

New Mexico  
Municipal  
League

# The Municipal Reporter

A Publication of the New Mexico Municipal League

Fall 2022



*Red Rock Balloon Rally, Gallup*

# New Mexico Municipal League

## New Mexico Municipal League



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## Municipal Reporter

Fall 2022

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# President's Message

It's a great honor to take on the role of New Mexico Municipal League President. After over 30 years of involvement with the League, including serving as President Elect, Vice President, and Treasurer over the last three years, I'm excited to be stepping into the role of President. Of course, I'm fortunate to be taking over from Mayor Javier Perea, our incredibly dedicated and capable immediate past president, and to be supported by a talented and engaged Executive Committee.

After 16 years of serving as a Portales city councilor, including eight as Mayor Pro Tem, I'd like to think I have some good ideas of how to serve the needs of municipalities. But more importantly, I want to hear your ideas. During my term as president, I hope to meet and speak with as many of you as possible to learn how the League can best serve municipalities' needs, especially given some of the unique opportunities and challenges that New Mexico cities face. In particular, I want to ensure that we are providing you with the resources you need to navigate new and complex issues – cannabis legalization, federal funding requirements, affordable housing needs, to name just a few.



Ultimately, your input will inform the long-term direction of the League. During the coming year, we'll be working on a five-year strategic plan that will guide us as we navigate the next round of challenges and opportunities. So – let me know what *you* think. How can the League best serve you and your city? What resources do you need to be successful?

As a native New Mexican and a Portales resident since age four, I see the potential in our state, especially in its cities and towns. I also believe that we are most effective when we work together, speaking together about the issues that affect us. We've seen success in this approach recently, with the passage of legislation that included significant funding increases for our local police departments, as well as the successful pushback to a proposal to curtail the ability of elected officials to set their own GRT increments.

As we approach the 2023 legislative session, I want to ensure that we continue to speak together strategically; for example, in educating legislators about how proposed tax changes could impact our revenues, advocating for increased funding for fire and emergency medical services, and continuing to provide our law enforcement with modern, high-quality resources and training. I also want to make sure we are prepared to advocate for appropriate funding levels to implement state mandates.

I'm honored to serve as your League president, and excited to get to know those of you I haven't met yet. So, please reach out – give me a call or say hello the next time you see me. I want to hear from you.

The signature of Mike Miller, written in black ink. It is a cursive script that reads "Michael A. Miller".

Mike Miller, NMML President

Mayor Pro Tem, City of Portales

# UPCOMING EVENTS

For a full list of events, please refer to the Municipal League website

## October 23-28

Clerks Certification Institute  
Albuquerque

## October 26 – 28

Infrastructure Finance Conference\*  
Albuquerque

## November 4

Airport Managers Association Meeting  
Albuquerque

## November 16-19

National League of Cities City Summit  
Kansas City, MO

## November 17

DFA/Local Government Division Budget  
Workshop\*  
Virtual

## November 30 – December 2

City Management Association Meeting  
Albuquerque

## November 30 – December 2

Municipal Attorneys Association Conference  
Albuquerque

## December 7-9

New Mexico Law Enforcement Conference  
Albuquerque

\*In partnership with the Department of Finance and Administration



## We Want Your Photos!

If you've visited the Municipal League offices in Santa Fe recently, you may have noticed that our walls are pretty bare. We'd like to fill them with art that reflects the beauty and diversity of New Mexico.

So, a request - **can you send us a photo from your community or region?** We'd love to receive photos that showcase the natural, cultural, historical, and architectural uniqueness of communities around the state.

If you're interested in sharing a photo, you can send a digital version via email to Alison Nichols at [anichols@nmml.org](mailto:anichols@nmml.org). Files should be jpeg and ideally at least 200 dpi (dots per inch, or resolution). We will print and frame photos that we receive. Thanks to those who have sent us photos!

Thank you for sharing the beauty of your communities with us!

## Municipal League Holds Annual Conference in Albuquerque

The Municipal League held its 65<sup>th</sup> Annual Conference from August 30 – September 1 at the Albuquerque Convention Center, with attendees from all over the state coming together to attend workshops, meet with subsection groups, conduct League business, network, and of course, have fun!

Outgoing League president Mayor Javier Perea of Sunland Park kicked off the general session, with attendees hearing from motivational speaker Matt Rush, before listening to a panel discussion about federal legislative priorities with Congresswoman Melanie Stansbury (NM-CD1), Congresswoman Yvette Herrell (NM-CD2), and Congresswoman Teresa Leger Fernandez (NM-CD3). Albuquerque Mayor Tim Keller also welcomed participants to town.

