

MINUTES
of the
FIFTH MEETING
of the
ECONOMIC AND RURAL DEVELOPMENT COMMITTEE

October 6-7, 2008
Room 322, State Capitol
Santa Fe

The fifth meeting of the Economic and Rural Development Committee (ERD) was called to order at 10:10 a.m. by Representative Mary Helen Garcia, chair, on October 6, 2008 in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Mary Helen Garcia, Chair
Sen. Bernadette M. Sanchez, Vice Chair
Rep. Andrew J. Barreras
Rep. Richard J. Berry
Rep. Jose A. Campos
Rep. Ernest H. Chavez
Sen. Dianna J. Duran
Rep. Nora Espinoza
Sen. Mary Jane M. Garcia
Rep. Dianne Miller Hamilton
Sen. Richard C. Martinez

Absent

Sen. Phil A. Griego
Sen. Clinton D. Harden, Jr.
Rep. Patricia A. Lundstrom
Sen. John Pinto
Sen. William E. Sharer

Advisory Members

Rep. Nathan P. Cote
Rep. William J. Gray
Sen. Stuart Ingle (10-6)
Sen. Carroll H. Leavell
Rep. James Roger Madalena
Sen. Howie C. Morales
Rep. Andy Nuñez
Rep. John Pena
Rep. Debbie A. Rodella
Rep. Shirley A. Tyler
Rep. Richard D. Vigil

Rep. Daniel R. Foley
Rep. John A. Heaton
Sen. Timothy Z. Jennings
Sen. Steven P. Neville
Sen. Lidio G. Rainaldi
Sen. Shannon Robinson
Sen. John C. Ryan

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Kate Ferlic, Legislative Council Service (LCS)
Jennie Lusk, LCS
Larry Matlock, LCS
Tom Pollard, LCS
Daniel M. White, Legislative Finance Committee (LFC)

Guests

The guest list is in the meeting file.

Monday, October 6**State Leasing and Contract Explained**

State Land Commissioner Patrick Lyons and Attorney General Gary King began their presentation at 10:11 a.m. Attorney General King's handout is an entire folder of opinions and letters, while Commissioner Lyons gave the committee a copy of his 2007 Annual Report. Both are in the meeting file.

After covering some of the current leases and land swaps arranged for economic development purposes, Attorney General King began his presentation on some leases that were approved exceeding the authority of the state land commissioner.

Attorney General's Opinion 03-02 was rendered in response to a request from Representative Cote. "We determined that the land commissioner does not have the statutory or constitutional authority to enter into agreements that include improvement value credits." Although the leases have been negotiated, the attorney general does not believe that either party realized the land commissioner lacked authority, so no fraud or misdeeds took place. He added that the legislature can give the land commissioner the authority. Credit can be given for tangible improvements with an "easily establish" value, but the credit given to the lessees was not dependent on any specific tangible improvements on the land. The second issue is the prohibition from spending state land trust proceeds to develop the land. The commissioner could address this by coming to the legislature to ask for a budget item appropriated directly to hire developers, which might help the state to get more value out of the land.

Banking Woes: The Current Climate

Economists from the college of business at New Mexico State University (NMSU), Dr. Christopher Erickson, Dr. Jim Peach and Dr. Ken Martin, were introduced by former Governor Garrey Carruthers, who is the dean.

"These are volatile times." Dr. Peach began his presentation with these words and quoted statistics showing the markets were down, with crude oil prices falling quickly. He cited multiple causes, but blamed the housing market, especially the subprime housing market. "These securities were like a pyramid scheme, based on these subprime mortgages." He explained that the question facing economists today is no longer, "Are we in a recession?", but

"What kind of a recession are we going to have?". He wonders if it will be a sharp, V-shaped downturn like the one the nation experienced in 1973, or if it will be the worst, the L-shape, where the nation's economy goes down and stays down for a long time. No one really has the answer to that question.

Dr. Erickson predicted that the U.S. bailout would not succeed and cautioned that many of his fellow economists are in agreement. "The meltdown has affected consumer spending. It's hard to buy a car, and real estate markets have been hit hard." The consensus is for a 15 percent decline, on top of the 20 percent decline the nation has already experienced. Foreclosure rates are up, about 60 percent compared to the same period last year, resulting in a rank of 37 out of the 50 states below the national average.

