

## Session Summary

The 2021 Legislative “zoom” session is finally over. Last year, we thought legislative sessions couldn’t have been more difficult... but the pandemic proved us wrong once again. This was, without a doubt, the most difficult session any of the legislative team can remember (although some of us are old enough to not remember much). The challenges of meaningful, direct communication with legislators caused many more problems than anyone could have foreseen. Even legislators were having trouble keeping up with the technology issues, including spotty internet, fast-changing agendas, amendments on the fly and many others. With more and more New Mexicans getting vaccinated, we look forward to a much more normal interim process and an open Legislature next winter.

The House and Senate introduced 868 bills, resolutions, and memorials, more like the number of bills introduced in a 30-day session. During the last 60-day session over 1,600 pieces of legislation were introduced. With the way the session was conducted (sporadic floor sessions, crazy committee schedules), it was a good thing that more bills were not introduced. This session 140 bills were signed by the Governor, with 12 vetoes, several line item vetoes in budget-related bills (including \$1 billion dollars of federal stimulus funds) and six pocket vetoes.

The most important constitutional business of the Legislature is passing a balanced budget. HB 2, along with SB 377 (“junior budget bill”), passed on a bi-partisan vote in both the House and Senate. The \$7.325 billion dollar budget, spent about half on education, including K-12 and higher education. That’s about a 4.9% increase over last year’s budget and forecasts reserves to be \$1.77 billion dollars (almost 24%), the new reserve gold standard in these turbulent times. The Legislature appropriated much of the money from the latest COVID stimulus package from the feds, using those dollars to fill holes in the Unemployment Trust Fund (\$600 million dollars) and \$400 million dollars for “economic recovery.” The Governor, in an on-going disagreement over who can spend federal grant dollars, vetoed that billion dollar portion from HB 2.

Along with the budget, one of the bills that local governments look for is the “capital outlay” bill (HB 285). Last year, there was so much money floating around that all the capital outlay projects were funded with general fund dollars (very easy to take back if more pressing needs arise). This session the process returned to normal with about \$511 million dollars being allocated from the severance tax bonding bucket. The Governor line-item vetoed several small projects (less than \$20,000), but took a bigger swipe at colleges and universities.

Speaking of economic recovery, many of the early bills were introduced to provide some relief to individuals and businesses that have been hammered by the statewide closures in effect for most of 2020. HB 291 provides new tax credits for low-income working families, while SB 1, 2, and 3 give businesses a break from gross receipt taxes and licensing fees. HB 255 was originally a bill to allow restaurants to deliver alcohol with their home-delivered meals. Eventually, the bill turned into the most all-encompassing liquor license “reform” bill in decades. There will be a lot to shake out as this law takes effect, and we expect there will be some legal action from existing liquor license holders.

HB 4, the Civil Rights Act, was passed and signed by the Governor, despite our best efforts in opposing and then attempting to make additional changes to this bill. While we were able to convince the sponsors to make several important changes, the bill is still extremely problematic. More than any other bill this session, our inability to directly respond to statements and comments from legislators and advocates led to what could be devastating to state and local government budgets over the coming years. There are a lot of details that will have to be litigated over the next few years to really understand where this is headed.

There were several bills that also dealt with accountability, qualified immunity, and law enforcement reform. SB 376 would have amended the Tort Claims Act to align it with the new Civil Rights Act, nearly tripling the caps, extending the statute of limitations, and allowing attorney fees for law enforcement cases. SB 376 surprisingly died in the Senate Public Affairs Committee (thanks to all of you for making the calls to legislators). Bills aimed at law enforcement reform like SB 192, SB 227, and HB 254 all came to a swift end early in the session. SB 375, a bill to reform some of the training and licensing procedures for law enforcement, was vetoed by the Governor. Her veto message indicated she didn't care for the changes to the composition of the Law Enforcement Academy Board.

