

LEGISLATIVE BULLETIN

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SINE DIE

After adjourning the 2010 regular 30-day session on February 18 without agreeing on a state budget, the Legislature was called back into a special by Governor Richardson. The special lasted four days (they adjourned Sine Die on Thursday, March 4), and the result was a \$5.6 billion budget that includes some state agency budget cuts and tax increases that are focused on trying to shore up the state's current budget deficit. The Governor has 20 days to sign, veto or pocket veto the measures. The main part of the package is an increase in the state Gross Receipts Tax from 5 to 5.125 percent, imposition of the GRT on food, but with a corresponding credit for retailers, and a tax increase of 75 cents per package on cigarettes. The following is a more detailed look at some of the key pieces of legislation the League followed during the regular and special legislative sessions:

OMNIBUS TAX BILL

Senate Finance Committee Substitute for Senate Bills 10, 12 & 13 (2nd SS)

The Omnibus Tax Bill contains three major components: Gross Receipts and Compensating Tax changes, Federal deductions as State Taxable Income, and the Low Income-Comprehensive Tax Rebate (LICTR)

Low-Income Comprehensive Tax Rebate

Increases the amount of income tax rebates available for claimants. This change reduces the regressive effect of the gross receipts tax increase as well as the re-imposition of the tax on the sale of food.

Federal Deductions as State Taxable Income

For personal income tax purposes, this bill amends the definition of "net income" to repeal the itemized deduction for state and local income and sales taxes that are deductible under federal law for income tax purposes.

Gross Receipts and Compensating Tax Changes

The bill would increase the State Gross Receipts and Compensating Tax by one-eighth (.125) percent. The rates would go from 5 to 5 1/8 percent. The bill also re-imposes the gross receipts tax (GRT) on the sale of food.

The changes, in effect, make food taxable at the municipal and county GRT rates. Here's how it works: the sale of food will become taxable at the total GRT rate but the food retailer would be able to claim a 5 and 1/8th percent tax credit, thereby leaving only the local rate to apply to the sale of food. For example, if the total GRT rate in a municipality is 7 and 1/8 percent with the municipal share of 1 percent and the county share is 1 percent, the tax, after the business takes a credit of 5 and 1/8 percent, will be 2 percent ($7.125 - 5.125 = 2$ per cent).

The bill also closes a loophole in the compensating tax. Currently certain sales to businesses from out-of-state business escape taxation. This bill would make those sales subject to compensating tax.

Local Governments and the Hold Harmless Provisions

The bill repeals the current food deduction but creates a 5.125 percent credit for food so that the state gross receipts tax rate would not apply. The hold harmless distribution for local option gross receipts taxes on food would be repealed. Municipal and county gross receipts taxes would be applied to food and would approximately replace the revenue loss of the current hold harmless distribution. Keep in mind that some municipalities and counties receive an increase or decrease if the local tax rates were changed after January 1, 2007.

The hold harmless distribution of the State's 1.225 percent to municipalities on food would be reduced by .175 percent to 1.05 percent beginning in FY 2012. This provision would result in a \$5.6 million dollar loss to municipalities.

Local Governments and the Compensating Tax

Smaller municipalities and counties currently receive 10 percent distributions from the state's compensating tax. The increase of 1/8th percent in compensating tax and the closing of the compensating loophole increase the amount of money available under the compensating tax, resulting in an increase to small municipalities and counties.

Bottom Line

The Gross Receipts Tax changes in this bill do the following:

- Increases the State GRT and Compensating Tax from 5.00 to 5.125 percent (1/8th percent);
- Taxes food at the municipal and county GRT rates; and
- There is no state GRT on the sale of food.

INCREASE IN CIGARETTE TAX House Taxation and Revenue Committee Substitute for House Bill 3 (2nd SS)

The state tax on cigarettes would go up 75 cents from 91 cents to \$1.61 per pack. This would raise an estimated \$33 million with one third of this earmarked for early childhood programs. The tax increase would sunset in 2014.

PUBLIC EMPLOYEES RETURNING TO WORK Senate Floor Substitute for Senate Public Affairs Committee Substitute for Senate Bill 207

Amends §10-11-8. Eliminates the current provisions allowing a retiree to return to work with a PERA affiliated employer and continue to collect their pension. "Grandfathers" those currently in return to work status but requires these retirees to contribute the employee PERA share beginning July 1, 2010. Eliminates the current exemption for police chief and undersheriff positions and retains current exemptions for retirees who are elected to office and those employed by the legislature for legislative session work. The bill does not address employees who retire under ERA, the educational retirement system. Effective 7/1/10. Below is a summary by category:

Retirees Currently in Return to Work Status: These employees are "grandfathered" and are subject to the provisions in the law in effect when they returned to work. They may continue to receive their pensions; however, beginning July 1, 2010, they must contribute the employee share in an amount specified for that position. It is implied that the employer will continue to pay the employer share. (Currently the employer pays both employer and employee share except for those who retired and were re-employed under the police chief and undersheriff exemptions.)

