



2013 POLICY AGENDA

ACI'S MISSION

The mission of the Association of Commerce & Industry is to enrich the lives and prosperity of New Mexicans through a vibrant business climate by effective advocacy and education.

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INTRODUCTION

The Association of Commerce and Industry (ACI) is the only New Mexico business association that represents all industry sectors, all geographic areas, and both small and large business. ACI is working to make our state's economy stronger for the benefit of all its citizens. A stronger economy means more jobs and better jobs, allowing New Mexico workers to better provide for their families. A stronger economy creates a demand for more skilled workers, meaning that more of our graduates can pursue careers here rather than elsewhere. A stronger economy supports a more vibrant cultural life. A stronger economy even provides a more robust tax base to support necessary government services. A stronger economy isn't just good for business.

Growing and thriving businesses provide the foundation for a stronger economy. Government has a role in fostering the conditions for that growth. By decreasing the burdens on businesses and providing appropriate incentives, government can encourage business growth. Growing businesses hire more employees, and consume more goods and services from other businesses. Those employees also consume more goods and services. So other businesses grow too. In that way, one employer adding a single job in a community can often result in another, and another.

Our state has lagged for too long behind its neighbors. Too many of our citizens live in poverty. Unemployed and underemployed New Mexicans want good jobs. New Mexico businesses want to provide those jobs. The will is there. We call on our legislators and our governor to assist with the means: economic policies and regulatory changes that promote business growth.

Together we can build a stronger economy for a better New Mexico.

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2013 LEGISLATIVE PRIORITIES

ACI SUPPORTS:

- **The use of a single sales factor in the multi-state tax apportionment formula for corporate income tax.**
- **The passage of an informed consent law that is extended to spacecraft manufacturers and suppliers.**
- **Making New Mexico a Right to Work state to maximize the potential for creating economic based jobs for our workforce.**
- **The creation of a closing fund per the Local Economic Development Act.**
- **Medicaid redesign (Centennial Care) to enhance the program's long-term sustainability without broad-based cuts in eligibility or provider reimbursement rates.**
- **Uniform and consistent administrative procedures across all government administrative agencies, boards and commissions to assure basic due process and consistency with the model Administrative Procedures Act.**
- **The passage of uniform environmental covenants legislation providing the legal infrastructure for creating, administering, and enforcing land use restrictions on properties during and after completion of remediation.**
- **Fostering long-term sustainable, diverse and environmentally responsible energy resources that fully realize the tremendous potential of New Mexico's energy resources.**
- **Efforts to ensure fiscal and program accountability at all levels, from early childhood through higher education.**
- **The free-market option of humane equine processing facilities located in New Mexico and other appropriate locations.**
- **Methods and regulations that encourage the use of technologies for cleaning brackish water and putting conserved water to beneficial use.**

ACI OPPOSES:

- **Any action that would increase the minimum wage in New Mexico.**

2013 POLICY POSITIONS

AGRICULTURE

ACI SUPPORTS:

- **The free-market option of humane equine processing facilities located in New Mexico and other appropriate locations.**
- State regulatory interpretation of the Endangered Species Act and associated state wildlife programs based on sound, peer-reviewed scientific evidence.
- Legislation requiring that all imported, processed foods, ready for consumption, meet the same standards as identified by the FDA for domestic processors.
- Improved public safety along New Mexico's border with Mexico.
- The closing of the loophole exemption in the New Mexico Right to Farm Act to provide adequate protection by defining "nuisance."

ACI OPPOSES:

- Elimination of the agricultural exemption from workers' compensation, though as a matter of principle, ACI believes that employers should provide insurance coverage for workers injured on the job.
- Mandated regulation requiring all farmers to be organic or conventional.

ECONOMIC DEVELOPMENT/RESEARCH and DEVELOPMENT

ACI SUPPORTS:

- **The creation of a closing fund per the Local Economic Development Act.**
- Statewide coordination of a plan setting forth economic development priorities that are matched to New Mexico's regional, urban and rural resources, work forces, and infrastructure. This should include a proper review of the economic impact to the state and business community prior to existing incentives being reduced or eliminated.
- Recurring, non-reverting funding for the Job Training Incentive Program (JTIP).
- Increased state investment for the New Mexico Tourism Department for marketing and promotional activities.
- Support for increased trade with Mexico while continuing to focus on border safety.
- Increased funding for the New Mexico Partnership.
- Requiring the State Investment Council to review current policies and to place greater priority on funding for instate investments and job creation.
- Legislation that facilitates successful commercialization of technologies developed in the state universities, national laboratories, and the private sector.
- Protection of New Mexico military installations.

EDUCATION AND WORK FORCE DEVELOPMENT

ACI SUPPORTS:

- **Efforts to ensure fiscal and program accountability at all levels, from early childhood through higher education.**
- Development of a teacher evaluation system that is based on measurable student achievement and encourages continued training opportunities and training of teachers.
- A Home Visiting Act that defines effective, evidenced-based home visiting services and compliments the accountability provisions of the NM Early Care and Education Act.
- Appropriate funding of higher education institutions by mission that does not sacrifice the efficiency and effectiveness of community colleges.
- A detailed gap analysis to determine the number and level of skills needed for current employers, as well as those needed for future economic development.
- More effective work force development programs that address New Mexico's needs such as skilled trades and healthcare.
- The implementation of Common Core Standards and connecting school to the needs of business.
- Incentives for internships.
- Efforts to reduce school dropout rate.

ENERGY and EXTRACTIVE INDUSTRIES

ACI SUPPORTS:

- **Fostering long-term sustainable, diverse and environmentally responsible energy resources that fully realize the tremendous potential of New Mexico's energy resources.**
- The continuation of responsible hydraulic fracturing for oil and gas in the state.
- Initiatives and incentives that promote investment in the expansion and maintenance of infrastructure necessary to explore for, develop, process, transport and transmit energy and natural resources.
- Legislative and regulatory initiatives to allow New Mexico to become a leader in the search for, and development of, rare earth elements and other strategic minerals.
- Initiatives and incentives to build on New Mexico's unique nuclear energy cycle from uranium production, through waste disposal, including research on all phases.

ACI OPPOSES:

- Legislation, regulations, designations and management plans that unreasonably curtail or limit access by energy and extractive industries to public lands or the leasing and development of public lands.

- State or local standards and regulations for the energy and extractive industries that conflict with or are more stringent than or duplicative of those adopted at the federal level.
- Standards or regulations not based upon peer-reviewed and widely accepted science, or that are so prescriptive as to stifle innovation, job creation, job retention, and emerging technologies.
- Local initiatives designed to prohibit or limit specified methodologies employed by the extractive industries, including but not limited to fracturing, leaching, etc.

ENVIRONMENT

ACI SUPPORTS:

- **The passage of uniform environmental covenants legislation providing the legal infrastructure for creating, administering, and enforcing land use restrictions on properties during and after completion of remediation.**

ACI OPPOSES:

- Regulations that are more stringent than the federal regulations.
- Authorizing government denial of environmental permits, including air quality construction and operating permits, based on a company's past compliance history.
- Authorizing non-governmental entities and private citizens to enforce state environmental regulations and permit requirements.
- Authorizing the Natural Resources Trustee to pursue damage claims beyond those authorized by the federal Comprehensive Environmental Response, Compensation and Liability Act or the Oil Pollution Act.

HEALTHCARE

ACI SUPPORTS:

- **Medicaid redesign (Centennial Care) to enhance the program's long-term sustainability without broad-based cuts in eligibility or provider reimbursement rates.**
- Medicaid expansion to maximize the federal share of funding for our growing healthcare infrastructure needs, and to lessen the impact of the upcoming coverage mandate on NM employers.
- Creating a New Mexico health insurance exchange that meets New Mexico's needs, including a simple defined contribution option for small employers.
- Focus on health care delivery improvement.
- Efficiencies of medical records and the use of telehealth delivery to rural areas.
- Improved healthcare delivery by focusing on coordinated care, quality improvement and addressing the provider shortage.

LEGAL REFORM

ACI SUPPORTS:

- **The passage of an informed consent law that is extended to spacecraft manufacturers and suppliers.**
- Limitations on choosing courts for filing of litigation in a jurisdiction perceived to be favorable to the plaintiff, often called "forum shopping."
- Class action litigation attorneys' fees that are proportionate to the value of the settlement to class members.
- Amendment of the New Mexico False Claims Act to reduce the opportunity for frivolous litigation.
- Avoiding expansion of the Unfair Trade Practices Act.
- Reform of New Mexico Uninsured/Underinsured Motorist law.
- Extension of medical malpractice liability limits to all medical practitioners, their employers, hospitals and their affiliates.
- Appropriate compensation for existing judges and additional judges to ensure quality and efficient caseload management.

REGULATORY and GOVERNMENT ACCOUNTABILITY

ACI SUPPORTS:

- **Uniform and consistent administrative procedures across all government administrative agencies, boards and commissions to assure basic due process and consistency with the model Administrative Procedures Act.**
- Adjudicatory actions conducted by qualified, professional, objective and independent hearing officers or administrative law judges.
- Establishment of reasonable periods of limitation for administrative agencies, boards and commissions to initiate administrative enforcement actions and appropriate time frames for all action taken by these entities.
- Establishment of clear and limited prescribed administrative penalties that may be assessed by an administrative agency, board or commission after appropriate due process.
- Strengthening the authority of the Small Business Regulatory Advisory Commission.
- The creation of an advisory/technical staff for the Public Regulation Commission members.
- Qualifications and continuing educational requirements for PRC commissioners.

ACI OPPOSES:

- Duplicative, ambiguous or unnecessary regulations, or actions that increase the cost of doing business in New Mexico.

TAXATION

ACI SUPPORTS:

- **The use of a single sales factor in the multi-state tax apportionment formula for corporate income tax.**
- The evaluation of the entire State tax code for recommendations to create a stable revenue source that is fair and equitable without a disproportionate burden on particular industries, individuals, or employers and in conjunction with a statewide economic development plan.

ACI OPPOSES:

- Eliminating alternative corporate income tax filing methods for corporate groups and requiring them to use the unitary combined method.
- Gross receipts tax pyramiding and legislation that aggravates such pyramiding.
- Tax increases or tax incentives that do not contain a reasonable sunset provision.
- Shifting of property tax burdens from residential property to commercial property that could result from the proposed caps on residential tax rates.