A series of workshops covered topics including cybersecurity for municipalities, building tourism and outdoor recreation opportunities, collaboration between cities and counties, and handling Inspection of Public Records Act requests. Motivational speaker Charles Marshall addressed the crowd for the closing session. At the Annual Business Meeting, delegates voted to adopt a number of changes to League bylaws to enhance transparency and operations, and also voted on open Executive Committee and Board positions. Attendees closed out the conference with an 80s Vegas-themed dinner dance.

The Municipal League Board and staff extend a huge thanks to speakers, sponsors, volunteers, and attendees – you made the 2022 Annual Conference a success!

We'll see you next year in Farmington!

### Annual Business Meeting Election Results

Delegates voted to elect the following League members to the Executive Committee and Board:

**President-Elect:** Tessa Abeyta, Councilor, Las Cruces

**Vice-President:** Lynn Crawford, Mayor, Ruidoso

**Treasurer:** Audrey Jaramillo, Mayor, Edgewood

**Directors-at-Large:** Jeff Carr, Mayor, Eagle Nest; Don Lopez, Mayor, Los Ranchos de Albuquerque; Michael Rael, Judge, Questa

Congratulations to all!



Conference attendees enjoy an evening reception at the Albuquerque Botanic Garden



Congresswomen Herrell, Leger Fernandez, and Stansbury discuss legislative priorities



League past presidents convene at the Annual Conference luncheon

### Thank You, Mayor Perea!

Mayor Javier Perea of Sunland Park passed the League president's baton to Mayor Pro Tem Mike Miller of Portales. Mayor Perea's term as president ends on October 1, at which point he will become immediate past president.

Mayor Perea brought dedication, enthusiasm, and his sharp mind to his role as president over the past year. We are fortunate to have his continued service as immediate past president for the next year!



# Municipal League News

## The League is Getting a New Website!

In August, the Municipal League signed an agreement with website developer CivicPlus to build a brand-new League website to better serve members' needs. CivicPlus will implement its CivicEngage Central platform, a propriety solution tailored for municipal, county, state, and other governments, as well as affiliated organizations like municipal leagues. In addition to giving the site a clean and modern look, the platform will also make it easier for members to view and register for events, find relevant resources and links, and connect with League and Fund staff. Staff will work with CivicPlus over the next four to six months to get the new website up and running. Keep an eye out for information about the new site!

Examples of sites created using CivicPlus' CivicEngage Central platform include the [Texas Municipal League](#); [Fulton County, OH](#); and [Cody, WY](#).



## Municipal Compensation Survey Will Provide Benchmarking Data for Members

In response to requests from members for municipal salary data, the Municipal League and the New Mexico Self Insurers' Fund have developed a compensation survey for municipalities to help with budgeting and benchmarking.

The compensation survey is a new module within the New Mexico Self Insurers' Fund exposure survey. Members can access the compensation survey using their existing log-in credentials and will receive detailed survey instructions by email.

The survey asks about actual, minimum, and maximum salaries for ten common municipal positions (see sidebar). If you're interested in seeing additional positions added to the survey in the future, let us know!

All municipalities are encouraged to fill out the survey – more responses mean better data for everyone! Results will be anonymized (i.e. municipality names will not be shared), and members will be able to search results by position or by municipality size.

Questions? Please contact Alison Nichols at [anichols@nmml.org](mailto:anichols@nmml.org). If you are not a Fund member and would like to fill out the survey and receive results, you can also contact Alison.

### Positions Included in Compensation Survey

- Mayor
- Councilmember/Commissioner/Trustee
- City Manager/Administrator
- Finance Director
- City Secretary/City Clerk
- City Attorney
- Police Chief
- Fire Chief
- Firefighter (Entry Level)
- Police Officer (Entry Level)

## Grant-Related Resources for Municipalities

New Mexico is expected to receive historic levels of federal funding for infrastructure and other needs under the Infrastructure Investment and Jobs Act (IIJA), in addition to significant funding already in place through the American Rescue Plan Act (ARPA). More funding is likely to be made available as part of the recently-passed Inflation Reduction Act (IRA). The Municipal League wants to support communities in identifying funding opportunities and preparing successful applications.