Retirees Returning to Work After July 1, 2010: Retirees returning to work with an affiliated employer must wait out 12 months and their pension is suspended when the new employment begins; the pension resumes when the subsequent employment ends.

Retirees returning to work have the option to elect to become a PERA member. If they elect not to be a member, they accrue no service credit and no contributions by the employee or employer are made. If they elect to become a member, service credit is accrued, both the employee and employer contributions shall be made, and the pension would be recalculated if the subsequent employment is for at least three years.

Contract employees: Retirees who return to work as an independent contractor with the affiliated employer from which they retired must wait out 12 months prior to re-employment and their pension is suspended upon re-employment.

Exemptions: Retains the current exemptions for retirees who are elected to office and those employed by the legislature for legislative session work. Those in exempted status continue to collect their pensions but are not entitled to accrue service credit or acquire or purchase service credit in the future for the period of their re-employment.

PLEASE NOTE: If you are a PERA retiree and you are a newly-elected official; and if your municipality provides compensation as an elected official and you don't want to suspend your retirement; **you need to file a waiver request with PERA within 30 days of your election.**

OTHER LEAGUE PRIORITY BILLS

The League followed a limited number of priority bills during this 30-day session. Staff spent a good deal of time and effort tracking legislation that had the potential to preempt any local municipal authority. One successful priority bill was **House Bill 30, Capital Outlay Gross Receipts Restrictions introduced by Representative Jim Trujillo and Senator Howie Morales.** The bill authorizes municipalities and counties to impose the Capital Outlay Gross Receipts Tax increment without first imposing all other local option gross receipts taxes. The measure passed the House on a 64-0 vote and similarly in the Senate on a 36-0 vote. The League thanks Representative Trujillo and Senator Morales for introducing and passing this League priority.

Other League priorities fared well in one house but stalled in another. **House Joint Resolution 10, Judicial Standards Commission Members, was introduced in the House by House Majority Leader Ken Martinez.** The proposed Constitutional Amendment would have increased the number of members of the Judicial Standards Commission and added a municipal judge as a member. The Resolution passed the House unanimously on a 66-0 vote but failed to pass out of the Senate Rules Committee at adjournment. This Joint Resolution was introduced last year by the Majority Leader but died on the Senate floor. The League thanks the Majority Leader for his continued support with this issue.

Senate Finance Committee Substitute for Senate Bill 182, Capital Outlay Reversions for Solvency, reverts more than \$200 million of previously-authorized capital outlay projects funded by General Fund and Severance Tax Bond monies. The bill also contains a multi-million dollar funding swap from General Fund to Severance Tax Bond funding for several projects. The Legislature's web site (<http://www.nmlegis.gov>) has summaries of the Capital Outlay Reversions and Capital Projects GO Bond bills.

House Bill 226, General Obligation Bond Projects was introduced by Representative Jim Trujillo. The bill contained \$3 million for public libraries statewide, which has been a League priority for several years. The bill was tabled in House Taxation and Revenue Committee. A similar bill in the Senate, **Senate Bill 113 introduced by Senator Carlos Cisneros,** authorized a lesser amount of General Obligation Bonds for senior

centers and public libraries as did the House version. The Senate version passed both the Senate and the House, but the Senate failed to concur with House amendments and died on adjournment.

During the Second Special Session, **Senate Bill 1, 2010 Capital Projects General Obligation Bond Act introduced by Senator Carlos Cisneros**, passed both the Senate and the House. The bill that now goes to the Governor contains a \$2 million General Obligation Bond provision for public libraries statewide that must be approved by voters in the 2010 November General Election. Increasing funding for public libraries has been a League priority for several years, and we thank the sponsors for their efforts to bring increases for public libraries.

This year the Legislature introduced far fewer pieces of legislation, no doubt due to the absence of discretionary funds. According to the Semi-Final Locator published by Legislative Council Service, during the regular 30-day session the House introduced 337 bills, 64 Joint Memorials, 76 Memorials, 15 Joint Resolutions and six Resolutions. In the Senate, there were 323 bills, 62 Joint Memorials, 55 Memorials, 17 Joint Resolutions, six Resolutions and one Concurrent Resolution for a total of 962 pieces of legislation. This compares to 2,056 pieces introduced during the 2009 60-day session, or a 53 percent reduction. During the Second Special Session, the House introduced seven bills and three Memorials. The Senate introduced 17 bills and two Memorials. The Governor has until March 10 to sign the bills from the regular session and until March 24 to sign those coming from the Special Session.

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*Please make your plans now to attend the League's District meetings that are scheduled in several locations across the state. They begin March 22 in Taos. Registration forms and general information are located on the League's web site at **www.nmml.org**.*