

FOR IMMEDIATE RELEASE

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Legislative Democrats Protect Governor's Veto of Unemployment Insurance Payments

Santa Fe, NM- The New Mexico [Legislative Council \(LC\) met today](#) to discuss legislative interim matters. House Republican Whip Rod Montoya (Farmington) moved to formally ask that the LC discuss and address potential issues arising from Governor Lujan Grisham's vetoes of billions of dollars, which included protections for thousands of small businesses affected by the Governor's shutdown, in this year's budget.

"For the Legislative Council to not address this matter is outrageous," said House Republican Whip Rod Montoya (Farmington). "Not too long ago, I voted with bipartisan colleagues to sue a Republican Governor over similar budget vetoes, it is amazing how polarized the politicians have become under these Democrat leaders."

House Republicans asked House Speaker Brian Egolf and Senate Pro Tem Mimi Stewart for these issues to be addressed on the next LC agenda in a letter on April 21, 2021. House Republicans have yet to hear back from either Egolf or Stewart, and both blocked the issue from being discussed at today's meeting. Egolf did indicate that perhaps a response to the weeks old letter might be coming.

"This is total abuse of power. We requested that the Governor's vetoes be discussed weeks ago, to protect the separation of powers, yet the Speaker has gone out of his way to not only ignore the request but also deny the public justice in the billions that Lujan Grisham is blocking from being spent," said House Republican Leader Jim Townsend (Artesia). "The Legislature funded \$1.2 billion in very important projects and initiatives, and this Governor and complicit Democrat leaders have ensured that that money will not go to unemployment, scholarships, and road projects as intended- instead they are giving a blank check to a Governor who has enjoyed limitless power for a year and isn't ready to give up the reigns."

The Governor's veto pen axed \$1.2 billion in federal dollars allocated to various government programs. Significantly, the Governor vetoed \$600 million that would be used for the New Mexico Unemployment Insurance Trust Fund, which has been depleted by Lujan Grisham in her year-plus economic shutdown. The unemployment fund's resources are paid by local businesses, but the State of New Mexico was forced to borrow hundreds of millions of dollars from the federal government to maintain unemployment benefits when the fund went broke in September 2020.

"Over the last year thousands of businesses were forced to close through no fault of their own, and tens of thousands lost their jobs," said Representative Rebecca Dow (R-TorC). "The Legislature appropriated \$600 million to the Unemployment Trust fund to keep businesses from having to pay for the shutdown and now because of this veto, businesses are left with the tab. I am so disappointed that my colleagues in the legislature would sit by and let this happen to our business community."

The vetoes by the Michelle Lujan Grisham were the following:

- Lujan Grisham vetoed \$600 million to stabilize the Unemployment Insurance Trust Fund
- Lujan Grisham vetoed \$5 million for reemployment services
- Lujan Grisham vetoed \$100 million from LEDA funds that directly support community economic opportunities
- Lujan Grisham vetoed \$100 million from the Lottery Scholarship
- Lujan Grisham vetoed \$200 million from DOT major road projects
- Lujan Grisham vetoed \$25 million from funds to assist housing assistance, small businesses, non-profits, and tourism and hospitality organizations impacted by COVID-19
- Lujan Grisham vetoed \$20.5 million to state parks and the state fair (which both have been impacted during the Governor's shutdowns)
- Lujan Grisham vetoed \$84.4 million in local projects across the state
- Lujan Grisham vetoed \$10 million in tourism funds
- Lujan Grisham vetoed \$50 million for Medicaid
- Lujan Grisham vetoed \$20 million for early childhood education
- Lujan Grisham vetoed \$5 million in senior citizen program funds

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State of New Mexico
House of Representatives

State Capitol
Santa Fe

April 21, 2021

The Honorable Mimi Stewart
Senate President Pro Tempore
New Mexico State Senate
State Capitol, Room 105
490 Old Santa Fe Trail
Santa Fe, New Mexico 87501

The Honorable Brian Egolf
Speaker
New Mexico House of Representatives
State Capitol, Room 104
490 Old Santa Fe Trail
Santa Fe, New Mexico 87501

Dear Senator Stewart and Speaker Egolf:

In light of the Governor's recent line-item vetoes of more than \$1.2 billion in appropriations of federal stimulus/COVID-19 relief related to the American Rescue Plan Act of 2021, we are requesting the Legislative Council for its April meeting establish an agenda item to discuss how the Legislature can preserve its constitutional authority of "power of the purse" regarding federal dollars. Equally important, this agenda item must include full consideration of possible action by the Legislative Council in either filing a lawsuit before the New Mexico Supreme Court or request an Attorney General's Opinion to help ensure the Governor cannot spend any portion of the upcoming \$1.6 billion in federal stimulus/COVID-19 relief dollars without the Legislature's approval.