Dr. Martin explained the concept of "baby bear markets".

The spread between investment grade bonds and treasuries has widened to record levels. The best investment strategy in a market like this is diversification.

When asked about the status of the state's permanent fund, Mr. White stated that the permanent fund has done well in comparison with the rest of the market, although he noted that the pension funds have been hit hard.

Governor Carruthers explained that New Mexico is in much better shape than many other states. "California is seeking a \$7 billion emergency loan just to meet payroll. New Mexico has done an excellent job of fiscal discipline."

Paul Boushelle, lobbyist for the banking industry in New Mexico, joined in the assessments of the bleak financial future, but praised New Mexico's financial institutions because none of them is on a watch list for failure. "Our institutions are very strong, but the problem is their inability to lend, to find an upstream bank to help them get other funds."

Arrowhead Incubator: Economic Stimulus in Southern New Mexico

Governor Carruthers began his own presentation at 12:23 p.m. The Arrowhead Center, founded in 2004, was established to meet the ever-changing business needs of the state. It is an environment where education, business and economic development meet. The organization has five primary functions organized into strategic business units. They are:

- entrepreneurship and outreach;
- work force development;
- research park and business incubation;
- intellectual property commercialization; and
- policy analysis.

The policy analysis is handled by Dr. Peach, providing economic impact information required by business and university leaders. Because the center has 35 economists, it is well-

prepared to answer questions about the film industry, especially the question, "Are the tax incentives we give paying off?". Governor Carruthers was dubious, saying, "I haven't seen the report, but I've heard that we are not getting our money back on those deals."

The center usually receives \$129,600 on a recurring basis, but is increasing its request this year by asking for another \$310,000.

The committee recessed for lunch and returned at 2:12 p.m.

Attorney General's Alcohol Package: Legislation

Attorney General King was joined by a member of his legislative team, Phil Baca, as well as Deputy Attorney General Stuart Bluestone. His handout, an entire folder containing many pieces of draft legislation with information on each, is in the meeting file. He recommends the following:

- legislation to amend the Liquor Excise Tax Act to provide for the correct tax rate for flavored malt beverages; these beverages are artificially sweetened drinks targeted to underage drinkers;
- a bill to amend the Local Liquor Excise Tax Act to give all counties the option to increase alcohol taxes;
- prohibiting sales of malt beverages with stimulants, especially those that contain caffeine;
- legislation amending the Delinquency Act to make consumption of alcohol a delinquent act; New Mexico state law prohibits the possession of alcohol by minors, but not the consumption of it;
- a bill to regulate alcohol advertising to youth by prohibiting alcohol advertising or promotions on public property;
- prohibit the DWI mixture of drugs and alcohol because the New Mexico Court of Appeals recently reversed the DWI conviction of a man who was under the influence of methamphetamine and alcohol (the expert witnesses could not distinguish between the two substances to support a conviction; the statute needs to be clarified to express that it is illegal to drive while under the influence of drugs and alcohol); and
- the Anaya Fix: amend the Habitual Offender Sentencing Act to include a prior DWI felony conviction under the DWI statute as a prior felony for enhancement purposes, resulting in substantially increased penalties.

Chile Industry Update

No presenters were available for this presentation.

Friends of the Bosque Redondo Memorial (FBRM)

Mary Ann Cortese, chair of the FBRM, gave the committee her handout entitled "Connecting Past and Present". Ms. Cortese began her presentation by describing the atrocities committed against the Navajo people. "Babies were slammed against walls, infants thrown in the river and the elderly were killed at the beginning if they didn't think they could make the 450-mile trek that winter." There was heavy snow, and many of them were nearly naked. They called Fort Sumner "the place of suffering". Nine thousand Navajos were brought to a 40-square-mile reservation that was ill-prepared to support them. After four years, a treaty was signed and they were allowed to go home. Three thousand of the Navajo died. In total, more than 4,000 are buried in the Fort Sumner Valley with no markings and with no recognition until 2005, when a memorial was dedicated.

Ms. Cortese carefully described the vision for the experience to be offered by the museum.

