

November 9, 2010

Summary of department comments on bill related to administratively attached agencies:

Tourism Department (would be responsible for administrative services for State Racing Commission and State Fair):

The Tourism Department indicated additional personnel would be needed in order to serve those agencies administratively attached to the Tourism Department: Expo New Mexico and the New Mexico Racing Commission (NMRC). Expo New Mexico is not currently required to issue payments, contracts, etc through the Department of Finance and Administration (DFA) as is required by the Tourism Department. Expo New Mexico issues checks directly out of their agency. Significant expense will be realized in order to manage the budget, expenses, contracts, accounts payable, and accounts receivable. Additional personnel will be needed as will additional software and hardware. While NMRC does process their administrative work through DFA, they conduct audits on every race event via contracts. This would increase contract processing through the Tourism Department that would require additional personnel.

Energy, Minerals and Natural Resources Department - EMNRD (would be responsible for administrative services for the Department of Game and Fish – DGF – and Youth Conservation Corps – YCC):

EMNRD already provides administrative budgetary support to the YCC Program. The YCC Program is a very small two person program.

Conversely, according to EMNRD, DGF is an agency with over 300 employees, with 39 FTE's currently responsible for budgetary and administrative support. EMNRD would have to hire more employees to provide the services identified in the proposed legislation. In addition, EMNRD may have to create new databases, provide IT support and train staff on internal fiscal and administrative processes which would result in significant costs to the agency. DGF receives the majority of its funding through hunting and fishing licenses. Accounting, procurement and tracking systems for processing these licenses and fees are unique to DGF. EMNRD would have to create a new administrative infrastructure, including IT technical support to provide the necessary services for DGF.

Department of Game and Fish (DGF):

DGF was concerned that the proposed bill could jeopardize federal funds received by DGF. EMNRD would need to demonstrate that funds generated via the sale of hunting and fishing licenses and federal reimbursements have only been used for purposes permitted by state and federal law. Failure to do so would result in the loss of eligibility to receive federal grant funds that make up one-third of the annual DGF budget.

DGF noted that the agency is mandated to perform functions that are unlike those in any other state agency: running fish hatcheries and stocking fish, operating farming

operations, conducting wildlife and fisheries research and operating lottery drawings to allocate hunting opportunities. This requires procurement of specialized goods and services unique to the agency. Integrating this functionality into another agency, while possible, would not likely be cost-efficient, but rather would likely increase the overall costs of administration of this function of government.

According to DGF, this draft bill may conflict with §17-1-5 NMSA 1978, which states: “The state game commission shall employ a director who shall, under such authorization that the game commission shall approve, employ such conservation officers, clerks and other employees as he shall deem proper and necessary to enforce and administer the laws and regulations relating to game and fish, and who shall prescribe their duties respectively...”

New Mexico Corrections Department – NMCD (would be responsible for administrative services for the Public Defender Office and the Adult Parole Board):

NMCD generally opposed the proposed bill as applied to that department. NMCD commented on each agency that would be assigned to it:

Public Defender Department (PDD): NMCD was concerned that it could not perform these functions with existing staff. It noted that it would have to provide budgeting, record-keeping and related administrative assistance to an additional 400 staff from the PDD, including 200 in-house attorneys as well as about 130 private attorneys under contract with the PDD. NMCD would also have to manage PDD’s \$41 million budget and provide administrative support for PDD’s 60,000 cases annually. Additionally, PDD has twelve districts that are spread throughout the state, which further complicates NMCD’s ability to provide this assistance to the PDD.

More important, there would be a significant conflict of interest in having NMCD perform these administrative functions for PDD. PDD and its attorneys often defend cases in which NMCD staff is opposing parties and witnesses. For example, PDD often defends NMCD inmates for crimes committed while in prison, and defends probationers being supervised by NMCD in probation violation hearings. The PDD sometimes defends these cases by “blaming” NMCD for the defendant’s behavior while in prison or on probation, or by alleging misconduct by NMCD staff. While NMCD tries to remain a neutral party in the criminal justice system (merely enforcing and complying with the prison and probation orders entered by sentencing judges, without representing the legal interests of the District Attorney’s Office or the PDD), someone could claim that NMCD cut the PDD’s budget in retaliation for its handling of one or more criminal cases involving NMCD inmates as defendants, or that NMCD is providing confidential attorney-client privileged documents in a particular PDD file to the District Attorney’s Office to use to better prosecute a particular defendant inmate, etc.

