

GOVERNMENT RESTRUCTURING TASK FORCE

November 22-23, 2010

Fiscal and Explanatory Analyses

**Bill Drafts
1-3, 4B, 6, 8-10, 19A**

Information Memorandum

DATE: October 12, 2010

DISCUSSION DRAFT

TO: Government Restructuring Task Force Members

FROM: Jonelle Maison

SUBJECT: COMMERCE DEPARTMENT — SECTION-BY-SECTION EXPLANATION

Following is a section-by-section explanation of the proposed commerce department and necessary amendatory sections. Any opinions expressed are those of the author and do not necessarily reflect the opinions of the legislative council or other members of its staff.

The purpose of the bill is to create a commerce department by combining the functions of the economic development department (EDD), tourism department and workforce solutions department (WSD). In addition, it abolishes the border authority and the bicycle racing commission.

Note that many of the sections creating a cabinet department are standard sections based on the Executive Reorganization Act.

Section 1 (page 1). Short title — Sections 1 through 26 of the bill are the Commerce Department Act; the remainder are the necessary amendments, temporary provisions and repeal sections.

Section 2 (pages 1-2). Purpose — This is a standard reorganization section. The purpose is to establish a single, unified department for economic development, tourism and workforce solutions.

Section 3 (page 2). Definitions — "Department" and "secretary" are defined.

Section 4 (pages 2-3). Department created — This section provides the structure of the commerce department, which is:

- (1) office of the secretary;

- (2) administrative services division, which includes:
 - (a) economic research and analysis bureau (from WSD); and
 - (b) information technology bureau;
- (3) economic development division, which includes:
 - (a) international trade bureau (which includes Mexican affairs from EDD and some border authority functions);
 - (b) marketing bureau;
 - (c) New Mexico film bureau; and
 - (d) enterprise development bureau (which collapses several functions from EDD);
- (4) labor relations division, which includes:
 - (a) human rights bureau;
 - (b) apprenticeship bureau; and
 - (c) labor and industrial bureau;
- (5) tourism development division, which includes:
 - (a) New Mexico magazine bureau; and
 - (b) welcome centers bureau; and
- (6) work force transition services division (mostly unemployment from WSD).

The secretary has the power to reorganize internally, but a change in statutory divisions or bureaus must be reported to the next regular session of the legislature. While secretaries have generally had the authority to reorganize, they usually have not come back to the legislature to have their laws changed; this has led to confusion between the law and reality.

Section 5 (pages 3-4). Administratively attached agencies — These are the boards and commissions that are attached to the current departments:

- (1) apprenticeship council;
- (2) economic development and tourism commission (this combines the two existing commissions);
- (3) human rights commission;
- (4) labor and industrial commission;

- (5) New Mexico-Chihuahua commission;
- (6) New Mexico-Sonora commission;
- (7) spaceport authority;
- (8) state fair commission;
- (9) workers' compensation administration; and
- (10) state workforce development board.

In an effort to alleviate some duplication and overlap, the department is required to provide administrative services to administratively attached agencies.

Section 6 (page 4). Secretary of commerce — This standard section provides that the secretary of commerce is appointed by the governor and confirmed by the senate.

Section 7 (pages 4-7). Secretary powers and duties — This is also a standard section and is a copy of the powers and duties section in the Executive Reorganization Act. It includes that divisions of the department are run by directors who are exempt and serve at the pleasure of the secretary. The section also lays out how the department will be operated, including how rules must be adopted and promulgated.

Section 8 (page 7). Bureaus — This is another standard section that allows for the establishment of bureaus, run by chiefs. Chiefs and subsidiary employees are covered by the Personnel Act unless otherwise provided by law.

Section 9 (pages 7-8). Organizational units; powers and duties specified by law; access to information — This is another standard section providing that organizational units of the department have the powers and duties specified by law but that they are subject to the direction and supervision of the secretary, who has final decision-making authority unless the law specifically exempts the organizational units. In the existing three departments, there are no divisions or functions exempted from the power of the secretaries. The section also gives the department access to all state information not specifically held confidential by law. Proprietary technical information or that related to possible relocation or expansion of business is deemed confidential.

Section 10 (pages 8-9). Cooperation with federal government and single state agency (existing law) — This is yet another standard organizational section; in this instance, it

brings forward the authority of the former WSD to cooperate with the federal government in the administration of employment, unemployment and training programs funded by the federal government, and it provides that the governor or the secretary may designate the department as the single state agency for the administration of such programs. No designation of a single state agency can be made in contravention of state law.

Section 11 (pages 9-12). Economic development and tourism commission (existing law) — This section creates the commission and administratively attaches it to the department. The commission is the planning agency that provides advice to the department on policy matters, and it is responsible for the annual approval and update of the state's five-year economic development and tourism plans.

The commission consists of 15 members who are qualified electors of the state, no more than eight of whom at the time of their appointment are members of the same political party and at least two of whom are Native American. Members are appointed by the governor and confirmed by the senate. Seven members are appointed from the seven planning districts, three are from the congressional districts and two are at-large. They serve five-year staggered terms and cannot be removed except for incompetence, neglect of duty or malfeasance, and the senate has exclusive original jurisdiction over removal. (Question: Are the five-year plans so important as to warrant this extraordinary protection for members?)

The commission:

- (1) develops and recommends policies and provides program guidance to the department;
- (2) reviews, modifies and approves annual updates to the five-year plans;
- (3) assists and promotes the department on matters relating to economic development, tourism, tribal tourism, technology, technology-based new business development and technology commercialization projects, including small business needs; and
- (4) reviews federal technology-based programs requiring state matching funds and authorizes expenditures or pledges of state match funds.

Section 12 (pages 12-14). Additional economic development duties (existing law) — This section delineates the department's functions regarding economic development, including

the following summarized duties:

- (1) provide coordinated statewide perspective with regard to economic development activities;
- (2) work with and provide staff support to the economic development and tourism commission;
- (3) develop, maintain and provide economic and demographic information to the governor, the legislature, other state agencies and local governments;
- (4) provide a database for local and regional economic development groups;
- (5) actively encourage new economic enterprises to locate in New Mexico and assist existing businesses to expand;
- (6) monitor the progress of state-supported economic development activities and prepare annual reports of those activities and their status and impact;
- (7) create and encourage methods designed to provide rapid economic diversification development;
- (8) provide for technology commercialization projects as an incentive to industry locating or expanding in the state and promote and market federal and state technology commercialization programs;
- (9) support technology transfer programs and promote New Mexico as a technology conference center;
- (10) develop and implement enhanced statewide procurement programs;
- (11) provide support and assistance in the creation and operation of development finance mechanisms such as business development corporations to ensure capital availability for business expansion and economic diversification; and
- (12) serve as the lead agency in coordination of the census program at the state data center.

Section 13 (page 14). Additional tourism promotion duties (existing law) — This section delineates the department's functions regarding tourism promotion, including the following summarized duties:

- (1) provide a coordinated statewide perspective with regard to tourism activities;

(2) staff the economic development and tourism commission in formulating and implementing the state's five-year tourism plan;

(3) provide a database for local and regional tourism groups and serve as a comprehensive source of information and assistance to tourism-related businesses wishing to locate, expand or do business in New Mexico;

(4) monitor the progress of state-supported tourism activities and prepare annual reports of those activities and their status and impact; and

(5) maintain and update records on the status of all completed and ongoing tourism-related projects of the department.

Section 14 (pages 14-15). Additional duties regarding Indian arts, crafts and culture (existing law) — The department has the following duties:

(1) encourage the preservation and development of Indian arts and crafts among the Indian nations, tribes and pueblos of the state;

(2) encourage the preservation of traditional rites and ceremonials of Indian nations, tribes and pueblos; and

(3) promote the intertribal ceremonial.

Section 15 (pages 15-16). Additional duties regarding defense conversion and other technology (existing law) — The department is the lead agency to promote defense conversion technology, to coordinate the transfer of defense technology and other technology from federal, state and local government facilities to private sector industries and to promote private-public partnership and business development programs. The department shall coordinate or accept federal and state funds appropriated for conversion of defense technologies and to coordinate technology transfer in accordance with the state's technology development plan. The department may contract with appropriate partnership intermediaries to assist in the coordination of defense conversion duties. As part of this, the department shall:

(1) oversee the activities of the manufacturing productivity center and manufacturing extension programs;

(2) coordinate the activities of small business incubators;

(3) coordinate appropriate divisions in the department to provide technology

export assistance;

- (4) coordinate small business development and assistance programs;
- (5) identify sources of funding for capital expenditure programs and initial

venture programs;

- (6) coordinate the development of regional technology clusters; and
- (7) provide support and coordination assistance to the commission and the

secretary in development of defense conversion industries.

Section 16 (pages 16-17). Department cooperation with local and regional economic development agencies (existing law) — The department shall cooperate with local and regional development agencies, including the following summarized duties:

- (1) coordinating state, local or regional activities and assisting in gathering information on local and regional assets;
- (2) assisting in the development of a plan for the expansion of the local or regional economic base; and
- (3) providing matching funds through the state cooperative advertising program.

Section 17 (pages 17-18). Administrative services division — This section includes some of the particular administrative services for which the division is responsible, including:

- (1) keeping all official records of the department and administratively attached agencies;
- (2) providing personnel administration, financial management, procurement and budget preparation for the department and administratively attached agencies; and
- (3) performing economic research and analysis for the department and commission.

The division administers programs and grants that have been assigned generally to the department by the governor or the economic development and tourism commission or by statute.

Section 18 (page 18). Tourism enterprise fund (existing law) — This is a nonreverting fund that includes revenue from sales of souvenirs and sundries at visitor centers, web site-based sales and television special program rights to be used by the department to carry out its duties.

NB: The task force may want to consider whether earmarking is good public policy.

Section 19 (pages 18-21). Economic development division (existing law) — This

section includes some of the particular functions for which the economic development division is responsible.

Section 20 (pages 21-23). Enterprise development bureau duties and business incubators (existing law) — The enterprise development bureau has the following summarized duties:

(1) provide information and assistance to businesses wishing to relocate to New Mexico or to expand within New Mexico;

(2) develop and maintain a comprehensive statewide business information database and referral service;

(3) provide assistance regarding licensing, permitting and taxation procedures; and

(4) establish a reporting procedure to monitor the success of the referral service.

Business incubators receiving state funds are required to pass a state incubator certification program administered by the bureau. The bureau certifies based on documentation that the incubator is qualified to provide services.