### Grant-related support available to municipalities includes:

#### New Mexico Municipal League

- League members have access to free grant-related consultation services through a League contract with Petroglyph Consulting. Members can set up consultations to receive help with identification of grant opportunities, explanation of grant requirements, and preliminary review of materials.
- The League also runs ongoing series of grant-related webinars with Petroglyph Consulting and other partners. See materials from previous webinars (<https://nmml.org/grant-writing-webinars/>) and look out for announcements about upcoming webinars!



**Contact:** Chuck Thomas, Grants Consultant, Petroglyph Consulting ([chuck@petroglyphconsulting.com](mailto:chuck@petroglyphconsulting.com))  
Alison Nichols, Director of Policy, NMML ([anichols@nmml.org](mailto:anichols@nmml.org))

#### **Tell us what type of grant workshops you'd like to see!**

NMML is planning to offer several small-group, interactive workshops to help municipalities research and apply for competitive federal grants. To better determine the format and topics for webinars, we want to hear from you. Help us by filling out a brief survey: <https://www.surveymonkey.com/r/NMMLGrantsSurvey>

#### Federal Grant Bureau, Department of Finance and Administration

- DFA's Federal Grant Bureau has several grant writers on staff that can assist municipalities.
- The bureau also distributes a weekly summary of grant opportunities.
- DFA has developed a BIL/IIJA dashboard to help identify and learn more about specific funding opportunities. See DFA website: <https://www.nmdfa.state.nm.us/bil-iija-dashboard/>

**Contact:** Paula Flores, Chief, Federal Grant Bureau ([Paula.Flores@state.nm.us](mailto:Paula.Flores@state.nm.us))

#### New Mexico Congressional Delegation

- New Mexico's Congressional delegation employs a funding specialist to help public entities, including municipalities, identify funding opportunities, obtain letters of support for grant applications, and liaise with federal agencies.
- The delegation also distributes a weekly summary of new grant opportunities.

**Contact:** Lisa Van Theemsche, Funding Specialist ([lisa\\_vantheemsche@heinrich.senate.gov](mailto:lisa_vantheemsche@heinrich.senate.gov))

#### North Central New Mexico Economic Development District

- NCNMEDD has several grant writers on contract who are available to assist communities in its service region with grant applications
- Municipalities in Santa Fe, Los Alamos, Taos, Rio Arriba, Mora, Colfax, San Miguel, and rural Sandoval counties (outside of Rio Rancho) are eligible to receive grant writing assistance.
- NCNMEDD will prioritize requests from entities that lack capacity and are unlikely to be able to apply for a grant without assistance.

**Contact:** Felicity Fonseca, Community Development Planner ([felicityf@ncnmedd.com](mailto:felicityf@ncnmedd.com))

# Around the State

## State Fiscal Outlook

### State Revenues Grow More Reliant on Gross Receipts Tax and Energy Industry

Changes to the state's tax code over the last several years will lead to greater reliance on gross receipts and oil and gas taxes, according to the Legislative Finance Committee. In its July newsletter, the LFC indicated that ongoing state revenue from income taxes will decrease by over \$90 million in FY23, primarily due to the elimination of taxes on social security benefits, with the decrease in recurring income tax revenue growing to over \$400 million in FY24 and FY25 as a result of exemptions for military pensions and expansion of child tax credits and tax credits for low-income families. Changes to the gross receipts tax mean that GRT revenues will also decline, but not by as much as income tax revenue. In FY23, GRT revenue is expected to decrease by \$45 million, and by \$157 million in FY25.

Income tax is expected to make up 23 percent of the state's total income in FY23, down from 30 percent that would be expected without the tax changes, while GRT revenue will make up 33 percent, up from 30 percent. As a result of tax changes, direct taxes on the energy industry will grow from 19 percent to 21 percent of state income.

## The New Mexico Mortgage Finance Authority:

### Your Partner in Affordable Housing

The **New Mexico Affordable Housing Act** (AHA) was passed in 2004 and amended in 2015 as an exception to the anti-donation clause in the New Mexico State Constitution to allow local governments and other political subdivisions to put resources towards affordable housing acquisition, development, financing, maintenance, and operation. The Act is pivotal in creating local-level solutions to the challenge many of New Mexico's low- and moderate-income residents face in securing safe, quality housing.

Under the Act, municipalities or counties wishing to donate, provide incentives, or pay all or a portion of affordable housing costs (including land, acquisition, renovation, financing, or infrastructure) must have an affordable housing plan and ordinance in place. Affordable Housing Plans may be included within an entity's comprehensive plan or be stand-alone documents. Multiple entities, counties, and municipalities may develop a joint plan so long as data and recommendations are sufficiently disaggregated to address each entity's unique needs.