Some of the more controversial bills that we were watching included HB 110 (minimum wage) that failed in committee, HB 20 (paid sick leave for private employers) which was signed by the Governor, and HB 12 (recreational cannabis) which did not get approved in the regular session. As you know, however, the Governor called a special session just to pass the recreational cannabis bill. As such, recreational adult use marijuana will be legal in New Mexico, and the New Mexico Regulation and Licensing Department will soon start putting together rules and regulations.

We've attached a list of the bills NMC supported or opposed this session, and their final end. Of note, every bill that NMC opposed, except for the infamous HB 4, died before reaching the Governor's desk.

## PASSED LEGISLATION

### Economic Development & IRBs

**HB10**      **Broadband Development Division**      **Figueroa; Garratt; Herrera; Sweetser; Chandler**  
Creates and lays out duties for the Broadband Development Division of DoIT, mainly to streamline the efforts of state, local, federal and tribal entities in broadband programs and development. Requires several state agencies to cooperate with the Division. Appropriates \$950,000 from the state General Fund to DoIT to implement the Connect New Mexico Act. **Signed by the Governor**

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**SB93**      **Broadband Access & Expansion Act**      **Padilla; Stefanics**  
Creates the Broadband Access and Expansion Act and the Office of Broadband Access and Expansion, administratively attached to the Department of Information Technology (DoIT) with a director appointed by the Governor; establishes powers and duties. The office shall promulgate rules to establish quality service standards; create a publicly accessible state broadband access map; develop and annually update a three-year statewide broadband plan; and provide planning assistance that encourages regional planning and coordination to local and state entities and educational institutions. Mandates that the office be applicant for federal and private broadband funding for all state agencies, and that it create a uniform system of permits, licenses and rights of way regulation across all jurisdictions. Appropriates \$900,000 (GF, reverting) to DoIT for FY2022 to establish the office and hire up to five staff.  
**Signed by the Governor**

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**HB105**      **Electric Generation Project Requirements**      **Small**  
Changes the in-lieu-of tax provisions to be received by the state or by school districts when a municipality or county issues industrial revenue bonds to acquire any electrical generation or transmission facility project. (SB72 Electric Generation Project Requirements; Neville; died.)  
**Signed by the Governor**

## Environment, Natural Resources & Public Lands

### HB51 Environmental Database Act

Casey; Stewart; Louis

Creates the Environmental Database Act to provide the public and state agencies with a user-friendly centralized and searchable website of state environmental data, hosted by the Natural Heritage New Mexico Division of the Museum of Southwestern Biology at UNM. Establishes a timeline for host deliverables. Specifies the state data to be included from the Energy, Minerals and Natural Resources Department, Department of Environment, State Land Office, Department of Health, Department of Game and Fish, Public Regulation Commission, and Cultural Affairs Department Historic Preservation Division, plus links that must be provided. Provides for protection of confidential data. Does not include an appropriation. **Signed by the Governor**

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### HB57 Prescribed Burning Act

McQueen; G. Armstrong; Wirth; Woods

Creates the Prescribed Burning Act, which declares that prescribed burning is in the public interest and not a public or private nuisance. Allows private landowners to conduct prescribed burns under certain conditions, and specifies the extent of their civil liability depending partly on whether the burn manager has certification. Requires the Energy, Minerals and Natural Resources Department to establish by rule model prescribed burn permits for use by counties and municipalities. Creates a non-mandatory prescribed burn manager certification program, with training provided by the Cooperative Extension Service. Provides for application and certification fees for the burn manager training. Fees collected pursuant to the act are paid to the Forest Land Protection Revolving Fund for administration of the act.

**Signed by the Governor**

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### SJM2 Federal Government Payments in Lieu of Taxes (PILT)

Pinto

Cites the vast land holdings of the United States in New Mexico (22,369,531 acres) and that New Mexico received just \$41.4 million in payment in lieu of taxes from the federal government in FY2020 despite Congress having agreed in 1976 to make those payments on a tax equivalency basis.

