

Governor Lujan Grisham, legislators wrestle for control in pandemic spending debate

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First, there was a tug of war over who could control funds sent from Washington.

Now, the Legislature is questioning whether the governor overstepped her legal authority.

In the midst of all the other tumult the pandemic has brought to New Mexico, the coronavirus also is sparking tension within state government — in the form of a quarrel over control between legislators and Gov. Michelle Lujan Grisham.

The source of friction?

Clearly, there's some disagreement regarding public health orders, such as a recent one reinstating business closures. Similar debates are raging nationwide.

Yet so far, a more tangible division may center on how the governor has spent money to fight the virus.

"There's a real tension building up between the executive and the legislative members," said Sen. John Arthur Smith, chairman of the Senate Finance Committee.

Prior to last month's special session, the two branches of government argued over which one had the power to spend federal stimulus dollars approved for novel coronavirus efforts, a dispute the governor ultimately won when she vetoed — and then replaced — certain parts of legislators' budget bill.

Then on Thursday, House and Senate leadership called on Lujan Grisham to explain the legality of her decision to unilaterally authorize emergency funding to deal with the outbreak "in excess of the statutory limits."



In this Feb. 15, 2018 file photo, New Mexico Rep. James Townsend, an Artesia Republican, researches a bill on the House floor in Santa Fe, N.M., at the New Mexico Statehouse. The Republican Party of New Mexico suffered historic losses statewide and legislative races this month and now must regroup without a clear leader. (Photo: Russell Contreras/AP)

Republicans, who are a minority in the Legislature, had been arguing since early in the pandemic that the governor violated state law through that spending, and they urged a key legislative panel to look into the matter.

The issue took on greater significance when that committee, the Legislative Council, voted unanimously to ask attorneys to look into the spending earlier this month. The panel includes top Democrats, who took the uncommon step of questioning the legality of decisions made by an executive from their own party.

Asked about the emergency purchases, the acting secretary of the state Department of Finance and Administration said they were imperative, particularly as many of them came in the frantic early stages of an unprecedented outbreak.

"This was kind of a no-brainer," Debbie Romero said. "We needed to get testing up, we needed to get (personal protective equipment) purchased, we needed to get food distributions out. I mean, we were closing schools and we wanted to make sure kids had meals."

The Governor's Office maintains it fully complied with state law, saying the state's All Hazards Emergency Management Act allowed the governor to authorize the spending.

"Not only does the governor have the ability to do so, she has the duty to do so," spokeswoman Nora Meyers Sackett said.

'A line in the sand'

Shortly after the coronavirus outbreak began, Lujan Grisham issued an executive order March 27 to make available \$20 million in emergency funds, and another order April 8 allocated \$10 million more.



New Mexico Gov. Michelle Lujan Grisham holds a news conference about racism in New Mexico, at the state Capitol in Santa Fe, N.M., Thursday, June 4, 2020. (Photo: Eddie Moore/AP)

In those first couple of months of the pandemic, the state's finance department — in conjunction with health, homeland security and other agencies navigating the outbreak — approved numerous emergency purchases amounting to millions of dollars each to buy personal protective equipment and other coronavirus-related goods and services.

A May purchase order, for instance, shows the state government spent \$2.9 million to give Cochiti Pueblo broadband connectivity so residents and K-12 students could use the internet without having to go to the library and violate social-distancing measures.

Another set of orders, authorized in April and May, allocated \$2.46 million to buy respirators and gloves.

Almost immediately, Republican legislators began crying foul, saying state law limits governors to emergency appropriations of only \$750,000 each and arguing the governor should have obtained approval from the Legislature first.

"She was out of line when she did that," House Minority Leader Jim Townsend said Friday. "I think she knew she was out of line, and she did it anyway."

Some fiscally conservative Democrats soon joined the chorus.

Legislators "have to draw a line in the sand if they're going to protect their appropriation authority and say, 'Hey you've overstepped, governor, when you've done this,' " said Smith, D-Deming.

Last week, Senate President Pro Tem Mary Kay Papen and House Speaker Brian Egolf sent a letter to the governor on behalf of the Legislative Council asking her to justify the spending so legislators "may further analyze the separation of powers concerns that have been raised."