Section 21 (pages 23-25). Artisans business development program and fund (existing law) — This section creates the New Mexico artisans business development program in the economic development division to promote artisans and artisans' wares, in conjunction with the arts division of the cultural affairs department. The New Mexico artisans business development fund is a nonreverting fund consisting of appropriations, gifts, grants, donations and investment income, which is used to carry out the purposes of the program. **NB:** The task force may want to consider whether earmarking is good public policy.

Section 22 (page 25). Technology-based proposals and state match fund (existing law) — The state match fund is a nonreverting fund that can be used only as state matching funds when submitting technology-based proposals to the federal government. **NB:** The task force may want to consider whether earmarking is good public policy.

Section 23 (page 26). International trade bureau duties (existing law) — The international trade bureau is responsible for conducting and coordinating the state's relations with other countries and promoting New Mexico and its products and services. Duties are

summarized as:

- (1) coordinating activities of the department and other state agencies as those activities relate to improving New Mexico's relations and trade with other countries;
- (2) promoting New Mexico to international investors;
- (3) promoting New Mexico products and services to potential international consumers and establishing a central registry for New Mexico products and services;
- (4) developing, maintaining and using a database of potential domestic and international investors and consumers for New Mexico and its products and services;
- (5) fostering, coordinating and supporting private promotion efforts; and
- (6) working with persons outside of state government to formulate a trade promotion plan for inclusion in the department's five-year economic development and tourism plans.

Section 24 (pages 26-27). Mexican trade (existing law) — The international trade bureau is responsible for:

- (1) conducting and coordinating the state's relations with Mexico and Chihuahua;
- (2) promoting New Mexico products and services in Mexico;
- (3) coordinating activities of the department and other departments as those activities relate to improving New Mexico-Mexico relations and trade;
- (4) establishing and updating the New Mexico trade registry; and
- (5) providing periodic reports to the New Mexico finance authority (NMFA) oversight committee on its activities and the activities of the state pertaining to New Mexico-Mexico relations, trade and border development.

Section 25 (pages 27-29). Minority business assistance (existing law) — This section defines "minority business" as a business with its principal place of business in New Mexico with majority ownership held by residents who are African American, Hispanic American, Asian American or Native American and that employs 20 or fewer people.

Section 26 (pages 29-30). Minority business assistance fund (existing law) — This section creates a nonreverting fund to carry out the provisions of Section 25. **NB:** The task force may want to consider whether earmarking is good public policy.

★ The next 60 sections are amendatory material, with only name changes for the most part. Only substantive changes will be discussed.

Section 28 (pages 31-33). Main street revolving loan committee — The boards and commissions subcommittee wrestled with the expense of per diem and mileage for numerous boards and commissions. This section provides that members will not receive per diem and mileage. Depending on final decisions of the task force, this may be changed. One option is to allow per diem and mileage only if the department can afford it. This section may need to be conformed to whatever decisions the task force makes regarding per diem and mileage.

Section 30 (pages 36-38). Powers and duties of NMFA oversight committee — This section includes monitoring and providing advice and assistance on border economic development activities, particularly state and government capital planning and financing of border and port-of-entry capital projects. This is similar to the committee's duty for the border authority, which is being abolished in the bill.

Section 33 (pages 43-45). New Mexico-Chihuahua commission — The boards and commissions subcommittee recommended continuation of the commission on condition that it not be an expense to the state. This section may need to be conformed to whatever decisions the task force makes regarding per diem and mileage.

Section 35 (pages 45-47). New Mexico-Sonora commission — The boards and commissions subcommittee recommended continuation of the commission on condition that it not be an expense to the state. This section may need to be conformed to whatever decisions the task force makes regarding per diem and mileage.

Sections 37 and 38 (pages 48-49). These sections of the Public Works Apprentice and Training Act move duties of the apprenticeship council to the apprenticeship bureau of the commerce department.

Sections 48 through 57 (pages 56-65). These sections of the Apprenticeship Assistance Act are amended to change the advisory committee to a state bureau, which is the apprenticeship bureau; clarifies the federal bureau; and makes the state bureau responsible for provisions of the act.

Sections 61 through 82 (pages 69-99). These sections clean up old labor sections of

law.

Section 86 (pages 100-103). Spaceport authority created — This section provides for per diem and mileage at the same rate as state employees. This section may need to be conformed to whatever decisions the task force makes regarding per diem and mileage.

Section 87 (pages 103-104). Litter Control and Beautification Act definitions — The boards and commissions subcommittee recommends that the litter control council be abolished. This section may need to be conformed to whatever decisions the task force makes regarding the council.

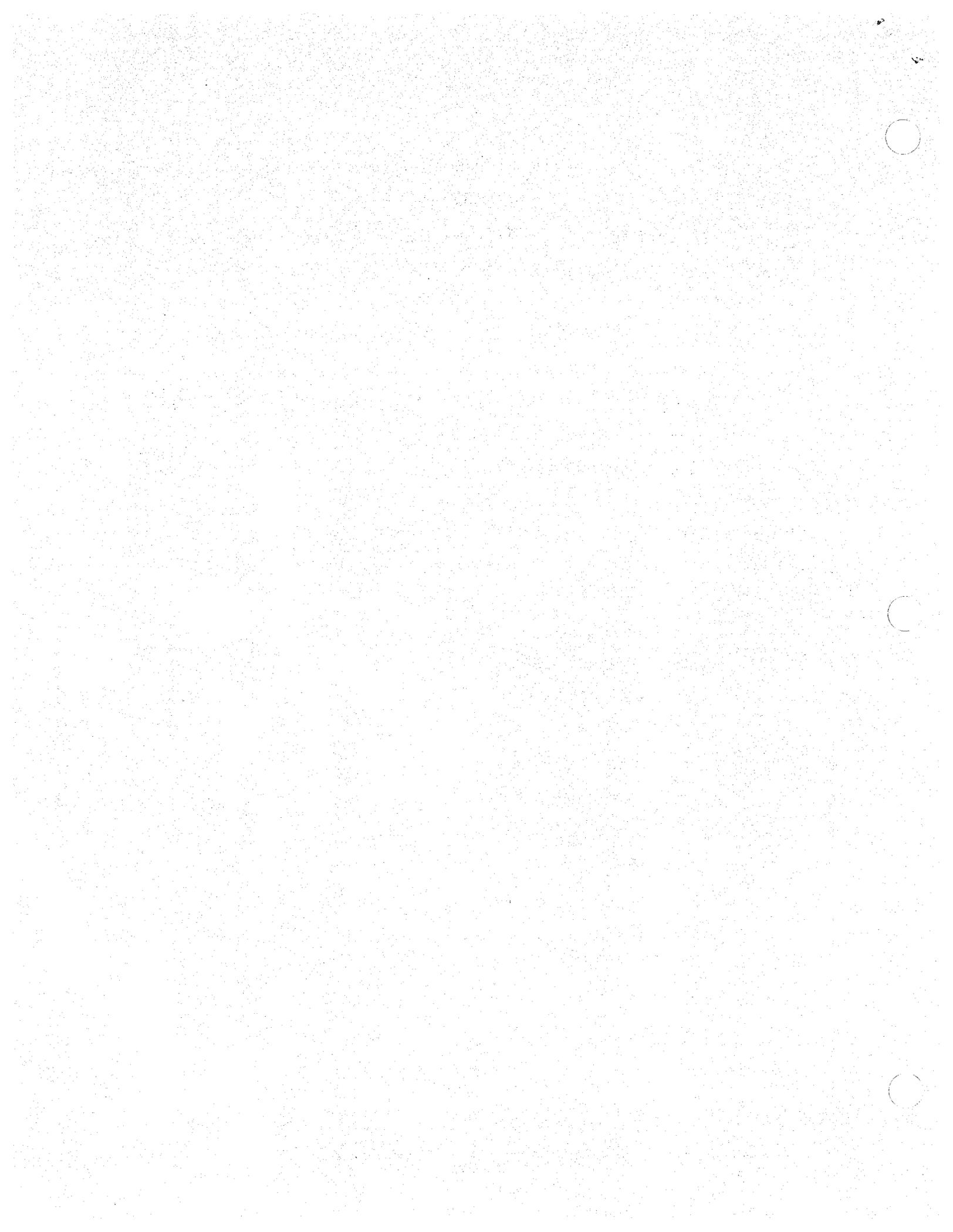
Section 88 (pages 104-105). Temporary provision; transfers — This is a standard transfer section that includes transfers of the EDD, tourism department, WSD and border authority to the commerce department. Subsection E of the section transfers everything of the New Mexico film museum to the cultural affairs department.

Section 89 (page 105). Recompilation — This section recompiles Section 9-15-56 NMSA 1978, which requires certain information to be provided in a law that provides economic development tax incentives, into the Commerce Department Act.

Section 90 (pages 105-107). Repeal — This section repeals the following:

- A. Economic Development Department Act;
- B. Tourism Department Act;
- C. Intertribal Ceremonial Act;
- D. Workforce Solutions Department Act;
- E. Small Business Regulatory Relief Act;
- F. New Mexico Film Museum Act;
- G. the apprenticeship and training advisory committee;
- H. Border Development Act; and
- I. Bicycle Racing Act.

Section 91 (page 107). Effective date — The effective date is January 1, 2012. The task force may want another effective date. The task force may want to consider a deliberative executive process for combining these agencies into one.



State of New Mexico

Legislative Council Service

411 State Capitol, Santa Fe, New Mexico 87501

(505) 986-4600 Fax: (505) 986-4680

Information Memorandum

DATE: November 19, 2010

DISCUSSION DRAFT

TO: Government Restructuring Task Force Members

FROM: Kim Bannerman

SUBJECT: ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
REORGANIZATION — SECTION-BY-SECTION EXPLANATION

Following is a section-by-section explanation of the proposed reorganization of the energy, minerals and natural resources department (EMNRD). The bill moves the department of game and fish into EMNRD. It also moves oversight of the Water Quality Act from the department of environment (DOE) into EMNRD. The majority of the bill deals with the elimination of the state game commission and the transfer of the state game commission's authority to the new game and fish division of EMNRD. It also transfers oversight of the Medical Imaging Radiation Therapy Health and Safety Act from DOE to the department of health. The bill combines the powers and duties of the coal surface mining commission with the mining commission and then eliminates the coal surface mining commission as well. Any opinions expressed are those of the author and do not necessarily reflect the opinions of the New Mexico legislative council or any other member of its staff. Note that amendatory sections that are cleanup without substantive changes are not discussed.

Section 1 (page 2). Department established. This section adds the game and fish division to EMNRD. It also deletes the administrative attachment of the state game commission to EMNRD because the state game commission is being eliminated.

