

Commerce and Economic Development Department

Per the Carruthers report recommendations, the Commerce and Economic Development Department Act proposes to merge the three cabinet departments, economic development, tourism and workforce solutions; the regulation and licensing department; the workers' compensation administration; the border authority; and the spaceport authority.

Carruthers recommendations:

Estimated size: 1,200 FTE

Estimated savings:

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| <i>exempt personnel cost savings, including benefits</i> | <i>\$2,621,800</i> |
| <i>other potential savings, all sources</i> | <i>\$1,689,600</i> |

NB: The legislative finance committee and department of finance and administration are providing the task force with new estimates regarding savings.

The 1977 reorganization included a commerce and industry department with the responsibility to ensure stability and encourage growth in New Mexico's economy. The department had a three-fold responsibility: regulation of those commercial enterprises that have a direct impact on the state's economy; promotion of the economic climate to encourage growth in the commercial and industrial sectors; and carrying out economic development planning. The department included the export marketing, economic development, financial institutions, tourism and construction industries divisions, with the state fair and the state racing commission administratively attached. The 1978 changes to the department included adding *New Mexico* magazine and mobile housing (now manufactured housing) divisions and subsuming tourism under economic development. In 1983, the commerce and industry department was split into the regulation and licensing department and the economic development and tourism department. In 1991, economic development and tourism was split into two cabinet departments.

The *Inventory of Boards and Commissions* identifies at least 23 entities under the heading, Commerce and Industry; there could be other related boards and commissions under other titles.

Last session, the legislative council service drafted the Commerce and Economic Development Department Act, which was introduced as Senate Bill 242, using the recommendations of the Carruthers report. The bill was, essentially, an amalgam of the current structures of the affected departments, and the task force may wish to take a harder look at whether those structures are necessary, efficient or likely to be effective. Some structures may have been created in drafting. An FIR was not prepared for this bill. Following is a description and analysis of selected sections in the bill, including possible questions.

Questions are those staff thought of and do not represent any particular point of view. Staff does not necessarily know the answer to any of the questions, but thought they might be worth asking.

A note about earmarked funds, since this act has several of them for various purposes. As recommended by Kay Marr in her presentation at the first meeting, the task force should look

at earmarked funds to determine their worth. Earmarking limits the legislature's ongoing ability to determine public policy, distorts what policy there is and blunts an agency's or a program's need to justify its existence. In addition, even if earmarking continues, the task force should consider whether income from investment of the fund should stay with the fund or be credited to the general fund and whether the funds should revert to the general fund at the end of the year. Most nonreverting funds carry a phrase, "money in the fund is appropriated to [whatever agency]. . .". LFC has taken a position that the fund should be subject to appropriation by the legislature.

Senate Bill 242 — Description and Analysis

Section 1. Short title. Commerce and Economic Development Department Act.

Section 2. Purpose. To establish a single, unified department to administer laws and exercise functions formerly administered and exercised by the economic development department, the tourism department, the workforce solutions department and the regulation and licensing department.

Questions Related to Section 2 Might Include:

1. Is economic development, including tourism promotion, a core, essential service of state government? If yes, is the current system of funding three levels of effort (state, regional and local) the most effective delivery model?

2. Are current economic development and tourism promotion efforts sufficiently targeted to achieve results?

3. Relative to the labor portion of the new department, what services to businesses and workers should the state be providing?

4. Should the cultural affairs department be included in this department? The current economic development department administers the arts and crafts districts and the artisan business development program.

Section 4. Organization. The "commerce and economic development department" is created as a cabinet department and includes the following organizational units:

- (1) office of the secretary;
- (2) administrative services division;
- (3) alcohol and gaming division;
- (4) business services division;
- (5) construction industries division:
 - (a) general construction bureau;
 - (b) electrical bureau;
 - (c) liquified petroleum gas bureau; and
 - (d) mechanical bureau;
- (6) economic development division:

- (a) international trade bureau;
- (b) marketing bureau;
- (c) New Mexico film bureau;
- (d) enterprise development bureau; and
- (e) technology enterprise bureau;
- (7) financial institutions division;
- (8) human rights division;
- (9) labor relations division:
 - (a) human rights bureau; and
 - (b) labor and industrial bureau;
- (10) manufactured housing division;
- (11) Mexican affairs and trade division;
- (12) securities division;
- (13) tourism development division:
 - (a) New Mexico magazine bureau; and
 - (b) welcome centers bureau;
- (14) work force technology division; and
- (15) work force transition services division.

Considerations:

These divisions and bureaus were taken from existing statutory structures. There may be opportunities to condense, consolidate or repeal organizational structures of this department. For example, manufactured housing (10) might be a bureau under construction industries division (5); it might be feasible to combine all the labor divisions, including business services (4), labor relations (9), work force technology (14) and work force transition services (15), into a single division. Economic development divisions and bureaus could be condensed. The economic development department has the science and technology division, which is not statutory, in addition to other technology-focused divisions and bureaus of the proposed department. Technology-focused functions may be combined more efficiently. Mexican affairs and trade (11) could be moved into the economic development division (6) and combined with the international trade bureau (6)(a). Depending on what it really does, the work force technology division (15) might be moved to the administrative services division (2).