WATER AND LAND USE

ACI SUPPORTS:

- **The use of technologies for cleaning brackish water and putting conserved water to beneficial use.**
- Funding New Mexico's cost share to complete Indian water rights settlements such as Navajo, Taos, and Aamodt, as well as other projects like the Ute water project.
- Adequate funding and resources for the Office of the State Engineer (OSE) and the Interstate Stream Commission.
- Encouraging the transfer of water across major basin boundaries when it meets the conditions promulgated by the OSE.
- Granting the OSE authority to limit annual acre-foot withdrawals in designated critical management areas after thorough evaluation.
- Regulations regarding land use and land use planning that reflect consideration of the negative economic impact of those regulations on the land owner, municipality, or business operation on the affected property.
- Active Water Resource Management (AWRM) rules which only include those limited measures necessary to protect senior water rights and compact delivery requirements.

ACI OPPOSES:

- Legislation that extends the scope of the Clean Water Act beyond navigable waters.

WORK PLACE ISSUES

ACI SUPPORTS:

- **Making New Mexico a Right to Work state to maximize the potential for creating economic based jobs for our workforce.**
- Keeping the Unemployment Insurance Fund solvent in the most cost effective way for employers.
- A uniform, national, minimum wage, including corrections to the 2009 Minimum Wage Act.
- A statutory definition of a willful violation in the Public Works Minimum Wage Act.

ACI OPPOSES:

- **Any action that would increase the minimum wage in New Mexico.**

DETAILED POSITION STATEMENTS ON 2013 POLICY AGENDA

AGRICULTURE

Tax Structure

ACI supports New Mexico's current tax structure as it applies to agriculture and the green belt exemption and opposes any changes in that structure that would harm the economic viability of the agriculture industry. ACI opposes any greenhouse gas (GHG) taxes on livestock.

Agricultural Development

ACI supports funding for research and development for automation and concurrent varietal development for important New Mexico agricultural products.

ACI supports efforts to make New Mexico agricultural industries more competitive and attractive when these industries are negatively affected by foreign competition caused by free trade agreements.

ACI supports targeted incentives that will help expand existing agricultural industries or attract agriculture-related industries to New Mexico, including but not limited to, funding assistance and tax credits.

ACI opposes legislation that inhibits the use of best available technology.

Workers' Compensation

ACI believes workers' compensation should not be mandated for farmers and ranchers. The statutory exemption should continue.

Funding

ACI believes the New Mexico Livestock Board and the Department of Agriculture, which is responsible for education, marketing, promotion, regulation, and public relations concerning New Mexico agricultural products and businesses, should be adequately funded to perform these activities.

Food Importation

ACI supports legislation requiring that all imported food meet the same criteria and undergo the same scrutiny regarding compliance with all FDA standards as domestically produced food.

Humane Equine Euthanasia & Animal Rights Protection

ACI supports the free-market option of humane equine processing facilities located in New Mexico and other appropriate locations. The issue of “humane” care and treatment of horses has become an extremely volatile in New Mexico and across the nation. Unfortunately, the problem isn’t nearly so recent. The issue has been in the spotlight long enough that the Government Accounting Office (GAO) has had time to do an in-depth study, identifying the problems and pointing out challenges for the U.S. Department of Agriculture as well as horse owners and lovers. GAO found that since domestic horse slaughter ceased in 2007, the slaughter horse market has shifted to Canada and Mexico. From 2006 through 2010, U.S. horse exports for slaughter increased by 148 and 660 percent to Canada and Mexico, respectively. As a result, nearly the same number of U.S. horses were transported to Canada and Mexico for slaughter in 2010—nearly 138,000—as was slaughtered before domestic slaughter ceased. State, local government, and animal welfare organizations report a rise in investigations for horse neglect and more abandoned horses since 2007. Horse rescue operations are not government funded and operate largely on donations. Not only are these facilities not well distributed around the state, but capacity is limited. Currently there are only nine certified rescues in New Mexico with a capacity of 257 horses, although those facilities are holding up to 300 horses at the present time. There are literally thousands of unwanted horses in New Mexico.

ACI supports legislation to prevent interference with agricultural operations including filming or recording sounds and images without the owners’ consent.

ACI supports penalties for any person who witnesses cruelty to an animal and does not intervene.

ECONOMIC DEVELOPMENT/RESEARCH and DEVELOPMENT

Introduction

Development and expansion of New Mexico's economy requires a multifaceted approach to provide support and appropriate incentives for new, existing, expanding and potentially relocating businesses; large and small; rural and urban; established and emerging businesses and industries. Economic development requires cooperative

investment of both public and private resources to retain existing jobs and create new ones as the local, state, regional and world economies develop and evolve. ACI supports legislation focused on the following issues that are important to a wide range of economic interests in New Mexico.

ACI supports development of a statewide plan setting forth economic development priorities that are well matched to New Mexico's regional, urban and rural resources, work forces and infrastructure. The goal is to lay the groundwork for cost effective economic development efforts focused on objectively reasonable efforts to maximize return on New Mexico's investment in economic development. The plan would be based upon a comprehensive analysis of what types of economic development goals appear to be reasonably achievable short term and longer term in each of the primary regional economies of the state.

Economic Development Department

ACI supports a substantial budget for the New Mexico Economic Development Department. The Department should concentrate on expansion of existing businesses and creation of new businesses in New Mexico, leaving most business recruitment efforts to the Economic Development Partnership. ACI supports reinstating the Economic Development Department's cooperative advertising program with funding.

New Mexico Economic Development Partnership

ACI supports adequate funding for the New Mexico Economic Development Partnership as an essential tool for recruitment of businesses to New Mexico that provide private sector well paying economic base jobs. ACI supports the development of metrics to determine the effectiveness of the Partnership.

Tourism

Given the significant role that tourism plays in New Mexico and by extension the number of New Mexicans it employs, ACI supports adequate funding of the New Mexico Tourism Department for marketing and promotional activities. The New Mexico Tourism Association reports that the hospitality/tourism industry contributes \$764 million in tax revenue to the state's economy. This sector employs over 110,000 employees and accounts for over \$1 billion in payroll. Currently, New Mexico appropriates fewer dollars for marketing than all but one of the surrounding states. The current marketing budget is \$2.2 million. The Legislative Finance Committee has found that there is a significant return on investment for each taxpayer dollar spent on marketing.

Government Support of Private Sector Economic Development

ACI supports state and local government economic development efforts, expenditures, incentives, and public-private partnerships. ACI also strongly supports efforts to establish a more streamlined, transparent and user friendly regulatory environment at all levels of government that facilitates rather than inhibits investment and economic growth.

Public-Private Partnerships

ACI supports public-private partnerships that facilitate economic development such as the Spaceport America, Regional Economic Development Initiative and energy initiatives for traditional, renewables, and nuclear-related industries including reprocessing, enrichment and waste storage.

ACI supports legislation that facilitates successful commercialization of technologies developed in the State's universities, national laboratories, and private sector.

ACI supports the adoption of a requirement that Workforce Investment Act funding be directed more toward job training than for administrative costs.

Capital Outlay Funding

ACI supports the approval of capital outlay funding that results in immediate job creation and is a long term cost benefit to the state. This funding helps the most fragile sector of our economy—construction. Many private sector employers have had to turn to public projects to bolster their bottom line and to maintain payroll.

Fix the Definition of “Wage” in the Current High Wage Jobs Tax Credit Legislation

ACI supports clarification of the word “wage” in the high wage jobs tax credit to provide for a predictable and cost effective means to administer the incentive. The incentive was created to encourage high wage job growth. Care must be taken to insure that the meaning is not diluted, which could negatively impact both the incentive’s original purpose and state funding.

Improved Access to Government Services and Information

ACI supports the creation of a central point of contact to make government services and information readily available. The State Economic Development Office of Small Business Advocacy and the Internet should include online posting of all agency rules and guidelines.

State and Tribal Investment

ACI supports changes to the New Mexico Regional Investment Program that would allow New Mexico Indian pueblos, tribes and Nations to co-invest alongside the State Investment Council in venture capital funds.

Increased Global Trade

ACI supports measures that increase international trade and tourism.

In-State Business, Industry and Entrepreneurial Job Creation, Growth and Retention

ACI supports placing as much emphasis on creating and growing new businesses in New Mexico as on recruiting businesses from outside New Mexico.

ACI supports funding of the certified business incubator program to help businesses start, grow, succeed and remain in our communities. ACI believes that such funding will provide a high return on investment to our state.

ACI supports funding of the Small Business Development Centers.

ACI supports continued funding of the Small Business Investment Corporation which actively provides capital for loans and equity investments in New Mexico businesses that to help retain and create new jobs. ACI believes that preference should be given to New Mexico investments when all factors are equal.

State Incentives

ACI supports a greater accountability for all incentives, including film and digital media, and implementing performance-based measures so that the return on investment to the state in terms of revenues and employment is transparent and measurable.

ACI supports recurring, non-reverting funding for the Job Training Incentive Program (JTIP). This incentive is critical for New Mexico's economic development. This incentive is a recruitment tool used to attract new employers to the state, as well as incentive for the current employers to expand.

ACI supports the expansion of JTIP funding to allow an employer to train an employee for promotion and then to train for the vacated position. Currently, the program only allows for training for an additional position and does not incentivize promoting from within.

ACI supports a gross receipts tax deduction for research and development activity at locations in addition to the national laboratories.

ACI supports incentive programs to grow and attract corporate headquarters.

ACI supports existing incentives to promote in-state expenditures by the film and digital media industries and encourage the continued growth of the industry, provided that the incentives produce positive revenue returns.

Infrastructure

ACI supports legislative and administrative initiatives to improve all phases of the state's infrastructure and to remove impediments to infrastructure development.

Tax Increment Development Districts

ACI supports Tax Increment Development Districts (TIDDs) that are reasonably projected to produce net positive revenue impacts for state and local governments and create additional economic base jobs.

ACI supports strategically planned and implemented improvement of New Mexico's infrastructure necessary to conduct or attract business in all parts of the state, including tax increment development districts (TIDDs).

