

## The 2016 New Mexico Political Outlook



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The upcoming election year will be pivotal in New Mexico politics and government. It is one of those years that can be more important than others. What happens next year could dictate the course of New Mexico government for some time in the future. This reference is designed to provide a very basic political overview of state government and elections in the upcoming year and is not an exhaustive political analysis of New Mexico politics and government for 2016 or otherwise. It is a “reference” or general outlook for 2016. For more detailed analysis and information, please contact Hal Stratton, [hstratton@bhfs.com](mailto:hstratton@bhfs.com), 505.724.9596.

This reference is not a substitute for legal counsel or specific legal advice. It is an independent review and general overview of governmental and election law in New Mexico. It is just a guide and overview of those topics. Please seek detailed legal advice as to any campaign contribution or expenditure issues that may arise.

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## I. 2016 NEW MEXICO LEGISLATURE

The 2016 New Mexico Legislative Session begins at noon on Tuesday, Jan. 19, 2016, and runs for 30 consecutive days until noon on Thursday, Feb. 18, 2016. The even-year New Mexico legislative sessions are limited to 30 consecutive days and are further limited in subject matter by the New Mexico Constitution to “(1) budgets, appropriations and revenue bills; (2) bills drawn pursuant to special messages of the governor; and (3) bills of the last previous regular session vetoed by the governor.” These restrictions are not applied to constitutional amendments proposed during the session, which must be passed by a majority of those elected in each house and then approved by a vote of New Mexico voters at the next general election.

The current political makeup of the New Mexico Legislature consists of 37 Republicans and 33 Democrats in the New Mexico House of Representatives and 24 Democrats and 18 Republicans in the New Mexico Senate. As discussed elsewhere herein, all 112 members of the House and Senate are up for election in 2016.

Proposed legislation may be prefiled for the upcoming legislative session beginning December 15, 2015. The legislature convenes at noon on Tuesday, January 19. The deadline for the introduction of legislation during this session is February 3 and the session ends at noon on Thursday, February 18. The N.M. Supreme Court has ruled that the New Mexico legislative session must end on the 30th consecutive day of the session at noon and that any legislation passed after that time is invalid.

The governor has three days in which to sign or veto bills from their passage by the Legislature unless the legislation is passed within the last three days of the session, in which case the governor has 20 days from the end of the legislative session, until March 9 to sign legislation. Legislation that is not signed by the governor within the three-day or March 9 periods is considered to be pocket vetoed (which in effect is equivalent to a regular signature veto by the governor).

Proposed constitutional amendments passed by the Legislature go directly to the next general election ballot for approval or disapproval by the voters without gubernatorial participation.

The Legislature can be called into special session by the governor and such session may consider only matters contained in the governor’s proclamation for that session. The Legislature may provide for an “extraordinary session,” effectively calling themselves into session by a vote of three-fifths of those elected to each house. Extraordinary sessions are limited to 30 days.

## A. Political Makeup and Leadership of the 2016 New Mexico Legislature

### 1. New Mexico House of Representatives

Republicans won control of the New Mexico House of Representatives in the election of 2014 for the first time since the 1953-1954 legislature.<sup>1</sup> In order to gain control in 2014, the Republicans had to effect a change of membership in the House from 37-33 Democrat to 37-33 Republican. Members of the New Mexico House of Representatives must stand for election every two years.

The current speaker of the New Mexico House is Republican Don Tripp, a businessman from Socorro. Speaker Tripp was first elected to the House in 1999 and has served continuously since that time.

Republican Nate Gentry, a lawyer from Albuquerque, serves as majority leader and was first elected to the House in 2010. He holds a B.A. from Rhodes College and a J.D. from the University of New Mexico. Prior to serving in the House, Gentry worked for U.S. Sen. Pete Domenici and served as legal counsel for the United States Senate Energy and Natural Resources Committee.

Republican Alonzo Baldonado from Los Lunas serves as House majority whip. Baldonado holds a BBA from the University of New Mexico and currently owns and operates a real estate and property management company in the Valencia County area with his wife. Baldonado was first elected to the New Mexico House in 2010.

The minority leader in the House is Democrat Brian Egolf of Santa Fe. Egolf was elected to the House in 2008. Egolf earned a B.S. in diplomacy and public service from Georgetown University in 1999 and a J.D. from the University of New Mexico. He practices law in Santa Fe.

Democrat Sheryl Williams-Stapleton from Albuquerque is the House minority whip and was first elected to the House in 1994. Williams-Stapleton earned a B.S. from the University of New Mexico in 1978 and an M.A. in multicultural education from the University of New Mexico in 1987. She lists her profession as an educator

### 2. New Mexico State Senate

The New Mexico Senate consists of 42 members who are elected every four years. The Senate terms were initially staggered prior to 1982 but were rearranged for election all together during the same election every four years through the reapportionment process in that year. The Senate is presided over by the Lieutenant Governor who votes only in the case of a tie. The Senate is currently controlled by the Democrats by a margin of 24-18.<sup>2</sup>

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<sup>1</sup> Also, the 1953-1954 legislature is the only time prior to the current session that the Republicans have controlled the New Mexico House since the 1929-1930 legislature. During three out of four legislatures during 1979-1986, the House was controlled by a coalition of between 26 and 29 Republicans and 10-11 Democrats, depending upon the particular two-year session.