The organization seems unnecessarily complex. There may be other combinations and consolidations to consider, as well as reconsideration of the essential roles for this department.

NB: Not all statutory structures may exist in current departmental organizations. Actual structures may be more streamlined. See attachments for specific department organizational charts.

Questions Related to Section 4 Might Include:

1. Could powers and duties of the construction industries division be devolved to counties and municipalities?

2. What divisions could be eliminated or consolidated or pushed in as bureaus of other divisions? What powers and duties should be eliminated and what statutes should be repealed?

Section 5. Administratively Attached Agencies.

A. The following boards, commissions, committees, administrations, authorities and councils are administratively attached agencies of the department:

- (1) apprenticeship council;
- (2) athletic commission;
- (3) border authority;
- (4) construction industries commission;
- (5) economic development and tourism commission;
- (6) human rights commission;
- (7) labor and industrial commission;
- (8) manufactured housing committee;
- (9) New Mexico-Chihuahua commission;
- (10) New Mexico-Sonora commission;
- (11) small business regulatory advisory commission, which is attached to the business services division;
- (12) spaceport authority;
- (13) state fair commission;
- (14) state racing commission;
- (15) workers' compensation administration; and
- (16) state work force development board.

B. The professional and occupational licensing boards created in Chapter 61 NMSA 1978 that had been administratively attached to the regulation and licensing department are administratively attached to the administrative services division of the department.

Considerations:

There may be opportunities to repeal or consolidate some of these administratively attached agencies.

Related boards and commissions cited by the Carruthers report for repeal are: nutrition and dietetic board, interior design board, fair and equal pay for all New Mexicans initiative (nonstatutory), intertribal ceremonial board and green jobs council (nonstatutory). Other changes recommended in the report were to combine athletic trainer practice board with physical therapy board; combine landscape architects with board of examiners for architects; combine real estate appraiser board with real estate commission; and combine animal sheltering and veterinary boards. There may be other boards and commissions in the area of professional and occupational licensure that could be eliminated or consolidated.

The question of licensing certain professions and occupations tends to fall into two arguments: (1) licensure ensures consumer protection by limiting a practice to qualified people; and (2) licensure is professional or occupational protectionism that limits participation in a

profession or occupation. If the task force undertakes deliberations on professional and occupational licensure, it may wish to consider those arguments.

NB: The recent decision of the risk management division of the general services department that a private citizen who had at one time served on an educational retirement board task force qualified for legal representation by the state in a lawsuit has far-reaching consequences. The task force may want to take that decision into consideration when it reviews any of the boards and commissions, whether they be policymaking or advisory. The state may want to reduce its exposure by reducing citizen participation either through elimination of many boards and commissions or through reduction in memberships.

Questions Related to Sections 4 and 5 Might Include:

1. What core, essential services of state government should be provided by a commerce and industry department?
2. Given that cabinet departments have statutory authority to create ad hoc advisory committees, how many of the boards and commissions attached to this department are necessary? Should department-created advisory committees be limited in duration?
3. Is there a more efficient, effective and inexpensive way for departments to receive public, professional or expert advice than creating an advisory board, commission or committee?
4. Will a fiscal commitment to professional sports pay off for the state in the foreseeable future? What return can the state expect from this investment? Are there better investments to be made, e.g., in science and technology or tourism?
5. Are the sports authority division and athletic commission necessary? The athletic commission is funded by a privilege tax on total gross receipts of professional contests as well as license fees. Is the tax necessary? The sports authority division replaced the sports authority, but there is a 31-member sports advisory committee. Is either an essential service of state government?
6. The state has created the border authority, the New Mexico-Chihuahua commission, the New Mexico-Sonora commission and the Mexican affairs and trade division. In addition, the department includes an international trade bureau, as well as a marketing bureau. New Mexico state university has the joint border research institute. Can these organizational structures be restructured for more effectiveness in light of the state's limited trade with Mexico?
7. Can the apprenticeship and training committee and the apprenticeship council be combined?
8. The small business regulatory advisory commission has no real duties in the sense that what it does is discretionary rather than mandatory. As such, is it performing an essential service of state government?

Section 10. Additional economic development duties. The department shall:

- A. provide a coordinated statewide perspective with regard to economic development activities;
- B. work with and provide staff support to the economic development and tourism commission in formulating and implementing the state's five-year economic development plan;
- C. maintain and update records on the status of all completed and ongoing economic development projects of the department;
- D. develop, maintain and provide economic and demographic information;
- E. provide a database for local and regional economic development groups and serve as a comprehensive source of information and assistance to businesses wishing to locate or expand in New Mexico;
- F. actively encourage new economic enterprises to locate in New Mexico and assist existing businesses to expand;
- G. monitor the progress of state-supported economic development activities and prepare annual reports of those activities and their status and impact;
- H. create and encourage methods designed to provide rapid economic diversification development that will create new employment opportunities for the residents of the state, including the issuance of grants and loans to municipalities and counties for economic enhancement projects;
- I. provide for technology commercialization projects as an incentive to industry locating or expanding in the state;
- J. support technology transfer programs;
- K. promote New Mexico as a technology conference center;
- L. promote and market federal and state technology commercialization programs;
- M. develop and implement enhanced statewide procurement programs;
- N. provide support and assistance in the creation and operation of development finance mechanisms such as business development corporations and the industrial and agricultural finance authorities in order to ensure capital availability for business expansion and economic diversification; and
- O. serve as the lead agency in coordination of the census program at the state data center.

