

**MINUTES
of the
THIRD MEETING
of the
ECONOMIC AND RURAL DEVELOPMENT COMMITTEE**

**August 3-4, 2016
Barbara Hubbard Room
New Mexico State University
Las Cruces**

The third meeting of the Economic and Rural Development Committee was called to order by Representative Rick Little, chair, on August 3, 2016 at 9:03 a.m. at the Barbara Hubbard Room at New Mexico State University (NMSU) in Las Cruces.

Present

Rep. Rick Little, Chair
Sen. Benny Shendo, Jr., Vice Chair
Sen. Jacob R. Candelaria (8/3)
Sen. Ron Griggs
Sen. Michael Padilla (8/3)
Sen. John Pinto
Rep. Debbie A. Rodella
Rep. Bob Wooley

Absent

Rep. D. Wonda Johnson
Sen. Richard C. Martinez
Rep. Patricia Roybal Caballero
Sen. Pat Woods
Rep. John L. Zimmerman

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Craig W. Brandt (8/3)
Sen. Lee S. Cotter
Rep. Bealquin Bill Gomez
Rep. Jimmie C. Hall
Sen. Mary Kay Papen

Rep. George Dodge, Jr.
Rep. Nora Espinoza
Sen. Carroll H. Leavell
Rep. Patricia A. Lundstrom
Sen. Mark Moores
Rep. Dennis J. Roch
Rep. Nick L. Salazar
Sen. William E. Sharer

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

Guest Legislator

Rep. Patricio Ruiloba

Staff

Shawna Casebier, Staff Attorney, Legislative Council Service (LCS)
Celia Ludi, Staff Attorney, LCS
Jeff Eaton, Fiscal Analyst, LCS
Anna Martin, Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Wednesday, August 3**Call to Order — Introductions**

Representative Little welcomed members of the committee, staff and guests to the meeting. Committee members and staff introduced themselves.

Welcoming Remarks

Gregory Z. Smith, mayor pro tem and District 2 councillor, City of Las Cruces, welcomed the committee to Las Cruces and observed that Las Cruces does not have oil and gas, so its economy depends on other industries. He mentioned that the Las Cruces Downtown Tax Increment Development District is an important piece of the city's economic development plan, as are the arts, manufacturing and NMSU. He said that Las Cruces' excellent relationship with Mexico is integral to the local economy, citing the development of Santa Teresa as an example. Mr. Smith requested the committee's support for establishing a crime laboratory for the southern part of the state in Las Cruces, explaining that the crime laboratory would benefit the community in many ways: it would increase the ability to investigate crimes faster and less expensively; and it would also reduce the amount of time officers spend traveling to the crime laboratory in Santa Fe, keeping more officers on the street. He also opined that the Local Economic Development Act and other state-supported economic development initiatives help buffer and diversify the economy by providing jobs that give young people a reason to stay in New Mexico.

Dan Howard, executive vice president and provost, NMSU, noted that NMSU has been in the news recently because of its \$12.1 million budget cuts that include 126 faculty and staff positions; one academic program, the engineering surveying program; and one athletic program, the equestrian program. Referring to his handout at item (1), he said NMSU is facing a variety of challenges that are also being felt at institutions throughout the nation. Oil, gas and other state revenues are down 10 percent; national trends in college enrollment are down; New Mexico high school graduation rates are down; the state appropriations for higher learning are down by 2.4 percent; and the state's population is also decreasing, particularly among 15- to 19-year-olds — the university's target demographic — which is down 7.63 percent.

Mr. Howard described an open and transparent process used to make the budget-cutting decisions that involved numerous meetings with faculty, staff, students and the public. Eighty-nine of the positions cut are vacant, but 37 are filled and the employees will be transferred or laid off, the first layoff at NMSU since 1957, and administrative units took more cuts than academic units.

He said that the university is also looking at its administrative structure and organization, and it is in the process of reorganizing to reduce administrative costs long-term, in particular, by reducing layers of management to no more than three; by reducing fragmentation across the different colleges; and by reducing the number of vehicles owned by the school.