The Mortgage Finance Authority (MFA) reviews plans and ordinances to ensure that the documents have all the elements that the Act requires. Further, plans must be adopted, and ordinances must be passed by an entity's governing body to be considered valid. During the drafting phase of an affordable housing plan or ordinance, MFA is available to provide AHA compliance-related feedback.



### Affordable housing is an eligible use of ARPA State and Local Fiscal Recovery Funds (SLFRF).

Under the program's final rule (Final Rule FAQs 2.14 and 4.9), funds can be used for affordable housing investments if the project meets certain requirements of one of several federal housing programs. Projects are also eligible if the units funded serve households at or below 65% Area Median Income (AMI) for at least 20 years. In addition, SLFRF can be used to fund certain loans financing affordable housing investments, as well as down payment assistance.

Other affordable housing-related uses may be eligible if they address negative economic impacts of the pandemic and meet other ARPA rule requirements.

For more information about SLFRF to invest in affordable housing, see the U.S Treasury Departments' Affordable Housing How-To Guide (<https://tinyurl.com/4zbvs4h8>)

**MFA is here to help you and your community as you take steps to provide affordable housing.**

To schedule a call or set up a meeting to learn more about the Affordable Housing Act and how MFA can assist you in this process, please contact MFA's Compliance Manager Julie Halbig at [jhalbig@housingnm.org](mailto:jhalbig@housingnm.org) or 505-308-4216. Additional resources are available at [Affordable Housing Act Oversightl New Mexico MFA \(housingnm.org\)](https://tinyurl.com/4zbvs4h8).



# New Mexico Self Insurers' Fund Update

## Resources for First Responders, Modern Tools and Training, and More: What Fund Members Can Expect to See This Year

By Linda Calhoun, Mayor of Red River, NMSIF Board Chair

It's difficult to overstate my excitement for all we have in store this year. I'm so proud of the work our Board of Trustees has done to transform our organization to meet the needs of our communities, prioritizing loss control and investing in proactive risk management. This was my goal from the start, and I am confident that we will continue to achieve it.

**First, we're reaffirming and expanding our commitment to first responders.** Last year, we provided – for the first time – mental health services to all of our insured law enforcement community, as well as their families. The feedback on that program and been both positive and reflective; we heard time and again that the entire first responder community should be included also in our commitments to holistic care. Our program now ensures that when a law enforcement officer, firefighter, or EMS employee has a need, we have infrastructure in place to meet that challenge. Everything from critical incident debriefings to at-home needs is covered by our program, for both the employee and their immediate families.

**Next, we're navigating increased demand for technical loss control reporting tools.** Fund staff have performed dozens of personal site visits over the last couple of months, and we're now leveraging new technology to generate individual reports that provide specific action steps to keep your communities and employees safe. These reports will give you the opportunity to perform real-time risk mitigation, helping prepare you for fewer workplace injuries, otherwise-unforeseen hazards, and emergency management action plans.

**Demand for modern training, such as active shooter, increased noticeably this year.** We put together a program for that purpose, sending our instructor around the state to our member insureds. When there, our instructor tailors his program to specific needs in your facility. As you may have seen if you joined us at the League's Annual Conference, the material is instructive, engaging, and insightful. While a weighty topic, it is important to our Board that you are as prepared as possible for the unthinkable.

**On the underwriting side, we're writing coverage that is responsive to a rapidly-changing legal landscape.** One year removed from the passage of the New Mexico Civil Rights Act, we bound reinsurance coverage with options for up to \$5 million in limits on our public officials and law enforcement liability lines. Bracing for uncertain losses, particularly with new laws, required our coverage to be assertive and flexible. I'm glad we were able to accomplish our goals in that regard.

**Finally, we're preparing for a hardening property market by directing a full-program appraisal for the first time in nearly twenty years.** This boots-on-the-ground overview will examine nearly two thousand facilities, and review fixtures from storage tanks to fine arts and everything in between. As we explore creative reinsurance and excess insurance programs, it remains essential that our property values are as close to current as possible. By the time we finalize our next coverage period, we'll have a much more accurate idea of what we own than we have in recent memory.

As you can see, while we've got no shortage of new challenges, we're long on ideas to address them. We'll always be open to your creativity, input, and collaboration. And although we're delighted with our growth, we feel like we're just getting started. Stay tuned for what's ahead.