Considerations:

These duties seem both nebulous and too specific; they are also "all over the map" and do not appear to reflect a focused legislative policy for state economic development. From this list of duties, one intuitively feels that the department is supposed to be a data collector, cheerleader, monitor, promoter and finance maven with a heavy interest in technology commercialization.

Questions Related to Section 10 Might Include:

1. Is economic development a core, essential service that state government must provide? If the answer is yes, how much should the state be involved in direct delivery of services and how much should be grants to regional and local economic development efforts?

2. What exactly is New Mexico's coordinated statewide perspective with regard to economic development activities?
3. Is there duplication of effort between the economic development department and the bureau of business and economic research at the university of New Mexico in the charge to develop demographic data?
4. The census is the state's opportunity for major funding increases in federal funding if its census is accurate. How active has the department been in ensuring that every New Mexican is counted?
5. What has been the success of the emphasis on technology commercialization and transfer?
6. How successful is New Mexico's investment in the economic development department?
7. The industrial and agricultural finance authority has never been constituted. Should it be repealed?
8. How closely have the department and the state followed the five-year economic plan? What have been priorities in the past and what are they now? Does the plan change with every administration? Is the economic development plan coordinated with the tourism plan or efforts of other agencies? If so, how?
9. What is the New Mexico technology conference center that the state is supposed to be promoting?

Section 11. Additional tourism promotion duties. The department shall:

- A. provide a coordinated statewide perspective with regard to tourism activities;
- B. work with and provide staff support to the economic development and tourism commission in formulating and implementing the state's five-year tourism plan;
- C. 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;
- D. monitor the progress of state-supported tourism activities and prepare annual reports of those activities and their status and impact; and
- E. maintain and update records on the status of all completed and ongoing tourism-related projects of the department.

Considerations:

The same considerations of economic development apply to tourism, except this department is not charged with actually carrying out tourism activities. Again, there does not appear to be a focused legislative policy for state tourism promotion.

Questions Related to Section 11 Might Include:

1. What exactly is New Mexico's coordinated statewide perspective with regard to tourism activities?
2. How closely have the department and the state followed the five-year tourism plan? What have been priorities in the past and what are they now? Does the plan change with every administration? Is the tourism plan coordinated with the economic development plan or efforts of other agencies?
3. What is the centerpiece of New Mexico's tourism plan? How successful has the tourism department been in executing the plan?

Section 12. Additional duties; Indian arts, crafts and culture; promotion. The department shall:

- A. encourage the preservation and development of Indian arts and crafts among the Indian nations, tribes and pueblos of the state to increase the knowledge and appreciation of those arts and crafts;
- B. encourage the preservation of traditional rites and ceremonials of Indian nations, tribes and pueblos to increase knowledge and appreciation of those rites and ceremonials; and
- C. promote the intertribal ceremonial.

Questions Related to Section 12 Might Include:

1. How closely does the tourism department work with the Indian affairs department?
2. Why are these duties assigned to the tourism department instead of the Indian affairs department or even the cultural affairs department?
3. In 2009, the governor line-item vetoed the personal services and employee benefits and the "other" categories in HB 2. Those were not restored in the 2010 budget; there was only \$88.1 appropriated for contractual services. Since the intertribal ceremonial office is not being supported, perhaps it should be eliminated.

Section 13. Additional duties; defense conversion and technology.

- A. 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.
- B. The department may contract with appropriate partnership intermediaries to assist in the coordination of defense conversion duties.
- C. The department shall:

- (1) oversee the activities of the manufacturing productivity center and manufacturing extension programs;
- (2) coordinate the activities of small business incubators to encourage the development and viability of technology spin-off companies in the private sector;
- (3) coordinate appropriate divisions in the department to provide technology export assistance;
- (4) coordinate small business development and assistance programs for new and existing businesses;
- (5) work with appropriate entities to 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 as deemed necessary by the economic development and tourism commission and the secretary to assist the state in developing defense conversion industries.

Questions Related to Section 13 Might Include:

1. What has the economic development department accomplished in promoting defense conversion technology?

2. What contracts has the department entered into related to defense conversion? Who are "appropriate partnership intermediaries"?

3. Back in 1983, the state created TICs and TECs, technology innovation centers and technology excellence centers, to assist with national lab spin-offs. From that came the New Mexico research and development institute, which took over the technical excellence fund. In 1991, the fund was abolished and money was transferred to the technology enterprise fund of the new economic development department. Now, there is "defense conversion". What has the state gained from its investment in this area?