Telecommunications

ACI Supports:

- Ensuring that right-of-way, franchise and other fees for use of the public right-of-way are cost-based and consistent throughout New Mexico.
- Implementation of a moratorium on franchise fee increases, in-kind services and other related requirements until a consistent, statewide, cost-based policy is established.
- Ongoing review by the PRC of all rules and regulations to ensure that they promote competition with reduced regulation for all providers.
- A requirement that agencies, such as the PRC, fulfill their legal obligation to balance the interests of consumers and regulated providers, and that they refrain from activities that would otherwise demonstrate bias and prejudgment on matters where they act in an adjudicatory capacity.

ACI Opposes:

- Any effort to expand the scope of franchise fees beyond the cost based use of the public right of way.
- PRC price regulation in areas of the state where unregulated competitors exist.
- Exclusive provider agreements in developments and subdivisions, which would dampen competition and narrow consumer choices.

ACI's telecommunications policy is based on the premise that the state should eliminate antiquated regulation when customers have a choice of providers of local-exchange, long distance service and other telecommunications services. This policy is consistent with ACI's support of free-market economics and the belief that businesses should be allowed to compete on a level playing field

Transportation

ACI Supports:

- Short, medium and long-term solutions that include the private sector and support a long term sustainable transportation program to meet the transportation infrastructure demands of the future.
- The appropriate reallocation of existing state resources to the state road fund to ensure adequate transportation infrastructure to support economic development.

ACI believes that transportation investment creates short and long term economic growth. National reports show that investment in transportation creates 42,500 jobs for every \$1 billion spent in addition to immediate improvements in safety and mobility. Improving our transportation infrastructure will support long-term economic growth and strengthen our ability to compete in a growing national and international marketplace.

Rural Economic Development

ACI supports initiatives designed to spur business growth in rural areas. State incentives should be available to enhance community economic development efforts by supporting affordable housing and expanded telecommunications and by providing outreach to rural businesses with respect to the use of technology and existing incentives for recruitment, expansion and retention of rural businesses.

Agriculture is the economic foundation for many New Mexico communities. ACI supports technical and marketing assistance and the development of incentives to provide value-added opportunities for agricultural firms in New Mexico.

MainStreet Investment

ACI Supports increased investment for the New Mexico MainStreet program. MainStreet works throughout the state's downtown communities to create an economically feasible business environment through the preservation of historical and cultural locations.

Technology Commercialization

ACI supports the development of effective partnerships between New Mexico universities and the national laboratories and their operating contractors to improve the movement of technology to New Mexico businesses. This includes support for university research programs that have clear economic development strategies such as the Experimental Program to Stimulate Competitive Research (EPSCoR). ACI also supports the tenets set forth in the Research Applications Act of 2009 and encourages the state to pursue the recommendations identified in the Technology21 Strategic Plan.

EDUCATION and WORK FORCE DEVELOPMENT

Accountability

ACI supports efforts to ensure fiscal and program accountability at all levels, from early childhood through grade 20. This will require the continued funding for the development and implementation of data systems and accountability measures to determine longitudinal results that can be shared with all stakeholders.

ACI opposes any additional distribution from the NM Land Grant Permanent Fund as LGPF is NOT a "Rainy Day Fund" but rather a trust fund designated for current and future LGPF Specified Beneficiaries. It is important that the NM citizens understand the legality and purpose of the LGPF. ACI opposes any additional distribution from the NM LGPF for Early Childhood Care and Education for the following reasons:

- Per the 1910 "Enabling Act for New Mexico" there is no provision for distributions from the LGPF for faith based or private sector providers. Doing so would require an act of US Congress and Presidential Signature to make that provision a reality and, even if successful, would cause an unacceptable disparity in the provision of services to families and children.
- Since Early Child Care and Education is not an "Entity" or "Specified Beneficiary" there is no provision within the "Enabling Act" for Early Childhood

Care and Education. An amendment would require an Act of the NM Legislature and Governor Signature to make that provision a reality.

- There is no guarantee that additional distributions from the LGPF will result in increased funds for early childhood care and education programs. Historical appropriations have demonstrated that increases in LGPF distributions have resulted in a supplanting of general fund.
- Any additional distributions from the LGPF should only be used for non-recurring cost, expenses and distribution amounts are subject to change and often sunset.
- The plan for the Early Childhood Care and Education system and supporting infrastructure is still in the development stage and there is much to be learned with regard to program and service gaps as well as community capacity.

K–12 School Grading

ACI supports the continued implementation of the school grading process, one that is collaborative, technically defensible, and leads to improved outcomes for students. Further, ACI recognizes that, given the unique nature of student population demographics, when comparing schools, peer review and peer-to-peer comparisons should be considered.

Teacher Evaluation

ACI continues to support the development of a teacher evaluation system that is technically based, peer reviewed, and tied to measurable student achievement.

Public Education Funding

ACI supports level funding for public education, based on a fair and equitable distribution for public traditional and public charter schools.

Early Intervention for Reading Confidence

ACI supports 3rd grade reading readiness and interventions. Along these lines, ACI supports assessment of grades K-2 to determine student learning capacity and cognitive processing skills and the funding and re-distribution of funding for interventions.

Charter School Effectiveness

ACI supports the rigorous development and implementation of standards for authorizing state and district authorized Charter Schools, and an assessment of the effectiveness of current charter schools.

Early Childhood Education

ACI supports a Home Visiting Act that defines effective, evidenced-based home visiting services and compliments the accountability provisions of the NM Early Care and Education Act.

Higher Education

ACI supports efforts to better align high school graduation requirements with assessment testing for college freshmen and with college/ university entrance requirements.

ACI supports increased funding for higher education and encourages a more efficient use and leveraging of the State's current investment.

ACI is concerned that further erosion of funding will directly impact workforce readiness and New Mexico's R&D infrastructure and thereby limit the State's ability to grow and strengthen the economy.

Further, ACI supports the concept of a performance based funding formula based on funding by mission. ACI also cautions that we do not sacrifice the efficiency and effectiveness of 2-year community colleges as they provide many services, certificates, and degrees necessary to support the economic development of the state. Community Colleges must remain independent from the 4-year universities to maintain their integrity, mission focus, and student outcomes.

Workforce Development

ACI supports a consolidated and streamlined workforce development system that effectively administers JTIP, job training, and other workforce development programs as provided in the federal Work Force Investment Act.

ACI supports the current level of funding for workforce development and is concerned that any reductions will impact the State's ability to effectively deliver on addressing the workforce needs of current and potential business enterprises. ACI recognizes that New Mexico's ability to attract, retain, and expand business and industry depends upon having a population of workers ready and able to assume the careers that new and existing enterprises will offer.

ACI recognizes that, in order for the state to better plan for worker shortages, a detailed gap analysis must be conducted to determine the number and level of skills needed for current employers, as well as those needed for future economic development. ACI supports the funding of such an effort and believes that this is the first step in truly addressing the workforce needs of our state.

ACI supports funding for workforce training programs, credit and non-credit, as well as funding to inform students on different careers in an effort to recruit and retain our workforce.

ACI supports the creation of scholarships for trade and vocational students to learn a specific skill and move into the work place.

ENERGY and EXTRACTIVE INDUSTRIES

Introduction

Energy and extractive industries and related businesses are critical components of our base economy that currently are, and will continue to be, major drivers and contributors to New Mexico's economy well into the future. New Mexico's natural resources generate, or have the potential to generate, significant tax revenues for all levels of government and high wage employment. The energy and extractive industries will continue to contribute to economic growth, and allow New Mexico to become a net exporter of energy and other natural resources, all of which will contribute to development and a higher standard of living if not inhibited by government policies and practices that discourage or obstruct investment in New Mexico.

ACI supports sensible and time-sensitive regulation and permitting of energy and extractive industries by the state where it has jurisdiction, either through a delegation of federal authority or under a comprehensive statewide program, without duplicative or inconsistent local regulation.

Research and Market-Driven Commercialization

The state's national laboratories and universities are conducting substantial energy research. ACI supports New Mexico's efforts and leadership in energy research and development and the promotion of economic opportunities associated with the growth of energy industries.

ACI supports public/private industry partnerships to conduct research and development of conventional and non-conventional energy and mineral resources. Among other things, research and development might include: clean coal and carbon sequestration technologies; secondary and tertiary oil and gas recovery techniques; pebble and modular reactor facility designs; smart grid advancements; distributed energy generation; electricity storage technologies; bird hazing/protection methodologies; deep aquifer development and algae production; in situ mining and leaching systems; water purification and bioremediation science; and restoration, reclamation and re-vegetation practices.

Public Lands and Right-of-Ways

ACI supports the development of a diverse mix of energy resource and extractive industries in currently non-producing areas of New Mexico, and believes that experience demonstrates that these industries can serve as major economic engines for vitalizing and revitalizing communities throughout the State.

ACI opposes legislation or regulation that would diminish access to or development of public lands by the energy and extractive industries. ACI supports a multiple use principle on public lands and believes that industry regulations should reflect this principle.

Regulation Within Reason

ACI recognizes that government policies can play a key role in helping to develop a diverse mix of energy resources and vital transmission and distribution systems to allow for intra-state and interstate utilization of our State's rich energy and mineral resources. These policies will be effective if developed through a comprehensive understanding of science, economics, and market mechanisms and in cooperation and consultation with industry.

ACI also supports incentives and technological innovation initiatives that promote the maintenance and expansion of the infrastructure required to explore, develop, transport and transmit energy and natural resources, including electric transmission facilities.

ACI opposes governmentally imposed mandates for, or prohibitions on, the use of particular energy sources by electric utilities or rural cooperatives. Government policies should rely on market mechanisms and well-targeted, self-executing incentives programs rather than involuntary mandates and prohibitions.

ACI also opposes state and local government-imposed standards and regulations on the energy and extractive industries that are more stringent than or duplicative of those adopted at the federal level because of impediments created as a result of over-regulation, as well as any standards or regulations that are not based upon peer-reviewed and widely accepted science or that are so prescriptive as to stifle innovation and emerging technologies. ACI also opposes legislative and regulatory regimes and permitting hurdles for New Mexico that are more onerous than those in effect in other states positioned to compete with New Mexico for natural resource development companies' limited domestic project budgets.