"As the visitor enters the 5,000-square-foot room, it's dark as you go in. You get the story in capsules, starting with the lives of the Navajo and the Apache. They had regular lives and homes, their children were playing. Then they were captured, marched and brought to this reservation.

"Then you'll hear soldiers yelling, mothers crying for their children, children crying. You'll be asked if you want to continue into the brewing storm amid the sounds of thunder and blasts of lightning. Accounts appear on the screens, tales from the ancestors who were there.

"Then you go into the theater. It's like a campfire in the middle, big enough for 30 students. We all know what it's like to sit around a campfire. You get ready to listen. Some audio will come up from the benches. Images will be ghosted up and voices are heard.

"You'll be asking questions, and you'll be asked to make some decisions, such as "What would you have done?". It's an interactive moment.

"Eventually, you'll go into a clearing. You're given two sheep and must make your way home as best you can. At the end will be the aftermath and the visitors' responses."

When the museum gains its status as an accredited site of conscience, it will be the only one of its kind between Los Angeles and Memphis, Tennessee.

Transmission Process

Lisa Szot, executive director of the Renewable Energy Transmission Authority (RETA), Sherry Kunka, project director for strategic planning at Xcel Energy and Joel Ivy, vice president of New Mexico operations for Public Service Company of New Mexico (PNM), each gave the committee a handout. Ted Apodaca, general counsel for RETA, was also present.

Ms. Szot gave an overview of the creation of the authority and its purpose, which is to help arrange financing and contracting to develop projects as well as settling issues of eminent domain. The RETA can fund storage projects as well as transmission lines.

One of the challenges facing the RETA is that the geographic areas where renewable energy sources are found are not close to existing transmission lines. Existing transmission lines were never intended to allow power to cross from one zone to another.

Another challenge, explained by Mr. Apodaca, is that although the RETA is required to become self-sufficient by the legislation that requires it, it is impossible without a dedicated revenue stream or credit support. He intends to propose legislation through the Governor's Office to streamline the process of issuing bonds. The RETA will need tax incentives to succeed, especially industrial revenue bonds.

Ms. Kunka presented the growth of renewable energy sources at Xcel, as well as local transmission grids. She noted that the ERCOT interconnection, which covers the state of Texas, is not interconnected with any other grid in the United States, which echoed Ms. Szot's comments about the impossibility of transferring power from New Mexico to the eastern seaboard because of the ERCOT interconnection's lack of interconnection. One of the challenges is keeping up with interconnection requests. Also, there is a long lag between how long it takes to build a wind farm and how long it takes to complete a transmission line. Wind farms can be completed in 12 to 18 months, while building transmission lines along select routes with certifications can take three years or longer.

The intermittency of wind and solar energy sources continues to cause problems, especially with storage.

Ms. Kunka recommended finding ways to support regulation that encourages investment in transmission.

Mr. Ivy gave his presentation with the help of Sayuri Yamada, who wrestled with a cardboard map bigger than herself. The map showed the existing transmission system in New Mexico, as well as anticipated transmission expansion needs to keep up with customer demand. PNM has 8,000 megawatts in its interconnection study queue, of which 85 percent is wind energy and 8 percent is from other renewable sources.

One of the major challenges is that transmission interconnection is paid one request at a time. It is often hard to justify building three times what is needed, because who pays for that? "If we don't have a use for that facility, the PRC doesn't approve us." The industry has to build taking into account the maximum needs when actual capacity runs at 30 to 40 percent. He also noted that wind energy is in the rural areas, but the transmission lines are not, which is true of the entire western part of the United States.

To solve some of these problems, he recommended the Western Governors' Association's approach of creating a western renewable energy zone.

After the presentation, Representative Campos moved to approve the minutes from the third meeting of the committee. Representative Tyler seconded the motion, which passed with no opposition. The committee recessed at 4:48 p.m.

Tuesday, October 7

Santa Fe Business Incubator

Marie Longserre, president and CEO of the Santa Fe Business Incubator, began her presentation after the meeting was called to order at 9:07 a.m. Her handout is in the meeting file. She stressed the fact that the incubators run on a very small budget and that they should not morph into commercial real estate ventures. Her incubator has created literally hundreds of jobs, for which Senator Leavell thanked her, saying, "This is one of the best programs that we can fund in New Mexico for economic development in our communities."