Section 14. Organizational units of department; powers and duties specified by law; access to information. Standard section that provides that organizational units of the department have all the powers and duties specified by law, but carrying out those duties shall be subject to the direction and supervision of the secretary. The secretary retains final decision-making authority and responsibility. The department has access to all records, data and information of other state agencies unless they are confidential. Proprietary technical information obtained by the department is confidential information.

Section 15. Single state agency status. The department is the single state agency for administration of federal employment, training and public assistance programs under the department's jurisdiction.

Sections 16 through 18. Exemptions from authority of the secretary. The financial institutions division, securities division, construction industries commission and manufactured housing committee are exempt from the secretary's authority.

Considerations:

The construction industries commission is a nine-member board appointed by the governor and confirmed by the senate. It has subpoena power and may assess administrative penalties. It establishes policy for the division and approves or disapproves all rules, standards, codes and licensing requirements. It revokes or suspends licenses and certificates of qualification. It has corporate power, e.g., it may sue and be sued and adopt a seal. It investigates code violations.

The manufactured housing committee, a seven-member board appointed by the governor and **not** confirmed by the senate, appears to have less power than the construction industries commission, but it is policymaking and, with the division, receives complaints and orders compliance.

Questions Related to Sections 16 Through 18 Might Include:

1. Should a citizen commission/committee have the powers given to the construction industries commission and the manufactured housing committee?

Section 19. Economic development and tourism commission created. The bill merges the currently separate economic development and tourism commissions into one commission. It is a planning commission that advises the department on policy matters and is responsible for approving the annual update to the state's five-year economic development and tourism plan. There are 15 members appointed by the governor and confirmed by the senate. It advises, assists and promotes the department on matters relating to economic development, tourism, tribal tourism, technology, technology-based new business development and technology commercialization projects and reviews federal technology-based programs requiring state matching funds and authorizes any expenditure or pledge of state match funds for such programs.

Questions Related to Section 19 Might Include:

1. Why should the commission authorize expenditures or a pledge of matching funds? How exactly is that accomplished since the commission meets infrequently?

2. Have the economic development commission and tourism commission outlived their usefulness?

3. Why are commission members given the extraordinary protection of limited removal only for cause when most boards serve at the pleasure of the governor?

4. Why should a commission member removable only for cause, instead of the elected governor, give policy and program guidance to a department?

Section 20. Administrative services division. Standard section for cabinet departments delineating administrative functions to be housed in the division.

Section 21. Department cooperation with local and regional economic development agencies. [If retained, this section should be rearranged by moving it to be Section 16, after the federal cooperation section.]

The department shall cooperate with local and regional development agencies, including:

- A. coordinating activities of the department and local or regional development agencies;
- B. assisting in gathering information on local and regional assets;
- C. assisting in the establishment of procedures for handling potential clients;
- D. assisting in the development of a plan for the expansion of the local or regional economic base;
- E. assisting in marketing the benefits of local communities by providing matching funds through the state cooperative advertising program, which shall include as eligible expenses travel and related costs to attract new business investment into the communities;
- F. assisting in the establishment of programs to attract new labor forces or to train local labor forces; and
- G. identifying barriers to local or regional economic development and developing plans to overcome such barriers.

Considerations:

This section may be duplicative of Section 10.

Questions Related to Section 21 Might Include:

1. If economic development is a core mission of state government, is the current delivery system (state, regional and local efforts) effective?

Section 22. Enterprise development bureau duties; business incubators; fund.

A. The enterprise development bureau of the economic development division shall:

- (1) provide information and assistance to businesses wishing to relocate to New Mexico or to expand within New Mexico by providing a centralized information service and assistance center;
- (2) develop and maintain a comprehensive statewide business information database and referral service;
- (3) establish a mechanism for advertising the existence of the bureau and its referral service;
- (4) provide professional assistance and information regarding licensing, permitting and taxation procedures; and
- (5) establish a reporting procedure to monitor the success of the referral service.

B. Business incubators receiving state funds shall be required to pass a state incubator certification program administered by the bureau. The bureau shall certify business incubators that submit documentation to the department that the incubator has:

- (1) a mission statement that defines the incubator's role to assist entrepreneurs and support the growth of businesses;
- (2) a formal feasibility study indicating an appropriate market and local community support and a business plan;
- (3) an effective governing board or an appropriate oversight advisory board committed to the incubator's mission;
- (4) qualified management and staff to achieve the mission of the incubator and to help businesses;
- (5) an ongoing business assistance program that places the greatest value on client assistance and adds value to client businesses by developing programs and coordinating activities such as:
 - (a) technical assistance and consulting;
 - (b) coaching and mentoring, business training workshops and seminars;
 - (c) providing marketing assistance;
 - (d) fostering networking opportunities and links with other business service providers; and
 - (e) providing assistance in obtaining financing;
- (6) a facility that encourages innovation and provides dedicated space for incubator client firms with flexible leases and that includes a common area meeting space and business equipment;
- (7) a process for client businesses that involves a screening and selection process and graduation policy for client companies;
- (8) a system for program evaluation;
- (9) all applicable required licenses and permits and a functional accounting system; and
- (10) membership in the national business incubation association.