Hydraulic Fracturing

ACI supports the continuation of responsible hydraulic fracturing for oil and gas in the state.

Support for Traditional Energy and Natural Resources Development and Production

ACI encourages sensible and time-sensitive regulation and permitting designed to facilitate, rather than unreasonably delay or impede, responsible growth of energy and natural resource industry activities. In addition to the direct economic benefits that would result from a boost in the base industry itself, the indirect influences on private industry development of all kinds would serve to ensure a healthier overall balance between economy segments in New Mexico that are based on private enterprise versus government contracts, and would shrink the extent of our State's dependence on federal appropriations dollars.

Support for New Mexico Uranium Production and Nuclear Power

ACI supports the resumption of uranium production in New Mexico. This will bring high-paying jobs, economic development and tax revenues to our state. Uranium mining, environmental and worker safety standards have improved since the 1970s. The New Mexico Mining Act and strict federal regulations have been established to better protect mining and milling employees, the public and the environment, including a bonding requirement to guarantee reclamation.

ACI correspondingly supports nuclear power as a dependable, affordable, and reliable source of energy. New Mexico is well positioned to develop all phases of the nuclear fuel cycle within its borders, and thus to perform a vital role in contributing to a safe and environmentally clean global nuclear renaissance. New Mexico should encourage uranium production milling infrastructure, enrichment and fuel pellet facilities and technology, nuclear energy generation facilities, and laboratory and private industry research and development of safe waste disposal technologies and new generation and modular forms of nuclear reactors.

The emerging industry will provide many New Mexicans with high paying jobs and create additional sources of revenue for the state. ACI believes New Mexico holds promise to become a net exporter of nuclear-based energy, which would be to the considerable benefit of all New Mexicans and other citizens of the United States.

Support of Emerging Alternative Energy Development

ACI supports alternative energy development, including renewable sources and energy efficiency, to supplement the more traditional energy resources operations, as part of the means - including further development of traditional resources and conservation - to meet projected increases in energy demands for the foreseeable future. Alternative energy development and associated necessary transmission capacity enhancements should be promoted through legislative and regulatory vehicles that encourage a robust and diverse mix of energy resources within reasonable cost limits, and that promote new employment opportunities in this emerging segment of the energy industry without jeopardizing the simultaneous growth potential of our considerable existing base of energy resource industry jobs statewide.

ENVIRONMENT

Introduction

ACI supports reasonable, economically feasible, and carefully considered public health and environmental programs based on sound science. ACI also supports environmental policies that carefully consider and accommodate state economic development priorities, including improved commerce, labor and employment, and tax revenue generation.

Climate Change and Greenhouse Gas Regulation

ACI believes that if greenhouse gas ("GHG") emissions are legislated; it is most appropriately done at the federal level. Federal legislation could potentially provide a comprehensive, economy-wide program for GHG emissions, rather than at the state or regional level. ACI supports the delegation to the state of federal GHG regulatory programs, if necessary, provided that any state program is no broader than and no more stringent than the federal program.

Any legislation and regulation in New Mexico must be contingent on federal legislation, be non-punitive, and apply standards no more stringent than federal standards. Such legislation and any related regulations must be premised on:

1. recognition of the importance of fuel diversity, including coal, in the nation's and New Mexico's electricity generation and overall economy;
2. economy-wide application;
3. preservation of New Mexico jobs and economic development;
4. use of cost-benefit analysis to evaluate impacts to all sectors of New Mexico's economy;
5. adoption of incentives to promote accelerated technology development and deployment;
6. correlating any GHG emissions requirements to the development and commercialization of technologies; and,
7. recognizing early action credit and the use of offsets.

A New Mexico-specific economic analysis must be conducted that objectively evaluates program impact on the state's gross domestic product, energy price and demand, consumers, small business, and potential shifts in manufacturing and employment.

ACI is committed to collaborating with stakeholders to carefully consider the components of any federal legislation and the promotion of state incentives sufficient to research, develop, and cost effectively deploy new technologies.

Building Codes

ACI opposes so-called "green building codes" that are more extensive or more stringent than generally applicable national building codes. Such "green building codes" will increase the costs of home and other building construction and make the cost of living in New Mexico more expensive and less competitive, without providing proportional health and safety protections.

Regulatory and Administrative Process Reform

ACI supports reasonable state and local funding to support timely permit processing. Fees should not exceed the reasonable cost of services provided. ACI opposes the use of fees to replace general fund dollars, to support or create unfunded mandates or to impose surcharges and assessments to fund environmental programs that are not directly related to the business that is required to bear the surcharge or assessment.

ACI supports a requirement that appointments to environmental policy-making boards include substantial representation from the business community and appropriate scientific and engineering disciplines.

ACI supports establishing a reasonable period of limitation for a state or local government agency to initiate administrative enforcement or penalty actions.

ACI supports placing a reasonable limit on fines and penalties that state or local government agencies can assess in administrative enforcement actions. Major civil penalty sanctions should only be imposed through the judicial process.

ACI supports providing only one formal evidentiary hearing on an air permit application, to be held after the agency's review and recommended decision on the permit application. ACI believes that the current practice of holding two formal evidentiary hearings is inefficient, increases the cost to the applicant and other affected parties of participating in permitting decisions and unreasonably delays permitting decisions.

ACI supports the consolidation of regional air quality authorities where appropriate.

Uniform Environmental Covenants

ACI supports the passage of uniform environmental covenants legislation providing the legal infrastructure for creating, administering, and enforcing land use restrictions on properties during and after completion of remediation. These restrictions are approved and enforced by the regulatory agency overseeing the remediation. Environmental covenants protect the public from risks by exposure to environmental contaminants by restricting allowable land uses, promoting the remediation and redevelopment of distressed properties, generating property tax revenues, and improving blighted neighborhoods. Absent these enforceable restrictions, these properties may not be otherwise useable for commercial and industrial purposes. These restrictions have been used effectively throughout the United States.

Environmental Equality

Environmental regulatory and permitting decisions should not address social and demographic concerns associated with proposed site locations of commercial and industrial facilities or be substituted for objective land use planning and zoning criteria.

State and Local Environmental Regulation

Where concurrent federal, state or local regulations are appropriate, ACI believes that state and local restrictions should be no more stringent than federal regulations on the same subject. In the case of resource management, ACI believes that state control of those resources, including environmental requirements relating to resource development, is necessary and that local regulations are inappropriate and could be used to restrict or preclude such development, to the detriment of the entire state.

National Pollutant Discharge Elimination System (NPDES) Primacy

ACI supports the delegation of the federal Clean Water Act NPDES permit program from the EPA to New Mexico provided that any legislation must specify that the state program 1) be adopted and implemented in a manner no broader than and no more stringent than the program currently administered by EPA; and 2) not charge fees for permits issued under the state program.

Precautionary Principle

ACI supports protecting public health and the environment through reasonable, carefully considered programs that are developed and implemented based on sound science, statutory authority, and economic analysis.

ACI opposes efforts to implement the “precautionary principle” in developing or implementing environmental programs. The precautionary principle presumes that many activities pose a risk to health and the environment, even without the presence of any scientific evidence that such risks are in fact present or related to a specific activity, and requires that precautionary measures be adopted or implemented to mitigate those assumed risks.

Mandatory Deposit Legislation

ACI opposes mandatory deposit legislation for beverage containers because experience in a number of states including New Mexico has demonstrated that other approaches to managing solid waste and conserving and reusing packaging materials, such as curbside recycling programs, are more comprehensive and cost effective strategies to address these issues.

Endangered Species Act (ESA) Compliance

ACI believes that all decisions concerning endangered species, both federal and state, must be based on sound scientific evidence and that federal agencies must follow all applicable laws and processes to establish compliance measures.

ACI believes that no sector of the state’s economy should bear an inequitable burden of compliance with ESA requirements.

ACI opposes the artificial increase of in-stream flows for the purpose of ESA and water quality compliance. When stream flows are artificially increased, the water is usually taken from a senior water rights holder.

HEALTHCARE

Medicaid Reform

ACI recognizes the necessity of Medicaid reform. With Centennial Care and the waiver application, the status of Medicaid Reform is currently fluid. ACI remains an interested observer and encourages the state to create forums and opportunities to discuss initiatives and respond to proposals. Medicaid is struggling to keep up with enrollment

growth and rising healthcare costs, while facing a constrained spending environment at the state and federal level. It must improve patient outcomes, promote wellness and provide cost efficiencies, while continuing to maximize the federal funds that are critical to New Mexico's health and economy.

The Medicaid Redesign implementation should:

1. Recognize the economic impact of Medicaid and its critical role in sustaining the entire state's healthcare delivery system, as Medicaid covers 26% of New Mexicans today, and is projected to cover 32% in 2014; aim to contain the rate of cost growth, rather than to reduce or freeze spending;
2. Maintain a strong network of providers, which is key to everyone's access to quality healthcare, by offering realistic reimbursement rates that take into account the rising cost of labor as well as state and federal mandates (e.g. the upcoming mandate to provide health benefits); improve access to care for underserved areas through tele-health and the full utilization of all providers' potential scope of practice;
3. Reduce legal and regulatory obstacles to the adoption of cost-saving practices (e.g. provider liability issues, HIPAA standards, federal Medicaid requirements, state processes for developing and enforcing regulations); and
4. Seek to maximize federal dollars, given state spending constraints; actively solicit appropriate grants and waivers; leverage all possible state and local government dollars.
5. Revamp Medicaid information systems to increase timeliness, accuracy, transparency and accountability; better inform policy decision-makers; and measure results.

Cost management should not rely on:

1. Broad-based cuts in provider reimbursement rates;
2. Excessive pressure on contracted managed care organizations;
3. Cutting eligibility for current beneficiaries or future PPACA low-income adult eligibles; or
4. Harmful reductions in benefits, or the elimination of services which can prevent more costly health problems in the long term (e.g. dental care).