<sup>2</sup> The New Mexico Senate has been controlled by the Democrats since 1932 with the exception of a tie in 1985. In late 1985, one of the Democrat senators switched parties giving the Republicans outright control by a margin of 22-20. During the years 1987 and 1988, [bhfs.com](http://bhfs.com) Brownstein Hyatt Farber Schreck, LLP

The Senate elects a president pro tempore from its membership who presides over the Senate in the absence of the Lieutenant Governor. Currently, Democrat Mary Kay Papen of Las Cruces holds that position. Papen was first elected to the Senate in 2000 and is a retired car dealer.

Democrat Michael Sanchez from Belen is the Senate majority leader. Sanchez earned his B.A. in 1973 and a J.D. in 1976, both from the University of New Mexico. Sanchez is a practicing attorney.

The Senate majority whip is Democrat Michael Padilla, a businessman from Albuquerque. He was first elected to the Senate in 2012. Padilla attended the University of New Mexico and the University of Phoenix.

The Senate minority leader is Republican Stuart Ingle from Portales. He was first elected to the Senate in 1984 and holds a B.S. degree from Oklahoma State University. Ingle is a farmer.

Republican Bill Payne, an attorney from Albuquerque, is the Senate minority whip. Payne was first elected in 1996 and earned his B.A. from the University of New Mexico, his M.A. from Georgetown University, and his J.D. from the University of New Mexico School of Law. Payne served as a rear admiral in the United States Navy.

## **B. 2016 Legislature—Expected Issues and Legislation**

A complete discussion of the issues expected to be considered in the 2016 New Mexico legislative session is beyond the scope of this reference and will evolve continuously from the date of this writing through the legislative session. The following are some of the issues that can be expected to be considered by the 2016 New Mexico Legislature:

**1. The State Budget/Capital Expenditures**—As noted earlier, the subject matter of the upcoming 2016 legislative session is limited by the New Mexico Constitution. The Legislature's main task during this short, even-year session is to pass the general appropriations act, which implements a state budget for the upcoming fiscal year. The annual general operating budget for New Mexico state government is now in excess of \$6.2 billion. Additionally, the Legislature will consider a capital outlay bill for capital projects across the state. Capital outlay legislation is separate from that of the general operating budget and is funded through proceeds from severance tax bonds, nonrecurring revenue in the general fund and proceeds from general obligation bonds.

In addition to omnibus bills such as the general appropriation act and the capital outlay bill, any other tax or appropriation bill may be introduced by the members during this session without a message from the governor. The prospect of such spending legislation will depend on state revenues available to fund such projects.

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taking a page out of the House's coalition playbook, the Senate was controlled by bipartisan coalitions between all of the elected Republicans and varying numbers of a minority of Democrat senators.

In August of 2015, the Consensus Revenue Estimating Group<sup>3</sup> presented state revenue projections to the Legislative Finance Committee projecting that there would be \$293 million in “new” state revenues available to the Legislature to spend for FY 17 in addition to the amount that was available the previous fiscal year. This projection was met with caution and some skepticism by the legislators serving on the committee primarily due to the falling price of oil. These revenue estimates were based on New Mexico oil prices being roughly \$51 per barrel for the current budget year and about \$56 per barrel for next year. Since these projections, however, the price of oil has been continually hovering in range of the low \$40s per barrel with some projecting that the price of oil was going to fall even further. Every \$1 fluctuation in the price of a barrel of oil results in a \$7.5 million adjustment in state revenue. These are the figures that the administration and the Legislative Finance Committee have been working with in forming a budget for the upcoming session since that August meeting.

However, not surprisingly, those figures for new money have, as of Dec. 7, 2015, been revised downward more than \$60 to \$232 million. These figures are based on a price per barrel of oil of \$49. But, as recently as Dec. 7, the price of oil has dropped to a seven year low of \$37.65 per barrel. And the estimate being used is for the next fiscal year, July 1, 2016 to June 30, 2017. This illustrates the difficulty in predicting how much money will be available for legislators to appropriate during the upcoming legislative session.

Big-ticket spending requests that have been proposed for the upcoming legislative session include \$85.2 million in additional funds for Medicaid, nearly \$12 million for the Department of Corrections to hire more corrections officers and \$14.5 million for additional funding to the judicial branch of government to pay for raises for court clerks and judges among other expenses.

In a proposal related to state funds and finances, there will be another effort in the Senate to tap New Mexico’s Land Grant Permanent Fund to pay for early childhood education. Last year, the interest off this \$14.6 billion fund amounted to \$655.8 million dollars, which was used mainly for primary education. Traditionally, the Legislature has been reluctant to breach the principal of the fund and to maintain it as a source of income for education.

**2. Business Legislation**—All other legislation not involving appropriations or taxes to be considered germane under the constitution during the short session requires a message from the governor calling for such legislation.<sup>4</sup> Assuming messages are obtained from the governor, as is the case in all sessions, there are a number of subjects expected for consideration that will affect business. The following are a few of those subjects:

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<sup>3</sup> The Consensus Revenue Estimating Group consists of professional economists at the New Mexico Taxation and Revenue Department, the Department of Finance and Administration, the Department of Transportation and the Legislative Finance Committee.

