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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/24/11

SPONSOR HHGAC LAST UPDATED \_\_\_\_\_ HB 29/HHGACS

SHORT TITLE Create Commerce Department SB \_\_\_\_\_

ANALYST Graeser

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	NFI	(\$766.0)*	(\$766.0)*	(\$1,532.0)*	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Tourism Department (TD)

Economic Development Department (EDD)

Department of Workforce Solutions (DWS)

### SUMMARY

#### Synopsis of Bill

The original House Bill 29 was introduced on behalf of the Government Restructuring Task Force. The HHGAC substitute bill simplifies the original proposal. The bill now proposes to enact the Commerce Department Act with the stated purpose of establishing a single, unified department to administer all laws and exercise all functions currently administered and exercised by the Economic Development Department and the Department of Tourism. The act creates a new Commerce Department in the executive branch pursuant to the Executive Reorganization Act. The department will be a cabinet-level agency headed by a cabinet secretary and will be comprised of three divisions and an office: office of the secretary, administrative services division, economic development division and tourism development division. The secretary is empowered to organize the department into different organizational units than initially specified, but is restricted to appointing three exempt division directors. The secretary may create a number of bureaus in each division. Each bureau is headed by a classified bureau chief. Six boards and commissions are administratively attached to the department, many of which name the commerce secretary as a member. A new administratively attached creation is the economic development and tourism commission. The EDTC is a planning and policy consulting commission. In addition to current duties of the Economic Development Department and the Tourism Department, the bill specifies in some detail duties and activities of the merged

department. The merged department is also charged with promoting, preserving and developing Indian arts and crafts, encouraging the preservation of Indian ceremonials and rites and promoting the intertribal ceremonial. Although not specified as a division in section 4 of the bill, the merged department is charged with promoting defense conversion technology and implementing tech transfer from the national labs to private sector entrepreneurs.

The bill retains the “tourism enterprise fund” in statute. The fund is the old tourism enterprise fund of 9-15A-4.1 NMSA 1978, with broader allowed use of money deposited in the fund. When the fund was administered by the Tourism Department, use of the proceeds of sale of various sundries and souvenirs could be used for tourism promotion activities. The new fund may be used to support tourism or economic development activities.

Similarly, the bill retains the Artisans Business Development Program and related fund. This fund was first created in 1991, just before economic development and tourism were split. Money in this fund is used to promote, in conjunction with DCA, a greater demand for arts and crafts produced by New Mexico artisans.

The state match fund is also retained (formerly at 9-15-19.1 NMSA 1978). This fund is used as a pool of matching funds for technology-based proposals submitted to the federal government.

Sections 23 and 24 are apparently incorrect. Section 23 refers to “MEXICAN TRADE – INTERNATIONAL TRADE BUREAU DUTIES.” The correct reference in Section 4 of the bill is to the “INTERNATIONAL TRADE BUREAU DUTIES.” Section 22 correctly references the International Trade Bureau. Similarly in Section 24, the reference to “MINORITY BUSINESS ASSISTANCE – ECONOMIC DEVELOPMENT DIVISION DUTIES” is inconsistent with the listing of bureaus of the Economic Development Division in Section 4.

The bill retains the minority business assistance fund (currently 9-15-55 NMSA 1978) used for carrying out the provisions and requirements of the Minority Business Assistance Bureau.

Sections 26 through 52, amend existing laws to make them consistent with the creation of the Commerce Department, and to reassign, and in some instances modify, numerous duties and responsibilities to that Department.

Sections 53 through 56 terminate several agencies at specified dates in the future pursuant to the provisions of the Sunset Act including the New Mexico-Chihuahua Commission, the New Mexico-Sonora Commission, the State Fair Commission and the Spaceport Authority. The Sunset act requires that the repealed boards work with LFC to analyze the costs and benefits of the activities of the sunsetted boards or commissions. If the boards and commissions are able to show productive activity, then the next legislature will enact a reinstatement.

Section 57 is a standard transfer section that includes transfers of the property, staff, appropriations and contracts of the economic development department, the tourism department and the border authority to the commerce department. It also includes the transfer of any property, functions or appropriations of the film museum to the cultural affairs department.

Section 88 is a recompilation of existing law into the Commerce Department Act, including attaching the military base planning commission and the office of military base planning to the merged department. The Economic Development incentives policy prescription of 9-15-56 will be compiled within the Commerce Department Act.