Section 2 (page 3). Secretary's powers and duties. This section provides that the secretary of energy, minerals and natural resources' authority over the department or divisions of

the department can be exempted by explicit statement in statute. This is a standard executive organization provision. The amendment is necessary because the Water Quality Act requires the water quality control commission to be exempt from the secretary's authority (see Section 3, page 3).

Section 5 (page 5). State parks advisory board. Specifically states that the state parks advisory board shall not be paid or receive per diem pursuant to a request of the boards and commissions committee.

Sections 7 and 8 (pages 8-9). Moves control of the department of game and fish from the state game commission into the new game and fish division of EMNRD. Moves the former conservation services division of the department of game and fish to the conservation services bureau of the game and fish division of EMNRD.

Section 14 (pages 12-18). Powers of the game and fish division. Transfers the powers of the state game commission to the game and fish division.

Sections 15 through 17 (pages 18-20). Bonding authority. Gives bonding authority previously invested in the state game commission to the secretary of energy, minerals and natural resources.

Sections 18 through 48 (pages 20-59). Game and fish programs. These sections move the state game commission's authority over the game and fish programs of the state, including the authority to receive federal funds and enforce penalties, to the new game and fish division of EMNRD.

Sections 49 through 55 (pages 59-78). Wildlife Conservation Act. Transfers oversight of the Wildlife Conservation Act, which deals with threatened and endangered species, from the state game commission to EMNRD. The game and fish division and the secretary of energy, minerals and natural resources both have duties under the act.

Sections 56 through 82 (pages 78-100). Hunting and fishing. Transfers oversight of hunting and fishing activities in the state from the state game commission to the game and fish division of EMNRD.

Sections 83 through 85 (pages 100-102). Power to acquire land. Provides the game and fish division of EMNRD with the authority to obtain lands for game and fish purposes,

including eminent domain for rights of way necessary for use of such lands. These powers previously rested with the state game commission.

Sections 94 through 97 (pages 118-122). Fur-bearing animals. Transfers oversight of the hunting and trapping of fur-bearing animals from the state game commission to the game and fish division of EMNRD.

Sections 98 through 102 (pages 122-126). Habitat protection. Transfers oversight of the Habitat Protection Act, which addresses the impact of motorized vehicle use on land, from the state game commission to the game and fish division of EMNRD.

Sections 113 through 116 (pages 138-146). Medical Imaging and Radiation Therapy Health and Safety Act. Transfers oversight and enforcement of the act from DOE to the department of health.

Sections 117 through 118 (pages 146-149). Off-Highway Motor Vehicle Act. Amends the act to specify that the game and fish division of EMNRD subsumes the powers of the department of game and fish. Also prohibits members of the off-highway motor vehicle advisory board from receiving per diem at the request of the boards and commissions committee.

Sections 119 through 123 (pages 149-161). Combining the mining commission and the coal surface mining commission. These sections combine the powers and duties of the mining commission and coal surface mining commission. The coal surface mining commission will be eliminated, leaving the mining commission as the only commission addressing mining regulations in the Surface Mining Act.

Sections 127 through 132 (pages 171-183). Water Quality Act. Transfers the powers and duties of DOE in the Water Quality Act to EMNRD. Also changes the membership on the water quality control commission to ensure that two members of the commission come from regulated industries, per instruction from the boards and commissions committee.

Section 132 (pages 183-185). Temporary provision; transfers; references in law. This section is a standard transfer section. It includes the transfer of:

- (1) functions, appropriations, personnel, property and contractual obligations from the department of game and fish and state game commission to EMNRD;
- (2) functions, appropriations, personnel, property and contractual obligations from

the surface and ground water quality bureaus of DOE relating to administration of the Water Quality Act to EMNRD;

(3) functions, appropriations, property and contractual obligations of the radiation control bureau of DOE relating to administration of the Medical Imaging and Radiation Therapy Health and Safety Act to the department of health; and

(4) functions, appropriations, property and contractual obligations of the coal surface mining commission to the mining commission.

Section 133 (page 185). Temporary provision; duties of the state game commission.

This section clarifies that all duties of the state game commission shall become duties of the game and fish division of EMNRD, and it states that all the state game commission's rules will remain in force unless repealed or amended by the game and fish division.

Section 134 (page 185). Repeal. This section repeals the sections establishing and setting forth the duties of the state game commission, and it repeals the sections creating and setting forth the duties of the coal surface mining commission.

Information Memorandum

DATE: November 19, 2010

DISCUSSION DRAFT

TO: Government Restructuring Task Force Members

FROM: Jonelle Maison

SUBJECT: DEPARTMENT OF FINANCE AND ADMINISTRATION — SECTION-BY-SECTION EXPLANATION

Following is a section-by-section explanation of the proposed new department of finance and administration (DFA) that includes:

- (1) creating an executive services bureau to provide administrative services to small agencies;
- (2) moving the purchasing division from the general services department (GSD);
- (3) moving the state personnel office (SPO) to DFA;
- (4) making the office of education accountability part of a division that oversees both public school and higher education finance and accountability; and
- (5) making necessary amendments to current law.

Any opinions expressed are those of the author and do not necessarily reflect the opinions of the New Mexico legislative council or other members of its staff.

Note that many of the sections creating a cabinet department are standard sections based on the Executive Reorganization Act. Amendatory sections that are cleanup without substantive changes are not discussed.

★ **Section 3 (pages 2-3). Department created** — This section provides the structure of DFA, with new organizational units bolded:

- (1) office of the secretary;
- (2) administrative services division, including:
 - (a) **executive services bureau**; and

- (b) capital outlay planning and monitoring bureau;
- (3) board of finance division;
- (4) educational finance and accountability division;**
- (5) financial control division;
- (6) local government division;
- (7) purchasing division,** which includes the management and contracts review bureau;
- (8) state budget division; and
- (9) state personnel division.**

The secretary has the power to reorganize internally, but a change in statutory divisions or bureaus must be provided to the legislature for statutory revision; the secretary may not create new divisions without express authority of the legislature. **NB:** This language is different from the commerce department bill. The task force may choose which language it prefers.

★ **Section 4 (pages 3-4). Administratively attached agencies** — This section lists the agencies that are administratively attached, with the new one to DFA in bold:

- (1) acequia commission;
- (2) state board of finance;
- (3) personnel board;**
- (4) New Mexico community development council;
- (5) civil legal services commission; and
- (6) land grant council.

NB: This list may change depending on decisions of the task force relative to boards and commissions.

★ **Section 8 (pages 11-13). Educational finance and accountability division** — This section specifies the duties of the educational finance and accountability division, which are to monitor and oversee public school and higher education finances and budgets and to provide an independent evaluation of how well the two public education systems are performing and how well the public education department and higher education department perform in holding those systems accountable to students, taxpayers and citizens.

★ **Section 9 (pages 13-14). Executive services bureau duties** — This section provides that the executive services bureau shall provide budgeting, recordkeeping and related

administrative and clerical services for small agencies. **NB:** Still to be determined is what constitutes a "small agency".

★ **Section 10 (pages 14-15). General services department created** — This section makes the GSD a non-cabinet department (similar to the regulation and licensing department) and changes the makeup of GSD to take out the purchasing division.

Section 11 (page 15). Superintendent appointment — This section converts the secretary of general services to a superintendent.

★ **Section 13 (pages 19-20). Administratively attached agency** — This section provides for administrative attachment of the governor's residence advisory commission to GSD. **NB:** LFC has recommended that this commission be eliminated.

Section 14 (page 20). Personnel board powers and duties — This section removes from the personnel board the ability to promulgate rules, hire the state personnel director, review budget requests of SPO and liaise with GSD.

★ **Section 15 (pages 20-21). State personnel director qualifications** — This section is a new section of the Personnel Act that provides that the state personnel director must be someone of recognized character and ability appointed by the secretary of finance and administration based solely on the director's qualifications and without regard to political affiliation. The director must have at least a master's degree in human resource management or public or business administration or a related field and at least seven years' progressive experience in applying principles, methods and techniques of personnel administration. The section also requires the director to be confirmed by the senate.

Section 16 (pages 21-22). Personnel director duties — This section deletes the director as secretary of the personnel board and provides that the director recommend to the secretary of finance and administration rules to be promulgated.

Sections 18 through 28 (pages 23-37). These sections amend the Procurement Code and the State Use Act to define the central purchasing office as the purchasing division of DFA and change responsibilities from GSD to DFA.

Sections 29 through 31 (pages 37-39). Temporary provisions; transfers — These sections are standard transfer sections. Section 29 transfers property, contractual obligations and statutory references of SPO to DFA. Section 30 transfers the purchasing division of GSD to DFA. Section 31 provides that statutory references to the secretary of general services shall be

deemed to be references to the superintendent of general services.

Section 32 (page 39). Repeal — This section repeals the attachment of SPO and the personnel board to GSD.

Section 33 (page 39). Contingent recompilation — This section provides that if the Ft. Stanton development commission, which is compiled in the Department of Finance and Administration Act, is not repealed by another act of the fiftieth legislature, first session, the compiler will recompile those sections in the Cultural Affairs Department Act or other suitable location in the NMSA 1978.

Section 34 (page 39). Effective date — The effective date is July 1, 2011, which should be a reasonable date.

Core Services Category: Business and Industry

Study Area: Reorganize/Transfer

High Level Recommendation: Transfer certain functions of the Public Regulation Commission (PRC) to other agencies and a unit from the Secretary of State's (SOS) Office including the following:

1. The Transportation Division from the PRC to the Department of Public Safety (DPS);
2. The Insurance Division from the PRC to the Regulation and Licensing Department (RLD) or to a newly created independent Department of Insurance;
3. The process of collecting insurance tax premiums from PRC to the Taxation and Revenue Department (TRD);
4. The State Fire Marshal's Office from the PRC to DPS;
5. The Operations Division from the SOS to the PRC

Problem Statement: The authority of the PRC Commission is being weakened by a semi-autonomous Insurance Division and Office of the State Fire Marshal. New Mexico is unique from other states in the breadth of responsibilities assigned to its regulatory commission. Not only does the PRC provide regulation and oversight of utilities, telecommunications, and motor carriers but also provides administrative oversight of the insurance industry and certain public safety functions, such as pipeline safety, the State Fire Marshal Office, and the Firefighter Training Academy.

The Commission has constitutional authority to protect the public from "natural monopolies" – utility, transportation, and telecommunication companies. However, a constitutional amendment expanded the Commission's authority to include insurance regulation. The Commission has limited influence over insurance regulation because, by statute, the authority is vested with the Superintendent of Insurance.

Through legislative action, the Office of the State Fire Marshal was transferred to the PRC along with the Fire Fighter Training Academy. As with the Insurance Division, the Commission has limited involvement in the operations of the State Fire Marshal.