**Signed by Officers of Senate**

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## Fire, EMS & Eg11

### SB256 Fire Protection Fund

Burt

Beginning with FY2022 the periodic allotments from the Fire Protection Fund to the Fire Protection Grant Fund (FPGF) increase from 40.2% to 100% of the total projected balance in the Fire Protection Fund. Allows money in the FPGF to be expended for paying stipends to volunteer firefighters (not just those in underserved areas) for recruiting and retention programs for them. (HB238 Fire Protection Grant Fund Changes; Armstrong, G. and Small; Pocket vetoed by Governor since she signed SB256)

**Signed by the Governor**

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## General Government

### SB12 Revised Uniform Law on Notarial Acts

Ivey-Soto; Baldonado

The Revised Uniform Law on Notarial Acts (RULONA) governs actions by a notary public, including taking an acknowledgement, administering an oath, witnessing or attesting a signature, and certifying a copy of a document. It allows electronic notarizations and remote online notarizations through the use of audio-visual and identity-proofing technology without geographic limits on the location of the signer. The measure is the most recent version of the act promulgated by the Uniform Law Commission in 2018 to provide stability across jurisdictions for performing notarial and to allow remote notarization. Repeals and replaces the Notary Public Act and the Uniform Law on Notarial Act. **Signed by the Governor**

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### SB345 Per Diem & Mileage Act Changes

Gonzales

Eliminates the set dollar amounts for reimbursement of expenses related to in-state or out-of-state travel paid to salaried public officers or employees on official business. Instead, bill charges the NM Department of Finance and Administration with setting reimbursement rates each July 1 for the fiscal year. **Signed by the Governor**

## Labor, Employment & Retirement

### HB20 Healthy Workplaces Act

Chandler; Ely; Stewart; Rubio

Cited as the Healthy Workplaces Act, requires all private employers to provide a minimum amount of Earned sick leave to all employees, including part-time and temporary workers. Prohibits retaliation Against employees for exercising their rights under the act and provides for penalties for violation. Exempts employers who already provide a more generous earned sick leave policy. Secretary of Workforce Solutions is given authority to implement and enforce the act and promulgate appropriate rules to do so. No appropriation included for administration, handling complaints, investigations, and a system of review and audit that includes confidentiality of complainants. **Signed by the Governor**

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### SB90 Certain Overtime Pay as Salary in PERA

Munoz

Includes overtime pay required for a regular scheduled tour of duty for fire protection or law enforcement activities in the definition of "salary" under the Public Employees Retirement Act. Current law excludes any overtime pay for the purpose of calculating contributions to a public employee's retirement account. **Signed by the Governor**

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## Public Safety

### HB2 Cannabis Regulation Act Special Session

J. Martinez; A. Romero; D. Armstrong; Duhigg; Lopez

Enacts the Cannabis Regulation Act (CRA) which legalizes cannabis for recreational use by adults over the age of 21. Creates the Cannabis Control Division within the Regulation and Licensing Department to implement an extensive regulatory framework to govern the commercial marketplace for the production, distribution, sale, and use of recreational marijuana. HB2 levies an excise tax of 12% on recreational sales (medical cannabis sales are untaxed). The municipality or county where the sale takes place receives 33.33% of the excise tax revenues. Counties will receive their existing GRT on sales. Purchase of cannabis is limited to two ounces, 16 grams of extract, and 800 milligrams of edibles. Possession of amounts exceeding these limits is allowed but must be hidden from public view in one's private residence. Retail sales of recreational cannabis will begin no later than April 1, 2022. HB2 provides a repeal date of December 31, 2025, for section 40, plant limit. **Signed by the Governor**

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### SB2 Expungement of Certain Criminal Records Special Session

Lopez; J. Martinez; A. Romero; Duhigg;  
Ortiz y Pino

SB2, a companion bill to HB2 from the special session, expunges arrest and conviction records for conduct that would no longer be illegal under the Cannabis Regulation Act. The bill provides for a review of persons currently or previously incarcerated for such acts for possible dismissal, expungement, or redesignation, and supports reentry into employment for those with non-violent criminal records by revising the currently short list of criminal records that cannot be considered in an application for public employment, licensure, or other authority to practice a trade, business or profession. **Signed by the Governor**