<sup>4</sup> The rules committees of each house pass on the determination as to whether any legislation introduced in the short session is “germane” and can therefore be considered as within the constitutional proscriptions regarding 30-day session legislation.

**REAL ID Legislation**—The federal REAL ID Act implements a 9/11 Commission recommendation urging the federal government to “set standards for the issuance of sources of identification, such as driver’s licenses.” Currently, New Mexico is out of compliance with the federal act and has been granted several extensions by the Department of Homeland Security (DHS) in which to come into compliance. On Oct. 19, 2015, the DHS sent a letter to New Mexico officials notifying them it would not grant the state another extension to come into compliance. As a result, the federal government will not accept New Mexico driver’s licenses to enter some federal buildings, such as those on military bases or at national labs, starting Jan. 19, 2016. In the upcoming session, the governor will once again have a proposal introduced that would result in compliance with REAL ID by ending the practice of issuing New Mexico state driver’s licenses to individuals regardless of their immigration status. There will doubtless be other, alternative proposals offered by legislators to bring the state into compliance as well.

**Workers’ Compensation**—A number of adjustments to the state’s workers’ compensation system were made by the Legislature in recent years. However, one change sought by businesses but not adopted by the last Legislature would lower the amount an injured employee could collect if he or she was under the influence of drugs or alcohol at the time of the accident. It is expected that this provision will be introduced once again in this upcoming session.

**Unemployment Insurance**—In an effort to restock unemployment insurance reserves that declined during the recent recession, the state implemented a new formula for calculating employer payments. After determining an individual business’ “benefit ratio” based in part on how much it has used the insurance, the rate is then multiplied by a “reserve factor” based on how much the state needs to replenish the fund. The reserve factor is currently set at its highest possible rate according to some business leaders. This fund consisted of \$580 million in 2008 and fell to a low of \$30 million in 2012. It now sits at \$263 million. Some businesses reportedly have seen unemployment insurance costs rise between 40 and 400 percent this year based on the current formula. Certain business interests will seek legislation lowering the reserve factor and allowing the fund to grow more slowly, thereby reducing the immediate impact on businesses.

**Capital Gains Tax Credits**—Legislation allowing the rollover of capital gains tax credits from the sale of a business if that owner reinvests in the state will be introduced. The intent of this legislation would be to make New Mexico more competitive with adjacent states such as Texas, which has no capital gains tax.

**Film Production Tax Credits**—There will be attempts to revise the state’s statutes on film production tax credits. It has been announced that there will be an attempt to remove the \$50 million yearly cap on the total of such credits or at least to raise that yearly limit.

**Consumer Finance**—Legislation is expected to be introduced that would provide additional regulation of the consumer finance industry in New Mexico. Among other provisions, such legislation is likely to include interest rate caps on consumer loans.

### 3. Criminal Justice and the Courts

**Bail**—Bail is security, usually a sum of money, exchanged for the release of an arrested person as a guarantee of that person's appearance for trial. The New Mexico Supreme Court has proposed a constitutional amendment regarding pretrial bail that would allow judges the lawful option of denying pretrial release on bail to defendants who are too dangerous or unreasonable flight risks. The proposal also would guarantee that no person entitled to pretrial release is held in jail simply because they are financially unable to afford a money bond.

**Local Government Curfews**—Legislation will be introduced that would allow cities and counties to empower officers to detain minors who are out at night after a certain hour or during school hours. The law would have some exceptions, including travel to school, work or religious events.

**Intentional Child Abuse**—Another proposal to be introduced would provide for an enhanced penalties for people convicted of intentional child abuse resulting in death when the victim is 13 to 18 years old. Under this proposal, those found guilty of this crime would face the same sentence of 30 years as someone who kills a younger child.

**Other Criminal Justice Issues**—As is usually the case, a number of other criminal justice measures will be proposed during the session. Although there is some agreement on some issues, Republicans and Democrats differ on others. Some of the proposals expected to be introduced by each party are as follows:

**Republican Proposals**—Republicans, at this writing, have focused on three main proposals including an expanded “three-strikes” law that would impose a life sentence on a defendant whose criminal history includes convictions for three violent offenses; making police officers a protected group under “hate crimes” laws; and a proposed constitutional amendment that would allow judges to deny bail to some defendants, which proposal has been proposed by the New Mexico Supreme Court and discussed earlier.

**Democrat Proposals**—Democrat proposals for the upcoming session include raising the pay of police, firefighters and correctional officers, and increasing funding for mental health treatment and prosecutors, courts and criminal justice agencies, along with the imposition of a local public safety tax to cover the increased costs of such proposals.

**4. Government Ethics and Campaign Reform**—It is likely that there will be a number of measures introduced dealing with government ethics and campaign reform in light of recent events in New Mexico. Ideas being floated in this area include revisions to the state’s campaign finance and lobbyist reporting system as well as the creation of an independent ethics commission.

Once again, this is not by any means an exhaustive list of legislative measures to be considered during the 2016 legislation session. For any more detailed questions regarding the 2016 legislative session, contact Hal Stratton directly at the contact information included herein.