The structural inefficiency created by duplicative regulatory structures between the commission and the Insurance Division and limited authority over the Office of the State Fire Marshal is weakening the department. Over the years, the mission and purpose of the commission has expanded beyond its original constitutional mandate.

Since the PRC was created nearly fifteen years ago, the scope of the commission's oversight and regulated industries has changed significantly. Despite the growing complexity, PRC commissioners are not required to have a background or experience in rate setting and regulation. Furthermore, once elected, due to ex parte rules, commissioners can't communicate with hearing officers about pending cases.

Background and Findings: The PRC has regulatory authority over utilities, telecommunications, motor carriers, and insurance, as well as administrative authority over the State Fire Marshal's Office, the Firefighter Training Academy, pipeline safety, and the registration of all corporations doing business in New Mexico.

Day to day operation of the department is managed by the Chief of Staff, except for activities of the Insurance Division and those of the Hearing Officers. The Chief of Staff is an 'at-will' employee appointed by the commission.

- The Transportation Division of the PRC works with the Motor Transportation Division of the DPS to comply with Federal Motor Carrier Safety requirements and the New Mexico Motor Carrier Act. Both departments work to ensure commercial vehicles are safe and legally authorized to drive on our roadways. Both departments perform safety inspections, enforce compliance and issue fines. Transferring the Transportation Division to DPS could improve compliance and enforcement efforts. Additional consideration may include whether the PRC Pipeline Safety Bureau, a bureau of the PRC Transportation Division, should also be combined with DPS. According to the National Association of Pipeline Safety Representatives, pipeline safety is part of a federal and state partnership to protect communities and protect national interests.
- The Insurance Division is semi-autonomous from the Commission except that the Superintendent of Insurance is appointed by the Commission, and can only be removed for cause. In addition, the PRC Chief of Staff does not generally oversee operations in the Insurance Division. Disputes over insurance rate regulation are generally not reviewed by the Commission and are usually litigated in court. Both the Commission and the Insurance Division could be strengthened if the Insurance Division were to be transferred from the PRC to another agency or elevated to an independent office.
- The Revenue Processing Unit of the Insurance Division collects over \$200 million of insurance premium taxes and assessments, as well as compliance and enforcement functions. Collecting and ensuring compliance is a core function of the Taxation and Revenue Department (TRD). The PRC and TRD are duplicating revenue processing and enforcement functions. Both departments support independent IT systems that are in need of upgrading. Collection, compliance, and enforcement of insurance premium taxes may be improved, with cost savings, if the Revenue Processing Unit of the PRC were transferred to TRD. The process of collecting revenue is not considered to be a constitutional regulatory authority and could therefore be transferred without an amendment.
- The State Fire Marshal's Office is also semi-autonomous from the Commission except that the State Fire Marshal is appointed by the Commission. The State Fire Marshal and the Fire Fighter Training Academy is not part of the constitutional regulatory authority and could therefore be transferred without a constitutional amendment. Combining firefighting training with other public safety training academies could improve coordination and leverage training assets.

- The Operations Bureau of the Secretary of State is responsible for issuing partnership registrations and other business related functions while the Corporations Bureau of the PRC is responsible for issuing certificates of incorporation/authority, overseeing the organization and registration of limited liability companies, and verifying the completeness and accuracy of related charter documents. Both departments support independent IT systems that are in need of upgrading.

Options to Consider:

- 1) **Transportation Division** – Transfer to Department of Public Safety Motor Transportation Division to eliminate duplicative compliance and enforcement efforts. Additional consideration warranted to move the Pipeline Safety Bureau to DPS.

Fiscal Implications: Transferring the Transportation Division to DPS may result in a minimal amount of general fund savings; however, there could be a substantial improvement in compliance and enforcement. The potential savings would occur from the elimination of 1 manager and possibly 1 administrative assistant/office clerk. The analysis assumes the division would remain in a state-owned building and includes the Pipeline Safety Bureau. The remaining \$3.8 million FY11 operating budget would be transferred.

	Potential Savings Amount (in thousands)					Exhibit A1
	General Fund	Other State	Inter-agency	Federal	Total	
Personal Svcs and Empl Benefits	\$58.3	\$30.3	\$4.0	\$18.7	\$111.3	
Contractual Services	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	
Other Costs	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	
TOTAL	\$58.3	\$30.3	\$4.0	\$18.7	\$111.3	

	Potential Transfer Amount (in thousands)				
	General Fund	Other State	Inter-agency	Federal	Total
Personal Svcs and Empl Benefits	\$733.8	\$761.8	\$788.1	\$773.4	\$3,057.1
Contractual Services	\$10.3	\$22.8	\$0.0	\$14.1	\$47.2
Other Costs	\$114.8	\$342.4	\$0.0	\$210.2	\$667.4
TOTAL	\$859.0	\$1,127.0	\$788.1	\$997.7	\$3,771.8

Obstacles to Consider:

The PRC was created in 1996 through an amendment to the New Mexico Constitution. As such, it would have to be determined whether the constitution would have to be amended if the Transportation Compliance and Applications Bureaus were to be transferred from the PRC to DPS. In theory, the PRC could retain jurisdiction over transportation rates (without a constitutional amendment) while DPS would be responsible for compliance and enforcement.

- 2) **Department of Insurance** – Create a whole new agency, or possibly consolidate/combine with the RLD Financial Institutions Division.

Fiscal Implications: Transferring the Department of Insurance to RLD would not result in any general fund savings; however, there could be a substantial improvement in operations of both the Insurance Division and the PRC.

	Potential Transfer Amount (in thousands)				
	General Fund	Other State	Inter-agency	Federal	Total
Personal Svcs and Empl Benefits	\$0.0	\$0.0	\$4,736.7	\$0.0	\$4,736.7
Contractual Services:	\$0.0	\$0.0	\$194.7	\$0.0	\$194.7
Other Costs	\$0.0	\$0.0	\$473.5	\$0.0	\$473.5
TOTAL	\$0.0	\$0.0	\$5,404.9	\$0.0	\$5,404.9

Obstacles to Consider:

- The PRC was created in 1996 through an amendment to the New Mexico Constitution. As such, it would require an additional amendment to the constitution to move the insurance regulation function from the PRC to another department.
- If the Department of Insurance were to be consolidated into a Commerce and Insurance Department, careful consideration regarding the appointment of the Superintendent of Insurance should be made and who would have judicial authority or review over the superintendent's actions.

- 3) **Insurance tax collection.** Transfer the unit that collects insurance premium taxes from the Department of Insurance to the Taxation and Revenue Department. The process of collecting insurance premium taxes is not part of the constitutional regulatory authority, and as such could be performed alongside other tax reporting and collection efforts.

Fiscal Implications:

	Potential Transfer Amount (in thousands)				
	General Fund	Other State	Inter-agency	Federal	Total
Personal Svcs and Empl Benefits	\$0.0	\$0.0	\$385.4	\$0.0	\$385.4
Contractual Services:	\$0.0	\$0.0	\$10.7	\$0.0	\$10.7
Other Costs	\$0.0	\$0.0	\$52.8	\$0.0	\$52.8
TOTAL	\$0.0	\$0.0	\$448.9	\$0.0	\$448.9

Obstacles to Consider:

- The Insurance Division IT system, IDEAL, shares data with the National Association of Insurance Commissioner's (NAIC) databases. Tax data would have to be able to be uploaded from TRD's GenTax system to IDEAL.

- 4) **State Fire Marshal's Office and Firefighter Training Academy** – Transfer the Fire Marshal's Office and Academy to the Department of Public Safety/Homeland Security and Emergency Management where various other training, disaster, emergency response, and investigation functions have consolidated. Although there would be no general fund savings, an opportunity may exist to leverage public safety assets and improve coordination between fire safety, state police, and training academies.

State Fire Marshal's Office

	Potential Transfer Amount (in thousands)				
	General Fund	Other State	Inter-agency	Federal	Total
Personal Svcs and Empl Benefits	\$0.0	\$1,683.0	\$0.0	\$0.0	\$1,683.0
Contractual Services:	\$0.0	\$100.2	\$0.0	\$0.0	\$100.2
Other Costs	\$0.0	\$753.6	\$0.0	\$0.0	\$753.6
TOTAL	\$0.0	\$2,536.8	\$0.0	\$0.0	\$2,536.8

Firefighter Training Academy

	Potential Transfer Amount (in thousands)				
	General Fund	Other State	Inter-agency	Federal	Total
Personal Svcs and Empl Benefits	\$0.0	\$951.8	\$385.4	\$0.0	\$1,337.2
Contractual Services:	\$0.0	\$221.5	\$10.7	\$0.0	\$232.2
Other Costs	\$0.0	\$496.7	\$52.8	\$0.0	\$549.5
TOTAL	\$0.0	\$1,670.0	\$448.9	\$0.0	\$2,118.9

- 5) Transfer the Operations Unit of the Secretary of State (SOS) and combine with the Corporations Bureau of to the PRC. The Operations Unit of the SOS provides various administrative and business-related services including the registration of general partnerships, limited partnerships, limited liability partnerships, trademarks, and Uniform Commercial Code filings. Additional analysis is required to determine whether SOS and PRC IT data bases could be merged. Although the general fund savings would be minimal, there could be an improved level of service provided by consolidating.

Fiscal Implications

Secretary of State Operations Division

	Potential Savings Amount (in thousands)					Exhibit B1
	General Fund	Other State	Inter-agency	Federal	Total	
Personal Svcs and Empl Benefits	\$120.0	\$0.0	\$0.0	\$0.0	\$120.0	Exhibit B1
Contractual Services:	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	
Other Costs	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	
TOTAL	\$120.0	\$0.0	\$0.0	\$0.0	\$120.0	

Exhibit A1						
Transportation Division Potential FTE to Delete						
Number of FTE		Salary and Benefits	General Fund	Other State Funds	Int. Svcs/Int-Trfers	Federal Funds
1	Transportation Bureau	\$62,246	\$58,262	\$0	\$3,984	\$0
1	Pipeline Safety Bureau	\$49,007	\$0	\$30,286	\$0	\$18,721
2	TOTAL	\$111,253	\$58,262	\$30,286	\$3,984	\$18,721

Exhibit B1						
Secretary of State Operations Division Potential FTE to Delete						
Number of FTE		Salary and Benefits	General Fund	Other State Funds	Int. Svcs/Int-Trfers	Federal Funds
1	Operations Division	\$120	\$120	\$0	\$0	\$0
1	TOTAL	\$120	\$120	\$0	\$0	\$0

DRAFT

State of New Mexico

Legislative Council Service

411 State Capitol, Santa Fe, New Mexico 87501

(505) 986-4600 Fax: (505) 986-4680

Information Memorandum

DATE: November 17, 2010

DISCUSSION DRAFT

TO: Government Restructuring Task Force Members

FROM: Kim Bannerman

SUBJECT: DEPARTMENT OF PUBLIC SAFETY — SECTION-BY-SECTION
EXPLANATION

Following is a section-by-section explanation of the proposed new department of public safety (DPS). The bill moves the homeland security and emergency management department and the fire marshal division of the public regulation commission into the DPS. It also moves oversight of the Enhanced 911 Act from the local government division of the department of finance and administration (DFA) into the DPS. The bill significantly amends the Enhanced 911 Act to allow the 911 surcharge to apply to new phone service technologies and prepaid calling cards. It also provides for development of a statewide enhanced 911 system utilizing technologies provided by the department of information technology (DoIT). The previous version of this bill moved the motor transportation division of the DPS to the department of transportation. After discussion on that topic at the last meeting, that part of the bill has been removed, and, accordingly, the motor transportation division will remain in the DPS. Any opinions expressed are those of the author and do not necessarily reflect the opinions of the New Mexico legislative council or any other member of its staff. Note that amendatory sections that are cleanup without substantive changes are not discussed.