Section 89 repeals the Economic Development Act, the Tourism Department Act, the Intertribal Ceremonial Act, the Small Business Regulatory Relief Act, the New Mexico Film Museum Act, the Border Development Act and the law creating the Litter Control Council.

The effective date of the provisions of the act is July 1, 2012

### **FISCAL IMPLICATIONS**

EDD currently has 56 FTE (7 exempt) and \$6.5 million budget (HAFC, HB 2). TD has 76 authorized FTE (8 exempt) and \$13.8 million budget. These numbers are not sufficient to sustain department status. Even a combined department with 132 FTE is smaller than 35 larger executive agencies, including military affairs. A leaner Commerce Department could run efficiently with a cabinet secretary, three division directors and 12 bureaus, each headed by a classified bureau chief. The major change involved in the merger is the downgrading of 15 exempt positions and 117 classified positions, including two exempt cabinet secretaries, two exempt deputy secretaries, 11 exempt division directors and two classified bureau chiefs to a department with four exempts, including one cabinet secretary, three division directors and 12 classified bureau chiefs. On net, only one position – the second exempt cabinet secretary would be eliminated. The majority of the existing division directors would be downgraded to classified bureau chiefs. There may be as many as four vacant ASD positions that could be eliminated, as well, since both agencies currently support administrative services support for HR, purchasing, accounting and IT. There would be no necessity for RIFing. Total savings from the downgrading of position titles and eliminating one cabinet secretary exempt position would total approximately \$170.0, total savings from eliminating the vacant duplicate ASD positions would be \$180.0.

The Border Authority, with 4 FTE and \$416.0 in budget authority would be eliminated. The budget and functions would be transferred to the commerce department. At the option of the cabinet secretary, the border authority would become a bureau in the commerce department and continue to function in the Las Cruces area. Alternatively, current employees would be offered other employment within the department or within State government in the Las Cruces area.

The nonrecurring costs to consolidate these departments would be minimal. Currently, both EDD and TD occupy state-owned buildings.

TD believes any cost savings to that department in its absorption into the Commerce Department (which it estimates at less than \$1 million) would be insignificant in comparison to the negative fiscal impact this absorption would have on state revenues. It is concerned that creating an agency in state government this diversified and cumbersome would negatively impact and dilute TD effectiveness in performing its mission of promoting New Mexico as a premier visitor destination. [LFC believes that this statement reflects a misunderstanding of the likely status and operations of the merged department.]

EDD notes the bill proposes or amends various enterprise funds to support the efforts of various divisions. These enterprise funds are smart ways to keep programs viable when overall state budgets are tight.

EDD also believes the unified department may leverage all funding and support resources for a comprehensive solution to business recruitment, retention, and expansion efforts, and tourism

efforts. It expresses concern that funds may be needed to address the operational and developmental costs associated with merging the two departments into the proposed department, including what it believes would be significant costs associated with any decision to co-locate the agencies.

For the purpose of assessing the fiscal impact of this bill, it is assumed that no physical move would be undertaken during, at least, the first two years after the merger.

## **SIGNIFICANT ISSUES**

Traditionally, economic development policy has focused on attracting new business through incentives and subsidies. However, newer approaches to economic development emphasize community and workforce development and an “open for business climate.”

In New Mexico, both the TD and EDD work to develop policies and strategies to improve the economic well being and quality of life for the citizens of the state. Both departments support existing business, work to attract new businesses, and market and promote the state’s assets; however, TD has tended to focus on developing and protecting the leisure and hospitality industry leaving EDD to focus on all other sectors of state’s economy.

- Essentially, the primary function for both departments is to market and promote the state by creating a “brand” or “image” for the state as a place to visit or do business. However, the departments don’t leverage promotional efforts and campaigns to support one another. The tourism “brand” for New Mexico is not consistent with the economic development “brand.”
- Until recently, both departments provided cooperative grants to local communities to promote tourism or economic development, and in doing so, each department maintained separate administrative support for this function.
- Even today, the line between these two departments is not so distinct. The Arts and Cultural District Program, administered by EDD, works to develop community-based cultural development and art into a sustainable economic event. However, the Arts and Cultural District Program is similar to TD’s art and culture tourism promotion.
- EDD and TD do not collect much economic data. Almost all economic research is prepared by the state’s colleges and universities, while labor market data is prepared by DWS. With the merged department, there may be increased opportunities to collect and disseminate data and information.