He noted that last year, the incubators had received an appropriation of \$100,000 and asked about additional funding from the Economic Development Department (EDD). Ms. Longserre responded that the EDD put in \$110,000 for research and feasibility studies. Senator Leavell gave her his commitment to seek continued funding for the incubators.

Tax Credits and Accountability

Norton Francis, chief economist for the LFC, delivered his presentation and was joined afterward by Lisa Strout, director of the New Mexico Film Office. Both had two handouts. There was no representative from NMSU present for this presentation.

Mr. Francis summed up the current national economic status as "not so good", with employment making a dramatic downturn after eight consecutive months of job losses and the stock market below 10,000. New Mexico is still outperforming and was fourteenth in job growth for the last month. Gross receipts taxes have declined. "Our tax structure is less efficient, dependent on oil and gas revenues."

He stressed the importance of accounting when dealing with layering incentives. He encouraged the adoption of reporting requirements, especially supplying the legislature with comprehensive reports. He praised the State Investment Council's job of reporting on the film loan program and the private equity program.

He encouraged the use of sunset clauses to force the legislature to revisit its policies on a regular basis. "If you want to grow an industry, ten years is good. For stimulus, you need a shorter time period, as well as specific reporting requirements." He also showed the need for more joint reporting between the Taxation and Revenue Department (TRD) and those doing the certifying. Although there is an issue with confidentiality, the TRD and the Workforce Solutions Department (WSD) can work together to produce a report without revealing the information.

Ms. Strout defended the incentives, saying that the TRD has not been properly breaking down the investment produced, noting that private sector spending on infrastructure is completely missing, when \$100 million had already been invested in Albuquerque Studios, all of which is non-rebatable and has no tax revenue attached to it. She cited examples of economic development that are not included in the NMSU figures, like film-related businesses such as

insurance, camera companies and post-production facilities. "There are 2,000 film equipment vehicles in the state and there used to be forty!" She said that New Mexico could be proud of the model that is in place because of all of the infrastructure improvements that have been made. "These folks are investing their own dollars in New Mexico."

Tom Rutherford agreed that New Mexico was reaping the results of its investment in film.

Regulatory Processes: Updates on the Model Administrative Procedures Act

John H. Martinez, director of the Administrative Law Division of the State Records Center and Archives, presented with Art Hull in place of Beverlee McClure from the Association of Commerce and Industry's (ACI) regulatory committee. The ACI's handout is in the meeting file, as well as a one-page handout with information from Mr. Martinez.

Mr. Martinez explained that his division administers the rules, which must be filed with his office, which compiles the New Mexico Administrative Code. He noted that the Uniform Law Commission has been in existence since 1892 to avoid patchwork regulations. New Mexico's uniform law commissioners are Senator Cisco McSorley, Representative Joseph Cervantes and Paula Tackett.

He suggested that the legislature form a committee to look at the model act, which is 88 pages long. "I love it, but I'm a nerd." He recommended doing something similar to what the State of Virginia has done, which was to establish an administrative law advisory committee with professors and attorneys and state entities that make rules, as well as including interested parties.

T.J. Trujillo said that the ACI has been before the legislature three out of the last four years with different proposals for regulatory reform. His handout lists seven major problems caused by New Mexico's failure to use the Administrative Procedures Act.

Representative James R.J. Strickler said that pit rules are killing the oil and gas industry and predicted that oil and gas drillers would abandon the state.

Beverly Fikse, governmental affairs officer with the Dairy Producers of New Mexico, complained that the dairy industry is one of the most regulated industries in the state and cannot pass on the costs of regulation because its prices are determined by the federal government. "Dairies need a fair, consistent and predictable regulatory process. We agree with ACI and Art Hull."

Allison Kuyper, lobbyist for the New Mexico Restaurant Association and the New Mexico Ground Water Association, said that businesses need consistency and the ability to appeal regulatory decisions.

Marla Shoats criticized the regulations on solid waste.

Mr. Trujillo said that the ACI's regulatory committee would come before the committee to ask for endorsement of seven conceptual ideas in very simple bills.

There being no further business before the committee, a motion to adjourn was heard and passed with no opposition at 12:04 p.m.