Section 5 (pages 8-9). Purpose of the department. This section adds homeland security and emergency management functions to the DPS's purpose. With new language bolded, the section provides that the purpose of the DPS Act is to:

.182722A

establish a single, unified department to consolidate law enforcement, safety **and homeland security and emergency management** functions in order to provide better management, real coordination and more efficient use of state resources and manpower in responding to New Mexico's public safety **and homeland security and emergency management** needs and problems and to improve the professionalism of the state's law enforcement and investigative functions and personnel **and the state's homeland security and emergency management functions and personnel.**

Section 6 (page 9). Department created. This section provides the structure of the DPS, with new organizational units bolded:

- A. the New Mexico state police division;
- B. the special investigations division;
- C. the training and recruiting division;
- D. the technical support division;
- E. the administrative services division;
- F. the motor transportation division;
- G. the information technology division;
- H. the homeland security and emergency management division;**
- I. the fire marshal division; and**
- J. the enhanced 911 division.**

Section 7 (pages 9-14). Secretary's duties and powers. Language was added to ensure that the secretary of public safety is the coordinating official of all departments and agencies and their employees when emergencies are declared by the governor.

Sections 12 through 29 (pages 22-53). These sections all deal with emergency situations. The homeland security and emergency management division of the DPS remains the primary authority and coordinating official when dealing with emergencies in the state.

Sections 30 through 36 (pages 53-59). These sections move all the fire marshal division duties from the public regulation commission to the DPS, including the fire protection fund.

Section 37 (pages 59-66). Enhanced 911 Act definitions. This section amends certain

definitions and adds new definitions, including:

A. 911 emergency surcharge — amended to include phone services that use an internet connection to make and receive calls and other new technology used for phone services;

F. communication service — added to ensure that new technology used for phone services are covered by the act;

J. division — changed from the local government division of the DFA to the enhanced 911 division of the DPS;

K. emergency services internet protocol network — added to the definitions section to ensure that the act deals with new technology such as internet-based public communication systems;

L. enhanced 911 system — amended to include new technology (emergency services internet protocol network and next generation 911 systems);

R. interconnected voice over internet protocol service — added to ensure that the act covers phone services that use an internet connection to make and receive calls; and

T. next generation 911 technology — allows for the use of new technology developed to make 911 systems more efficient and compatible with phone services that are non-traditional.

Section 38 (pages 66-68). Imposition of the 911 emergency surcharge. This section is amended to include all new technology used for phone services, including interconnect voice over internet protocol service. This amendment will ensure that the surcharge applies to the users of these new technologies. Also, the section clarifies how to determine if the primary place of use of the service is New Mexico to comply with federal law.

Section 39 (pages 68-70). Prepaid wireless communication surcharge. This section enacts a new 911 emergency surcharge for prepaid phone cards. The surcharge is one and eight-tenths percent of the cost of the prepaid service.

Section 41, Subsection H (page 74). Enhanced 911 fund. This section is amended to allow money in the fund to be used by the enhanced 911 division, in conjunction with the DoIT, to develop and provide for a statewide enhanced 911 system.

Section 45 (pages 77-78). Statewide enhanced 911 system. This is a new section

requiring the enhanced 911 division of the DPS to work with the DoIT to develop and implement a statewide enhanced 911 system. It requires the DoIT to provide the technical infrastructure needed for the development of such a system utilizing next generation 911 technology and an emergency services internet protocol network. In addition, this section mandates that all locally controlled public safety answering points connect to the statewide system when it becomes fully operational.

Section 50 (pages 82-84). Temporary provision; transfers. This section is a standard transfer section, and it transfers functions, appropriations, property and contractual obligations from the homeland security and emergency management department, the fire marshal division of the public regulation commission and the local government division of the DFA relating to the Enhanced 911 Act to the DPS.

Section 51 (page 84). Temporary provision; recompilation. This section moves the sections establishing the firefighter training academy and fire marshal division out of the Public Regulation Commission Act into the DPS Act.

Section 52 (page 84). Repeal. This section repeals the Homeland Security and Emergency Management Department Act.

Core Services Category: Public Safety, Homeland Security, State Fire Marshal, E-911

Study Area: Reorganization/Efficiency

High Level Recommendation: Repeal the appropriate sections of the Homeland Security and Emergency Management Department (Section 9-21-1 through 9-28-7, NMSA 1978) and return all emergency management and homeland security, policy development, agency coordination, and implementation functions to the Department of Public Safety.

Problem Statement: As indicated in the January 14, 2010 report of the Committee on Government Efficiency, there exists an unnecessary dual agency approach to statewide homeland security and public safety functions and the Homeland Security and Emergency Management Department should be merged into the Department of Public Safety. The draft legislation address this issue and also seeks to streamline related functions by transferring administration of the enhanced 911 service program to newly aligned DPS Homeland Security and Emergency Management Division, while requiring the Department of Information Technology to provide the infrastructure for enhanced 911 services. The draft legislation additionally transfers the Fire Marshal Division of the Public Regulation Commission (PRC) to the Department of Public Safety.

The draft legislation indicates the Fire Marshal Division shall consist of functions formerly exercised by the Fire Marshal Division of the PRC public regulation commission and shall include:

- (1) the firefighter training academy bureau;
- (2) the fire service support bureau;
- (3) the fire investigations bureau; and
- (4) the fire code enforcement bureau.

It further states that, "The enhanced 911 division shall administer the state's enhanced 911 service program pursuant to the Enhanced 911 Act." As contemplated by the proposed legislation, subsequent to the reorganization of the above functions, DPS "...shall be a cabinet department and shall consist of, but not be limited to, [five] eight program divisions, an administrative division and an information technology division as follows:

- A. the New Mexico state police division;
- B. the special investigations division;
- C. the training and recruiting division;
- D. the technical support division;
- E. the administrative services division;
- F. the motor transportation division; [and]
- G. the information technology division;
- H. the homeland security and emergency management division;
- I. the fire marshal division; and
- J. the enhanced 911 division."

While no additional comments were provided by the PRC or agencies associated with the existing enhanced 911 structure, DPS did provide the following statement in response to the most current discussion draft (.182722.4):

Homeland Security and Emergency Management Department's mission is to respond to an emergency and to assess the magnitude of the incident and coordinate the response and recovery process.

Transferring the Administration of E911 Services to Homeland Security and Emergency Management appears logical. Currently, Homeland Security and Emergency Management are charged with interoperability of communications between emergency service agencies. This transfer would provide for a seamless process and would reduce the number of state agencies involved in the decision making process that exists today.

Transferring the Fire Marshal's Division to DPS from the PRC is also very logical. As previously stated, the Department of Public Safety is the State's law enforcement agency, tasked with the investigation of criminal violations that occur within the State of New Mexico. The addition of the Fire Marshal Division would provide for an improved response to arson investigations statewide. Currently, the New Mexico State Police and Fire Marshal Division collaborate during these investigations and this will only enhance our ability to do so. Additionally, the Fire Marshal's Office has some regulatory responsibilities as does the Special Investigations Division of the Department of Public Safety. Further, the transfer of the Fire Marshal's Division to the DPS may lead to improved response to the citizens by enhancing collaboration with the DPS Forensic Bureau. Therefore, this proposed draft appears to attempt to move all law enforcement / safety related entities under the Department of Public Safety.

The Homeland Security and Emergency Management Department (DHSEM) has voiced opposition to the proposed legislation, previously suggesting the following considerations associated with merging the agency with the Department of Public Safety:

1. DHSEM focus is response and preparation to an emergency regardless of the cause. The agency also is the States coordinating entity during a disaster. DHSEM coordinates resources, local, State and Federal, to effectively respond to the incident. These recourses are Fire, EMS, National Guard, Law enforcement and national assets. DPS is one of the many assets utilized. An inherent problem with coordination of a multi jurisdiction response by a law enforcement agency is that territorial battles ensue and unlike agencies (fire, EMS, National Guard, etc) sometime so not blend well because of the difference in missions;
2. DPS has a mission that is clearly law enforcement. Response to non law enforcement incidents is not within their scope; and
3. Financial management (federal funding, grant and disaster) is more timely and effective out of a smaller more nimble organization. DHSEM is current with regard to Federal grant close out and reporting for all grants programs beginning with the creation of the agency (DHSEM) the grant programs managed under the Department of Public

Safety (prior to 2007) have yet to be completely reconciled. This speaks to the efficiencies gained after the separation. This is a direct impact to funding for New Mexico as well as a negative impact to the local programs the agency supports. The New Mexico State Police is one of many law enforcement programs funded by Federal Homeland Security Grants. Today this is a competitive process that places local jurisdictions and State Police as equal applicants. If this merger was enacted, DPS becomes the funding agency; therefore placing local law enforcement programs at a disadvantage.

However, it should be noted that the adjusted FY11 General Fund appropriation to DHSEM is some \$2.7 million and federal funding of \$35.4 million, with the majority of federal funds (some \$26 million) being passed through as grants to various state and local agencies to support homeland security-related initiatives.

The adjusted FY11 General Fund appropriation to the Department of Public Safety is some \$88 million and federal funding of \$20.8 million, with some \$6 million being passed through as grants to various state and local agencies in support of various law enforcement initiatives. Considering that DPS has an FY11 FTE count of 1,259, contrasted with Homeland Security's 66 FTE, it appears that the homeland security function could, as contemplated by the legislation, be absorbed back into DPS at the program level with the grants management function for the most part being assumed by existing DPS infrastructure.