## II. NEW MEXICO EXECUTIVE BRANCH OF GOVERNMENT

The following is a list of executive department government agencies in New Mexico:

**A. Governor**—Susana Martinez is the governor of New Mexico now serving her second four-year term. She is a Republican and was elected as the first female Hispanic governor in the United States in 2010 and reelected to the position in 2014. The office of governor is limited to two terms and her last term will end at midnight on Dec. 31, 2018.

Gov. Martinez was born in El Paso, Texas, and received a bachelor’s degree in criminal justice from the University of Texas at El Paso and a law degree from the University of Oklahoma. She was an assistant district attorney in Doña Ana County New Mexico in Las Cruces from 1986 to 1992. She was elected Doña Ana County District Attorney in 1996 and was reelected to three subsequent four-year terms to that office. In 2010 she ran for governor winning 51 percent of the vote in a five-way Republican primary. She won the general election for governor in 2010 with 53 percent of the vote, defeating the sitting lieutenant governor, Democrat Diane Denish.

**B. Lieutenant Governor**—John Sanchez, from Albuquerque, is the lieutenant governor of New Mexico and was elected and reelected on the Republican ticket with Susana Martinez.<sup>5</sup> His term as lieutenant governor is coextensive with the term of the governor. Sanchez was elected to the New Mexico House of Representatives in 2000 by defeating the then Speaker of the New Mexico House, Raymond Sanchez. Lt. Gov. Sanchez served only one term in the House and was the Republican nominee for governor in 2002, running unsuccessfully against Democrat Bill Richardson. It is rumored that Sanchez may once again run for governor in 2018 in an attempt to succeed Gov. Martinez to that office.

**C. Secretary of State**—At this writing, the office of New Mexico Secretary of State is vacant. Secretary of State Dianna Duran was first elected to that post in 2010 and was the first Republican to hold the position since 1929–1930 when New Mexico secretaries of state served two-year terms. Duran was reelected to the position in 2014. On Oct. 25, 2015, Duran resigned her position after entering into a plea bargain with the Office of Attorney General pleading guilty to certain campaign

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<sup>5</sup> The lieutenant governor runs in a primary election in New Mexico; the winner of that primary then running on the general election ticket with the party’s nominee for governor.

violations. Currently, Deputy Secretary of State Mary Quintana is serving as acting Secretary of State. The office will be filled by an appointment by the governor, which at this writing is now pending. Whomever is appointed to the position will have to stand for election in the 2016 general election to fill out the current term. The position will then be up again for election in the 2018 election.

The primary functions of the Office of the New Mexico Secretary of State include oversight of the entire state election process in New Mexico as well as being the custodian of corporate records within the state.

**D. Attorney General**—The Office of Attorney General is held by Democrat Hector Balderas who won his first term to that position in 2014. Balderas is from Wagon Mound and was elected to the New Mexico House in 2004. He was elected to the position of New Mexico State Auditor in 2006 and re-elected to that position in 2010. He ran unsuccessfully for the Democratic nomination for U.S. Senate in 2012. Balderas is eligible to run for re-election to the Office of Attorney General in 2018. There is speculation as to whether he will seek reelection to that position or make a run for governor in 2018 when Gov. Martinez vacates the seat due to a term limitation.

**E. State Auditor**—The position of New Mexico state auditor is currently held by Democrat Tim Keller, from Albuquerque, who was elected in 2014 and is eligible for reelection in 2018. Keller attended the University of Notre Dame, where he earned a bachelor's degree in public service, art history and finance. Keller is a former state senator from Albuquerque and is rumored to be interested in seeking higher political office. The State Auditor of New Mexico is responsible for authorizing, performing and supervising audits of state agencies and state and local entities.

**F. State Treasurer**—The State Treasurer of New Mexico is the chief elected financial officer of the state. The position is currently held by Tim Eichenberg, a Democrat from Albuquerque, who previously served in the New Mexico State Senate from 2009 to 2013. Keller has operated a small business in Albuquerque as a property tax consultant, state certified appraiser, general contractor and as a real estate broker.

**G. State Land Commissioner**—The office of New Mexico State Land Commissioner is held by Republican Aubrey Dunn, Jr., who was elected to his first four-year term in 2014. He will be eligible for reelection to that position in 2018. Dunn is originally from High Rolls and holds a bachelor's degree in animal science from Colorado State University. He previously has been involved in the agriculture, ranching and banking industries. The New Mexico state land commissioner is in charge of managing all state lands and mineral rights, as well as overseeing leases and royalties on state land.

**H. Public Regulation Commission**—The New Mexico Public Regulation Commission (NMPRC) is an elected five-member board and regulates the public utility, telecommunications and motor carrier industries in New Mexico. The NMPRC oversees the offices of State Fire Marshal, the Firefighter Training Academy, the Pipeline Safety Bureau and the Transportation Division. Commissioners are elected to staggered four-year terms beginning January 1 following their election. The commissioners are elected from districts, and currently there are four Democrats and one Republican serving on the board. NMPRC commissioners are term limited to serving two consecutive terms.