Our current Governor, as well as past Governors, have claimed the executive branch has sole authority to spend federal dollars and that any attempt by the Legislature to appropriate federal dollars is an infringement of "the executive function of administration." This assertion is based upon the New Mexico Supreme Court's decision in *State ex rel. Sego v. Kirkpatrick*, in which the Court ruled that the Legislature "has no power to appropriate and thereby endeavor to control the manner and extent of the use or expenditure of Federal funds *made available* to our institutions of higher learning. Control over the expenditure of these funds rests with the Federal Government and the Boards of Regents" 1974-NMSC-059, ¶ 51, 86 N.M. 359, 524 P.2d 975.

The Governor and her staff, however, fail to mention that our Supreme Court in both *Sego* and *State ex rel. Coll v. Carruthers*, 1988-NMSC-057 86 N.M. 439, 759 P.2d 1380, reiterate a key point: that the Legislature "has the power, and perhaps the duty, in appropriating State monies to consider the availability of Federal funds for certain purposes . . ." *State ex rel. Sego*, 1974-NMSC-059, ¶ 51.

In addition, the future distribution to the State of New Mexico of \$1.6 billion from the American Rescue Plan Act (as well as the recent \$1.1 billion from the CARES Act) is different in nature than the type of federal dollars analyzed by the Court in *Sego*. Just as with CARES Act dollars, it is highly likely this new \$1.6 billion in federal stimulus/COVID-19 relief will be directly deposited into the State Treasury and, thus, will not have yet been "made available" to any state department or agency. This direct deposit to the State Treasury, along with considerable flexibility permitted by the Federal government in utilizing these dollars, results in this new federal stimulus/COVID-19 relief package being more closely aligned with typical General Fund dollars which the Legislature has full authority to appropriate. Whereas *Sego*

dealt with federal dollars specifically earmarked for institutions of higher learning with their own constitutionally established board of regents.

It should also be noted in regards to *Sego*, that it is difficult to believe our Supreme Court ever envisioned granting the executive branch the unilateral authority to spend \$1.6 billion in federal dollars under the guise of it being simply a "function of administration." This dictatorial power in spending such a large sum of money is certainly contrary to our constitutional system of "checks and balances" and begs the question that no government official's power is absolute or can be exercised without any restraint or limitation. Therefore, we believe this issue of which branch of government has the ultimate "power of the purse" in regards to billions of dollars in unrestricted and non-allocated federal assistance needs to be reviewed again by the New Mexico Supreme Court or, at the very least, by the New Mexico Attorney General.

No Governor, regardless of political party, should have the authority to unilaterally decide how to allocate or spend \$1.6 billion in federal assistance without the Legislature's input and approval. Nor should any effort to question or challenge any Governor who claims such broad authority be viewed through a partisan lens. In turn, it is essential for the Legislature, as an equal branch of government, to take every action possible to preserve or exert its constitutional authority to make appropriations of public monies and oppose any Governor who tries to usurp our institution's fundamental responsibility of exercising the "power of the purse."

This issue is extremely important in terms of maintaining the current balance of power between the executive and legislative branches. In fact, we do not believe it is too far-fetched to suggest that we may be on the brink of a constitutional crisis in terms of who ultimately has the authority to decide how billions of dollars in federal assistance will be spent. We have already seen examples of where the Governor believes she has the authority to take General Fund dollars from the State Treasury without a legislative appropriation and to allow the Governor to freely spend this new \$1.6 billion in federal assistance without legislative approval is inconceivable.

Thank you for your consideration of our request and we look forward to a full discussion of this important topic at the Legislative Council's meeting later this month.

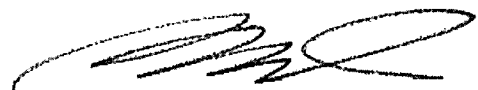
Sincerely,



James G. Townsend
Republican Leader



Rod Montoya
Republican Whip



Rebecca Dow
Caucus Chair

cc: All Members of the Legislative Council
Raul Burciaga, Director, Legislative Council Service
David Abbey, Director, Legislative Finance Committee