Additionally, since the homeland security function is primarily directed to coordination and consultation – with no actual incident operational control – it would support the primary DPS mission to “...protect and secure the people of New Mexico in their lives, homes, and communities.” This realignment could not only streamline chain of command issues, but could potentially result in the reduction of 12 FTE – including five GOVEX positions – and save approximately \$779.8 thousand in general fund. It should be noted that the new program alignment will present a return to the original DPS organizational structure that existed prior to the elevation of homeland security responsibilities to cabinet-level status while maintaining the current level of service.

Background: The New Mexico Office of Emergency Management was first created in 1959 as the Civil Emergency Preparedness Division (CEPD) of the Office of Military Affairs. The State Civil Emergency Preparedness Act redefined the purpose and function of the Division. In 1979, the Federal Emergency Management Agency (FEMA) was and CEPD was then reorganized to meet the FEMA structural requirements. In 1987, the office was moved from Office of Military Affairs to the Department of Public Safety. In 1990, the name of the agency was changed to the Office of Emergency Management, Department of Public Safety. In 2003, the governor created the Governor's Office of Homeland Security that worked in conjunction with the Office of Emergency Management. In 2007, Chapter 291 (House Bill 227) created the Homeland Security and Emergency Management Department. The law removed the Emergency Management and the Homeland Security Support Program from the Department of Public Safety from DPS and the Office of Homeland Security from the Governor's Office to create a separate Homeland Security and Emergency Management Department (DHSEM). The purpose of the new department was to:

- Consolidate and coordinate homeland security and emergency management functions to provide comprehensive and coordinated preparedness, mitigation, prevention, protection, response, and recovery for emergencies, disasters and acts of terrorism, regardless of cause;
- Serve as the central primary coordinating agency in response to emergencies, disasters, and acts of terrorism; and
- Serve as the conduit for federal assistance and cooperation in response to emergencies, disasters and acts of terrorism.

Fiscal Implications: Because the draft legislation transfers the budget of the Homeland Security and Emergency Management Department, Fire Marshal Division and the Enhanced 911 Service Program to the Department of Public Safety, DPS does not anticipate the merger to create a fiscal impact to DPS. However, DPS suggests, once again, that the legislation should include specific language transferring staff of the above departments/programs/divisions to the Department of Public Safety. DPS further notes that, "There may be additional Fiscal Impact if there are administrative personnel currently assisting these potentially merged departments, which will not be transferred to DPS. Further discussion and coordination with PRC, DFA and Homeland Security and Emergency Management Department will be necessary to accurately determine 'administrative/personnel impact' that will be incurred by the current DPS Administrative Services Division from this merger." The following spreadsheet provided an initial financial overview of the proposed organization structure.

**Combined Department of Public Safety, Homeland Security Department,
State Fire Marshal and E-911 Cost Projections**
Based Upon Adjusted FY11 Operating Budget (3.2 percent reduction)

Account Code	Account Title	Department of Public Safety	Homeland Security Department	E-911 Program	State Fire Marshal Program	Total Combined Operating Budget for FY11	Potential GF Cost Savings	New Combined Budget
200.0	Personal Services/Benefits	90,052.9	4,091.1	487.9	2,634.8	97,266.7	(779.8)	96,486.9
300.0	Contractual Services	5,808.2	1,799.1	30.9	321.7	7,959.9	(30.0)	7,929.9
400.0	Other	35,431.9	32,577.2	19,481.2	1,250.3	88,743.6	(80.0)	88,663.6
Total		131,296.0	38,467.4	20,000.0	4,206.8	193,970.2	(895.8)	193,074.4
	Less 3.2 percent GF reduction	(2,853.1)	(90.9)	-	-	(3,044.1)		(3,044.1)
Adjusted		128,442.9	38,376.5	20,000.0	4,206.8	190,926.1	(895.8)	190,030.3

Cost Savings Detail

200.0	Personnel Services							
	Elimination of 12 duplicative General Fund, primarily administrative FTE currently employed by Homeland Security Department (General Fund Savings)							(779.8)
	Total 200							(779.8)
300.0	Contractual Services							
	Independent Financial Audit (General Fund Savings)							(36.0)
	Total 300							(36.0)
400.0	Other Costs							
	Supplies and other general support costs (General Fund Savings)							(80.0)
	In-State Travel (General Fund Savings)							(20.0)
	Total 400							(80.0)

Information Memorandum

DATE: October 13, 2010

TO: Government Restructuring Task Force Members

FROM: Kim Bannerman

SUBJECT: GAMING CONTROL AND HORSE RACING ACT — SECTION-BY-SECTION EXPLANATION

Following is a section-by-section explanation of the proposed Gaming Control and Horse Racing Act and necessary amendatory sections. Sections that only include simple language amendments are not addressed. Any opinions expressed are those of the author and do not necessarily reflect the opinions of the New Mexico legislative council or other members of its staff.

The purpose of the bill is to transfer all regulatory authority related to horse racing and pari-mutuel wagering to the gaming control board. In addition, it attempts to make the licensing requirements for horse racing and gaming activities more efficient.

Section 1 (page 1). Short title — This section amends the "Gaming Control Act" to the "Gaming Control and Horse Racing Act".

Section 2 (pages 1-2). Policy — This section states that it is New Mexico's policy to allow limited and regulated gaming, pari-mutuel wagering and horse racing activities.

Section 3 (pages 2-14). Definitions — This section: adds "pari-mutuel wagering" and "horse racing" to the defined terms already found in the Gaming Control Act; adds persons connected to horse racing to the definition of "gaming employee"; and adds definitions needed for horse racing and pari-mutuel wagering previously found in the Horse Racing Act, including "horse race", "horse racetrack", "pari-mutuel wagering", "race meet", "racing season", "racetrack gaming operator", "racetrack operator" and "simulcast".

Section 5 (pages 14-19). Gaming control board created — This section provides the

structure of the gaming control board, changing the board structure from the previous structure under the Gaming Control Act. The board is structured as follows:

- seven members (previously four) — all appointed by governor with the advice and consent of the senate:
 - one member with a minimum of five years of previous employment in a law enforcement agency;
 - one member that is a certified public accountant;
 - one member that is an attorney;
 - three members that are practical breeders of racehorses; and
 - one public member with experience in business management and financing; and
- the law enforcement, certified public accountant and attorney members all receive a salary set by the governor and, while on the board, are prohibited from being employed in any other capacity or receiving compensation for services rendered to any person or entity other than the board.

Section 7 (pages 20-25). Board's powers and duties — This section adds several powers and duties related to the regulation of horse racing and pari-mutuel wagering to the existing powers and duties of the board addressing gaming.

Section 14 (pages 38-41). Licensure and certification — This section sets forth the types of licenses the board can issue and adds "racetrack operator" and "racetrack gaming operator" to the list, which already covers gaming activity licenses.

The section also provides for certification of suitability and work permits for both gaming licensees and horse racing licensees. Due to these amendments, the secondary and occupational licenses required under the Horse Racing Act are no longer needed. Under the Horse Racing Act, secondary licenses were required for key executives or shareholders involved in the administration of a horse racetrack. Occupational licenses were required for vendors or other people having access to restricted areas at a horse racetrack or access to pari-mutuel betting windows. Under the Gaming Control Act, no secondary or occupational licenses were required for similar individuals. Rather, the person would apply for a certification or work permit. This section allows the board to issue a certification of suitability or work permit in the situations previously needing secondary or occupational licenses. It also allows the board to issue one certification or work permit for a gaming employee that works in both gaming and horse racing.

The certification process is addressed in Section 20.

Section 17 (pages 46-48). License, certification and work permit fees — This section sets forth all the fees for the different types of licenses, as well as certifications and work permits. The fee for a "racetrack operator license" is added to the list, which already covers all gaming licensing fees.

Sections 23 through 25 (pages 64-71). These sections move all the previous Horse Racing Act provisions governing pari-mutuel wagering, horse race simulcasting and interstate common pool wagering under the control of the gaming control board.

Sections 36 through 40 (pages 89-97). These sections move all the tax matters associated with horse racing and pari-mutuel wagering into the new act.

Section 42 (page 98). This section moves the racing suspense account into the new act and makes the board responsible for the account.

Section 43 (pages 99-104). This section moves the horsemen's commission, a commission retained by a racetrack gaming operator for a win, place or show in the pari-mutuel system for remittance to the racing suspense account, into the new act. A portion of the money is distributed to the New Mexico horse breeders' association, pursuant to Section 59.

Sections 44 through 48 (pages 104-108). These sections move all penalties and illegal activities related to horse racing into the new act.

Sections 49 and 50 (pages 108-109). These sections move horse racing stewards under the control of the board and provide for the testing of specimens related to horse racing.

Sections 59 and 60 (pages 117-120). These sections move the horse breeders' awards provisions of the Horse Racing Act into the new act.

Sections 61 and 62 (pages 120-122). These sections add the horse racing taxes to the Tax Administration Act and require the taxation and revenue department to report on the racing suspense account to the board.

Section 63 (page 122). Temporary provision; transfers — This is a standard transfer section that includes transfers of the functions, property and contractual obligations of the state racing commission to the gaming control board.

Section 64 (page 122). Repeal — This section repeals the Horse Racing Act.

Section 65 (page 122). Effective date — The effective date is July 1, 2011. The task force may want another effective date if it determines the process of moving these two entities

into one will take more time.

- 4 -

.182723A

Core Services Category: Commerce and Industry

Study Area: Consolidation/Efficiency

High Level Recommendation: Repeal the appropriate sections of the Gaming Control Act (Sections 60-2E-1 through 60-2E-62 NMSA 1978) and the State Racing Commission Act (Sections 60-1-1 through 60-1-26 NMSA 1978). Combine the functions of the two agencies into the New Mexico Racing and Gaming Commission. (It is noted that this recommendation was not specifically addressed in the January 14, 2010 report of the Committee on Government Efficiency.)

Problem Statement: There exists an unnecessary dual agency approach to gaming and racing in New Mexico and the New Mexico Gaming Control Board and the New Mexico Racing Commission should be merged into one new regulatory agency. Not only will this save significant general fund monies – this based upon adjusted FY11 combined general fund operating budgets of \$7.4 million – but it will also provide benefits to their respective industries, as well as the state and taxpayers. Further, it is noted that both agency central offices are presently located in the same building – 4900 Alameda Blvd NE, Albuquerque. Total projections associated with the consolidation of the agencies reflect general fund potential annual savings of \$780 thousand. (see attached spreadsheet)

Background and Findings: The New Mexico Racing Commission provides regulation of the pari-mutuel horseracing industry to protect the interest of the wagering public and the state in a manner which promotes economic prosperity for horsemen, horse owners and racetrack management. The commission's regulatory oversight includes both human and equine drug testing, licensing of all participants as well as background investigations, enforcement of the rules and regulations of pari-mutuel horseracing, oversight of 5 racetracks, 6 race meets, approval of race dates for live racing as well as regulation of simulcast facilities and signals. The commission is composed of five gubernatorial-appointed members. The membership must meet the following criteria:

1. Three members are horse breeders;
2. Two members are public members; and
3. No more than three members from the same political party.