Cost management strategies should include:

1. Improving chronic disease management programs, i.e. personal health coaching and care coordination for the 20% of beneficiaries who drive 80% of medical utilization;
2. Implementing culturally appropriate wellness and prevention programs to teach the benefits of better lifestyle choices, focusing on individuals at risk of falling into the high utilization group;
3. Incentivizing best practices and quality of care metrics;
4. Tailoring benefits based on individual need (e.g. weekly hours in Personal Care Option);

5. Reducing regulatory burdens that drive up costs (e.g. clinical documentation and reporting requirements); reforming the development and enforcement of state regulations (e.g. through an Administrative Procedures Act);
6. Developing reimbursement policies that encourage the use of the most cost-effective providers and treatment modalities
7. Increasing personal responsibility by:
 - Educating beneficiaries about the cost of their medical treatment;
 - Rewarding improved lifestyle choices;
 - Promoting the appropriate use of healthcare services, i.e. seeking treatment when needed, selecting appropriate providers, and keeping scheduled appointments; and
 - Designing a better collection mechanism for co-pays (often written off by providers)
8. Making more wide-spread and coordinated use of information technology, including personal health records, e-prescribing, clinical decision support systems, public health systems, and tele-health; reducing administrative costs;
9. Rooting out criminal fraud and abuse with effective rules and enforcement; and
10. Training, recruiting and retaining the healthcare workforce to reduce cost and quality issues due to overtime and temporary staffing, and to facilitate access to primary care.

Healthcare Insurance Exchange

ACI supports the timely establishment of a healthcare insurance exchange to leverage federal resources and to support New Mexico business. The governance, responsibilities and operations of the exchange must be set up with great care to achieve success in offering more choices and lower costs.

The healthcare insurance exchange should:

1. Be a New Mexico based, quasi-public entity;
2. Operate independently of state government;
3. Have a governing board of between 11 and 15 voting members who represent all stakeholders on the board and through advisory committees; include a strong voice for employers, and a diversity of professional expertise, geographic areas, demographics, cultural backgrounds and political views.
4. Broadly define board member qualifications, to allow for a deep pool of outstanding candidates. Qualifying experience should include health plan administration, health care finance, public policy expertise, health care delivery, enrollment in coverage, ownership of a small business, information technology, marketing or public relations, legal services, and other professional experience relevant to exchange operations;
5. Assure accountability and transparency through the board appointment process, proper auditing, and reporting to the Legislature, the Executive, and the public;
6. Determine the exchange's plan of operation; secure funding to cover administrative expenses; recruit, train and compensate those who serve in the role of navigator; and

7. Implement information systems that make it easy for individual consumers to shop for health insurance, and for employers to participate on a voluntary basis.

The healthcare insurance exchange should not have the authority to:

8. Require carriers to participate in the exchange, or stop carriers from offering plans outside the exchange;
9. Reject qualified plans properly licensed to do business in New Mexico, including stand-alone dental or vision coverage plans meeting state and federal requirements;
10. Set plan premiums, determine provider reimbursement rates, or create benefit mandates that exceed state and federal requirements; or
11. Restrict the ability of the state to seek federal waivers to enable innovations in healthcare coverage, financing, payment or delivery.

Focus on Health Care Delivery Improvements

The current healthcare system is unsustainable. It is not sharing information well, is not engaging patients enough in their own health and treatment, is too focused on short-term acute care, is not focused on physician/patient relationships, and, as a result, is too costly. Therefore, ACI proposes the following to improve health care delivery:

1. Encourage development of pilot programs, public/private partnerships and innovations in health care delivery and payment – designed to improve coordination of care and deploy resources more efficiently.
2. Facilitate the sharing of patient medical information by increasing the capabilities and promoting adoption of the Health Information Exchange or developing a centralized patient health record
3. Other states' activities should be researched for successes that can be adopted in NM;
4. Tele-health, which will play an increasing role in healthcare, especially given our rural population, must be supported by:
 - ensuring adequate bandwidth infrastructure;
 - appropriately reducing the risk/liability of remote healthcare;
 - appropriately modifying HIPAA and other regulations to enable tele-health; and
 - encouraging the use of tele-health in Medicaid, Medicare and private insurance.
5. The regulatory burden on providers, businesses and agencies should be reduced to lower costs and improve delivery;
6. The capacity of the health care delivery system should be optimized through utilization of an expanded array of health professionals and community-based caregivers; especially within primary care, with a continuous focus on patient safety and positive outcomes. This focus should be supported by appropriate reimbursement systems, organizational structures, and work force development; and

7. Encourage the establishment of one-on-one relationships between patients and medical personnel to improve accountability, communication, and effective wellness care.

Centennial Care

Centennial Care is the New Mexico program to re-engineer Medicaid service delivery. The effort is being managed by the Medical Assistance Division (MAD) of the Human Services Department (HSD). This is primarily a regulatory, rather than a legislative, initiative.

The Patient Protection and Affordable Care Act (PPACA) is a Federal law that was enacted in March 2010. This is a Federal Legislative initiative that will result in a lot of regulatory activity under the authority of the Human Services Department and CMS (Centers for Medicare and Medicaid Services).

As envisioned by the State of New Mexico, Centennial Care will result in the State contracting with 4 or 5 Managed Care Organizations (MCOs) to provide total health care for those eligible for Medicaid. Services are to include acute care, long term care for the elderly and disabled, and behavioral health services. Disabled people are currently exempt. Under Centennial Care, the State will reimburse the MCO contractors on a per member per month basis. The contractors will be at risk for providing all health services to their members. They will be allowed a net profit of 3%. Any amount above this will be split with the State.

The ACI Healthcare Committee has endorsed Medicaid Reform (Centennial Care) and they have endorsed two items enabled by PPACA: 1) Setting up the Health Insurance Exchange and a Health Information Exchange (these are separate items), and 2) Expansion of Medicaid to 138% of the Federal Poverty Level, which is estimated to add about 140,000 to 175,000 New Mexicans eligible for Medicaid.

LEGAL REFORM

Introduction

ACI believes that sensible legal reform will create jobs and spur economic growth by saving New Mexico businesses and consumers millions of dollars a year in insurance premiums, legal defense costs, and the cost of goods and services. New Mexico businesses need a stable, predictable and fair legal environment to survive in the current economic environment. A state's legal climate is instrumental in determining whether a state is generally hospitable to businesses and attractive to prospective employers. ACI believes that legal reform would promote economic prosperity by supporting New Mexico business, and attracting more businesses to New Mexico, thereby creating sustaining jobs and creating more high-wage employment opportunities.

Informed Consent

ACI supports the passage of an informed consent law that is extended to spacecraft manufacturers and suppliers. This will make Spaceport America more competitive with the other twelve states that have passed this type of informed consent such as Texas, Colorado, Virginia and Florida. This is required in attracting new tenants to the Spaceport and for a successful commercial space industry in New Mexico.

Forum Shopping

In New Mexico, a plaintiff may choose to file a wrongful death suit or personal injury suit of a minor or incapacitated person in a county which may be based on perceived sympathy to the claimant. ACI believes that to promote justice that the proper forum for wrongful death and personal injury cases should be where the injured party resided at the time of the injury. Therefore, ACI supports legislation that deems residence of a personal representative, guardian, or conservator to be the place where the injured person resided at the time of the injury.

Liability Under the New Mexico False Claims/Avoid Unfair Trade Practices Acts

New Mexico created causes of action under the New Mexico False Claim and Unfair Trade Practices Act to deter intentional behavior by awarding treble damages for intentional conduct. Expanding liability to claims that involve unintentional acts, however, does not provide any deterrent value. ACI opposes any change that would allow a cause of action for unintentional acts. In addition, the False Claims Act currently does not allow for a private right of action where the fraudulent act was previously made public. ACI opposes any amendment that would eliminate that restriction. ACI further opposes any legislation that would allow the Attorney General's Office to contract with private attorneys to prosecute false claim actions that have not been selected based on a determination that is both cost effective and in the public interest.

Attorneys Fees Awards in Class Action Suits

Class action lawsuits that award plaintiff's attorneys' fees that are disproportionate to the award given to a plaintiff only encourages lawsuits against New Mexico businesses with little or no recovery for the injured parties. ACI believes that the courts should be given a framework to prevent plaintiffs' attorneys' fees awards that are disproportionate with compensatory awards for plaintiffs.

Prima Facie Tort

The prima facie tort cause of action allows a plaintiff to recover for damage resulting from a defendant's intentional and malicious infliction of harm. Prima facie tort is generally defined as the "infliction of intentional harm, resulting in damages, without excuse or justification, by an act or series of acts which would otherwise be lawful." Considerable confusion in defining "otherwise lawful" and understanding the role of prima facie tort and other torts results in excessive litigation costs to the parties and the

judicial system. Accordingly, ACI supports legislation that would abolish this tort as a separate cause of action.

Punitive Damage Awards

Many punitive damage awards in the New Mexico have exceeded a ratio of more than 4:1 when comparing the punitive damage award to that of the compensatory award, even when there has been a substantial compensatory damage award. When punitive damage awards that exceed a 4:1 ratio, or 1:1 ratio when there is a substantial compensatory damage award, violate the United States Constitution. Consequently, ACI supports legislation that would prohibit any punitive damage award that exceeds a 4:1 ratio; and, for cases in which the ratio is larger than 1:1, a finding must be made that the compensatory" award was not substantial."

Uninsured/Underinsured Motorist Coverage

New Mexico has one of the highest costs for UM/UIM coverage in our geographic area and more than twice the national average. The uninsured population in New Mexico is the second highest in the Nation. The costs associated with having the second highest uninsured population in the Nation makes insurance less affordable; increasing the number of uninsured drivers, further driving up the costs of insurance for those who maintain it. Due to a series of New Mexico court decisions which expands UM/UIM coverage, New Mexico must reform its laws to eliminate recoverability of punitive damages as uninsured/underinsured damages; to limit stacking of limits; to stop the expansion of UM/UIM coverage beyond the policy language; and to return freedom of choice to New Mexico consumers who purchase UM/UIM coverage.

Enact and Enforce Meaningful Criminal Penalties to Deter the Crime that Imperils Our Businesses and Communities

ACI believes that enacting and enforcing meaningful revisions to and enhancements of our criminal statutes are crucial to making New Mexico safe for New Mexico businesses, and their employees. ACI supports legislation to address crime committed by organized gangs. ACI also supports a stronger three strikes law. In addition, ACI opposes automatic expungement of criminal records which limits transparency in criminal records allowing valuable information to be hidden from businesses during the hiring process.