In addition, Mr. Howard said, NMSU has a strategic enrollment plan that includes a student pathway to move from community college to university and expands its internship and distance learning programs. Starting in the fall 2017 semester, NMSU will require first-year students to live on campus unless they are local students and live with their families. He said that the university is reviewing its missions and the use of all of its experimental stations, which may result in some closures, and it is developing its real estate and water assets. He added that NMSU that day had been notified that it is the recipient of a \$4.4 million grant from the United States Department of Agriculture (USDA), the largest in the USDA's history, to study the genetics of pecans.

Workers' Compensation: Historic Overview and the Perspectives of Business, Workers and Insurance after *Rodriguez*

Thomas E. Dow, executive deputy director, Workers' Compensation Administration (WCA), summarized the WCA's annual report for 2015, which is available on the WCA website, by saying that most workers receive benefits for which they are eligible without recourse to dispute resolution, and most employers are in compliance with the applicable law regarding workers' compensation. He said that the WCA's general approach to compliance is to help employers become and remain compliant, rather than punishing them when they are not. The WCA penalizes employers only as a last resort. He introduced Rachel Bayless, general counsel, WCA, and Trey Flynt, program manager, Employer Compliance Bureau, WCA.

In response to questions from committee members regarding the implications and application of the New Mexico Supreme Court ruling in *Rodriguez v. Brand West Dairy*, Mr. Dow said that the determination on whether a worker is an "employee" has 10 factors, which are set out in federal Internal Revenue Service guidelines, and he noted that the definition of an "employee" needs to be clarified in New Mexico law. He said that there have been many questions about the application of the decision and that the WCA has published "frequently asked questions" on its website; he added that the Supreme Court's decision applied to the individual plaintiffs, but otherwise was prospective only. The WCA is also advising employers of their responsibility to post the notices required by Section 52-1-29 NMSA 1978. He noted that determining an acceptable posting site is challenging for some employers because they do not have fixed worksites, for example, on construction sites.

Mary Fowler, manager, National Council on Compensation Insurance (NCCI), explained that the NCCI's core service in New Mexico is management of the residual market assigned risk pool, which offers specialized coverage not available in the voluntary market, albeit at the highest rates.

Kevin McGinley, vice chair, Advisory Council on Workers' Compensation (ACWC), said that the ACWC is composed of six members, three representing management and three representing labor. The ACWC chair, James Magoffee, is a union member and is also the safety officer for his company. Mr. McGinley said that workers' compensation was intended as a no-fault (as between employer and employee) mechanism to take care of injured workers and get them back to work, but replacement of wages lost due to injury has always been a gray area and is subject to a lot of litigation in New Mexico. Additionally, in recent years, subrogation of damages due to injuries caused by third parties has become an issue. For instance, in the situation where a truck full of workers on the job are injured when a third party causes a wreck, the workers are covered by workers' compensation, for which the employer pays, but the workers may also sue the third party to recover damages for their injuries. Mr. McGinley said that the ACWC is working on a bill draft that would give the worker the choice between suing the third party and receiving workers' compensation; possible models are laws in Minnesota and Arizona.

Committee members discussed other gray areas, including:

- the issue of workers who were injured on the job and received workers' compensation, then returned to work and were subsequently terminated for a reason or reasons unrelated to the injury, but are allowed to keep receiving workers' compensation benefits;
- treatment of public employees who are injured when they are close to retirement — overlapping workers' compensation and disability retirement benefits can result in a windfall for the worker;
- responsibility for cumulative injuries that develop over time, especially when workers work for multiple employers over that time;
- the status of workers who are supplied by labor contractors for casual or seasonal work; and
- the impact of the Supreme Court decision on family and friends who help each other occasionally during the year such as during harvest or branding time.