## **Tourism Department Issues**

TD maintains that the bill’s assumption of cost savings does not take into account the efficiencies of the different departments, which negative impact is further exacerbated by the incongruous nature of the two agencies being consolidated. While ED deals with land deals, taxes, technology development, bonds and community development, TD is primarily a marketing and promotions agency working primarily with the service industry in attracting tourists to New Mexico.

TD believes there are only two common threads among the agencies -- jobs and marketing -- but TD maintains that even in these areas the responsibilities differ widely: ED’s mission is to create jobs by working one-on-one with individual businesses to attract new companies to New Mexico, and it promotes technology development and transfer to the private sector in the hopes

of creating industries and jobs, while TD is charged with promoting New Mexico domestically and around the world. Tourism industry jobs are created as a result of a broader effort of advertising and promotions which maintains and expands the service industry; it does not, however, work with private sector companies in job creation. The second area of some common ground is marketing, but here again the messages and the audiences are different: ED is very specialized and relies on one-to-one negotiations with prospective companies, while TD must take a broader view that appeals to a mass audience to get them to visit New Mexico.

TD asserts that three program functions must be added to the bill to continue essential services to the tourism industry:

1. A marketing and promotion division which advertises New Mexico as a visitor destination to the consumer and trade audiences, which brings business to the tourism industry, supports jobs and job creation, and generates revenue to the state general fund via tax revenue.
2. A tourism development division which provides vital interaction with rural communities in New Mexico. The Indian Tourism and the Ecotourism programs market and promote ongoing tourism collaborations, while grant fund management is needed for the NM Clean and Beautiful, Cooperative Marketing, and Scenic Byways grant program. This division contributes significantly to statewide marketing efforts and provides rural communities with necessary resources to advertise and market their tourism assets and bring economic benefit to their communities.
3. A New Mexico sports promotion program that brings major and minor sports events to New Mexico. These efforts bring economic benefit to rural New Mexico communities throughout the state. Significant revenue to the state and business to the tourism industry is realized by this program's efforts.

[LFC comments: the secretary of commerce is fully authorized to create additional bureaus within the tourism development division. The phrase in the bill, "...including New Mexico magazine bureau and welcome centers bureau" does not preclude the secretary from creating a marketing and promotion bureau, a tourism development bureau and a sports promotion program bureau within the tourism development division. The sports promotion division is currently budgeted for one FTE. This is not sufficient for even bureau status, let alone division status.]

TD expresses concern that if TD becomes one of four divisions of the Commerce Department, the tourism industry - which contributes \$6.1 billion annually to the New Mexico economy, employs more than 110,000 New Mexicans and provides \$400 million in state tax revenue - will compete with other divisions for priority by the cabinet secretary to carry out its mission. This could cause delays in decision making and create extra layers of bureaucracy in an industry that has to react to market conditions in an expedient manner. It would further dilute TD's ability to bring important issues to the attention of the administration and the legislature by placing the tourism division three to four steps from the Governor's office. The work of TD as it now exists directly and significantly affects revenue generated to the state general fund and job creation. Tourism advertising and promotion recognizes a 40:1 return on investment.

[LFC comments: the bill does not authorize the secretary to appoint a deputy secretary or an assistant secretary. The three division directors – ASD, EDD and TD – would report directly to the cabinet secretary and would be two steps from the governor. The 40:1 estimate of ROI has never been validated by independent economic analysis.]

## Economic Development Department Issues

EDD points out these advantages to a unified Commerce Department:

### Advantages

- EDD and TD are intertwined, especially in New Mexico. While EDD is focused on bringing job opportunities to New Mexicans, tourism is the most important industry for rural New Mexico. Tourism growth within rural New Mexico creates jobs in a variety of different ways and is very important to the economic development of the State.
- Given the importance of tourism and workforce solution services to economic development, a consolidation of EDD, TD and DWS could potentially improve communication and strategic planning towards the State's economic development goals.
- EDD's funding is not substantial considering the tremendous volume and variety of department initiatives. EDD relies heavily on its partnerships with various counties, municipalities, economic development organizations and federal departments and agencies to fund important projects that bring industry and jobs to New Mexico. Consolidation of EDD with TD could provide a unique opportunity to leverage more State and Federal monies into the activities of EDD.
- EDD also could benefit from the consolidation of certain administrative functions. A considerable amount of resources are spent on marketing and printing related activities. EDD could achieve some cost savings through the consolidation of these services.
- More than 7 years ago, EDD had research/analysis staff within the department to assist the division, local communities, ED organizations, and relevant entities, with data, analysis, and research on aspects of labor market, economy, and labor pool, etc. This research component is key to the role and function of EDD as it provides for the development, growth, focus and implementation of economic development for New Mexico as a whole; however, this data also assists in the recruitment, retention and expansion of industry by our communities. The framework on which community, business, and finance development is conducted is based on trend and data information. With the creation of this unified department, there might be some opportunity to leverage a research component.

