth in this process. I have continued to communicate the same parameters that were initially set forth. I thank all of you for your assistance during this process. Despite this quality communication I am frustrated with this final product as evidenced in this bill.

I indicated at the beginning of this legislative session that my intent was to communicate and to negotiate a budget that would accomplish all of our objectives. I believed, and still believe, that given the new money available such a budget was and still is possible. When I received the General Appropriation Act I met with the legislative leadership and offered to veto a number of large items giving the legislature maximum flexibility to reappropriate those dollars at a more reasonable level. This process would have allowed for the legislature to provide both a handsome compensation increase for public school teachers and educational reform. Instead the leaders did not want that flexibility and asked me to make these decisions. Last night, before making any final decisions, I met again with the legislative leadership and staff and outlined the specific items that needed to be addressed for my approval, with very limited exceptions, of an operating budget. These items included:

- A \$72 million recurring income tax cut that would be phased in over two years, with benefits to all taxpayers. In fact, I indicated that although I did not believe a LICTR constituted true tax reduction, I would consider some level of tax rebate or credit in the context of an across-the-board \$72 million income tax cut.
- An increase in the spending growth for 2002 to \$370 million from my initial recommendation of \$308 million. This spending increase was contingent on the enactment of my tax reduction plan. I indicated that the proposed salary increases for public schools, higher education and government could remain as proposed, with adjustments in other areas to hold spending to a reasonable level.

At present, I still have no indication that an appropriate tax reduction has been enacted, and I cannot approve the proposed spending plan without assurance of the tax reduction. I am vetoing all compensation outlined in this General Appropriations Act and am vetoing approximately an additional forty million dollars in other recurring appropriations.

With respect to the salary increases, I have vetoed them not because I believe a pay raise is unwarranted, but rather because the increases provided in the bill are unreasonable, given the total spending recommendation. In short, this bill provides for over-spending.

I must also remind the leadership that the state's operating reserve and spending level are directly related. Given the increase in spending over my initial recommendation, the general operating reserve level will have to increase proportionately to provide adequate funding for future growth of recurring appropriations.

Having discussed the reasoning associated with the majority of my vetoes, I will now outline the reasoning associated with some of the other more specific vetoes. I have once again vetoed a variety of language which attempts to restrict the executive's powers as I have each year I have been in office.

With respect to performance measures, I reiterate my statements in House Executive Message 21 delivered to you yesterday. The vetoed items fail to conform to the intent of the Accountability in Government Act as they were not developed through the process outlined in the law.

With respect to vetoes of "contingent" language, making appropriations contingent on the enactment of other substantive legislation, the legislature has included substantive law requirements in a General Appropriations Act in violation of Article IV, Section 16 of the New Mexico Constitution. In addition, the effect of making appropriations contingent on the enactment of substantive legislation places me in the position of having to forego my authority to veto substantive legislation to avoid losing the general appropriation in violation of the Constitution's separation of powers principles.

I have once again vetoed language associated with the legislature's attempt to restrict state government officials from engaging in discussions regarding the legalization or decriminalization of certain controlled substances.

I vetoed similar language in last year's General Appropriation Act. Again, such legislation is patently unconstitutional. Not only is it an illicit attempt to enact substantive law within an appropriation bill, but it also constitutes an impermissible infringement on freedom of speech as guaranteed by both the New Mexico and United States Constitutions.

The First Amendment to the United States Constitution provides that government shall make no law abridging the right to free speech. Similarly, Article II, Section 17 of our Constitution protects this right. The legislature's attempt to quash free and open dialogue

on the legalization of certain controlled substances as a possible solution to this state's pervasive drug problem is the type of censorship readily and often condemned by the United States and the New Mexico Supreme Courts. I must act to protect the marketplace of ideas so that we may all freely trade our opinions regarding the solutions to the drug and crime ills that plague New Mexico's citizens.

In addition to Constitutional problems, this language is struck because the magnitude of our state and national drug abuse problem and the abysmal failure of today's drug strategies requires us to continue to explore alternative solutions. The wholesale failure of today's "Drug War" requires New Mexico policymakers, both the legislature and the Governor, to implement new drug strategies, including sentencing reform, harm reduction, treatment and prevention.

Today's "Drug War" strategies, based largely upon prohibition, incarceration and abstinence, are not only a failure but an expensive failure. To date, the federal government has spent over \$180 billion to combat drugs while state and local governments have spent an additional \$320 billion. And in New Mexico this last year alone it's estimated that we have wasted another \$42 million on such strategies. Our war on drugs has many costs but few benefits.

Despite the ideological posturing by many elected officials favoring drug war policies, the public strongly favors a more pragmatic approach based on treatment, prevention and education. Recent polls show that a clear majority of New Mexicans want change. Citizens want policies that save lives, keep drugs out of the hands of kids and treat those suffering from drug abuse or addiction. They want common-sense, cost-effective approaches producing real results, not another decade of failed rhetoric.

We have made progress this legislative session on drug policy reform. Unstoppable forces of change are now at work: bills have been debated, votes have been cast and laws have been changed. But the task is far from complete. Throughout the remainder of my term in office I will continue to work with New Mexico's citizens and the legislature to effectuate positive, permanent change in this state's drug policy. While advocating for drug policy reform and raising public awareness about the drug problem, I will also continue my public education campaign to tell all New Mexicans that drugs are a bad choice.

With respect to drug reform, I have also vetoed language associated with funding and expanding Medicaid through tobacco settlement revenues. These dollars should not be used as such and are more appropriately used to deal with substance abuse including tobacco and drugs. Note however, that I am committed to providing breast and cervical cancer services as well as making up the underfunding of the TANF/Medicaid program. My administration will ensure these projects are funded properly.

In closing, I will state again my hope that the legislature will make another attempt to pass the tax reform plan that I have requested and so specifically outlined. I still believe

that General Appropriation Act, including reasonable salary increases and an appropriate income tax reduction, can be approved.

Sincerely,

Gary E. Johnson
Governor

RECEIVED FROM THE OFFICE OF THE GOVERNOR:

Time: _____

By: _____
Secretary of State

Date: _____

Time: _____

By: _____
Chief Clerk of the House

Date: _____

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