Edward Tabet-Cubero, executive director, New Mexico Center on Law and Poverty (NMCLP), noted that the New Mexico Supreme Court's decision in *Rodriguez v. Brand West Dairy* only applies to farm and ranch operations with more than three employees, which make up only 7.5 percent of all farms and ranches in New Mexico; the other 92.5 percent of farms and ranches have three or fewer employees. However, approximately 90 percent of all agricultural workers are employed by those 7.5 percent of farm and ranch operations, and about one-third have voluntarily covered their employees with workers' compensation insurance.

Gail Evans, legal director, NMCLP, provided the factual background of the *Rodriguez* and *Aguirre v. M.A. & Sons Chili Products* cases (which were consolidated at the appellate levels) and commented that for workers who do not have health insurance and/or workers' compensation coverage, an injury at work can put them into deep poverty. She contrasted benefits paid by liability insurance, which provides a flat \$5,000 and does not cover all health

care costs of injuries, with workers' compensation, which covers all health care costs and also provides replacement wages on a reduced schedule for the duration of the injury. Workers' compensation also provides lifetime medical benefits for workers who are disabled at work and never recover enough to go back to work; no other insurance scheme provides similar benefits. Ms. Evans applauded the WCA's outreach and education efforts to employers, encouraged more outreach to the workers themselves and agreed that New Mexico needs healthy agricultural workers.

Responding to committee members' questions, Ms. Evans:

- estimated that about 15,000 workers would be impacted by the *Rodriguez* decision — approximately 3,500 workers are employed in the dairy industry, and the remainder are field and ranch workers;
- said that the cost of workers' compensation coverage is based on quarterly payroll. Cost also varies depending on the type of operation, e.g., dairies, farms, ranches and whether coverage is purchased from the assigned risk pool or in the voluntary market. She observed that the agriculture payroll and cost of doing business is much lower than in other industries and that the issues facing farms and ranches are not dissimilar to all other industries that are required to carry workers' compensation insurance;
- said she had no information about the cost to taxpayers through Medicaid or other public assistance programs when workers are injured or disabled while working for an employer that does not have workers' compensation insurance;
- disclosed that of the two plaintiffs in the case, NMCLP and Mr. Rodriguez's employer are working out workers' compensation payments for his disability; M.A. & Sons Chili Products, the farm Ms. Aguirre was working on at the time of her injury, is arguing that she was not an employee but rather was employed by a labor contractor and that M.A. & Sons Chili Products should not be liable for her injury, although M.A. & Sons Chili Products is covered by workers' compensation and the labor contractor is not. Ms. Evans' takeaway from that situation, given *Rodriguez*, is that farmers who use labor contractors should make sure that if the farm does not have workers' compensation insurance, the labor contractor does;
- opined that the chances of either plaintiff recovering damages for the plaintiff's disabilities if the employer was sued would be nil, because both injuries were accidents and not the result of either intention or negligence of employers, which is the very situation workers' compensation was established to address; and
- stressed that farms and ranches do not have to have workers' compensation for family and friends who are helping out as long as they are not on the payroll, because workers' compensation does not apply to unpaid workers.

Caren Cowan, executive director, New Mexico Cattle Growers' Association, stated that workers' compensation coverage cannot be purchased by the quarter only for times when casual or seasonal workers are employed and that uncertainty remains around the classification of children and other family members who help out on a farm. She said that ranchers in the

assigned risk pool pay \$38.00 for every \$100 of payroll, which is a huge cost to a narrow-margin industry.

Zach Riley, director of government affairs, New Mexico Farm and Livestock Bureau, opined that the *Rodriguez* decision has left a number of uncertainties about the application of workers' compensation to farm and ranch operations. Noting that farmers are price takers, not price setters, and that many farms are operating with negative net income, he questioned where the money will come from for these employers to purchase workers' compensation insurance.