Considerations:

There may be constitutional issues with requiring an incubator to hold membership in a particular private association (B (10)).

Questions Related to Section 22 Might Include:

1. What concrete results has the state's investment in business incubators achieved?
2. Has the state completed development of the state geographic information system and centralized information database and assistance center/referral service? If not, why not? If yes, how effective is it?
3. The statewide "one-stop shop" for business has been a promise for at least two decades. Is it a reality now?

Section 23. Artisans business development program; creating a fund.

A. The "New Mexico artisans business development program" is created within the department to promote, in conjunction with the arts division of the of cultural affairs department, the New Mexico artisans industry by establishing a greater demand for New Mexico artisans' wares and by providing technical and marketing assistance to New Mexico artisans.

The purposes of the program include:

- (1) establishment of a nonprofit organization to carry out the objectives of the New Mexico artisans business development program;
- (2) educational workshops and seminars in cooperation with the small business development centers for artisans to assist the centers in the development of their businesses and marketing of their wares;
- (3) an assessment of a full range of marketing strategies for artisan wares and relating those wares to target markets;
- (4) production of a promotional brochure of New Mexico artisans and their products;
- (5) development and publishing of a marketing catalog of New Mexico artisans;
- (6) establishment of a network of state and national distribution points and gift and trade shows for the promotion and export of New Mexico artisans' wares;
- (7) development of a state and national marketing and exhibitions calendar;
- (8) participation in state and national promotional shows by New Mexico artisans; and
- (9) development of a marketing network with private-sector distributors, catalog producers and retailers.

B. The "New Mexico artisans business development fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants, donations and income from investment of the fund. The fund shall be administered by the enterprise development bureau, and expenditures may be made from the fund on warrants issued by the secretary of finance and administration pursuant to vouchers signed by the secretary of commerce and economic development to carry out the purposes of the New Mexico artisans business development program.

Considerations:

As recommended by Kay Marr in her presentation at the first meeting, the task force should look at earmarked funds to determine their worth. Earmarking limits the legislature's ongoing ability to determine public policy, distorts what policy there is and blunts an agency's or program's need to justify its existence.

Questions Related to Section 23 Might Include:

1. What has this program accomplished?

2. How does this program work with the economic development department's arts and crafts district program? Should the two programs be combined, at least administratively? Why

is the economic development department, rather than the cultural affairs department, administering these programs?

3. What exactly is the relationship of a government-created nonprofit organization and the state? Would the state be liable for the affairs of such an organization? Would it be covered by the Tort Claims Act? Has one been created?

Section 24. Tourism enterprise fund; created; administration. The "tourism enterprise fund" is created as a nonreverting fund in the state treasury. Money appropriated to the fund or accruing to it through sales of souvenirs and sundries at visitor centers, web-site-related sales, television special program rights, gifts, grants, fees, bequests or any other source shall be delivered to the state treasurer and deposited in the fund. The fund shall be administered by the department, and money in the fund is appropriated to the department to carry out the duties of the department. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of commerce and economic development.

Considerations:

As recommended by Kay Marr in her presentation at the first meeting, the task force should look at earmarked funds to determine their worth. Earmarking limits the legislature's ongoing ability to determine public policy, distorts what policy there is and blunts an agency's or program's need to justify its existence.

Section 25. Technology enterprise bureau. The technology enterprise bureau [of the economic development division] shall:

A. enhance the business climate to encourage the start-up, relocation, development and growth of technology-based industry in New Mexico;

B. promote an expanded, diversified technology-based economy, emphasizing areas that:

- (1) derive from the state's technological strengths;
- (2) provide a commercial advantage;
- (3) lend themselves to a distributed technology-based industry network;

and

- (4) use imaginative state, federal and private partnerships;

C. support in-state industries and attract new industries to New Mexico;

D. formulate and submit to the economic development and tourism commission a five-year state technology development plan;

E. develop agreements with federal research, development, testing and evaluating organizations and universities to facilitate the transfer and commercialization of technology;

F. recommend to the secretary proposed projects and contracts in accordance with the policies, procedures and guidelines established by the department;

G. subject to the approval of the secretary, apply for and accept any federal funds or grants and private donations;

H. develop requests for proposals in technology commercialization areas given priority in the state's economic development and tourism plans; receive and refer with commentary to the secretary proposals submitted in response to requests for proposals; confer with research investigators to assist them when needed; monitor progress on state-funded research and development projects; maintain contact with research and development offices of universities, federal laboratories and private research operations; and receive reports of individual projects;

I. prepare an annual report on:

- (1) the status of the technology enterprise bureau;
- (2) the status of ongoing research and development projects;
- (3) the results obtained from completed projects and the dissemination of

those results; and

- (4) other activities of the bureau;

J. maintain and update records on the status of all completed and ongoing projects;

K. request from each entity under contract with the bureau a detailed description of tasks and associated budgets for review and approval by the economic development and tourism commission; and

L. perform such other duties as assigned by the secretary.

Questions Related to Section 25 Might Include:

1. How well are technology-focused programs coordinated?

Section 26. Technology enterprise bureau; proprietary information.

