

March 6, 2012

SENATE EXECUTIVE MESSAGE NO. 114

The Honorable Timothy Z. Jennings, President Pro Tempore
And Members of the New Mexico State Senate
State Capitol Building
Santa Fe, New Mexico 87501

Dear President Pro Tempore Jennings and Members of the Senate:

Pursuant to the Constitution of the State of New Mexico, Article IV, Section 22, I hereby VETO and am returning SENATE FINANCE COMMITTEE SUBSTITUTE FOR SENATE BILL 9, as amended, enacted by the Fiftieth Legislature, Second Session, 2012.

This legislation would raise taxes on grocery stores, clothing stores, and other businesses operating stores of a particular and arbitrary square footage while slightly cutting corporate taxes for large banks, casinos, payday loan companies, and other corporations that earn more than \$1 million annually.

Perhaps proponents of this legislation had a few particular corporate targets in mind when pushing for the tax increase that would result from this bill, but I doubt they understood the true breadth and impact on New Mexicans of the changes they were supporting.

We know that consumers suffer in the form of higher prices when additional taxes are imposed on businesses. And, it is widely understood that when one state makes it more costly for employers to operate, these businesses are faced with a strong incentive to leave the state, while potential new businesses have an incentive to stay away.

This legislation targets grocery stores. New Mexicans would pay higher food costs.

This legislation targets certain large clothing stores. New Mexicans would pay higher costs for their families' clothing.

This legislation targets home improvement stores. New Mexicans would pay higher costs to make repairs and investments in their homes.

Worse yet – retail workers would undoubtedly feel the brunt of the new burden placed on these businesses, as they downsize or close their doors in response to their new financial demands. And, as though it's not difficult enough to attract new companies to our state, language in the Fiscal Impact Report for this legislation states, "... mandatory combined reporting may discourage corporations with profitable operations in other states from locating in New Mexico...."

Our tax policy decisions cannot be made in a vacuum. At a time when New Mexico is working to become more economically competitive with surrounding states, the overriding downside of this legislation is that it would erode – not bolster – our competitiveness. While proponents generally point to New Mexico being the last western state to adopt combined reporting, they often fail to mention that other western states that have instituted combined reporting have a much lower corporate tax rate than New Mexico's, and many also implement other policies that make for a more competitive and welcoming tax code, such as single-weighted sales factor apportionment.

New Mexico has one of the highest corporate tax rates in the country – certainly among western states - and this bill's attempt to drop that rate by one-tenth of one percent does little to change that fact. Furthermore, as opposed to a single-weighted sales system, New Mexico businesses operate under a tax system that requires most companies to use three-factor apportionment. When you throw in our burdensome gross receipts tax, New Mexico's tax treatment of manufacturers, contractors, and both small and large businesses tends to be quite complex and onerous.

Finally, I am very concerned that a bill with such significant economic ramifications – especially one that raises taxes on job creators in our state - was never heard in the House Taxation and Revenue Committee. Instead, in the waning days of the session, it was heard only in the House Judiciary Committee before being sent to the House floor. Perhaps this was a decision made by House leadership based on where they had the votes to get it passed, or perhaps it was an oversight as time became tight, but either way, a bill such as this, that raises revenues through new taxes, should have been heard in the Taxation and Revenue Committee. This is particularly true of a bill that is this arbitrary in nature, lacking any discernible rationale for discriminating between the types of corporations that would have their taxes raised and those that would have their corporate income tax rate slightly lowered.

I'm proud of the important tax reforms that were passed by the Legislature and signed into law during this past session. If the Legislature is serious about continuing this work

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and truly leveling the playing field with other states so that we can compete for jobs, I would be happy to work with them on a broader strategy of aggressive tax policy changes to make New Mexico's tax environment more competitive with that of states around us.

As I stated clearly following the end of the session:

If this bill makes New Mexico less competitive, I would veto it – and it does.

If this bill raises taxes, I would veto it – and it does.

If this bill drives up the cost of items New Mexicans buy every day, such as food, clothing, and household supplies, I would veto it – and it does.

And, if this bill sends businesses and jobs elsewhere and hurts our efforts to attract new ones, I would veto it – and sadly, it would do just.

This veto is a reflection of my belief that we cannot turn New Mexico's economy around and create high-paying jobs in our state unless we are willing to stand up for our workers by competing with the states around us. Achieving sustained economic growth will take a full commitment to pursuing new jobs and welcoming job creators to New Mexico; this legislation would have served as a strong impediment to that commitment.

Respectfully yours,

Susana Martinez
Governor

RECEIVED FROM THE OFFICE OF THE GOVERNOR

Time: _____ a.m. p.m.

Date: _____ 2012

By _____
Secretary of State

Time: _____ a.m. p.m.

Date: _____ 2012

By _____
Chief Clerk of the Senate