Development of Health-Tech Industry Cluster at Arrowhead Park

Wayne Savage, executive director, Arrowhead Center, NMSU, reviewed his handout at item (3). He stressed that the true impact of a health-tech industry cluster in the Arrowhead Center will be on the health and economy of the community. In answer to questions by committee members, Mr. Savage said that New Mexico is already rated highly in national comparisons in life sciences/biotech research innovation and that access to capital for development of health-tech innovations is crucial. He explained that, as a nonprofit organization, the Arrowhead Center is working on generating revenue to grow the businesses it supports as a way of reinvesting in the community.

Developing the Agritourism Industry in New Mexico

Jeff Witte, director/secretary, New Mexico Department of Agriculture (NMDA), informed the committee that there are at least 80 different agri-adventure and agritourism businesses in New Mexico, and the best way to learn about them is to hear from some of the business owners themselves.

Anna Lyles, co-owner, Mesilla Valley Maze, reviewed her handout at item (4). She related that the Mesilla Valley Maze was developed in 1999 as a single weekend educational project as an offshoot of a family commercial farm. In response to popular demand, it has grown over the years and now it is open a total of 80 days a year, with the fall season lasting 30 days. It has hosted students from 17 school districts, two states and two countries. Because of huge liability and insurance issues, the owners have split Mesilla Valley Maze off from the farm and made it its own limited liability corporation. Ms. Lyles said that even though education is the primary mission and the Mesilla Valley Maze does no advertising, the insurance companies classify it as an "amusement park", and its workers' compensation and liability insurance rates are calculated similar to that of Disneyland or Six Flags. She proposed that there is a need for legislation to lessen the liability burden for businesses such as pumpkin patches and "you-pick" gardens.

Andrew Graves, Graves Farm and Garden, reviewed his handout at item (4). He said that 15,000 people a year come to Graves Farm and Garden and any one of them could get hurt and sue him, so he has always carried liability insurance. He said his \$2 million liability policy costs \$45,000 per year. He supported Ms. Lyles' proposal.

Christopher Goblet, executive director, New Mexico Wine and Grape Growers Association (NMWGGA), told the committee that the NMWGGA has 50 members and is actively working to help many members develop tourism at their wineries, whether by offering tasting rooms, overnight accommodations or other hands-on experiences. NMWGGA members have registered with the "New Mexico True" campaign to participate in a "New Mexico TrueFest" over Labor Day weekend in Albuquerque. It is also working with grants from the NMDA and the USDA on marketing "Liquid Tourism", including tourism related to wineries, breweries, distilleries and coffee and tea shops. Mr. Goblet observed that wineries are rural, and breweries and distilleries are urban, so visitors are offered different experiences. He also noted that increased signage is needed to inform travelers of these agritourism opportunities.

David and Theresa Fisher, owners of Sombre Antigua Winery located on Highway 28 near Chamberino, New Mexico, described their business as the youngest and one of the smallest New Mexico wineries, with the oldest vineyard. They said their clientele comes primarily from the El Paso area and increases every year. The winery has two full-time employees and numerous part-time seasonal workers, and it produces 2,000 cases a year with the potential to quadruple.

Mr. Witte concluded that the NMDA is working with the Tourism Department on proposed legislation regarding agritourism liability, and he hopes to have it ready to present for consideration of endorsement at the committee's last meeting.

Water Needs and Concerns for Lower Rio Grande Users

Gary Esslinger, manager, Elephant Butte Irrigation District (EBID), reviewed his handout at item (5). He explained to the committee the 1938 Rio Grande Compact that requires the EBID to deliver water to Texas and Mexico and the issues that have arisen in the lawsuits filed over the terms of that compact and the subsequent 2008 operating agreement between the EBID and the El Paso County Water Improvement District. He discussed with the committee potential avenues of resolution to the lawsuit, including settlement negotiations, offsets by ground water users and the EBID's Depletion Reduction Offset Program that will allow municipal and industrial users to become Rio Grande project contractors and offset their impact on the Rio Grande surface supply by fallowing portions of their land. Emphasizing the dire nature of the water shortage at Elephant Butte Dam, which has a capacity of over two million acre-feet and is presently holding 100,000 acre-feet, Mr. Esslinger discussed water supply enhancement opportunities such as desalination of brackish ground water, development of the Central Palomas Basin, improvements to storm water management and river channel maintenance.