The New Mexico Gaming Control Board was established by the New Mexico Legislature and began operations in June 1998. It is responsible for regulating legalized gaming at New Mexico's licensed racetracks, as well as veterans' and fraternal organizations. The Board also appoints a representative to monitor New Mexico's tribal gaming compacts. In 2005 the Gaming Control Board also began regulating Bingo and Raffle. The board is composed of five gubernatorial-appointed members. The membership must meet the following criteria:

1. Three members are paid fulltime positions
 - a. One must be an attorney
 - b. One must be a Certified Public Accountant
 - c. One must have a background in Law Enforcement

2. One member is the chairman of the racing commission
3. One member is a public member who must have experience in business; and
4. No more than three members from the same political party.

Options to Consider: The proposed New Mexico Gaming and Racing Commission will retain all jurisdictional authority currently vested in the two, now separate agencies. It will consist of seven gubernatorial-appointed, *non-paid* members with the chair to be elected by the membership. The membership must meet the following criteria:

1. Two members must be horse breeders;
2. One member must be a licensed Certified Public Accountant;
3. One member must be an attorney licensed to practice in the state;
4. One member must have five years supervisory experience in law enforcement;
5. One member must have experience in business; and
6. One public member.
7. No more than four members can be from the same political party.

Primary Benefits To The Industry, The State and The Taxpayer:

1. Streamlined processes with particular emphasis on single background investigations
2. Common licensing procedures
3. Single board meetings
4. More rapid response to issues
5. In-house legal representation and research
6. Enhanced customer service
7. Cost savings to licensees
8. Cost Savings to the state and the taxpayer
9. Reduction of redundancy in staffing levels

Fiscal Implications: See attached spreadsheet and organizational chart.

Combined New Mexico Gaming Control Board and Racing Commission Cost Projections

General Fund monies in thousands

Based upon FY11 Operating Budget (as submitted on May 1, 2010)

Account Code	Account Title	Gaming Control Board	Racing Commission	Total Combined Budget for FY11	Potential GF Cost Savings	New Combined Budget
200	Personal Services/Benefits	\$3,928.8	\$1,217.1	\$5,145.9	-\$744.6	\$4,401.3
300	Contractual Services	731.9	737.6	1,469.5	-18.5	1,451.0
400	Other	929.0	200.1	1,129.1	-19.8	1,109.3
Total		\$5,589.7	\$2,154.8	\$7,744.5	-\$782.9	\$6,961.6
	Less 3.2 percent GF reduction	-181.3	-69.9			
Adjusted		\$5,408.4	\$2,084.9	\$7,493.3	-\$782.9	\$6,710.4

Cost Savings Detail

200 Personnel Services (Positions Removed)		
Three (3) Fulltime Board Members (NMGCB) [3 X \$102,091X1.35]		-413.5
Director (Racing) GOVEX Position 0004397		-132.9
HR Position (Gaming) Position #00080150		-77.3
Administrative Supervisor (Racing) Position #0004399		-86.7
Executive Secretary (Racing) Position #00004406		-34.2
Total 200		-744.6
300 Contractual Services		
Independent Financial Audit (Performed on both agencies)		-18.5
Total 300		-18.5
400 Other Costs		
Supplies (Estimate based on inventory control)		-6.0
In-State Travel		-10.5
In-State Travel (Exempt)		-3.3
Total 400		-19.8

Core Services Category: Agriculture, Energy and Natural Resources

Study Area: Intertribal Ceremonial Office

High Level Recommendation: Elimination

Problem Statement:

The department duplicates the functions of the Tourism Department and the Indian Affairs Department. Further, the Intertribal Ceremonial has shown minimal success in fulfilling its mission, has not demonstrated results – as indicated by performance measure data, and is a lower priority appropriation item in this revenue constrained environment.

Background and Findings:

- The department suffers from an unclear mandate and conflicts with local government functions. The Gallup Intertribal Ceremonial is a community event, governed by the Gallup Intertribal Ceremonial Association (GICA), a nonprofit corporation, with help from the state.
- Prior to FY10, the department received a direct appropriation to support FTE and promotion of the event. Without an explicit explanation, the governor vetoed 93.8 percent of the FY10 operating budget and all of its FTE. The community did however, receive funds through a competitive bid process from the Tourism Department.
- The veto demonstrated the ability of the local government and nonprofit to continue the event with little state oversight.
- Despite the veto, the community received grant funds from the Tourism Department’s Cooperative Advertising program. Describe in detail the problem, inefficiency, ineffectiveness, cost saving opportunity, etc., and describe the impact of such to the State, local governments, business, clients, etc.

Options to Consider:

Eliminate the department all together as there is only a token amount left in the budget and no FTE. Through the Tourism Department’s Cooperative Advertising program, the event could still receive state support, albeit through a competitive bid process.

Fiscal Implications:

Although a minimal amount of general fund savings would be gained by eliminating the program there isn’t a sufficient level of funding to hire FTE, nor are any appropriated to the agency. Without FTE there is no point in having the appropriation elevated to the level of an agency.

		Potential Savings (in thousands)
Contractual Services:		\$88.1
TOTAL		\$88.1

Implementation Plan:

- Introduce legislation to repeal the Intertribal Ceremonial Act.
- Transfer appropriation to the Tourism Department to combine with Cooperative Advertising program
- The Restructuring Taskforce should draft an omnibus bill to repeal acts.

Core Services Category: Agriculture, Energy and Natural Resources

Study Area: Intertribal Ceremonial Office

High Level Recommendation: Elimination

Problem Statement:

The Intertribal Ceremonial Office (ICO) duplicates the function of the Tourism Department and to a lesser extent the Indian Affairs Department. Further, the Intertribal Ceremonial has shown minimal success in fulfilling its mission, has not demonstrated results – as indicated by performance measure data, and is a lower priority appropriation item in this revenue constrained environment.

Background and Findings:

- The department suffers from an unclear mandate and conflicts with local government functions. The Gallup Intertribal Ceremonial is a community event, governed by the Gallup Intertribal Ceremonial Association (GICA), a nonprofit corporation, with help from the state.
- Prior to FY10, the department received a direct appropriation to support FTE and promotion of the event. Without an explicit explanation, the governor vetoed 93.8 percent of the FY10 operating budget and all of its FTE. The community did however, receive funds through a competitive bid process from the Tourism Department.
- The veto demonstrated the ability of the local government and nonprofit to continue the event with little state oversight.
- Despite the veto, the community received grant funds from the Tourism Department's Cooperative Advertising program.

Bill draft under Consideration:

Bill draft # .182720.1 proposes to repeal Sections 9-15C-1 through 9-15C-5 NMSA, the Intertribal Ceremonial Act. The bill draft would transfer all functions, contractual obligations, appropriations, money, records, furniture, equipment and other property of the Intertribal Ceremonial Office and the Intertribal Ceremonial Board to the Tourism Department.

Fiscal Implications:

	Potential Savings (in thousands)				
	General Fund	Other State	Inter-agency	Federal	Total
Personal Svcs and Empl Benefits	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
Contractual Services:	\$87.6	\$0.0	\$0.0	\$0.0	\$87.6
Other Costs	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
TOTAL	\$87.6	\$0.0	\$0.0	\$0.0	\$87.6

Source: LFC Files - FY11 Operating budget as Adjusted by Laws 2010, Ch. 6, Sec. 14

Significant Issues:

The annual Intertribal Ceremonial event is administered, promoted, and produced with the assistance of four separate entities. The entities include the Intertribal Ceremonial Office (ICO) – a state agency, the Gallup Intertribal Ceremonial Association (GICA) – a non-profit, an Intertribal Ceremonial Board – part of the non-profit, and administrative oversight is provided by the New Mexico Tourism Department to ICO. As noted in the June 30, 2007 annual audit, the four entities do not have a clear understanding of the functions of the different entities.

This bill eliminates reduces the layers of oversight over the ceremonial event.

This bill would transfer the assets, contractual obligations, and functions to the Tourism Department. The transfer to the Tourism Department would coincide with the current statutory authority that provides for ICO to be administratively attached to the Tourism Department.

Implementation Plan:

- Introduce legislation to repeal the Intertribal Ceremonial Act.
- Transfer assets, obligations, functions of the act to the Tourism Department.

Administrative Implications:

The FY11 operating budget appropriates funds to ICO in the contractual services category to pay for an annual audit and to transfer to GICA through a contract with McKinley County.

Conflict, Duplication, Companionship, Relationship:

This bill relates to another separate bill regarding the proposed Commerce Department. The Commerce Department draft bill would also repeal the Intertribal Ceremonial Act; however, there is no mention of transferring the functions of the act elsewhere.

Alternatives:

The ICO could be repealed without a transfer of the ‘functions’ of the act to the Tourism Department. This would allow the ceremonial event to be conducted like other similar tourism related events without a separate and distinct obligation from the state.

Agency Comments:

The Tourism Department notes that Intertribal Ceremonial Act no longer performs as statutorily required due to the veto of FTE and per diem for the board. Although the exact specifications of the act no longer match the appropriation, the spirit of the law is being carried out. The ceremonial event has continued although funding from the state has been decreased significantly.

The Tourism Department is concerned about being obligated in the future to carry out the functions of the Intertribal Ceremonial Act without also being appropriated the necessary funds to complete that task.

Core Services Category: Juvenile Justice Facilities and Services Oversight

Study Area: Consolidation/Elimination

High Level Recommendation: Repeal Section 32A-7A-1 through 32A-7A-8 NMSA 1978 which created the Juvenile Public Safety Advisory Board.

Problem Statement:

The Juvenile Public Safety Advisory Board's operating budget consists of only funding for board expenses, and currently the board relies on the Children, Youth and Families Department (CYFD) for administrative support.