### III. NEW MEXICO COURTS

The New Mexico state court system consists of a Supreme Court, a Court of Appeals, District Courts, Magistrate Courts, the Bernalillo County Metropolitan Court, as well as a number of lesser courts including municipal courts. Judges in New Mexico are chosen in a unique way. A judicial nomination commission interviews and then sends a list of qualified candidates to the governor. The governor then chooses one of the candidates and appoints him or her to the court. Thereafter, at the first general election after a judge has been appointed to that court, a partisan election is held and the winner of that election assumes the position (The judge previously appointed by the governor may run for that position but in order to stand in the general election must win his or her party's primary nomination for the position). The winner of the general election then stands in retention elections where he or she must win 57 percent of the vote to remain on the court for another term. Terms of the Supreme Court and Court of Appeals are eight years, the District Courts six years and the Magistrate and Metropolitan Courts four years.

**A. New Mexico Supreme Court**—The New Mexico Supreme Court sits in Santa Fe and consists of four Democrats and one Republican. The Supreme Court is the court of last resort and has superintending control over all inferior courts and attorneys licensed in the state. The Supreme Court has jurisdiction over criminal matters in which the sentence imposed is life in prison or the death penalty, appeals from the NMPRC, appeals from the granting of writs of habeas corpus, appeals in actions challenging nominations, and removal of public officials. It has discretionary jurisdiction over denials of petitions for writ of habeas corpus, petitions for writ of certiorari to the Court of Appeals, other extraordinary writ matters, and certified questions either from the Court of Appeals or federal courts.

**B. New Mexico Court of Appeals**—The New Mexico Court of Appeals consists of 10 judges, seven Democrats and three Republicans, sitting in panels of three. The court has offices in Santa Fe and Albuquerque and exercises appellate jurisdiction over civil, non-capital criminal and juvenile cases, and discretionary jurisdiction in interlocutory decision cases and administrative agency appeals.

**C. New Mexico District Courts**—New Mexico District Courts are courts of general jurisdiction and the district court system is divided into 13 districts with 94 judges. District Courts hear cases involving criminal, tort, contract, real property rights, and estate law with exclusive jurisdiction over domestic relations, mental health, appeals for administrative agencies and lower courts as well as miscellaneous civil jurisdiction and misdemeanors.

**D. New Mexico Magistrate Courts**—There are 54 Magistrate Courts with limited jurisdiction hearing cases involving tort, contract and landlord/tenant rights with amounts in dispute up to \$10,000. Magistrate courts may hear felony preliminary hearings as well as misdemeanor, DWI/DUI and other traffic violation matters.

**E. Bernalillo County Metropolitan Court**—The Bernalillo County Metropolitan Court is a court of limited jurisdiction like New Mexico magistrate courts and has jurisdiction over not only Bernalillo County but the City of Albuquerque matters. The court consists of 19 judges and hears matters similar to the magistrate and municipal courts.

## IV. NEW MEXICO FEDERAL OFFICES

### A. United States Senate

**Tom Udall—Democrat**—Tom Udall, who is originally from Tucson, Arizona, won election to the U.S. Senate in 2008, was reelected in 2012 and is currently serving his second consecutive term. Prior to his election to the U.S. Senate, Udall served five consecutive terms in the U.S. House of Representatives, representing the 3rd Congressional District of New Mexico. He is also a former two-term state New Mexico attorney general, serving from 1991–1999. Before entering politics, Udall worked as an attorney beginning his legal career as a law clerk to Chief Judge Oliver Seth of the Tenth Circuit Court of Appeals. His legal career thereafter included appointments as assistant U.S. attorney in the criminal division and chief counsel to the Department of Health and Environment. He was also a partner in the Miller Law Firm.

**Martin Heinrich—Democrat**—Martin Heinrich, originally from Fallon, Nevada, is currently serving his first term in the U.S. Senate. He defeated current Attorney General Hector Balderas in the June Democratic primary and defeated Republican Heather Wilson in the November 2012 general election. Prior to assuming his seat in the U.S. Senate, Heinrich served as a member of the U.S. House of Representatives, representing the 1st Congressional District. He began his career working as a mechanical engineer at Kirtland Air Force Base in Albuquerque. Before he became a congressman, Heinrich served as Albuquerque City Council president and as natural resources trustee for the State of New Mexico.

### B. U.S. House of Representatives

**First Congressional District—Democrat Michelle Lujan Grisham.** Lujan Grisham was first elected to the U. S. House in 2012 and is currently serving her second term, having won re-election in 2014. Lujan Grisham was born in Los Alamos and raised in Santa Fe. She holds a bachelor's degree and a law degree from the University of New Mexico. She has served as Bernalillo county commissioner and president of a health insurance consulting business. Previously, she was the appointed head of New Mexico's Department of Health. Prior to her political career, Lujan Grisham worked as an attorney for the Lawyer Referral for the Elderly Program of the State Bar of New Mexico. She also co-founded a small business called the Delta Consulting Group, which helped to provide health insurance for those who had been denied coverage.

**Second Congressional District—Republican Steve Pearce.** Pearce was first elected to Congress in New Mexico's 2nd Congressional District in 2002 and served there until 2008. In 2008, Pearce chose to run for the U.S. Senate rather than seek re-election to the House, but after winning the Republican primary election against Heather Wilson, lost to Democrat Tom Udall. Pearce won back his U.S. House seat from Democrat Harry Teague in 2010. Pearce was born in Lamesa, Texas. He earned a B.A. from New Mexico State University in 1970 and an M.A. from Eastern New Mexico University in 1991. After graduating from New Mexico State University, Pearce was a pilot in the Air Force, serving in the Philippines and flying missions in Vietnam. Prior to his congressional career, Pearce owned and managed Lea Fishing Tools, a small oil field services business in Hobbs.