Adult Parole Board (PB): The movement of the PB into NMCD would be a feasible fiscal move based on the small number of FTE and budget involved with the PB. Thus, the direct fiscal impact would probably be minimal because of the small size of the PB. However, there would also be a significant conflict of interest. The PB is represented by the Attorney General's Office, not by NMCD or its Office of General Counsel. The PD has the statutory duty and authority to decide (1) whether or not certain NMCD inmates are placed on parole (and whether or not to approve those inmates' parole plans), and (2) whether or not to revoke the parole of a parolee (under the supervision of NMCD) for an alleged parole violation. NMCD does not have any authority or duty to decide either of these issues. This legislation could create controversy and lawsuits if there are allegations that NMCD is improperly denying parole or is violating parole for its inmates and parolees because it does not like a particular offender, is retaliating against the offender because he or she previously sued NMCD or assaulted an NMCD officer while in prison. PB sometimes interprets laws or issues differently than NMCD. For example, there is an ongoing issue regarding exactly when and how certain sex offenders (those serving in-house parole periods and those back in prison on parole violations) will receive their hearings (designed to determine whether or not the offender remains on parole) required by the sex offender parole statute. The PB needs to maintain its independence to pursue its legal interpretations and agendas as it sees fit without worrying that NMCD will cut its budget for having a different opinion than that of NMCD.

Public Defender Department (PDD):

Routing the PDD budget request for inclusion in NMCD's budget, as required in the bill, could give NMCD the authority to revise or modify the budget request. NMCD does not know PDD's budgetary needs and should not have this discretion. There indicated there is no cost savings by doing this, that PDD has adequate staff for its budget, administrative and financial functions. PDD expressed significant concerns about the potential for conflict of interest in criminal litigation. PDD clients are often inmates at NMCD prisons. Frequently, PDD lawyers litigate *against* NMCD because of charges brought by NMDC against individual inmates who are being defended by PDD lawyers. PDD attorneys have litigated on behalf of a number of inmates and negotiated a number of other plea agreements, in part using threats of exposing weaknesses at NMDC. This defense would be compromised if NMDC reviewed PDD's budget request for expert witness funds *to be used against the Department of Corrections*.

New Mexico Department of Agriculture – NMDA (would be responsible for administrative services for the Livestock Board):

NMDA offered the following questions with regard to the proposed bill:

1. Why are the Beef Council and Sheep and Goat Council excluded?

2. This legislation may not even apply since NMDA is under NMSU and the administratively attached agencies are under the executive.
 - a. On page 1, line 24 (and this is current law) administratively attached agencies submit to the parent its budgetary requests through the department. This does not happen because NMDA is under NMSU.
3. Beginning on page 2, line 3, it states the department *shall* provide budgeting, record-keeping and related administrative and clerical assistance to the agency.
 - a. NMDA does not use SHARE. Once again NMDA is under NMSU who has its own budget process.
4. On page 2, line 10 the administratively attached agency would provide its own personnel through SPO, unless provided for by law.
 - a. Can NMDA administer an executive agency?
 - b. If NMDA was provided to do so by law then would they be NMSU employees?

State Personnel Office (SPO):

SPO had several operational concerns from this bill:

1. Parent agency would have unfettered ability to change budget request of attached agencies, which could disrupt the attached agency's functions and services.
2. The bill could overtax ASD shops in parent agencies that are already stretched thin to manage budget reductions to date.
3. A reduction in force (RIF) is a possible outcome of the proposed bill. If the department is providing the services that the agency's ASD was originally providing, then the agency may be forced into a RIF scenario for their ASD staff. Such scenario would require a RIF plan to be developed and presented to the State Personnel Board. See 1.7.10.9 NMAC which would require additional resources.
4. Under the State Personnel Act, §10-9-1 et. seq., NMSA 1978, the State Personnel Board has the sole and exclusive authority to review the budget requests prepared by the SPO Director and to make appropriate recommendations. *See §10-9-10(D) NMSA 1978.* The proposed amendments dealing with the parent agency's authority to make changes to the SPO's budget after it has been adopted by the State Personnel Board is in direct conflict with the State Personnel Act.
5. Pursuant to the State Personnel Act, the SPO Director has the exclusive authority to supervise all administrative and technical personnel activities of the state. *See §10-9-11 NMSA 1978.* As proposed, the SPO and its Director's exclusive authority to exercise their functions under the State Personnel Act are jeopardized, as drafted, are in conflict with the State Personnel Act.