

Legislative Council Service

Information Memorandum

DATE: December 16, 2010

TO: Government Restructuring Task Force Members

FROM: Jonelle Maison

SUBJECT: COMMERCE DEPARTMENT — SECTION-BY-SECTION EXPLANATION

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

The purpose of the bill is to create a commerce department by combining the functions of the economic development department (EDD), tourism department and workforce solutions department (WSD). In addition, it abolishes the border authority, the apprenticeship and training advisory committee, the apprenticeship council and the litter control council. The bill also sunsets all boards and commissions that fall under the purview of the new commerce department.

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

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

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

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

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

- (1) office of the secretary;

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

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

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

- (1) economic development and tourism commission (this combines the two existing commissions);
- (2) human rights commission;
- (3) labor and industrial commission;
- (4) New Mexico-Chihuahua commission;
- (5) New Mexico-Sonora commission;

- (6) spaceport authority;
- (7) state fair commission;
- (8) workers' compensation administration; and
- (9) state workforce development board.

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

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

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

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

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

Section 10 (pages 8-9). Cooperation with federal government and single state agency (existing law) — This is yet another standard organizational section; in this instance, it brings forward the authority of the former WSD to cooperate with the federal government in the administration of employment, unemployment and training programs funded by the federal

government, and it provides that the governor or the secretary may designate the department as the single state agency for the administration of such programs. No designation of a single state agency can be made in contravention of state law.

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

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

The commission:

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

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

- (1) provide coordinated statewide perspective with regard to economic development activities;

(2) work with and provide staff support to the economic development and tourism commission;

(3) develop, maintain and provide economic and demographic information to the governor, the legislature, other state agencies and local governments;

(4) provide a database for local and regional economic development groups;

(5) actively encourage new economic enterprises to locate in New Mexico and assist existing businesses to expand;

(6) monitor the progress of state-supported economic development activities and prepare annual reports of those activities and their status and impact;

(7) create and encourage methods designed to provide rapid economic diversification development;

(8) provide for technology commercialization projects as an incentive to industry locating or expanding in the state and promote and market federal and state technology commercialization programs;

(9) support technology transfer programs and promote New Mexico as a technology conference center;

(10) develop and implement enhanced statewide procurement programs;

(11) provide support and assistance in the creation and operation of development finance mechanisms such as business development corporations to ensure capital availability for business expansion and economic diversification; and

(12) serve as the lead agency in coordination of the census program at the state data center.

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

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

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

(3) provide a database for local and regional tourism groups and serve as a comprehensive source of information and assistance to tourism-related businesses wishing to

locate, expand or do business in New Mexico;

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

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

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

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

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

(3) promote the intertribal ceremonial.

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

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

(2) coordinate the activities of small business incubators;

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

(4) coordinate small business development and assistance programs;

(5) identify sources of funding for capital expenditure programs and initial venture programs;

(6) coordinate the development of regional technology clusters; and
(7) provide support and coordination assistance to the commission and the secretary in development of defense conversion industries.

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

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

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

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

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

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

Section 19 (pages 18-21). Economic development division (existing law) — This section includes some of the particular functions for which the economic development division is responsible.

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

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

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

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

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

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

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

Section 22 (page 25). Technology-based proposals and state match fund (existing law) — The state match fund is a nonreverting fund that can be used only as state matching funds when submitting technology-based proposals to the federal government.

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

(1) coordinating activities of the department and other state agencies as those activities relate to improving New Mexico's relations and trade with other countries;

(2) promoting New Mexico to international investors;

(3) promoting New Mexico products and services to potential international consumers and establishing a central registry for New Mexico products and services;

(4) developing, maintaining and using a database of potential domestic and

international investors and consumers for New Mexico and its products and services;

- (5) fostering, coordinating and supporting private promotion efforts; and
- (6) working with persons outside of state government to formulate a trade promotion plan for inclusion in the department's five-year economic development and tourism plans.

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

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

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

Section 26 (pages 29-30). Minority business assistance fund (existing law) — This section creates a nonreverting fund to carry out the provisions of Section 25.

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

Section 28 (pages 31-33). Main street revolving loan committee — The boards and commissions subcommittee wrestled with the expense of per diem and mileage for numerous boards and commissions. This section provides that members will not receive per diem and mileage.

Section 31 (pages 36-38). Powers and duties of NMFA oversight committee — This section includes monitoring and providing advice and assistance on border economic

development activities, particularly state and government capital planning and financing of border and port-of-entry capital projects. This is similar to the committee's duty for the border authority, which is being abolished in the bill.

Sections 33 and 34 (pages 43-45). New Mexico-Chihuahua commission — The boards and commissions subcommittee recommended continuation of the commission on condition that it not be an expense to the state. The commission is sunsetted later in the bill.

Sections 35 and 36 (pages 45-47). New Mexico-Sonora commission — The boards and commissions subcommittee recommended continuation of the commission on condition that it not be an expense to the state. The commission is sunsetted later in the bill.

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

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

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

Section 86 through 89 (pages 99-101). These sections clean up economic development and patent law sections.

Section 91 (pages 101-103). Spaceport authority created — This section provides for per diem and mileage at the same rate as state employees.

Section 93 (pages 104-105). Litter Control and Beautification Act definitions — The boards and commissions subcommittee recommends that the litter control council be abolished. The amendments to this section conform with that request.

Section 98 (page 109). Sunsets the human rights commission in 2017.

Section 99 (pages 109-110). Sunsets the New Mexico-Chihuahua commission in 2015.

Section 100 (page 110). Sunsets the New Mexico-Sonora commission in 2015.

Section 101 (page 110). Sunsets the state fair commission in 2017.

Section 102 (pages 110-111). Sunsets the spaceport authority in 2017.

Section 103 (pages 111). Sunsets the labor and industrial commission in 2017.

Section 104 (page 111). Sunsets the workers' compensation administration in 2017.

Section 105 (pages 111-112). Sunsets the state workforce development board in 2017.

Section 106 (pages 112-113). Temporary provision; transfers — This is a standard transfer section that includes transfers of the EDD, tourism department, WSD and border authority to the commerce department. Subsection E of the section transfers everything of the New Mexico film museum to the cultural affairs department.

Section 107 (page 113). Recompilation — This section recompiles Section 9-15-56 NMSA 1978, which requires certain information to be provided in a law that provides economic development tax incentives, into the Commerce Department Act.

Section 108 (pages 113-115). Repeal — This section repeals the following:

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

Section 109 (page 109). Effective date — The effective date is January 1, 2011. The task force may want another effective date. The task force may want to consider a deliberative executive process for combining these agencies into one.