EDD notes these disadvantages:

- One of the main factors that has made EDD so successful over the last several years is its small size and agility to move quickly and respond to leads and opportunities, such as the capacity for its secretary to connect, meet and network with individual businesses, both small and large. This one-on-one contact is essential to the expansion, retention and recruitment of industry and jobs. [Although the proposal only doubles the size of the merged department compared to EDD's current size], a larger Commerce Department might compromise EDD's strength in its size and agility. As a separate department, EDD can much more efficiently focus on job creation through community development, financial development and incentive programs, which efficiency is part of the historical rationale for the two separate agencies. Although TD brings a tremendous amount of outside dollars into the state, it was always considered "second-fiddle" to economic development when the two agencies were together.
- EDD is the smaller of the departments to be consolidated. The possibility exists that the priorities of EDD's programs and initiatives could be minimized when folded into the larger programs of the merged department. The importance and uniqueness of EDD's

programs were the motivating factors that the legislature considered when separating the department from TD several years ago.

## **TECHNICAL ISSUES**

Section 22 and Section 23 duplicate requirements. Apparently, section 22, which refers to the “International Trade Bureau” is the correct reference, while Section 23, which refers to MEXICAN TRADE – INTERNATIONAL TRADE BUREAU DUTIES” is incorrect.

To justify Section 24, add the Minority Business Assistance Bureau to the list of bureaus of the Economic Development Division.

Page 28, Section 25, line 12 should reference Section 24, not 25. If the above corrections are adopted, the reference will be to section 22.

TD currently controls four enterprise funds (New Mexico Magazine, Scenic Byways, Clean and Beautiful and Visitor Information). The bill only provides one enterprise fund. [LFC comment: the transition section in the bill – page 62 – provides that, “references in law to the tourism department or any division or other subordinate units of that department shall be deemed to be references to the commerce department. This catchall authority should suffice.]

## **OTHER SUBSTANTIVE ISSUES**

Some history involving the two agencies is provided as background. According to research by the Legislative Council Service (LCS):

*A 1977 reorganization included a commerce and industry department with the responsibility to ensure stability and encourage growth in New Mexico’s economy. The department had a three-fold responsibility: regulation of those commercial enterprises that have a direct impact on the state’s economy; promotion of the economic climate to encourage growth in the commercial and industrial sectors; and carrying out economic development planning. The department included the export marketing, economic development, financial institutions, tourism and construction industries division, with the state fair and the state racing commission administratively attached.*

*The 1978 changes to the department included adding the New Mexico Magazine and mobile house (now manufactured housing) divisions and subsuming tourism under economic development.*

*In 1983, the commerce and industry department was split into the Regulation and Licensing Department (RLD) and the Economic Development and Tourism Department.*

*In 1991, the Economic Development and Tourism Department were split into two cabinet departments.*

Additionally, in 2010, the Legislature introduced Senate Bill 242 to reorganize certain departments into a Commerce Department. The bill proposed to create the Commerce and Economic Development Department by combining the existing Economic Development Department, the Tourism Department, the Regulation and Licensing Department, and the

Workforce Solutions Department. The bill also proposed to administratively attach sixteen boards or commissions including; (1) apprenticeship council; (2) athletic commission; (3) border authority; (4) construction industries commission; (5) economic development and tourism commission; (6) human rights commission; (7) labor and industrial commission; (8) manufactured housing committee; (9) New Mexico-Chihuahua commission; (10) New Mexico-Sonora commission; (11) small business regulatory advisory commission; (12) spaceport authority; (13) state fair commission; (14) state racing commission; (15) workers' compensation administration; and (16) state workforce development board. However, this bill contained a potential span of control issue attributable to the size of the proposed 'super' commerce department and a conflicting mandate to promote job growth, protect employees, and regulate business.

Additional history is provided by TD, which reports that that department was created in 1991 when it was determined that the needs of the tourism industry and its employees were largely being ignored and that its creation would in fact not lead to increased costs to the state. Currently, TD advises that, through efforts led by TD, the tourism industry has since grown to become New Mexico's largest private-sector employer and second-largest private-sector industry.

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