**Third Congressional District—Democrat Ben Ray Lujan.** Lujan was first elected in 2008 from New Mexico’s 3rd Congressional District. He is currently serving his fourth consecutive term in the U.S. House. Lujan was born in Santa Fe. He attended the University of New Mexico from 1990–1995, later completing a B.B.A. at New Mexico Highlands University in 2007.

## V. 2016 ELECTION IN NEW MEXICO

All candidates for public office in New Mexico in 2016 must be affiliated with a political party on the date of the governor’s proclamation for the election, January 25, 2016, and be a resident in the district or county of the office for which they are a candidate. A person convicted of a felony may not hold an office of the public trust for the state, county, municipality, or a district, unless the person has presented the governor with a certificate verifying the completion of the sentence and was granted a pardon or a certificate by the governor restoring the person’s full rights of citizenship. Other qualifications for specific offices require certain other qualifications, the most important of which are noted below.

Candidate filing day for Preprimary Convention Designation is February 2, 2016. All candidates for statewide and federal office must file on this date. Filing day for all other offices is March 8, 2016. Voter registration for the primary election closes on May 10, 2016, at which time absentee voting begins.

The New Mexico primary election will be held on Tuesday, June 7, 2016. Early voting for the primary election begins on May 21, 2016, and ends along with absentee voting on June 4, 2016.

The general election occurs on Tuesday, November 8, 2016.

### A. New Mexico Legislature

To run for the New Mexico House of Representatives, a person must be 21 years of age and “not hold any office of trust or profit with the state, county or national governments, except for notaries public and officers of the militia who receive no salary.” A candidate for State Senate must have the same qualifications as a candidate for the House, but must be 25 years old.

The legislative primary elections will be held on June 7, 2016, and the general election on November 8, 2016.

All 112 New Mexico legislative seats will be up for election in 2016. The Republicans hold the House by a margin of 37-33. The Democrats hold the Senate by a margin of 24-18. Each party will be going all out to win control in each chamber in the 2016 election. The governor will take a particular interest in this election as the legislature elected will be the one that serves during her last two years as governor. She would prefer a Republican majority in each chamber in order to gain majority support for a number of measures that she has pushed over the past several years, the most controversial of which were stalled in the Democratic-controlled Senate.

As is normally the case, only a few of the legislative seats are really in play, the others being secure in either the Republican or Democrat camp. In the House, in a normal year, there are probably around 10–12 seats in play either way. In the Senate this number would be closer to four to six in the upcoming 2016 election. And, of course, a number of other factors affect the number of seats in play, including whether certain incumbents are retiring, candidates further up the ballot including the candidates for president, the economy, as well as other factors that may vary from election to election. However, it is pretty much agreed by all observers that either chamber could go either way in the upcoming election.

At this writing, the Democrat and former Speaker of the House Ken Martinez of Grants has announced that he will not be running for reelection next year. Prior to the Republicans taking over the House, Martinez held the primary leadership position among the Democrats. It is yet to be seen what effect his departure will have on this year's election and control of the House.

Also, on the Republican side, Conrad James, a House member from Albuquerque's Northeast Heights, has announced that he will not run for reelection next year. James holds a key swing district and his seat will be up for grabs. This seat will be pivotal in control of the House.

Doubtless, other members will make announcements regarding their re-election plans between this writing and the election, that will have an effect on the outcome of control of each house.

## **B. State Executive Offices**

The only state executive office up for election in 2016 is that of secretary of state due to the resignation of Dianna Duran. The parties will hold primary elections on June 7 to choose their candidates. Maggie Toulouse Oliver, the Bernalillo County clerk, has expressed interest in running on the Democrat side along with former Democrat Secretary of State Rebecca Vigil. As of this writing, the governor has not chosen Duran's replacement. It can safely be assumed that whomever the governor appoints to the position will run for the post in the Republican primary.

## **C. Statewide Courts**

New Mexico Supreme Court Justice Richard Bosson resigned his position this year. His seat was filled by Governor Martinez appointing Republican Bernalillo County District Judge Judy Nakamura. There will be a partisan election for this position in 2016. The winner will then stand for a retention election at the end of each eight-year term. Each party's candidate for the general election will be chosen in the June 7 primary election.

The only other statewide election for a judicial position at this writing will be the Court of Appeals seat held by Republican Judge Jonathan Sutin who will be standing for retention.

## **D. New Mexico Public Regulation Commission**

As discussed earlier, NMPRC commissioners serve staggered terms. Two seats are elected in one general election and three in the next. In 2016, two seats will be up for election, both held by

Democrats. Standing for election in 2016 will be Commission Chairman Karen Montoya from Albuquerque and Commission Vice-Chairman Valerie Espinosa from Santa Fe. Commissioner Montoya worked in the Bernalillo County Assessor's Office from 1991 to 2004. She was a senior appraiser with the New Mexico State Property Tax Division from 2004 to 2006 and served as chair of the Bernalillo County Valuation Protest Board. She was elected as Bernalillo county assessor in 2006, serving in the position for two terms from January 2007 to January 2013.