Extension of Medical Malpractice Liability Limits

To keep medical costs reasonable, medical malpractice liability limits should extend to all medical practitioners, and to avoid an end-run around the policy behind the limits, those protections should also extend to the employers of medical practitioners, hospitals and their affiliates.

REGULATORY and GOVERNMENT ACCOUNTABILITY

Introduction

ACI supports regulatory reform legislation that assures a regulatory environment marked by stability, fair competition, due process, transparency and accountability. New Mexico needs a stable regulatory system that protects the public and nurtures a financially healthy business environment.

Administrative Procedures Act

ACI supports the update of the New Mexico Administrative Procedures Act to assure basic due process and consistency with the current model state administrative procedures act. State lawmakers should consider statutory provisions that: (1) require assessments of economic and employment impacts of regulation; (2) afford uniform and consistent process for administrative action across all administrative agencies, boards and commissions; (3) require specific legislative authority for the use of any fees, assessments or penalties collected by an administrative agency, board or commission; and (4) permit recovery of reasonable legal costs incurred by a prevailing party against an administrative agency, board or commission when administrative action is determined to be arbitrary, capricious, not based upon substantial evidence or violates administrative due process.

Balanced Appointments

ACI supports the election or appointment of public officials to administrative agencies, boards and commissions who recognize the essential balance between protection of the public and a stable and fair regulatory environment for business.

Rulemaking

ACI recognizes the need for executive agencies, boards and commissions to promulgate rules in order to effectively implement laws and to protect the common good. ACI further believes that administrative rule-making actions must adhere to the prescribed legislative authority set forth in the respective enabling act or other legislative acts. Such actions should be subject to legislative oversight in addition to judicial scrutiny.

Strengthening of the Small Business Regulatory Advisory Commission

ACI recognizes that regulation can pose significant burdens on small businesses in New Mexico, which are a key component of employment and economic development. The Legislature should explore ways to strengthen the authority of the Small Business Regulatory Advisory Commission to assist New Mexico small businesses and to assure that the impacts of regulatory actions on small business are considered and appropriately addressed.

Timely Decisions

ACI supports requirements to assure that all administrative agencies, boards and commissions act within prescribed authority in a timely manner. Such a defined

framework will assure that projects can obtain and maintain funding and other support required to complete projects.

Administrative Burden, Efficiency and Cost Effectiveness

ACI believes that the State of New Mexico should review the current administrative agency, board and commission structure to identify risks and opportunities to improve the cost, timeliness and effectiveness of such structure in the best interests of New Mexico businesses and the public.

ACI supports periodic review, assessment and re-organization of legislative and executive administrative agencies, boards and commissions to assure efficient, coordinated and responsive regulation consistent with industry and market developments.

Ex Parte Communication

ACI believes that rules restricting *ex parte* communication in administrative proceedings should be uniformly applied and strictly enforced.

Capital Outlay Process

ACI supports an open, public process to guide capital outlay expenditures. The current process is designed to implement individual legislative priorities, and does not uniformly address state-wide priorities. ACI believes that the creation of an open, public process for establishing and funding multi-year state-wide capital project priorities is essential to a more fiscally responsible expenditure of public funds.

Public Regulation Commission

ACI supports qualifications, such as relevant academic degrees and/or relevant professional experience, and continuing educational requirements for PRC commissioners. ACI recognizes that PRC commissioners are responsible for complex, difficult public policy decisions. ACI also recognizes that the current structure of the Commission staff may create impediments to the effective performance of required decision making tasks. ACI believes that providing each commissioner with the necessary technical and advisory staff would enhance the decision-making process and lead to better decisions. Thus, ACI also supports the creation of a separate staff to advise individual commissioners on matters before the Commission.

ACI supports agreements between the telecommunication industry and the New Mexico Public Regulation Commission (PRC) that further develop a pro-competitive, deregulated environment.

TAXATION

Introduction

Proposals to alter New Mexico's taxation of business must be evaluated in the context of the entire tax code as it affects business. The most important aspect of business

taxation in New Mexico is that it is quite burdensome overall. In fact, a recent survey rated New Mexico 51st among the states and the District of Columbia as a location for new business investment for businesses not qualifying for incentives.

Among the provisions of New Mexico tax law that are burdensome for business are the following:

- New Mexico's corporate income tax rate is higher than the national average and considerably higher than the average of our neighboring states.
- New Mexico's gross receipts tax applies to business inputs, raising the cost of doing business of every kind.
- New Mexico's aggressive "throw-back" rule attributes to New Mexico sales made elsewhere.
- New Mexico has a very short period, five years, during which net operating losses can be claimed to reduce tax liability.

Sound Tax and Fiscal Policy

If after all possible budget reductions have been made and tax increases are still necessary, they should be broad-based, simple to administer, derived from stable revenue sources, fair and equitable, spread across multiple taxes without a disproportionate burden upon particular industries, individuals or businesses and subject to a sunset provision. When state revenues are tight, it is even more important to ensure program effectiveness and to trim those of low priority.

ACI supports multi-year fiscal planning based upon accurate revenue forecasts and budgets that allow for cost-effective and efficient delivery of governmental services, including capital outlay.

ACI's tax positions are based upon the goal of achieving a sound tax system that:

- Is stable and predictable, so that taxpayers can anticipate tax burdens and the state can reliably forecast revenues;
- Is fair and imposes total tax burdens on similarly situated taxpayers similarly;
- Relies predominantly on broad-based, nondiscriminatory taxes;
- Does not place a disproportionate burden on businesses for funding general public services;
- Does not burden taxpayers or administrators with overly complicated or complex rules; and,
- Is competitive with other states so as to maintain and encourage rather than deter private sector investment and job creation in New Mexico.

ACI opposes a tax system that:

- Attempts to fund public services through indirect tax credits and deductions rather than direct appropriations;
- Uses taxes or fees enacted for one purpose to fund some other purpose;

- Pays for general government programs with tax increases that disproportionately burden business;
- Relies upon unstable revenue sources; and
- Uses unstable revenue streams from the taxation of energy and extractive industries to fund programs.

To facilitate achievement of a sound and transparent New Mexico tax system, ACI supports the creation of a website for public use that provides data on revenue collections and distributions; reports on state's revenue, and other economic and demographic data.

Gross Receipts Tax Pyramiding

New Mexico's tax system results in the pyramiding of the gross receipts tax on business-to-business transactions. Taxing business inputs not only raises the cost of doing business of every kind, but also makes New Mexico non-competitive with other states. This problem increases as rates increase over time. ACI believes that solutions to business tax pyramiding should be broad-based and systemic.

ACI Supports:

- Sunsetting the 1/8% gross receipts tax increase as the original legislation introduced in the 2008 Regular Session proposed. The sunset would have been effective this year. The sunset provision was removed from the legislation that was signed in the 2008 special session.
- Eliminating the tax on most business purchases including business services and related inputs and all temporary staffing services;
- Repeal of the tax credit provided by Section 7-9-96 NMSA, passed in 2005, which has been ineffective to address pyramiding; and,
- For as long as pyramiding continues, providing relief in situations where the correct state and local taxes were paid on a business-to-business transaction, but were paid by the wrong party ("gotcha" assessments).

ACI Opposes:

- Removal of the gross receipts tax on business-to-consumer transactions resulting in a narrowing of the tax base which will ultimately require increasing the tax rate on business-to-business transactions; and
- Imposing an additional compensating tax burden, whether through local option taxes and/or by including services or intangibles, unless offset by removal of business-to-business transactions from the base.

Corporate Income Tax

ACI opposes recent efforts to impose increased corporate income tax burdens. Each of these efforts has sought to impose additional tax burdens and reduce tax incentives for businesses to hire employees or make investments in New Mexico. Furthermore, these efforts would provide little or no time for businesses to adjust their tax projections and

budgets, and have upset economic expectations in place at the time of investment in New Mexico. ACI supports reducing the corporate income tax rate to 4.9% to mirror the highest personal income tax bracket.

ACI supports the use of a single sales factor in the multi-state tax apportionment formula for corporate income tax. A single sales factor formula would provide an incentive for companies of any size who make sales outside New Mexico, whether new or existing, to invest in additional plant, equipment and jobs here. The current system provides a disincentive to those investments. The goal is to bring new money into our state through out-of-state sales to create economic base jobs. It is this outside money that helps create service sector jobs and helps the economy to grow and prosper. This single sales factor is the most common apportionment formula among the states.

ACI Supports:

- Reducing the top corporate income tax rate to the level of the top individual income tax rate in order to create better tax parity between all types of corporate and non-corporate businesses; make the rate comparable to that of neighboring states; and, remove a disincentive to business location or relocation in New Mexico;
- Eliminating the corporate income tax sales factor "throw-back" rule to encourage producing and exporting products from New Mexico; and,
- Clarification that New Mexico's treatment of net operating losses is governed by federal tax statutes and regulations.

ACI Opposes:

- Eliminating alternative corporate income tax filing methods for corporate groups and requiring them to use the unitary combined method which would:
 - Not raise substantial additional tax revenue.
 - Eliminate an important economic development incentive, reducing New Mexico's competitiveness with other states.
 - Disrupt economic expectations of companies that invested in New Mexico anticipating use of alternative filing methods.
 - Be complex to comply with and administer and targets multi-state businesses.

Property Tax

ACI believes that legislation is needed to equalize and stabilize the property tax burdens on residential and commercial properties. The cap on residential property tax rates creates inequities in the property tax system that should be reviewed.

ACI supports reasonable legislation or regulations to provide a simple and readily administered determination of property obsolescence.

Specialty and Excise Taxes

ACI opposes punitive or excessive specialty or excise taxes narrowly focused on businesses that provide specific types of consumer products. If a specialty or excise tax is imposed, it should be based on reasonable regulatory costs and not on a desire to control or reduce demand for those products. Such taxes are not only very regressive but they become unstable revenue sources when demand is impacted by the level of tax. Products typically subject to such taxes may be subject to multiple impositions by federal and state jurisdictions and are also typically subject to all other general taxes.

ACI opposes increases of the insurance premium tax rate, already among the highest in the nation. Increased tax merely increases the cost of insurance and affects coverage.