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### HB4 NM Civil Rights Act

Louis; Egolf; Cervantes

Cited as the New Mexico Civil Rights Act, establishes the right of an individual to bring a claim against a public body for violation of constitutional rights, privileges, or immunities as set forth in the New Mexico Bill of Rights. HB4 does NOT expose individual employees, elected officials, or volunteers to any increased liability and all costs of litigation including any damages awarded must be paid by the public body. (Related to 2020 SS1 HB5, which created a Civil Rights Commission.) **Signed by the Governor**

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## Tax, Finance & Capital Outlay

### HB2 General Appropriation Act of 2021

Lundstrom

Authorizes funding to state agencies from the General Fund, internal services and transfers, other state funds, and federal funds in FY2022. Total FY2022 GF appropriation is \$7.325 billion.

**Signed by the Governor**

### HB55 Publication of Capital Outlay Allocations

McQueen; Tallman; Fajardo; Neville

Requires publication of capital projects that passed the Legislature, listing the names of legislators or the Governor who allocated a portion of the funding and the amount of the funds designated by each legislator and the Governor. The capital projects list must be posted on the legislative website in searchable form, include vetoes, and be published within 10 days after the Governor has acted on the capital outlay bill or after the bill has failed to become law due to lack of approval by the Governor. (Has emergency clause and takes effect immediately.) **Signed by the Governor**

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### HB285 Capital Outlay Projects

J. Martinez

Provides funding for various projects statewide ranging from the planning, design, and construction of projects to equipment for senior centers, to the purchase of vehicles, wastewater treatment centers, etc. The first three sections of the bill cover technical aspects of the issuance and sale of severance tax bonds, conditions that attach to general-fund appropriations and other forms of funding. Sections 4-37 are funded through Severance Tax Bonds and the remaining projects in Sections 38-50 are funded through the General Fund or other designated special funds. Contingency provisions in Sections 51-52 to take into account pending legal settlements and adjudications, situations where the appropriation may not be sufficient to complete a project, and the allocation of one percent of the appropriations for the Art in Public Places Fund. **Signed by the Governor**

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### SB20 Transportation Project Fund

R. Gonzales

From July 1, 2021 on, directs that 18.75% of Motor Vehicle Excise Tax collections be sent to the Transportation Project Fund instead of the Local Governments Road Fund. **Signed by the Governor**

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## Treasurers

### SB64 Federally Insured Obligations

Rodriguez

Makes a technical correction to the types of federally insured obligations in which county and municipal treasurers may invest public money. Specifically, "certificate of deposit placement services" replaces the current "certificate of deposit registry service." **Signed by the Governor**

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## FAILED LEGISLATION

### Economic Development

### HB33 Livestock Board Meat Inspections

Dow; G. Armstrong. G. A. Romero; Chatfield; Maestas

Authorizes the New Mexico Livestock Board with authority to conduct meat inspections to ensure the safety and quality of meat for human consumption.

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### HB267 Tourism Dept. Programs & Services

Dixon; Gonzales; Sweetser; Maestas; Burt

Appropriates a total of \$45 million (GF) to the Tourism Department for use in FY2022 and 2023 to provide certain marketing services and support, technical assistance, and a career advancement pilot program.

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## Elections

### SB48 Election Changes

Woods

Amends the Election Code to direct the Secretary of State to: provide county clerks with funds to the business reply mail account; eliminate election day voting location voter registration; adjust the time frame for processing registrations after an election; revise requirements for returning and handling mailed ballots; prescribe election day working hours for the Absent Voter Election Board; and eliminate third-party agents for voter registration and mailed ballot applications.

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## Environment, Natural Resources & Public Lands

### HB50 Private Right of Action for Certain Statutes

Louis

Amends the Oil and Gas Act, Air Quality Control Act, Hazardous Waste Act, Solid Waste Act, and Water Quality Act to create the right for a private individual to sue for appropriate relief, including imposition of a penalty or injunctive relief or both, on the person's own behalf against any other person for an alleged past or present violation of the acts or rules. Successful plaintiff may be awarded reasonable costs of litigation including expert and attorney fees. The injury may be economic or otherwise.