Prior to her election to the NMPRC, Espinoza served as Santa Fe county clerk from 2004 to 2012. She worked for the New Mexico Secretary of State from 1979 to 1984. Espinoza spent the majority of her career, from 1984 to 2004, with Los Alamos National Laboratory. Beginning as senior clerk, she eventually became executive office administrator in the office of the deputy associate laboratory director.

## E. Federal Offices

### 1. 2016 Presidential Election

**a. Democratic Party**—New Mexico is expected to have 43 delegates at the 2016 Democratic National Convention. Of this total, 34 will be "pledged delegates." Pledged delegates will be allocated to a candidate in proportion to the votes he or she receives in the state's primary. A candidate will be eligible to receive a share of the state's pledged delegates if he or she wins at least 15 percent of the votes cast in the primary. There are three types of pledged Democratic delegates: congressional district delegates, at-large delegates, and party leaders and elected officials (PLEOs). Congressional district delegates are allocated proportionally based on the primary results in a given district. At-large and PLEO delegates are allocated proportionally based on statewide primary results.

Nine party leaders and elected officials will serve as unpledged delegates. These delegates are not required to adhere to the results of the state primary.

**b. Republican Party**—New Mexico is expected to have 24 delegates at the 2016 Republican National Convention. Of this total, nine will be district-level delegates (three for each of the state's three congressional districts), and 12 will serve as at-large delegates. New Mexico's district and at-large delegates will be allocated proportionally. A candidate must win at least 15 percent of the statewide primary vote in order to be eligible to receive a portion of the state's district and at-large delegates.

In addition, three national party leaders will serve as unbound delegates to the Republican National Convention. The RNC delegates will not be required to pledge their support to the winner of the state's primary.

*See Appendix "A" for the results of the 2000, 2004, 2008 and 2012 presidential elections in New Mexico.*

**2. Congressional Elections**—Each of New Mexico’s three congressional seats will be up for election in 2016. As of this date, there are no announced candidates challenging any of the incumbents.

**3. U.S. Senate**—Neither of the two New Mexico U.S. Senate seats is up for election in 2016. Heinrich will be up for re-election in 2018 and Udall will be up for re-election in 2020.

## VI. POLITICAL CONTRIBUTION AND EXPENDITURE REPORTING BY LOBBYISTS AND THEIR EMPLOYERS

New Mexico employs a complex and ambiguous system of campaign contribution and expenditure reporting particularly for lobbyists and lobbyists’ employers. Separate statutes exist to govern reporting by lobbyists and their employers and candidates. As a result, lobbyist and employer reports may not match up with those of elected officials and candidates. This treatment will address the obligations of lobbyists and their employers but not that of candidates. Candidates should consult the New Mexico Secretary of State website and their election counsel for information regarding campaign expenditure reporting.

***Do not rely on this outline to be the final guide regarding your individual lobbying, expenditure, campaign contribution or campaign activities. Consult your legal counsel, the statutes and rules of the Secretary of State.***

**A. The New Mexico Lobbyist Registration Act**—The major requirements of the New Mexico Lobbyist Registration Act are as follows:

1. Each January before the legislative session each person who is employed as a lobbyist must register with the New Mexico Secretary of State by paying a fee of \$25 for each employer represented along with a form that provides the lobbyists full name and address and the name and address of each of the lobbyist’s employers.

2. In addition, for each employer the lobbyist must file information including the source of funds used for lobbying, a written statement from each of the lobbyists employers authorizing the lobbyist to lobby on their behalf, a brief description of the matters for which services are to be rendered by the lobbyist, and the name and address of the person if other than the lobbyist or employer who has custody of the records regarding the lobbyist services.

3. Expenditure Reports to be filed. “Each lobbyist or lobbyist’s employer who makes expenditures or political contributions” to legislators or legislative or state candidates must file expenditure reports on forms prescribed by the Secretary of State. Each report must contain the following:

a. “The cumulative total” of expenditures made or incurred separated into categories of 1) meals and beverages, 2) other entertainment expenses, 3) gifts and 4) other expenditures;

b. Each political contribution made including the amount, date and candidate;  
and

c. the names, addresses and occupations of other contributors and the amounts of their separate political contributions if the lobbyist or lobbyist’s employer delivers directly or indirectly separate contributions from those contributors in excess of five hundred dollars (\$500) in the aggregate for each election to a candidate, a campaign committee or anyone authorized by a candidate to receive funds on the candidate’s behalf.

4. Reports must be filed pursuant to the statute as follows:

a. By January 15 of each year for all contributions not reported in the previous year;

b. Within 48 hours for any expenditure made during the legislative session in excess of \$500; and

c. On May 15 for all expenditures and political contributions made through April 25 of the current year and not previously reported.

## VII. NEW MEXICO CAMPAIGN CONTRIBUTION LAWS

### A. New Campaign Contribution Limits

New Mexico law imposes limits on political contributions to state candidates which limits are indexed to increase pursuant to the consumer price index. The limits that apply to the 2016 election are as follows:

1. Contributions from a person to a non-statewide candidate: \$2,500 each for the primary election and general election;

2. Contributions from a person to a statewide candidate: \$5,400 each for the primary election and general election; and

3. Contributions from a Political Action Committee to a candidate or to another political action committee: \$5,400.

### B. Campaign Contribution Prohibition Period

New Mexico statutes have imposed a “black out” period when campaign contributions are prohibited. This prohibition is technically for “solicitation” of campaign contributions by candidates.