Public Comment

There was no public comment.

Tour of NMSU Rural Drinking Water Research Project

See handout at item (0).

Recess

After the tour of the NMSU Rural Drinking Water Research project, the committee recessed at 5:02 p.m.

Thursday, August 4

The committee reconvened at 9:04 a.m.

Economic Development Initiatives of the South Central Council of Governments (SCCOG)

Jay Armijo, executive director, SCCOG, related that the SCCOG is a regional planning body composed of local governments in Socorro, Sierra and Dona Ana counties. The SCCOG assists members with local and regional planning and development initiatives in the areas of infrastructure planning, economic development and workforce development. It provides varied services to members, including assistance with the Department of Finance and Administration's (DFA's) infrastructure capital improvement plan (ICIP) and community development block grant programs; legislative assistance with capital outlay requests; technical assistance and training; and transportation planning. The SCCOG is also a United States Economic Development Administration (USEDA) designated economic development district. Mr. Armijo said that there are three regional councils of governments funded with federal money distributed by the state through the DFA; each has its own economic development plan. The SCCOG's annual budget is \$1.1 million.

Steve Duran, workforce administrator, SCCOG, reviewing his handout at item (6), stressed that workforce development and economic development are related but not identical issues, and he discussed with the committee the key services provided by the SCCOG that support the needs of businesses and individuals and help New Mexico to become more competitive globally as well as across state lines. Key services include tuition assistance and supportive services, such as transportation, for students; on-the-job training for new and existing workers; reimbursement of costs for customized training required by an industry; and assistance to youth ages 14 through 24, who are both in school and out of school, to obtain basic education goals and pass the General Education Development Test. Mr. Duran summarized that the SCCOG's programs align the needs of job creation and job skills development to support businesses in the community.

Tiffany Goolsby, senior planner, SCCOG, reviewing her handouts at item (6), described the SCCOG's Comprehensive Economic Development Strategy (CEDS), which the SCCOG manages for the region. Key goals of the CEDS include reducing reliance on government employment by five percent by 2025 and increasing tourism by five percent by 2025.

Answering questions from committee members, Mr. Duran explained that there is no process for the SCCOG itself to use Job Training Incentive Program (JTIP) funds; instead, it complements JTIP, providing support for mid-level jobs in industries not eligible for JTIP. The SCCOG workforce development initiative provided services to 140 youth last year at an average

cost of \$3,000 to \$4,000 per individual. Mr. Armijo clarified that the CEDS is required by the USED A and uses ICIP information to identify different types of projects that can be included in the CEDS, e.g., water, wastewater and tourism.

Rural Health Care Careers

Charlie Alfero, E.D., executive director, Southwest Center for Health Innovation (SWCHI), and director, New Mexico Primary Care Training Consortium (NMPCTC), described the SWCHI's workforce development strategy to address access to and shortage of health care providers, particularly in rural areas. He emphasized that health care is important to economic development, particularly in rural areas, for two reasons: like convenient transportation, excellent schools and adequate housing, health care is an essential part of the infrastructure that supports other economic development and it is a vital piece of economic development in its own right because it provides well-paying jobs that cannot be outsourced.

Mr. Alfero began by briefly recounting the history of the SWCHI, starting with the establishment in 1995 of Hidalgo Medical Services (HMS) in Lordsburg. At the time, Hidalgo County was the last county in New Mexico with no access to basic health care services. HMS now serves upwards of 70 percent of the people of Hidalgo and Grant counties, which are New Mexico's two southwestern-most counties that contain one of the state's most isolated, frontier and traditionally underrepresented majority-minority populations.