Background and Findings:

- Section 32A-7A-1 through 32A-7A-8 created the Juvenile Public Safety Advisory Board which consists of seven governor appointees. The board reviews programs and initiatives, makes recommendations to CYFD on adjudicated youth programs, and conducts onsite facility inspections and visits. The Juvenile Public Safety Advisory Board is administratively attached to CYFD.
- CYFD implemented the Cambiar New Mexico initiative based on the Missouri model which eliminated the need for a Juvenile Parole Board. The statute changed creating release panels within juvenile justice service that are now the releasing authority for committed juveniles instead of the Juvenile Parole Board. The Juvenile Parole Board changed to the Juvenile Public Safety Advisory Board and its mission changed to citizen oversight. The Juvenile Public Safety Advisory Board members sit on the release panel and share one vote for or against the release of a youth offender from a state secure juvenile facility.
- Independent oversight for juvenile justice facilities and services is also provided by the American Civil Liberties Union, Juvenile Justice Commission, New Mexico Sentencing Commission's Juvenile Committee and various advocacy groups.
- In FY10, Juvenile Public Safety Advisory Board's budget was reduced by \$210.6 thousand, or 48.4 percent, from the FY09 adjusted budget and 3 FTE were eliminated. In FY11, the agency's budget was reduced to only board expenses and the remaining 3 FTE were eliminated.

Juvenile Public Safety Advisory Board's
General Fund Appropriations (in thousands)

	General Fund	FTE
FY07	\$395.4	6
FY08	\$434.0	6
FY09	\$446.0	6
FY10	\$224.2	3
FY11	\$24.1	0

Source: Juvenile Public Safety Advisory Board and LFC Files

Options to Consider:

1. Move the Juvenile Public Safety Advisory Board and its duties to CYFD, and reevaluate the number of board members required to fulfill the duties of the board. CYFD noted a viable alternative that would accomplish the goals of the board would be to have the board remain in place but with only one member who would sit on the facility release panel that has one vote.

Fiscal Implications:

- Eliminating the Juvenile Public Safety Advisory Board would produce a potential savings of \$24.1 thousand.
- CYFD reported the cost for one board member would be approximately \$5,000.

Implementation Plan:

- Changes to the Juvenile Public Safety Advisory Board regarding funding for FY12 should also be reflected in the LFC and Executive recommendation contingent upon passage of legislation repealing Section 32A-7A-1 through 32A-7A-8 NMSA 1978 which created the board.
- Key stakeholders are the board members of the Juvenile Public Safety Advisory Board, New Mexico Sentencing Commissions Juvenile Board, CYFD's Juvenile Justice Facilities Program, American Civil Liberties Union and juvenile justice advocates.

Other Significant Issues:

- CYFD reported the department realizes the importance of having a member of the community participate in the facility release panel and of having independent oversight of release decisions and department operations. It is for these reasons the department would like to have the board remain.

Core Services Category: Employer Pension Contribution

Study Area: Extension of FY10/FY11 Solvency Measure

High Level Recommendation: Postpone the sixth 0.75 percentage incremental increase in employer contributions to the Educational Retirement Board (ERB) currently scheduled for July 1, 2011 (FY12) for one year to July 1, 2012 (FY13); add the seventh and final 0.75 percentage increase on July 1, 2013 (FY14).

This bill must pass in order to avoid incurring an \$18.3 million expense to the general fund.

Problem Statement: Laws 2005, Chapter 273 implemented a schedule of employee and employer contribution increases to improve the funded status of the ERB fund, including a seven-year annual incremental increase of 0.75 percent for ERB employers ending at a final rate of 13.9 percent in FY12. It should be noted that Senate Bill 181, as originally drafted, implemented a four-year schedule of 0.75% increases ending at in FY09 at 11.65 percent. This additional 3 percent employer contribution, going from 8.65 percent to 11.65 percent, met ERB’s actuarial recommendation designed to address solvency concerns at that time. A House Floor Amendment increased the schedule an additional three years to a final 13.9 percent, presumably to add a “cushion” for the educational plan to improve funded status.

Table 1 – Laws 2005, Chapter 273 (Senate Bill 181)

Fiscal Year	Employee Contribution Rate	Employer Contribution Rate	Incremental Change in Employer Rate
FY05	7.6%	8.65%	
FY06	7.675%	9.4%	0.75%
FY07	7.75%	10.15%	0.75%
FY08	7.825%	10.9%	0.75%
FY09	7.9%	11.65%	0.75%
FY10	7.9%	12.4%	0.75%
FY11	7.9%	13.15%	0.75%
FY12	7.9%	13.9%	0.75%

Each year’s increase represented an aggregate fiscal impact of about \$18.3 million general fund appropriations needed by ERB-affiliated employers to pay the additional contribution. Due to reduced state revenues, Laws 2010, Chapter 67 (Senate Bill 91) postponed the 0.75 percent increase slated for FY11 until FY12 to help balance the state budget as part of a package of solvency measures. A projected budget deficit for FY12 requires careful consideration of continuing FY10/FY11 solvency measures, including delaying the 0.75 ERB employer increase an additional year until FY13 (July 1, 2012).

Background and Findings: Section 22-11-21 NMSA 1978 lays out the employee and employer contributions for ERB. The current rates are summarized in Table 2. Note that the rates also reflect the impact stemming from another solvency measure – Laws 2009, Chapter 127 – that increased the employee rate by 1.5 percent and correspondingly reduced the employer rate by 1.5 percent for those employees making more than \$20,000.

Table 2 – Current Statutory Contribution Rates

Employee Contributions	Normal	FY10	FY11	FY12	FY13
<\$20,000	7.90%	7.90%	7.90%	7.90%	7.90%
>20,000	7.90%	9.40%	9.40%	7.90%	7.90%
Swap	1.50% FY10/FY11 for employees>\$20,000			End 1.5%	
Employer Contributions	Normal	FY10	FY11	FY12	FY13
<\$20,000		12.40%	12.40%	13.15%	13.90%
>20,000		10.90%	10.90%	13.15%	13.90%
Swap	1.50% FY10/FY11 for employees>\$20,000			End 1.5%	
Increase	0.75% Delayed from FY11 to FY12			Add 0.75%	Add 0.75%

Current statutory rates complete the final 13.9 percent employer contribution in FY13, one year later than originally planned. This proposal would extend the final phase another year to FY14 as shown in Table 3.

Table 3 – Contribution Rates Under the Proposal

Employee Contributions	Normal	FY10	FY11	FY12	FY13	FY14
<\$20,000	7.90%	7.90%	7.90%	7.90%	7.90%	7.90%
>20,000	7.90%	9.40%	9.40%	7.90%	7.90%	7.90%
Swap	1.50% FY10/FY11 for employees>\$20,000			End 1.5%		
Employer Contributions	Normal	FY10	FY11	FY12	FY13	FY14
<\$20,000		12.40%	12.40%	12.40%	13.15%	13.90%
>20,000		10.90%	10.90%	12.40%	13.15%	13.90%
Swap	1.50% FY10/FY11 for employees>\$20,000			End 1.5%		
Increase	0.75% Delayed from FY12 to FY13			DELAY	Add .75%	Add .75%

Prior actuarial analysis indicated that the impact to the fund due to delaying the 0.75 percent increase scheduled for FY11 to FY12, primarily resulting from the lost opportunity cost of not having the additional contributions invested, would be minimal.

Options to Consider:

Option 1: Delay the 0.75 percent increase from FY12 to FY13 to save about \$18.3 million in general fund appropriations to public education and higher education entities.

Option 2: Schedule the final 1.5 percent increase over a longer period of time, such as the six years being considered by the Retirement System Solvency Task Force.

Option 3: Keep the statutory rates as currently scheduled and budget accordingly.

Fiscal Implications: Based on FY10 appropriations, Table 4 shows the estimated fiscal impact for each incremental 0.75 percent contribution for employers.

Table 4 – Estimated Fiscal Impact of Each 0.75% Employer Contribution Increase

Public School Support*	(in thousands)
Program Costs	\$12,073.2
Transportation	\$194.8
Higher Education**	\$6,024.0
TOTAL	\$18,292.0

*Source: Public Education Department

**Source: Laws 2009, Chapter 124, p 188

If this or a similar bill does not pass, the increased contribution represents an \$18.3 million expense to the general fund.

The prior ERB analysis performed as part of the agency response for Senate Bill 91 during the 2010 session estimated a reduction in the fund's market value of assets by \$177 million on a projected total fund value of \$17.4 billion by 2030. The Fiscal Impact Report notes the following actuarial impact of a one-year delay:

Actuarial Impact of One-Year Delay

Table 2 shows the projected impact of delaying the employer contribution increase on actuarial solvency measures, the funded ratio (actuarial value of assets compared to the actuarial value of liabilities) and funding period (the amount of time estimated to pay off the unfunded liability). The impact appears de minimus.

Table 2 – Impact on Actuarial Solvency Measures*

Fiscal Year	Without One-Year Delay		With One-Year Delay	
	Funded Ratio	Funding Period	Funded Ratio	Funding Period
FY10	67.3%	48.7	67.3%	48.7
FY11 (delay)	63.3%	55.1	63.3%	94.3
FY12	59.3%	61.5	59.1%	infinite
FY13	54.9%	infinite	54.6%	infinite
FY24	53.5%	infinite	53%	infinite
FY25	53.6%	113.8	53.1%	186.4
FY38	61%	34.2	60.3%	35.6

*Source: ERB (based on the June 30, 2009 valuation)

Minimum industry standards require 80 percent for the funded ratio and 30 years for the funding period. The bill's impact primarily influences the funding period, extending the fund's infinite funding status by one year in FY12. In both cases the indicators fall substantially below industry standards, portraying a situation where the obligations promised to current retirees and active members are being pushed out to future generations to fulfill. Delaying the employer contribution increase for one year will not substantially alter this picture. However, deviations from assumptions, such as over or under performing the 8 percent assumed rate of investment return, could materially impact this dynamic.

The actuarial impact of delaying the increased contribution another year under the proposal has not been performed. However, preliminary actuarial measures indicate ERB's FY10 investment return of 18.2 percent improved the funding period projections and it is reasonable to assume that another year delay would have a similar de minimus actuarial impact.

Option 2 would spread out the cost of the incremental increase over more time, reducing the amount at the state would need to allocate each year. A six year schedule would require an approximate \$3 million general fund expense for each of year.

Option 3 will require an estimated \$18.3 million expense to the general fund.

Implementation Plan: Options 1 and 2 would require legislation to amend Section 22-11-21 NMSA 1978 to implement the rate changes. Option 3 would not require any further action.

Various stakeholders may view the delay as a breach of the state's 2005 promise to increase the employer contribution rate to improve ERB fund solvency and question any proposed reductions to benefits for fund solvency by members as unfair until the state "makes good" on its promise. An actuarial study that shows the impact on fund solvency of a two-year delay in fulfilling the 2005 legislation may be necessary to show the impact as being minimal and that fund solvency requires additional measures to reduce plan cost to ensure fund solvency.