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### HB92 Safe Drinking Water Testing Fund

Doreen Gallegos; Herrera

Renames the Water Conservation Fee as the Safe Drinking Water Testing Fee and the Water Conservation Fund as the Safe Drinking Water Testing Fund. Raises the fee from \$.03 to \$.05 per 1,000 gallons produced. Increased revenues may not be used to cover sampling and analysis of a public water supply system resulting from violations of the federal Safe Drinking Water Act. Such sampling and analysis remain the responsibility of the public water supply system.

**Vetoed by the Governor**

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### HB103 Utility Operator Certification Act Changes

Anderson; Madrid; Stefanics

Would create new requirements for certification under the Utility Operators Certification Act and establish fees and late fees related to certification for utility operators who control or affect public water systems and wastewater systems. **Vetoed by the Governor**

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### HB241 Water Trust Fund Mutual Domestic Set-Aside

Herrera; Garratt; Jaramillo

Amends the Water Project Finance Act to require the Water Trust Board to set aside 10% of the annual appropriation from the Water Project Fund for grants to qualifying projects that serve mutual domestic water systems in urgent need, with no matching contribution required. Funding recipients must obtain all required state and federal permits and may use funding to acquire permits. Requires rule-making.

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## General Government

### HB264 County Receipt & Disposal of Public Property

Doreen Gallegos

Exempts counties from procedural requirements for sale or other disposal of public property belonging to it that has a value less than \$5,000. Preserves the ability of counties to receive donations of public property from state agencies and other governmental entities.

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### SB102 Daylight Saving Time

Pirtle

Exempts New Mexico from annual reversions to standard time from daylight saving time once a federal law is passed that allows such exemptions.

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## Public Safety

### HB40 Private Detention Facility Moratorium Act

Rubio; Bash; Ely; Chasey; Duhigg

### HB352 Private Detention Facility Moratorium Act

Serrato; Rubio

Creates the Private Detention Facility Moratorium Act to remove authorization for any nongovernmental entity to operate a private detention facility, including juvenile detention; exempts work-release facilities and private contracts in effect prior to the act's 2021 effective date; makes the operation of a private detention facility unlawful; prohibits public funding of privately operated detention facilities; provides for recommended termination of existing contracts based on inspection reports; requires annual reports by Corrections Department to the Legislature; provides penalties. Repeals existing sections of law governing private contracts and jail agreements. (HB352 would create the Detention Facility Economic Development Assistance Fund and Detention Facility Displaced Worker Assistance Fund.)

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### HB193 Extreme Risk Protection Order Changes

Ely; Garratt

Amends the Extreme Risk Firearm Protection Order Act to establish when a law enforcement officer may act as the reporting party who initiates a request for a petition for an extreme risk firearm protection order. Requires a law enforcement officer or agency to take possession of all firearms subject of such an order if they are surrendered, in plain view, or discovered pursuant to a lawful search. Changes provisions for reporting of such orders. Prohibits use in any criminal proceeding of evidence establishing possession or ownership of a firearm obtained in an extreme risk hearing. Prohibits a person subject to an extreme risk order from acquiring a new firearm until the order expires.

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### SB220 Exceptions for Body Cameras

Cervantes

Provides exceptions to a statewide requirement that law enforcement officers employ body cameras while on duty. Amends the body camera law, passed in 2020, to add a provision allowing law enforcement officers to not employ a body camera to record a death or an undercover operation.

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### SB227 Inspection of Police Misconduct Investigation

L. Lopez

Makes a sweeping police reform proposal meant to curtail police use of force, require de-escalation training, ban police choke holds, tear gas, rubber bullets, "no knock" search warrants and other measures following a summer of nationwide protests focused on police brutality and racism within police ranks.

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### SB274 Use of Deadly Force Reporting

Sedillo Lopez; Roybal Caballero

Creates a reporting mechanism and assignment of a prosecutor after a law enforcement officers use of deadly force resulting in great bodily harm or death.