A. Any information obtained by the technology enterprise bureau that is deemed by the chief and the economic development division director to be proprietary technical or business information shall be held in confidence. Proprietary technical or business information shall not be deemed a public record under the Public Records Act or be open to inspection under Section 14-2-1 NMSA 1978. The technology enterprise bureau shall take such steps as are necessary to safeguard the confidentiality of the information.

B. Notwithstanding Sections 10-15-1 through 10-15-4 NMSA 1978 or any other law requiring meetings of public bodies to be open to the public, meetings of the economic development and tourism commission shall be closed when proprietary technical or business information is discussed.

Section 27. Technology enterprise fund created. The "technology enterprise fund" is created as a nonreverting fund in the state treasury. No money appropriated to the fund or accruing to it through cooperative research and technology transfer agreements, gifts, grants or bequests shall be transferred to another fund or encumbered or disbursed in any manner except for activities conducted pursuant to Section 26 [Section 25] of the Commerce and Economic Development Department Act. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary or the secretary's authorized representative.

Considerations:

Another earmarked fund.

Questions Related to Section 27 Might Include:

1. Why should money received from cooperative research and technology agreements not be deposited in the general fund?

Section 28. Technology-based proposals; state match fund created.

A. The "state match fund" is created in the state treasury. Money in the fund is appropriated to the department to provide a pool of matching funds for technology-based proposals submitted to the federal government on behalf of the state. Money in the fund shall only be expended upon review and approval of the economic development and tourism commission.

B. No money in the fund appropriated to it or accruing to it in any manner shall be transferred to another fund or encumbered or dispersed in any manner except for the purposes set forth in this section. Disbursements from the fund shall only be made upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary or the secretary's authorized representative.

Considerations:

Another earmarked fund.

Questions Related to Section 28 Might Include:

1. Has this fund ever been used? What state matching proposals have been funded by the federal government?

2. What other source of funding does this fund have other than appropriation?

Section 29. International trade bureau duties. 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. The bureau shall:

A. coordinate activities of the department and other state agencies as those activities relate to improving New Mexico's relations and trade with other countries;

B. promote New Mexico to international investors;

C. promote New Mexico products and services to potential international consumers;

D. establish a central registry for New Mexico products and services;

E. develop, maintain and use a database of potential domestic and international investors and consumers for New Mexico and its products and services;

F. foster, coordinate and support private efforts in the promotion of New Mexico and its businesses, products and services to consumers in other countries; and

G. work with persons outside of state government to formulate a trade promotion plan for inclusion in the department's five-year economic development and tourism plan.

Questions Related to Section 29 Might Include:

1. Is there a central registry for New Mexico products and services? Is there a database of potential domestic and international investors and consumers for New Mexico and its products and services? Where are they located for public viewing?
2. Are there anti-donation implications to the provision to "support [of] private efforts"?

Section 30. Mexican affairs and trade division; duties. The Mexican affairs and trade division is responsible for:

- A. conducting and coordinating the state's relations with the republic of Mexico and the state of Chihuahua;
- B. promoting New Mexico products and services in Mexico;
- C. coordinating activities of the department, the cultural affairs department, the department of transportation, the department of health, the department of environment, the department of public safety, the New Mexico-Chihuahua commission and the joint border research institute at New Mexico state university as those activities relate to improving New Mexico-Mexico relations and trade and encouraging or funding appropriate border development;
- D. establishing and annually updating the New Mexico trade registry of New Mexico businesses and the products and services they offer to consumers; and
- E. providing periodic reports to the New Mexico finance authority oversight committee on its activities and the activities of the state pertaining to New Mexico-Mexico relations, trade and border development.

Questions Related to Section 30 Might Include:

1. Does the state need all the separate organizations focusing on Mexican trade and border development?
2. How have southern New Mexico and New Mexico economics and social indicators improved on the border in the last 10 years?

Section 31. Minority business assistance; business services division; duties.

- A. As used in this section, "minority business" means a business, with its principal place of business in New Mexico:
 - (1) the majority ownership of which is held by persons who are residents of New Mexico and who are African Americans, Hispanic Americans, Asian Americans or Native Americans; and
 - (2) that employs twenty or fewer people.
- B. The business services division shall develop and implement a minority business assistance program to facilitate the entrance of minority businesses, located throughout the state, into the marketplace. As part of the development and implementation of the program, the division shall:
 - (1) develop a process to define and identify minority businesses that may benefit from additional assistance and training in the areas of general business practices,

accounting principles, business ethics, technical expertise, marketing and government procurement;

(2) develop a registry of well-established businesses, persons within those businesses, retirees and other persons that have the expertise and skills that may be needed by minority businesses and that have expressed a desire to volunteer as a mentor or otherwise to assist minority businesses;

(3) develop an outreach and marketing program so that minority businesses may become aware of the assistance available and so that needed, experienced persons are aware of the opportunity to mentor and assist minority businesses;

(4) develop training materials and in-house training expertise; and

(5) create a mentorship program in which employees or agents of the division or department or volunteers with business experience will visit minority businesses for the purpose of training, mentoring, advising and otherwise assisting the minority businesses in the development or improvement of general business practices, accounting principles, business ethics, technical expertise, marketing and government procurement.

