

State legislators, governor wrangle over \$1.1 billion in stimulus spending

BY DAN MCKAY / JOURNAL CAPITOL BUREAU

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Rep. Patricia Lundstrom, D-Gallup, chairwoman of the House Appropriations and Finance Committee, listens to testimony about budget legislation in 2020. (Eddie Moore/Albuquerque Journal)

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SANTA FE – Over \$19 billion in federal stimulus funding is pouring into New Mexico – a deluge that began last year and will continue amid the pandemic, according to a new report by legislative analysts.

But a substantial slice of the federal funding – about \$1.1 billion – remains at the center of a standoff between the governor and state legislators over who is empowered to determine how it's spent.

Gov. Michelle Lujan Grisham last month vetoed the Legislature's plan for allocating the money, contending lawmakers had intruded on the legal authority of the executive branch to handle federal funding.

One of the Legislature's key budget leaders, however, made clear Thursday the dispute isn't settled.

Rep. Patricia Lundstrom, a Gallup Democrat and chairwoman of the House Appropriations and Finance Committee, didn't rule out litigation as she and other lawmakers discussed the issue. She said she intends to object if state agencies under Lujan Grisham try to spend the disputed funding without legislative approval.

"It's clearly our role when it comes to appropriating and budgeting," Lundstrom said, "and we're going to protect that."

In a written statement, Nora Meyers Sackett, a spokeswoman for Lujan Grisham, said the administration would welcome legislative collaboration on how to best spend the federal funding. But last month's budget language was premature, Sackett said, because the state hasn't yet received the funds at issue or been informed of guidelines on their use.

The veto – and how to respond – generated intense discussion among legislators.

Rep. Dayan Hochman-Vigil, an Albuquerque Democrat and member of the House budget-writing committee, said lawmakers "need further clarification and direction from the courts as to what our appropriation powers look like."

At least one lawmaker suggested court action isn't necessary.

House Majority Leader Sheryl Williams Stapleton, D-Albuquerque, said executive agencies already must submit spending plans to the Legislature and face scrutiny for their work, including oversight by state auditors.

"We do have an accountability cycle," she said.

In vetoing the Legislature's plan for the federal funds, Lujan Grisham cited a state Supreme Court ruling that she said concluded certain federal funding isn't subject to legislative appropriation powers.

She said she rejected budget language that would "impermissibly attempt to appropriate or control the allocation of federal funds to a New Mexico governmental entity."

Some lawmakers offered a different interpretation Thursday of the 1974 court ruling cited by Lujan Grisham, known as *Sego v. Kirkpatrick*. They also pointed to a state law calling for broad revenue to go into the general fund and a provision in the state Constitution requiring a legislative appropriation for money paid out of the state treasury.

“These were unconstitutional vetoes,” Rep. Antonio “Moe” Maestas, D-Albuquerque, said Thursday. “The question is, do we go to the courts for a remedy?”

Weighing options

In Thursday’s meeting, members of the Legislative Finance Committee took no final action on how to resolve the dispute over spending authority.

Among the potential options that surfaced were objecting to budget-adjustment paperwork filed by the Lujan Grisham administration, filing a lawsuit on behalf of an individual lawmaker or a formal legislative panel, or pursuing a veto override in an extraordinary session.

Thursday’s discussion didn’t fall along party lines, with Democrats and Republicans alike expressing concern about the federal funding veto.

Democrats hold majorities in both legislative chambers, and Lujan Grisham is a Democrat, too.

“We have to have an equal presence in this thing,” Sen. Pat Woods, R-Broadview, said of legislative authority. “It’s our elected duty.”

But Sackett, the governor’s press secretary, said appropriating federal funds is up to the executive branch.

“What’s more,” she said, “without the governor’s action, the cart would have been put entirely before the horse, given that New Mexico has not yet received any of these federal funds, nor have we been informed of how many allotments the funds will come in, nor have we yet received any guidance from the Treasury Department on how the funds may be spent – all details that surely state legislators would agree are critical to making such appropriations.”

Injection of funds

Disputed authority aside, a report by LFC analysts outlined the magnitude of the federal funding infusion through stimulus bills passed at the federal level, starting under then-President Trump and continuing in the Biden administration.

All told, the funding is expected to exceed \$19 billion, some of which hasn’t yet arrived.

By comparison, New Mexico’s general-fund operating budget totals about \$7.4 billion for the coming year.

The gross domestic product of the state equaled about \$100 billion in 2020, according to the Federal Reserve Bank of St. Louis.

Much of the \$19 billion in funding is already spoken for – flowing directly into residents' back accounts as stimulus checks, reserved for specific purposes or used to bolster a host of financial assistance programs, such as unemployment benefits.

Some money has gone directly to school districts or other government agencies.

Schools, for example, have spent only about 4% of what they're expected to receive. The money has largely gone to computers, internet hot spots, personal protective equipment, sanitation and, in some cases, salaries, according to LFC analysts.

But it isn't clear yet how they will spend the bulk of the money they're getting.

Nonetheless, some of the federal stimulus money flowing into New Mexico is undesignated general funding that, Lundstrom said, should be subject to legislative appropriation.

In budget legislation this year, lawmakers outlined plans to spend about \$1.1 billion of the money to help a depleted state unemployment fund, a popular college scholarship program and highway repairs – the language now at the center of the separation-of-powers dispute.