Tax Incentives and Economic Development

ACI supports targeted tax incentives to attract and retain economic base jobs in New Mexico. Economic base jobs are jobs that bring money into the state with a multiplier effect that increases state tax revenues over the life of the targeted incentive. ACI also supports tax incentives that promote the development and use of cost competitive renewable and alternative energy sources.

Indian Lands Double Taxation

ACI favors legislative action to address situations in which double taxation of industry by New Mexico and the Indian nations inhibits economic growth on tribal lands.

Fair Tax Administration and Enforcement

Without fair and transparent administration and enforcement, a tax system will be inefficient and discourage business growth. Our tax system, like others in the country, is based on voluntary compliance and depends on taxpayer understanding of the tax system and cooperation.

ACI Supports:

- Replacing the internal hearing officer system for administrative protests with decision-makers independent of the Taxation and Revenue Department;
- Adequate funding of Taxation and Revenue Department taxpayer assistance, public information and education programs;
- More effective mechanisms to resolve audit issues before the need to initiate litigation;
- Adequate funding for Taxation and Revenue Department employee training;
- Establishing tax policy prospectively through legislation and rule making processes to give businesses predictable standards to follow, rather than retroactively through audits and litigation;
- Expanding the "Taxpayer Bill of Rights" to prohibit employees of the Department from being paid, evaluated or promoted primarily on the basis of the amount of assessments or collections generated;
- Extending the "Taxpayer Bill of Rights" to property tax administration;

- Detection and prosecution of tax fraud while respecting and protecting the rights of taxpayers; and,
- When business taxes change, allowing sufficient time for the Taxation and Revenue Department to develop necessary administrative rules and for businesses to adjust to the change.
- Reducing New Mexico’s expenditures by increasing efficiencies and cutting ineffective programs before stifling economic development with increased taxes. ACI also supports continued reductions in state expenditures to proportionately bring New Mexico’s budget in line with surrounding states.
- Adequate enforcement to ensure that out-of-state businesses be required to pay the New Mexico gross receipts tax.

WATER and LAND USE

Introduction

ACI acknowledges that wisely using, conserving, and protecting our limited water resources are top priorities for the business community, the citizens of New Mexico, the Legislature and many other stakeholders. ACI recognizes the critical importance of a comprehensive, clear, and predictable water rights allocation and adjudication program to the future economic development of New Mexico. ACI supports sound water planning that covers all aspects of water usage and management, including New Mexico’s prior appropriation doctrine and the protection of private property rights. ACI believes that water allocation can best be accomplished through the free market system operation under the laws of the State of New Mexico that includes the consideration of measures such as statewide water banking.

Adequate Funding and Resources for OSE and ISC

ACI supports the OSE and ISC in their efforts to effectively manage New Mexico’s water resources and it recognizes that funding is required to accomplish this at a satisfactory level. It is imperative that the offices have sufficient resources to defend and protect our water in litigation and compact related matters. ACI recognizes the critical need for accurate reporting on the quantity and quality of our water resources, and supports efforts to bring current the NM Environment Department’s databases relating to water, the completion of the OSE’s “WATERS” database, hydrographic surveys, information management systems, and metering of domestic wells and irrigation districts.

NM Cost Share for Indian Water Rights Settlements

Major Indian water rights settlements, such as Navajo, Taos, and Aamodt will provide significant certainty for the use of our water resources if adequate funds are provided for New Mexico’s cost share. ACI supports funding at the appropriate levels to ensure that all federal funds appropriated for the settlements and associated infrastructure projects are received and put to full use in New Mexico.

Expedited Appeals Process Through OSE

ACI supports reform that reduces the processing time of applications by the OSE, limits protests to those who can demonstrate they will be directly affected by the application, enhances confidence, promotes accountability, provides consistency, and ensures independent adjudication. ACI supports legislation on this subject in the fashion of the 2011 House Bill 109.

Inter-Basin Transfers

ACI supports the transfer of water across major basin boundaries, provided that there are no impairments to senior water rights and compact delivery requirements. ACI supports maximizing the efficiency of water conveyance systems to achieve the beneficial use of water resources as defined by a statewide water plan, in accordance with required notice provisions under water rights proceedings.

Domestic Wells

ACI recognizes that domestic wells are a viable alternative for water supply in certain areas.

ACI supports granting the OSE limited authority to limit annual acre-foot withdrawals in designated critical management areas only after a complete hydrologic study in the proposed management area has been performed and shows aquifer depletion to be occurring.

Scientific and Technological Strategies

ACI supports the development of conservation techniques enabling water reuse and aquifer re-injection. ACI supports funding for New Mexico's universities and national laboratories to develop technological solutions that support a sustainable water supply. ACI supports methods and regulations that encourage the use of technologies for cleaning brackish water and putting conserved water to beneficial use, while acknowledging that the OSE has no authority over water recovered from deeper than 2500 feet in the course of oil and gas operations.

Land Use

ACI believes that regulations regarding land use and land use planning should reflect consideration of the negative economic impact of those regulations on the land owner, municipality, or business operating on the affected property. ACI believes that land use planning and zoning should be accomplished at the local government level. ACI believes that the free market should determine what farmers want to grow and how they use their land.

Statewide Water User's Fee

ACI opposes the implementation of a statewide water user's fee because of the negative economic impact of an additional fee.

Clean Water Act and Surface Water

ACI opposes legislation that extends the scope of the Clean Water Act beyond navigable waters. This change would give federal agencies authority to regulate isolated wetlands that might affect interstate or foreign commerce. In addition, it will provide federal jurisdiction for both intrastate waters and ephemeral streams. The definition of "surface water" is a key definition of the federal Clean Water Act for actions such as the permitting process for the National Pollutant Discharge Elimination System (NPDES). New Mexico's definition of "surface water" should be consistent with, and no more expansive than, the federal definition in its interpretation and applications. The definition should not include playas, potholes, bar-ditches, dry arroyos, or lagoons that are situated miles from rivers and streams and hold rainwater for short periods of time. Areas not covered by the surface water definition of the Clean Water Act are protected under the Groundwater Protection Act.

Active Water Resource Management

ACI recognizes the temporary nature of AWRM rules. However, due to the lengthy process of final adjudications, AWRM could impact the administration of water rights for an extended period of time.

ACI recognizes the critical need for public input by water stakeholders in the content and design of AWRM.

ACI encourages the OSE to ensure a transparent and inclusive process of establishing rules in each of the 7 priority basins.

Water Planning

ACI supports specific New Mexico incentives for water rights holders to conserve water, and to retain ownership of, and put to use that portion of their beneficial use, water rights that are conserved. ACI believes that all consumer sectors should equitably share both the demands and benefits of conservation. ACI opposes unreasonable requirements for water supply availability, such as proof of a 100-year water sustainability.

Water Banking

ACI supports statewide water banking measures, including leasing, that allow water rights holders to reduce their amount of water consumption without risking loss of their water rights through either forfeiture or government acquisitions.

Water Importation and Storage

ACI believes that the future water needs of the state should be addressed through a long-range strategy, including the study of the feasibility of importing water into the state from outside sources and upstream and under-ground storage opportunities.

WORK PLACE ISSUES

Introduction

ACI opposes any unreasonable state level expansion of mandated rights, benefits and protections that fails to account for and balance the interests of the employees, employers and the overall economy. New Mexico employers strive to provide their employees with the best benefits they can afford and turn to layoffs and furloughs as last resorts. Federal law sufficiently provides employees with health, safety, civil, minimum wage and overtime pay, family and medical leave, disability and many other workplace rights, benefits and protections.

ACI supports employment and tax laws that help employers retain employees, add more jobs, and encourage employers to provide benefits to employees, permitting New Mexico companies to be competitive in multi-state, national, or global markets.

Unemployment Insurance

The Unemployment Insurance (UI) premiums charged to businesses were designed to be adjusted periodically to a level expected to allow the fund to remain solvent. Beginning several years ago, changes were made to freeze the premiums, increase the benefits and divert some of the money in the trust fund to other purposes. The diversion of funds, artificially low premiums, and additional benefits combined with the increased unemployment in the current downturn have put the UI fund in jeopardy of default. A default would trigger dramatic, automatic premium increases that would be devastating for many businesses. It is imperative that the New Mexico fund remain solvent. The best way to remain solvent is to allow premiums to float based upon reserves in accordance with the original intention.

ACI supports keeping the UI Fund solvent to prevent triggering to a higher tax rate and causing additional burden on employers. ACI supports a floating employer payment schedule where "floating" is based on the UI balance. ACI supports continued thoughtful leadership by the Department in deploying additional resources, technology, and administration to rapidly reemploy UI beneficiaries. These include utilizing the National Directory of New Hires to prevent overpayment fraud and decreasing the timeline on appeals to reduce overpayment for ineligible claims.

ACI supports the implementation of a task force to review the long term administration of the UI schedule in order to make recommendations to the Legislature and the Governor.

Corrections to the 2009 Minimum Wage Act

ACI supports repealing the 2009 amendments to the Minimum Wage Act which unintentionally created unmanageable risk for employers of every size. The vast majority of violations are unintentional. Treble damages for an unlimited period of time for every violation regardless of whether it was intentional could result in financial losses of such magnitude that a business would fail. Employers should be accountable

for violations that are part of the same "course of conduct." However, the period of damages should not exceed the statute of limitations. A set period of damages is often stated in employment laws with similar societal aims. For example, the federal minimum wage and overtime law (FLSA) provides for two years of damages unless a willful violation is shown, in which case the period is three years. The federal 2009 Ledbetter Fair Pay Act (which changed the statute of limitations for discrimination claims) contains a limit on recovery of damages for a period of two years prior to the assertion of the claim.

Retaliation against employees asserting rights or assisting others in asserting rights under the Minimum Wage Act should be prohibited, as stated in the 2009 Amendments. However, the protection against retaliation for employees who inform others of rights beyond the minimum wage act is over-broad and ambiguous, and could graft a workplace anti-retaliation provision into every law, ordinance and constitutional right that exists inside and outside the workplace, clearly beyond the intended scope of the 2009 Amendments.

Concealed Firearms in Restaurants and Bars

ACI opposes legislation allowing one to carry concealed firearms in restaurants or bars with full alcohol licenses. Allowing concealed carry of firearms in an environment where alcohol is consumed could put both the patrons and employees of the establishment in jeopardy and create unnecessary liability for employers.