C. In performing its duties pursuant to this section, the division may:

(1) to the extent money has been appropriated for such purposes, develop a grant program for minority businesses to acquire the expertise necessary to compete effectively; and

(2) do all other things necessary and proper to effectuate the purpose of this section.

D. All state agencies shall cooperate with the division in carrying out the provisions of this section and shall, as the opportunity arises, assist minority businesses and encourage other businesses and persons to register as volunteers pursuant to this section.

Considerations:

The business services division does not have a current statutory analog; it was created to place this and other business programs into a structure. It may not be necessary.

Section 32. Minority business assistance fund; created. The "minority business assistance fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants, donations, bequests and income from investment of the fund. Money in the fund is subject to appropriation by the legislature to the department for the purposes of carrying out the provisions of Section 31 of the Commerce and Economic Development Department Act. Disbursements from the fund shall be made on warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of commerce and economic development.

Considerations:

Another earmarked fund.

Section 33. Regulation and licensing suspense accounts. The administrative services division shall establish such suspense accounts as necessary to account for money received by the department from activities of the construction industries division, financial institutions

division, manufactured housing division, securities division or other departmental unit for fees, licenses and penalties for which the department may owe a refund. At the end of each month, all money in the accounts, except for an amount determined by the division to be necessary to reserve for refunds, shall be credited to the general fund.

Considerations:

Article 4, Section 30 of the constitution of New Mexico provides that money shall be paid out of the treasury only upon appropriations made by the legislature. This section comports with Section 6-10-3 NMSA 1978 regarding the creation of suspense funds or accounts to allow an agency to refund money that it has collected incorrectly. As that section of law provides, it is money that has not yet been earned so as to become the absolute property of the state.

Section 34. Mortgage regulatory fund; created.

A. The "mortgage regulatory fund" is created as a nonreverting fund in the state treasury and shall be administered by the financial institutions division of the department. The fund shall consist of application, licensing, renewal, examination, investigation and any other fees received that are associated with the costs of administering the New Mexico Mortgage Loan Originator Licensing Act, fees specified in Subsection E of Section 58-21-5 NMSA 1978 and money that is appropriated, donated or otherwise accrues to the fund. Money in the fund shall be invested by the state investment officer in the manner that land grant permanent funds are invested pursuant to Chapter 6, Article 8 NMSA 1978. Income from investment of the fund shall be credited to the fund.

B. Money in the mortgage regulatory fund is appropriated to the financial institutions division to carry out the provisions of the New Mexico Mortgage Loan Originator Licensing Act and the Mortgage Loan Company Act.

C. Money shall be disbursed from the mortgage regulatory fund only on warrant of the secretary of finance and administration pursuant to vouchers signed by the director of the financial institutions division or the director's authorized representative.

Considerations:

Another earmarked fund. This section might be better compiled in Chapter 58 NMSA 1978.

Amendatory Sections:

Sections 35 through 106 are amendatory sections to change the names of departments and make other conforming amendments. The following acts and programs have been amended:

Sections 35 through 37. Main street program and Main Street Revolving Loan Act (from the economic development department). The economic development and tourism commission takes the place of the main street revolving loan committee.

Section 38. Local Economic Development Act (from the economic development department).

Section 39. Statewide Economic Development Finance Act (from the economic development department).

Sections 40 and 41. Sunrise Act (from the regulation and licensing department).

Considerations:

This act, which requires review and evaluation of professions or occupations before legislative action is taken, is obeyed more in the breach. Arguably, it is not good public policy to have laws that people ignore. The legislature might want to consider repealing the Sunrise Act or insist that it be complied with.

Sections 42 and 43. New Mexico-Chihuahua commission (from the economic development department).

Sections 44 and 45. New Mexico-Sonora commission (from the economic development department).

Section 46. Public Works Minimum Wage Act (from the workforce solutions department).

Section 47. Public Works Apprentice and Training Act (from the workforce solutions department).

Section 48. Small business regulatory advisory commission administrative attachment (from the economic development department) (per diem and mileage was deleted, though do not know why).

Section 49. State fair commission administrative attachment (from the tourism department).

Section 50. Post-secondary educational planning participation (from the workforce solutions, tourism and economic development departments).

Section 51. Community development assistance (from the economic development department).

Consideration:

Not sure why this section is compiled in Chapter 21 NMSA 1978, post-secondary education, instead of in the New Mexico Community Development Assistance Act.