Mr. Alfero related that one of the programs developed by HMS and now operated by SWCHI is FORWARD New Mexico Pathways to Health Careers (FORWARD NM), whose mission is to enhance access to quality health care, particularly primary and preventive care, by improving the supply and distribution of health care professionals through community and academic educational partnerships. Not only is there a current shortage of between 200 to 400 family practice physicians in New Mexico, 30 percent of family physicians currently practicing in the state are over 60 years old, which is the oldest cohort in the United States. The medical school at the University of New Mexico does not graduate enough physicians to fill the need even if all 120 yearly graduates stay in-state.

Referring to his handout at item (7), Mr. Alfero described a variety of workforce development programs of FORWARD NM that create a "pipeline" to help rural New Mexico communities to "grow their own" health care providers, thus allowing rural children the opportunity to live and serve in their own communities. Mr. Alfero said that there is great interest among medical students in the family practice residency opportunities offered in FORWARD NM's stage 3 (expand graduate and resident experiences for many health career disciplines in rural and underserved areas); last year it had 1,100 applicants for two positions. HMS only has capacity to train two to four residents in a year, but FORWARD NM shares the process with other residency programs in New Mexico to capture as many qualified applicants as possible. Currently, 10 HMS health care providers, including one certified nurse practitioner, one family nurse practitioner, three physician's assistants and five physicians, have passed through the FORWARD NM pipeline.

Mr. Alfero explained that FORWARD NM's experience in its stage 3 — and in national studies and local residency placement data that show that training and experience in primary care settings and the location of a primary care residency program also affect a person's decision to practice in those places — eventually led to the creation of the NMPCTC. After meeting informally since 1996, the NMPCTC was organized as a nonprofit organization in 2013. The NMPCTC partners with the University of New Mexico Medical School Family Medicine program and health care providers in Albuquerque, Farmington, Las Cruces, Roswell, Santa Fe and Silver City to provide family practice residencies to increase the number of health care professionals working in New Mexico.

John Andazola, M.D., board chair, NMPCTC, program director, Memorial Medical Center Southern New Mexico Family Medicine Residency Program, told the committee it is important to understand that the primary care residency programs directly address the shortage of primary care physicians in New Mexico. Training residents in New Mexico increases the likelihood that they will stay and practice in New Mexico, so it is urgent to continue and expand the NMPCTC's efforts, which are working. For example, in the case of the Memorial Medical Center Family Medicine Residency Program in Las Cruces, 67 percent of residents over the last 20 years have stayed in New Mexico. Mr. Alfero added that studies show that when there is a shortage of family practice physicians in an area, there are more referrals by lower-level health care providers such as nurse practitioners to physicians with other sub-specialties, thus increasing overall costs to the system and often resulting in a lack of care because many rural patients do not have transportation to access specialists in urban areas and it is expensive to travel.

Answering questions by the committee, Mr. Alfero explained that expanding the number of residency opportunities is a long process because each program must be accredited before it can recruit and accept applicants, and part of the accreditation process is meeting supervision requirements. Because the process is so involved, the NMPCTC is applying for accreditation itself so that individual practices do not have to undergo the process on their own. Dr. Andazola said that the NMPCTC does not work much with the Texas Tech School of Medicine in El Paso, despite the school's proximity to southern New Mexico, because of cross-state licensing issues; physicians from New Mexico can do residencies in Texas, but the relationship is not reciprocal, although the NMPCTC is working on reciprocity.

NMSU Corporate Engagement: Benefiting Students, Communities and Companies

Kevin Boberg, Ph.D., vice president for economic development, NMSU, referring to his handout at item (8), shared with the committee that NMSU's mission includes learning, scholarship and engagement with the community. While learning in the classroom is important, Mr. Boberg stressed that academic pathways need to be developed concurrently with career pathways, as academics prepares students for the next step of the academic ladder and, eventually, the workforce. From this intersection, Mr. Boberg described approaches to meld academic needs with economic needs and how universities and corporations can develop mutually beneficial relationships to share expertise and resources.

Public Comment

There was no public comment.

Adjournment

There being no further business before the committee, the third meeting of the Economic and Rural Development Committee for the 2016 interim adjourned at 11:41 a.m.