Domestic Abuse Leave Clarification

ACI supports the prosecution of domestic abuse crimes and protections for employees seeking to prosecute such crimes. ACI also supports the use of the existing domestic abuse leave to get emergency medical care resulting from domestic abuse with appropriate requirements. The 2009 domestic abuse leave law should be clarified to permit leave to be taken in increments of not less than one hour. Such clarification would reduce employers' administrative burden in tracking employee use of the leave. Employers should be able to require that employees use accrued paid leave benefits before taking it as unpaid leave, as with the FMLA. The 2009 Act's confidentiality requirements are unclear and could be read to prohibit notice of an employee's absence within the employing organization. It will be difficult, if not impossible, for employers to schedule work and required leave if the employer cannot communicate regarding the absence internally. Disclosure should be prohibited outside the company or to anyone internally who does not have a business need to know.

Equal Pay Act

ACI opposes changes to the Human Rights Act regarding discrimination in compensation. In New Mexico, the Human Rights Act currently prohibits discrimination in compensation, as does Title VII of the Civil Rights Act. The federal Equal Pay Act has not significantly impacted the pay of women beyond the impact of Title VII. There is no reason to conclude that an expansion to the Human Rights Act based on the Equal Pay

Act would have an appreciable impact beyond what can be accomplished with the existing prohibitions. Instead, employers and employees will likely face litigation focused on the conflicts, ambiguity, or supremacy among the various statutes on the subject, rather than accomplishing the goal of non-discriminatory compensation. Further a state equal pay bill that includes ambiguous terms such as "within the same place of employment", "rate of compensation", and "employees of a group" will create litigation which focuses on the meaning of such terms rather than ending discriminatory compensation.

Immigration Reform

ACI supports the continuation and expansion of current visa programs and the creation of new visa and foreign worker programs to fulfill the manpower needs at all levels of industry. ACI believes that comprehensive immigration reform is needed at the federal level to insure that the United States' annual legal intake of foreign workers is realistically in line with the economy's need for foreign labor. We need a worker program that provides an adequate supply of legal workers to all U.S. businesses.

Minimum Wage

A uniform, national, minimum wage reduces the administrative burden on employers in New Mexico and also makes New Mexico an attractive state for creating jobs. During the 2012 Legislative Session HJR 28 was introduced which would have tied minimum wage to indexing. Addressing minimum wage in the form of a Joint Resolution is the wrong approach for New Mexico for many reasons. Currently, teen unemployment hovers around 20% nationally. In places like Washington State where they already have their minimum wage tied to indexing, they are seeing the highest levels of youth unemployment in the past 60 years. Unemployment rates amongst 18-24 year olds is up to 40%. The largest number of minimum wage jobs in the state are municipal, county and state jobs. Municipalities currently have hold harmless provisions in place to help offset the loss of revenue from the removal of the GRT on food. Passing legislation like HJR 28 will only cause more hardships on every municipality in the state. Lastly, passing a constitutional amendment to tie minimum wage to indexing is just bad policy.

Paid Leave

ACI supports paid leave programs voluntarily provided by employers and encourages businesses to consider such programs; however, ACI opposes the expansion of mandatory leave benefits. Simply stated, mandatory paid leave has a direct impact on an employer's labor costs which makes it more difficult to avoid layoffs or bring new jobs in the current economy.

Prevailing Wage Laws

ACI supports the repealing of the New Mexico's prevailing wage law or "little Davis-Bacon" as it artificially inflates the cost of public construction projects. ACI also supports repeal of the Prevailing Wage Law passed in the 2009 Legislative Session. Employee wages and benefits associated with public works projects should be

established by the average wage and level of benefits for the job classifications in the relevant market, as opposed to the average wage and level of benefits for the job classifications in union contracts in the market.

Public Works Minimum Wage Act – Definition of Willful Violations

Contractors must pay \$100 per day as liquidated damages to any employee affected by a violation of the Act if the contractor “willfully required or permitted an individual laborer or mechanic to work in violation of the provisions” of the Act. NMSA § 13-4-14(C). Liquidated damages should not be assessed against a contractor that did not know it was doing something wrong. The term “willfully” is not defined in the Act or its implementing regulations. Not knowing the definition increases the costs of enforcement and defense because its meaning must be litigated in addition to whether the contractor’s conduct was willful. A definition is needed to eliminate uncertainty and that will result in fair awards of liquidated damages. The term “willfully” should be defined to mean: A contractor has acted willfully when the contractor knew of the requirements of the Act and made a deliberate decision not to follow them.

Right-To-Work

Employees have the right to organize and participate in unified representation in the work place; however, organized labor union membership should be voluntary and no employee should be required to join a union as a condition of employment, which subjects them to full union dues and to union rules and fines. This will be beneficial to the New Mexico work force as statistics over the last 20 years have shown a greater increase in jobs in those States that are Right-to-Work vs. New Mexico & other States that are not. Right-to-Work status is also documented as a determining factor for companies expanding operations for economic based jobs to new States.

Secret Ballot Elections Related to Union Representation

ACI opposes any state or federal legislation, whether pertaining to public or private sector employees, that would substitute any mechanism other than as outlined by the New Mexico Public Employee Labor Relations Act and the National Labor Relations Act related to union representation. The New Mexico Public Employee Labor Relations Board currently oversees secret ballot elections, after a sufficient showing of interest has been demonstrated, in cases where public employees wish to vote on whether to be represented by a union. Likewise, the National Labor Relations Board oversees secret ballot elections as to private sector employers. ACI opposes legislation that would eliminate elections, permit a third party (such as an arbitrator) to determine the terms of the parties’ collective bargaining agreement, or that would increase fines or penalties against employers for unfair labor practice charges without providing for the same penalties against unions who engage in unfair labor practices.

WARN Act

ACI opposes expansion of federal WARN Act protections already afforded to employees in New Mexico. The vast majority of employers in New Mexico view layoffs (even of

very small numbers of employees) as a difficult and undesirable outcome, and they often only implement them as a last resort. Laying off even a single employee is often a painful decision for New Mexico employers. Federal law already requires employers to provide notice to the State and to affected workers of any mass layoff or shutdown of operations. The federal law has sufficient requirements and penalties to protect employees from surprise job loss, and it has meaningful enforcement mechanisms in place. A state law on the subject would not result in greater enforcement, fewer layoffs or plant closures. Adding greater requirements and penalties, also known as “mini-WARN Act” statutes, deters economic development in other states where they are in place. Business owners who may want to relocate to New Mexico or expand operations in New Mexico are hesitant to subject themselves to penalties beyond the federal framework as well as extreme restrictions on their ability to sell or potentially save a failing business. A mini-WARN Act would not likely have altered the outcome in recent publicized business closures and layoffs.

Whistleblower Protection

Whistleblower protections serve a valid purpose in the business and corporate governance environment; however, whistleblower protections should not be expanded to protect employees making false or fraudulent allegations that could damage the employer or another employee.

Workers’ Compensation

State workers’ compensation administrative systems and laws provide the best cost-benefit to employers and workers through stability, predictability and fairness. The New Mexico state workers’ compensation system has minimized litigation costs and managed medical costs to the mutual benefit of injured workers and employers. The system delivers fair levels of indemnity and medical benefits to injured workers. The system minimizes the pressures on workers compensation premium rates by establishing a fair and objective system to deliver indemnity and medical benefits to injured workers while encouraging workplace safety, “return to work” strategies and utilization review.

Overall, the state workers’ compensation system supports strong economic growth marked by workplace safety, cost efficiency and productivity positioning New Mexico in a competitive position with surrounding states, as evidenced by the growth in new business and related investment since 1991. For these reasons, the regulatory framework and “exclusive remedy” of the New Mexico Workers Compensation Act should be protected and nurtured.

ACI supports any issues or changes in benefits going thru the Worker’s Compensation Business and Labor Coalition as a first step.

ACI supports a state workers' compensation system that ensures the quick and efficient delivery of indemnity and medical benefits to injured and disabled workers at a reasonable cost to employers.

ACI supports the preservation of the "exclusive remedy" of the New Mexico Workers' Compensation Act.

ACI supports clarification of existing penalties where a worker's use or misuse of alcohol, illegal drugs or off-label use of prescription drugs contributing to a worker's injury or death.

ACI supports the ability of an employer, insurer or the Workers' Compensation Administration to request information about a health care providers treatment plan to justify the prescription of a controlled substance to mitigate the risk of abuse, dependence, addiction or diversion by an injured worker.

ACI supports the application of the most recent edition of the American Medical Association's guidelines to the evaluation of permanent impairment at the date of the worker reaching maximum medical improvement to eliminate confusion in the industry as to which version of the AMA guidelines apply to a particular case.

ACI opposes any unreasonable increase for attorneys' fees in the workers' compensation system given the current economic environment and the Act's objectives to ensure the quick and efficient delivery of indemnity and medical benefits to injured and disabled workers at a reasonable cost to employers.

ACI opposes expansion of presumptive causation coverage to the private sector.

ACI supports clarification of the Workers' Compensation Act's definition and application to "sole proprietors" to assist employers, independent agents, carriers and the Workers' Compensation Administration in ensuring compliance with the Act.

ACI supports improved administrative caseload management by qualified administrative law judges in a fair and timely manner consistent with the objectives of the Workers' Compensation Act.

Workers' Compensation Presumptive Causation

ACI opposes any expansion of presumptive causation coverage to the private sector.

Employee and Independent Contractor Classification

ACI opposes legislation above and beyond United States Department of Labor (USDOL) and IRS definitions of an employee/employer relationship.

Since the end of the recession some 30% of the US workforce is now categorized as "flexible labor." In many cases individuals have created their own consulting business in order to find sustainable piece work as regular full time employment is unavailable in their field of work.

Currently the USDOL and IRS enforce several statutes regarding independent contractors and the definition of an employee. At the federal level definitions and tests on employee/employer relationship are numerous. Penalties for misclassification are severe. Additional state laws and rules particular to New Mexico are unnecessary as well as detrimental to further job creation.

ACI does not condone misclassification of workers to avoid payment of taxes and wages, however, ACI believes the federal requirements achieve the desired results in deterring businesses and individuals from doing so.