Section 52. Disclosure of information about obligors of educational debt (from the workforce solutions department).

Section 53. Human Rights Act (from the workforce solutions department).

Section 54. Unlawful carrying of a firearm in licensed liquor establishments (from the regulation and licensing department).

Section 55. Alcohol and gaming division monitored compliance and inspections (from the regulation and licensing department).

Section 56. Parental Responsibility Act (from the regulation and licensing department).

Sections 57 through 59. Workforce Development Act (from the workforce solutions department).

Section 60. Day Laborer Act (from the workforce solutions department).

Section 61. Unemployment Compensation Law (from the workforce solutions department).

Section 62. New Mexico Research Applications Act (from the economic development department).

Section 63. Residential Home Loan Act (from the regulation and licensing department).

Section 64. Patent and Copyright Act (from the economic development department).

Section 65. Carnival Ride Insurance Act (from the regulation and licensing department).

Section 66. Sale of Recycled Metals Act (from the regulation and licensing department).

Section 67. Banking Act (from the regulation and licensing department).

Section 68. Consumer Credit Bank Act (from the regulation and licensing department).

Section 69. Interstate Bank Acquisition Act (from the regulation and licensing department).

Section 70. Interstate Bank Branching Act (from the regulation and licensing department).

Section 71. Trust Company Act (from the regulation and licensing department).

Sections 72 and 73. Savings and Loan Act (from the regulation and licensing department).

Section 74. Credit Union Act (from the regulation and licensing department).

Section 75. Model State Commodity Code (from the regulation and licensing department).

Section 76. New Mexico Uniform Securities Act (from the regulation and licensing department).

Section 77. New Mexico Small Loan Act of 1955 (from the regulation and licensing department).

Section 78. Remote Financial Service Unit Act (from the regulation and licensing department).

Section 79. Endowed Care Cemetery Act (from the regulation and licensing department).

Section 80. Low-Income Housing Trust Act (from the regulation and licensing department).

Section 81. Motor Vehicle Sales Finance Act (from the regulation and licensing department).

Section 82. Mortgage Loan Company Act (from the regulation and licensing department).

Section 83. Home Loan Protection Act (from the regulation and licensing department).

Section 84. New Mexico Mortgage Loan Originator Licensing Act (from the regulation and licensing department).

Section 85. Escrow Company Act (from the regulation and licensing department).

Section 86. Interstate Depository Institutions Act (from the regulation and licensing department).

Section 87. Border authority administrative attachment (from the economic development department).

Section 88. Land Title Trust Fund Act (from the regulation and licensing department).

Sections 89 and 90. Spaceport authority administrative attachment (from the economic development department).

Section 91. State racing commission administrative attachment (from the economic development department).

Section 92. Professional Athletic Competition Act (from the regulation and licensing department).

Sections 93 through 96. Liquor Control Act (from the regulation and licensing department).

Sections 97 and 98. Construction Industries Licensing Act (from the regulation and licensing department).

Section 99. Employee Leasing Act (from the regulation and licensing department).

Sections 100 and 101. Manufactured Housing Act (from the regulation and licensing department).

Section 102. Hoisting Operators Safety Act (from the regulation and licensing department).

Section 103. Uniform Licensing Act (from the regulation and licensing department).

Section 104. Litter Control and Beautification Act (from the tourism department).

Section 105. LPG and CNG Act (from the regulation and licensing department).

Section 106. Animal Sheltering Act (from the regulation and licensing department).

Section 107. Standard transfer section. This temporary provision provides for the transfer of functions, appropriations, money, records, furniture, equipment and other property; contractual obligations; and statutory references from the various departments to the new commerce and economic development department. The section also provides that rules of the various departments continue in effect until amended or repealed by the new department.

Section 108. Repeal.

▶ Subsection A repeals Chapter 9, Article 15 NMSA 1978, which is the Economic Development Department Act, the Defense Conversion and Technology Act and the Minority Business Assistance Act. Substantive provisions are included in the Commerce and Economic Development Department Act.

▶ Subsection B repeals Chapter 9, Article 15A NMSA 1978, which is the Tourism Department Act.

▶ Subsection C repeals Chapter 9, Article 15C NMSA 1978, which is the Intertribal Ceremonial Act.

- ▶ Subsection D repeals Chapter 9, Article 16 NMSA 1978, which is the Regulation and Licensing Department Act.

- ▶ Subsection E repeals Chapter 9, Article 26 NMSA 1978, which is the Workforce Solutions Department Act.

- ▶ Subsection F repeals the New Mexico Film Museum Act, which is not reconstituted in the Commerce and Economic Development Department Act.

- ▶ Subsection G repeals the Bicycle Racing Act, which is not reconstituted in the Commerce and Economic Development Department Act.

Section 109. The effective date is July 1, 2010.

Considerations:

If the task force proposes to introduce this or other reorganization bills in the 2011 session, it should consider whether giving departments only two to three months to transition is sufficient. January 1 or the next July may be a better date.