However, most treat the period conservatively and do not contribute to candidates during these periods. The periods are as follows:

1. To legislators and legislative candidates—January 1, 2016, through adjournment of the legislative session, February 18, 2016;
2. To governor or candidate for governor—January 1, 2016, through the 20th day after adjournment of the legislature, March 9, 2016; and
3. From lobbyists or lobbyist’s employers—January 1, 2016, through February 18, 2016, for contributions to legislators or March 9, 2016, for governor or candidate for governor.

## VIII. THE NEW MEXICO GIFT ACT

The New Mexico Gift Act purports to limit “gifts” to “state officers or employees.” State officers and employees are defined as “any person who has been elected to, appointed to or hired for any state office and who receives compensation in the form of salary or is eligible for per diem or mileage.” The gift restriction applies to “restricted donors,” the definition of which is complex but includes “a lobbyist or a client of a lobbyist with respect to matters within the donee’s jurisdiction.”

Prohibited gifts include a gift of a market value in excess of \$250. In addition, a lobbyist or lobbyist’s employer is restricted from donating gifts of an aggregate market value greater than one thousand dollars (\$1,000) in a calendar year to any one state officer or employee or to any one candidate for state office.

The New Mexico Gift Act is administered by the Attorney General and not the Secretary of State.

Once again, it is important to analyze each gift separately and to seek legal counsel to ensure that the gift fits within the legal tenants of the gift statute.

## A FINAL WORD

This outline is provided to familiarize those as to the 2016 New Mexico election process and is by no means exhaustive of 2016 election information. It is offered as only an outline. The election process is complex and is subject to interpretation by several different entities and agencies including district attorneys, the attorney general, the Office of Secretary of State as well as others. It is important to analyze each matter or event regarding the election and to seek professional advice on all matters to ensure compliance.

## Appendix “A”

U.S. presidential election, New Mexico, 2012				
Party	Candidate	Vote %	Votes	Electoral votes
Democratic	✓ Barack Obama/Joe Biden <i>Incumbent</i>	53%	415,335	5
Republican	Mitt Romney/Paul Ryan	42.8%	335,788	0
Libertarian	Gary Johnson/Jim Gray	3.5%	27,787	0
Green	Jill Stein/Cheri Honkala	0.3%	2,691	0
Independent American	Rocky Anderson/Luis Rodriguez	0.1%	1,174	0
Constitution	Virgil Goode/James Clymer	0.1%	982	0
<b>Total Votes</b>			<b>783,757</b>	<b>5</b>
Election Results Via: <i>U.S. Election Atlas</i>				

U.S. presidential election, New Mexico, 2008				
Party	Candidate	Vote %	Votes	Electoral votes
Democratic	✓ Barack Obama/Joe Biden	56.9%	472,422	5
Republican	John McCain/Sarah Palin	41.8%	346,832	0
Independent	Ralph Nader/Matt Gonzalez	0.6%	5,327	0
Libertarian	Bob Barr/Wayne Allyn Root	0.3%	2,428	0
Constitution	Chuck Baldwin/Darrell Castle	0.2%	1,597	0
Green	Cynthia McKinney/Rosa Clemente	0.2%	1,552	0
<b>Total Votes</b>			<b>830,158</b>	<b>5</b>
Election Results Via: <i>U.S. Election Atlas</i>				
Data taken from Ballotpedia				

United States presidential election in NM, 2004					
Party	Candidate	Running mate	Votes	Percentage	Electoral votes
Republican	George W. Bush	Richard Cheney	376,930	49.84%	5
Democratic	John Kerry	John Edwards	370,942	49.05%	0
Independent	Ralph Nader	Peter Camejo	4,053	0.54%	0
Libertarian	Michael Badnarik	Richard Campagna	2,382	0.31%	0
Green	David Cobb	Pat LaMarche	1,226	0.16%	0
Constitution	Michael Peroutka	Chuck Baldwin	771	0.10%	0
<b>Totals</b>			<b>756,304</b>	<b>100%</b>	<b>5</b>
Voter Turnout (Voting age/Registered)					55%/68%

United States presidential election in NM, 2000					
Party	Candidate	Running mate	Votes	Percentage	Electoral votes
Democratic	Al Gore	Joe Lieberman	286,783	47.9%	5
Republican	George W. Bush	Dick Cheney	286,417	47.9%	0
Green	Ralph Nader	Winona LaDuke	21,251	3.6%	0
Libertarian	Harry Browne	Art Olivier	2,058	0.3%	0
Reform	Pat Buchanan	Ezola Foster	1,392	0.2%	0
Natural Law	John Hagelin	Mary Alice Herbert	361	0.1%	0
Constitution	Howard Phillips	Michael Peroutka	343	0.1%	0
<b>Totals</b>			<b>598,605</b>	<b>100.00%</b>	<b>3</b>
Voter turnout (Voting age/Registered)					46%/61%