# Loss Control Corner

## Working Safely in Confined Spaces

A confined space incident is not very common, but it can be the deadliest of all worksite accidents. That's because the hazards tend to be misunderstood and underestimated. And many confined space fatalities involve not one but two victims: **the worker** and **the rescuer**.

Knowing the difference between a confined space and a permit-required confined space is essential for your safety when working in these environments.

### Confined Spaces

A confined space has limited openings for entry and exit, unfavorable natural ventilation that could contain or produce dangerous air contaminants, and is not intended for continuous employee occupancy.

Examples of confined spaces include:

- Storage tanks
- Ship compartments
- Pits
- Silos
- Vats
- Degreasers
- Boilers
- Ventilation and exhaust ducts
- Sewers
- Tunnels
- Underground utility vaults
- Pipelines



### Permit-Required Confined Spaces

A permit-required confined space includes one or more of the following characteristics: contains or has the potential to contain a hazardous atmosphere; contains material that could engulf an entrant; has a design that could cause an occupant to become trapped or asphyxiated; and/or contains other severe health or safety hazards.

Examples of permit-required confined spaces include:

- Sewers
- Rendering plants
- Workplaces where portable tanks are fabricated and serviced



### Safety Considerations

When working in either location:

- Follow all Occupational Safety and Health Administration (OSHA) regulations regarding confined and permit-required confined spaces.
- Develop, implement, train, review and enforce written procedures.
- Make sure you clearly understand the difference between confined and permit-required confined spaces.
- Don't enter a permit-required confined space without proper training and a permit to enter.
- Identify and eliminate any obvious physical hazards before entering.
- Monitor for oxygen content, flammability, toxicity, and explosive hazards as soon as you enter.
- Use fall protection, rescue, air monitoring, ventilation, communication, and lighting equipment according to specific entry procedures.
- Maintain contact, visually or via phone or two-way radio, with a trained attendant.
- Make sure to call for help immediately if you need assistance while working

For further assistance or information on how to meet OSHA standards, please contact the New Mexico Self Insurers' Fund Loss Control Specialist Erica D. Moncayo, MBA, MCRM, MCSH at 505-490-7098 or [emoncayo@nmsif.org](mailto:emoncayo@nmsif.org)

## Spear Phishing: How to Protect Your Organization

Phishing, a type of cyber attack in which a hacker disguises him- or herself as a trusted source online in order to acquire sensitive information, is a common and technologically simple scam that can put your employees and organization at risk. However, more resourceful criminals are resorting to a modified and more sophisticated technique called "spear phishing," in which they use personal information to pose as colleagues or other sources specific to individuals or organizations.

A spear phishing attack is often disguised as a message from a close friend or business partner and is more convincing than a normal phishing attempt; when messages contain personal information, they are much more difficult to identify as malicious.

For businesses, the potential risk of spear phishing is monumental. A report released by the Internet Crime Complaint Center (IC3) stated that there were over 120,000 cybercrime-related complaints against businesses last year, resulting in over \$800 million lost. A large majority of these attacks can be attributed to spear phishing, since the messages are designed and customized to make victims feel safe and secure.

### The Basics of Spear Phishing

Any personal information that is posted online can potentially be used as bait in a spear phishing attack. The more a criminal learns about a potential victim, the more trustworthy he or she will seem during an attack. Once the apparent source gains the victim's trust, and there is information within the message that supports the message's validity, the hacker will usually make a reasonable request, such as following a URL link, supplying usernames and/or passwords, or opening an attachment.

Even if spear phishing perpetrators target just one of your employees, it can put your entire organization at risk.

Falling for a spear phishing attack can give a hacker access to personal and financial information across an entire network. And, successful spear phishing attacks oftentimes go unnoticed, which increases the risk of large and continued losses.

### How to Protect Your Organization

Though it is difficult to completely avoid the risk that spear phishing attacks pose, there are ways to prevent further damage to your organization. Make sure that your employees are aware of these simple techniques:

- Never send financial or personal information electronically, even if you know the recipient well. It maybe possible for a third party to intercept this information, especially if the recipient is later subject to a spear phishing attack.