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### SB285 Emergency Mental Health Evaluations

Ortiz y Pino

Amends the law relating to Mental Health and Developmental Disabilities to authorize an EMT or emergency medical responder to transport a person for emergency mental health evaluation and care without a court order. **Vetoed by the Governor**

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### SB375 Officer Training & Certification

Munoz; Ingle

Amends the Emergency Medical Services Act, the Law Enforcement Training Act, and the Fire Protection Training law to require that first responder training programs include crisis management strategies. Reorganizes the NM Law Enforcement Academy Board, changes its duties, and places the Director under direct supervision of the Secretary of Public Safety. Creates the Law Enforcement Certification Board, administratively attached to the Department of Public Safety, and transfers to it authority for officer certification. Directs transfer of \$6 million from the Law Enforcement Protection Fund to the academy for training. Provides for creation of a law enforcement officer database for information-sharing among law enforcement agencies about excessive use of force. **Vetoed by the Governor**

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### SB376 Prohibit Defense of Qualified Immunity

Cervantes

The bill is mistitled since the defense of qualified immunity is not currently available under the Tort Claims Act. What SB376 does is to amend the Tort Claims Act by substantially increasing the maximum liability limits for past and future medical expenses from \$300,000 to \$800,000, for property damages from \$200,000 to \$500,000, for all other damages from \$400,000 to \$1,200,000 and the total cap per single occurrence from \$1,050,000 to \$2,000,000. These caps are increased every year based on an increase in the cost of living (consumer price index). In addition, the bill allows the court to award reasonable litigation expenses and attorney fees to the prevailing party in law enforcement cases.

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## Tax, Finance & Capital Outlay

### HB49 Exempt Social Security from Income Tax

Brown; Dow; G. Armstrong; Pettigrew; Ezzell

### SB78 Exempting Social Security from Income Tax

Padilla; Stefanics

Exempts from state income tax Social Security benefits includable in adjusted gross income. A person claiming this new exemption may not claim the general exemption for persons 65 and over (of up to \$8,000) under Section 7-2-5.2.

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**SB66 Permitted Percentage Rates for Loans****Soules; Duhigg**

Would place an interest rate cap of 36% on small loans up to \$10,000 in value with the exception of a higher cap in certain cases.

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**SB174 Fiscal Agent for Capital Outlay Projects****Woods**

Provides that the Legislative Council Service shall not accept a request for capital outlay funding intended for a project of a nongovernmental entity unless the state or a county or municipality has accepted the role of acting as fiscal agent for the entity's project.

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**SB321 County Courthouse Bonding Act****Griggs; Burt**

Authorizes NMFA to make grants to qualified counties to remodel, renovate, or construct courthouses, including equipment and furnishings but excluding purchase of land or buildings. Proceeds from sale of county courthouse tax revenue bonds provide the grant money. \$1 million per month in state gross receipts tax revenues from July 2021 through June 2026 pays off the bonds.

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## Treasurers

**HB173 County Solar Assessments on Homes****Black**

Amends the Solar Energy Improvement Special Assessment Act to limit the authority of counties to impose a solar energy improvement special assessment on commercial properties only. Such an assessment would no longer apply to residential properties. Makes a technical correction to the types of federally insured obligations in which county and municipal treasurers may invest public money. Specifically, "certificate of deposit placement services" replaces the current "certificate of deposit Registry service."

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**HB299 Improvement Special Assessment Act****Small**

Replaces the existing Solar Energy Improvement Special Assessment Act with a similar Improvement Special Assessment Act of broader scope. The bill proposes to allow counties to use their tax collecting authority to collect repayments of monies loaned by private parties to private parties to make eligible improvements.

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## Workers' Compensation

**HB268 Coronavirus & Workers' Comp****Hochman Vigil**

Amends the Workers' Compensation Act to create the presumption that contraction of the coronavirus by an essential employee is an injury arising by accident out of and in the course of employment. Prohibits insurers from using coronavirus claims arising in the course of employment in developing rating plans. Applies to contraction of the coronavirus from the effective date of the act, until January 31, 2023 and requires the Superintendent of Insurance to disapprove rating plans that do so.