New Mexico Gov. Michelle Lujan Grisham, below, urges members of the Legislature's powerful Senate Finance Committee including chairman John Arthur Smith to provide new funding for early childhood education on Friday, March 15, 2019, in Santa Fe, N.M. (Photo: Morgan Lee/AP)

Some in the legislative branch also have taken issue with a policy exemption approved in March by the state's finance department that allowed agencies to pay for emergency goods and services before they received them.

Among the purchases made with that exemption was a \$2.6 million order for gowns and masks from a medical supply company based in Florida.

The exemption, which wasn't mentioned in the letter to the governor, overrode a statute that says the state can't pay for any goods or services until they've been received.

"When you're moving really fast, even if it's for good purposes, you increase the risk of taxpayers getting bilked out of money," said Charles Sallee, deputy director of the Legislative Finance Committee. "Moving fast makes it hard to do the due diligence."

State Auditor Brian Colón made similar comments about those purchases. His office said it couldn't comment on the specifics because it had "an open examination into the concerns over recent emergency procurement."

"The prepayment or payment for goods or services not rendered bears considerable risk," said Colón's spokeswoman, Stephanie Telles.

'A mile in our moccasins'

For the state's finance chief, the bickering over how the emergency payments were authorized misses the point.

In March, New Mexico was thrust into the biggest global health crisis in a century. Without much of a coordinated federal response, it scrambled largely on its own to set up COVID-19 testing and purchase protective equipment.



Volunteers hand out personal protective equipment at a free face mask and sanitation kit giveaway event at the parking lot of Thomas Branigan Memorial Library in Las Cruces on Saturday, July 18, 2020. (Photo: Nathan J Fish/Sun-News)

"I wish you could have walked a mile in our moccasins when we were having to deal with these emergencies," Romero said. "Everything in our minds were considered justifiable emergencies. I can't think of one thing we did that we didn't have to do to address the issues that were going on at the time."

State officials were working late into the night and the early hours of the morning to try to acquire personal protective equipment from vendors around the world.

Diego Arencon, Lujan Grisham's deputy chief of staff, led the efforts, joined by others at the Departments of Health, Homeland Security and Emergency Management, and Finance and Administration.

"Diego was having conversations with people in Korea at 2, 3, 4 o'clock in the morning because that was the time difference," Romero said. "Everyone was doing what they could."

Romero recalled one instance in which they lost a bid to secure supplies around midnight because the state of Tennessee outbid them by one penny.

"Those are the kinds of things that were happening," she said. "Did I like the fact that we were having to rush things so quickly without a lot of thought and the normal amount of time to really dig deep into it? No, I didn't. But we had no choice."



New Mexico Gov. Michelle Lujan Grisham removes her face mask at the start of an update on the COVID-19 outbreak in New Mexico and the state's effort to limit the impact of the disease on residents, during a news conference at the State Capitol in Santa Fe, N.M., Wednesday May 27, 2020. (Photo: Eddie Moore/AP)

Romero said the state intends to pay back the amounts spent through the emergency orders with the newly arrived federal aid.

Regarding the exemption allowing the state to pay for items before receiving them, the secretary said officials approved it because suppliers required payment upfront. She said the state only used the provision "a couple of times."

She added she believed the supplies were all received but said the agencies that made the order, such as the Department of Health, would need to verify that.

Some top legislators have a similar view as Romero's.

While the House speaker voted in favor of reviewing the spending, Egolf called the issue "a conversation about a technicality."

"The overall issue here is the governor was acting in response to a public health crisis, a global health emergency. And her response has been tremendous," the Santa Fe Democrat said. "Why are we elevating form over substance?"

He also said the issue could be resolved by the governor amending her original executive order.

"The result is not going to change," he said. "It's just the mechanism by which it occurs."

Egolf added that he didn't believe there was an abnormal level of tension between the Governor's Office and the Legislature — there's certainly much less, he said, than during the administration of former Gov. Susana Martinez.

Still, Smith and others are urging their fellow legislators to push hard to hold the executive accountable, arguing Lujan Grisham's moves set a bad precedent.

"I'm going to be disappointed if they turn their head and look the other way," Smith said.