- Be cautious when you are asked to divulge personal information in an email. Even if it appears to be from a trusted source, it could be a hacker impersonating another person or group.
- Only share personal information on secure websites or over the phone. When in a Web browser, you can ensure a website is secure when you see a lock icon in the URL bar, or when an "s" is present in the "https" of a URL. The "s" stands for "secure" at the end of the normal "http".
- Some spear-phishing schemes use telephone numbers, so be sure to never share information over the phone unless you initiate the call to a trusted number.
- Never click on links or open attachments from unknown sources. Even opening a file that seems familiar can give a spear phishing attacker access to personal information stored on your device.
- Ensure that your company's security software is up to date. Firewalls and anti-virus software can help protect against spear phishing attacks.
- Encourage employees to think twice about what they post online. Spear phishing hackers often attain personal information through social media sites. Make sure that employees know how to keep this information private to protect their own security as well as that of your organization.
- Regularly check all online accounts and bank statements to ensure that no one has accessed them without authorization.
- Never enter any personal or financial information into a pop-up window or a Web browser.

## Loss Control continued...

### What to Do If You Suspect a Spear Phishing Attack

If you believe that your organization has been the target of a spear phishing attack, it is important to act quickly to limit your potential losses. The first step should be to immediately change the passwords of any accounts connected to the personal or financial information of your organization or its clients, and to obtain a list of recent and pending transactions. It may also be necessary to contact law enforcement.

Next, an internal or third-party IT expert should be consulted to pinpoint any vulnerabilities that remain in your organization's network, and he or she can advise you on how to avoid future attacks.

*This Cyber Risks & Liabilities document is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel or an insurance professional for appropriate advice*

## Legal Corner

### NM Supreme Court Clarifies Evidentiary Burden for Pretrial Detention

by Laura Vega, Litigation Counsel, NMSIF and Dillon Fisher-Ives, Litigation Attorney, NMSIF

On June 30, 2022, in the case of *State v. Mascareno-Haidle*, No. S-1-SC-38743, the New Mexico Supreme Court concluded that evidence about the "nature and circumstances" of a charged offense, alone, is insufficient to keep a defendant jailed while awaiting trial.

The phrase "innocent until proven guilty" is a symbolic principle often cited by lay-persons and lawyers alike. It stands for the fundamental principle that persons charged with committing a crime shall not be punished or imprisoned until the government proves those charges beyond a reasonable doubt. Since statehood in 1912, this long-standing principle has been enshrined by the right to bail under Article II, Section 13 of the New Mexico Constitution.

In 2016, an exception to the right to bail was created after New Mexico voters approved a constitutional amendment to Article II, Section 13, granting courts the authority to hold a defendant in jail, pending trial, if prosecutors can prove that 1) the defendant is dangerous, and 2) that no release conditions will reasonably protect the safety of the community.

The Court's ruling in *Mascareno-Haidle* affirms the lower court's denial of pretrial detention of a defendant who admitted to committing nearly 28 burglaries, some while residents were inside their home sleeping, and who was suspected of many more. In requesting pretrial detention, prosecutors relied on evidence of the nature of the defendant's alleged offenses to show that he posed a danger to the public but failed to present any evidence to argue that "no conditions or combination of conditions could reasonably be imposed to protect the community if Defendant was released."

Striking the balance between the dignity of a person's presumed innocence and the safety of the community, the Court reasoned that district court judges must be provided with as much information as possible "to reduce the margins of error" before deciding whether a person charged with committing a felony should be jailed pending trial. Therefore, while the "nature and circumstances" of a charged offense may be used to demonstrate a defendant's dangerousness, this single factor cannot be used at the exclusion of all other relevant factors to satisfy the constitutional burden of proving with clear and convincing evidence that no conditions of release could protect the safety of the community.



## The Food Tax Deduction in Mexico: Contentious History, Unclear Future

By Janet Peacock, Tax Policy Consultant

The question of whether to subject the sale of food to tax under the state and local gross receipts taxes (GRT) has a long, complicated, and contentious history – and debate continues today. Exempting food from GRT has led to reduced and volatile revenues for some communities, and the Municipal League supports efforts to expand local taxing authority, where appropriate and feasible.

### Debate Over Food Tax Begins

Concerns about taxing food were formally addressed in 1979, as part of broader discussion of the overall tax burden of the New Mexico tax structure. In that year, the Legislature enacted a food tax credit administered through the State personal income tax of \$40 per exemption, which rose to \$45 per exemption in 1981. The amount – structured as a refundable credit and applied to all New Mexico resident tax filers – was intended to offset GRT costs on food purchases.

In 1987, a time of fiscal shortfalls for the State, the universal food tax credit was repealed and replaced by a means-tested credit that was scaled as income increased. In addition, the GRT was amended to explicitly provide an exemption for sales of food using USDA food stamps as required by federal law, ensuring that the poorest households would no longer be paying GRT on those purchases. However, in 1993, during another time of fiscal stress for the State, the means-tested food tax credit was repealed.

Following the repeal of the food tax credits, the idea of eliminating the tax on food started gathering steam, and became a major issue during the 2002 race for Governor. Amidst a flurry of public debate and opinion, both candidates for Governor endorsed the removal of GRT on food. However, fiscal shortfalls stalled action on the issue. Instead, a Blue Ribbon Tax Reform Commission was set up to address a range of tax issues, including the food tax, and to develop recommendations “to establish a balanced tax system that provides maximum economic development benefits and maintains necessary government services at an appropriate level”.

The Blue Ribbon Tax Reform Commission developed a number of recommendations for changes to the tax system. In its final report, the Commission noted that “for a variety of reasons, [it] believed that expanding the low-income comprehensive tax rebate table and establishing a new personal income tax exemption was preferable to reducing or eliminating the gross receipts tax on receipts from selling groceries”.

The Blue Ribbon Tax Commission noted it considered several arguments in making a recommendation (see sidebar).

### Blue Ribbon Tax Commission Report:

#### Pros and Cons of a Food Deduction

##### Arguments for a food deduction

- *Food is a basic necessity and should not be subject to tax;*
- *Tax on food is regressive—low-income families pay a higher percentage of their income on this tax than higher income families pay;*

##### Arguments against a food deduction

- *While food is a necessity, there are other necessities that are taxed and removing the tax on food could set a precedent for removing the tax on other necessities, further narrowing the tax base;*
- *A considerable share of low-income families participate in the food stamp program, and thus won't benefit from the tax relief provided by lifting the food tax;*
- *Higher income households will receive most of the benefit of the tax cut in terms of dollars saved;*
- *It would be less expensive to target tax relief to low- and moderate-income households through the income tax system.*

### New Food Deductions Include Hold Harmless Provisions

A significant part of the debate and early opposition to proposals to eliminate the food tax was led by local governments who would lose their ability to tax food if a deduction were enacted. In many municipalities, the tax on food was one of the largest, if not the single largest, contributor to local GRT revenues, as well as being a stable revenue contributor. In addition, many legislators noted the long-term cost to the State coffers of this tax relief.

## Tax Talk continued...

However, after consensus between Governor Bill Richardson and legislative leadership, the Legislature passed House Bill 625 in 2004, and a new deduction for sale of food at retail was added to the GRT effective January 1, 2005.

The bill addressed the revenue concerns of local governments by including a new hold-harmless distribution to every municipality and county to offset the lost revenue from the food deduction. This was a monthly distribution made to each local government equal to amount of the deductions taken by businesses in the local jurisdiction times their current local GRT tax rate.

HB 625 also provided a similar deduction and hold harmless distribution for receipts of certain health care providers (known as the medical deduction). It also repealed a provision called the "municipal gross receipts tax credit" which was a 0.5% State credit for GRT transactions within municipalities. This credit, first enacted in 1986, was intended to reduce the disparity between tax rates within municipalities and outside of municipalities. The repeal of the credit resulted in a 0.5% tax increase on all sales within municipalities. It was estimated to offset, to a large extent, the projected revenue cost to the State general fund of the food and medical tax deductions.

### Hold Harmless Distributions Costs Increase

After the implementation of the new food and medical deductions and hold harmless distributions, it became clear that the actual cost of providing the tax relief and the hold harmless distributions was far more than the original estimates provided in the fiscal impact report prepared by the Legislative Finance Committee, and that costs were growing rapidly year-to-year, driven mainly by the food deduction. In 2013, the Taxation and Revenue Department confirmed that costs had far exceeded early estimates and reported that "for the past five years, the food deduction and hold harmless cost averaged more than double the amount that had been estimated".

The Legislature responded to the rising costs by reducing hold harmless distributions. In 2013, an omnibus tax bill (House Bill 641) led to a planned phase-out of hold harmless payments over 15 years beginning in 2016, with an exception from the phase-out for small cities and counties. The phase-out was coupled with the authorization of new

taxing authority for municipalities and counties, designated as "hold harmless increments" and amounting to 3/8% in increments of 1/8%. Hold harmless increments were subsequently repealed effective July 1, 2019, with enactment of legislation de-earmarking most local increments. At the same time, small cities and counties were exempted from the phase-out, but only if they had not previously elected to impose one or more of the hold harmless increments.

In 2022, cost control of hold harmless payments was no longer the priority, and provisions were enacted (House Bill 163) to provide targeted relief from the phase-out of distributions to additional municipalities that had not enacted a hold harmless increment tax. The legislation applied to municipalities with a population of at least 10,000 that did not have a hold harmless GRT increment in effect on June 30, 2019. Those municipalities would continue to receive a percentage of the hold harmless distribution based on their poverty rate. See table for municipalities meeting the criteria.



The result of the statutory hold harmless changes is that municipalities currently receive either full or varying degrees of partial relief from the cost of the food deduction, based on three factors:

- Whether they enacted at least one of the hold harmless increments authorized by the legislature;
- Population; and
- Poverty levels, if the population is 10,000 or more.

**Hold Harmless Phase-Out Exemptions (HB163 in 2022)**

Municipality	HH % under HB163
Santa Fe	30%
Roswell	50%
Hobbs	50%
Carlsbad	30%
Alamogordo	50%
Gallup	80%
Los Alamos	30%
Los Lunas	30%
Las Vegas	80%
Portales	80%

*Note: Municipalities under 10,000 population were already exempted from the phase-out*

## Tax Talk continued...

Without further legislative action, the discrepancy in distribution amounts will increase in the future as some municipalities reach the zero hold-harmless rate while others continue to receive State distributions.

### Debate About the Tax on Food Continues

It is likely that debate will continue about whether to continue the current system of providing a full GRT deduction for retail sales of food with hold harmless provisions applying to local governments. The additional taxing authority through the hold harmless increments have resulted in taxpayers in some areas experiencing significant tax increases while those in other areas have seen no change. In addition, changes to the hold harmless provisions have impacted both State and local government budgets, sometimes in unpredictable ways, and have raised questions about the long-term viability and equity of retaining the food tax deduction.

In addition, it is not clear how much the food deduction truly benefits low-income New Mexicans. According to the

New Mexico Human Services Department, the SNAP program serves nearly 540,000 New Mexicans every month – over one-quarter of the state's population, who don't benefit from the food deduction.

The Municipal League supports policies that retain taxing authority at the local level, where appropriate. To this end, we supported de-earmarking of local option GRT increments. Similarly, we support GRT policies that would allow municipalities to impose local GRT increments on food. For many communities – especially our smallest towns – exempting food from GRT significantly narrows the tax base. The food deduction can also lead to volatile GRT revenues, as groceries tend to be a fairly stable source of revenue, despite changes in economic conditions. And broadening the tax base can also allow for lowering of rates.

With State revenues at an all-time high, we hope that legislators seize the opportunity for a serious, holistic approach to tax reform – including addressing the food tax question.

## From the Archives: Albuquerque Morning Journal, Jan 19, 1921

### Cities Seeking a Wider Power of Legislators

Twenty-five Bills Prepared By  
New Mexico Municipal League  
for Early Submission to Solons.  
Santa Fe, Jan 19.

Twenty-five bills, mainly to correct minor matters in the administration of cities and towns, were considered at a meeting of the New Mexico League of Municipalities here Tuesday. The league program is to be whipped into final shape and presented to the legislature some time next week.

Of the measures, a few are to increase levies such as one to give cities the right to levy for parks and playgrounds and another to provide that repairs upon pavements within municipalities may be paid

for by tax levies on the theory that if the property owner puts in the improvements the city should maintain it.

There is a bill to make the city clerks appointed and another to require the election of police justices. One of the proposals is for a constitutional amendment which would permit voting upon bonds at special as well as general elections. There is a bill to authorize cities and incorporated municipalities to organize an adequate system of garbage collection.

The league favors the repeal of the road tax law and believes that a share of the automobile license money should be distributed to municipalities.

A law will be proposed giving cities the right to exclusive jurisdiction with regard to weights and measures, under the present system this power is divided between the city and the sheriff.

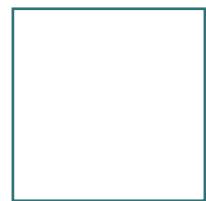
Another law would give the city police definite police powers within one mile outside of the city limits.

Most of the bills are prepared but are not in a final form. This is to be done at once and the entire group of bills will be ready for introduction about Thursday of the coming week.

*Source: Chronicling America*



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# The Municipal Reporter

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