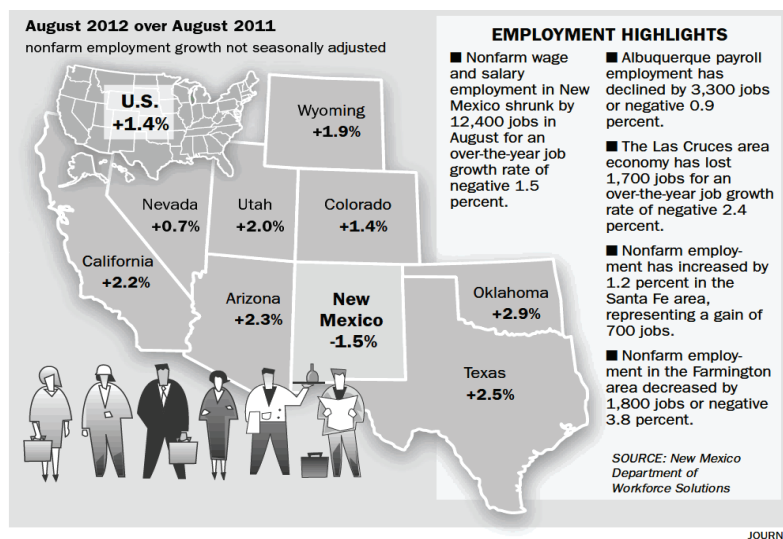


## Day 1 The Dire Need for Regulatory Reform in New Mexico

New Mexico has been lagging its regional neighbors for many years. Throughout its 100 years of statehood, New Mexico has missed out on a great deal of private-sector economic development that has instead flowed to more economically-free states such as Colorado, Texas, and Arizona. New Mexico has instead relied on a steady and ever-growing flow of tax dollars from Washington for economic growth.<sup>1</sup>

Unfortunately, this reliance on Washington has not made New Mexicans prosperous or their state wealthy. Rather, New Mexico has the highest poverty rate in the nation according to the Census Bureau.<sup>2</sup>

And, while economic trends are best understood over the long-term, New Mexico has again been lagging behind its regional counterparts as the growth of federal spending has stalled. The following chart from the *Albuquerque Journal* shows that New Mexico is the only state in the West that lost jobs between August 2011 and August 2012.<sup>3</sup>



It is often said that the definition of insanity is doing the same thing over and over again and expecting a different result. One area where this is true is in the area of government regulations. New Mexico suffers from overregulation of its economy. These regulations increase economic costs to businesses and consumers alike and enrich well-connected special interests. The Rio Grande Foundation has compiled a list of regulations that should be eliminated or at least modified in ways that liberalize markets. Most of these regulations are economic in nature, but some of these regulations are simply silly and place unnecessary burdens on those looking to run for the Legislature (as one example).

<sup>1</sup> *The Economist*, "Greek Americans?" July 30, 2011, <http://www.economist.com/node/21524887>

<sup>2</sup> *The Huffington Post*, "How New Mexico, Poorest State in America, Fights Poverty," September 13, 2012, [http://www.huffingtonpost.com/2012/09/13/new-mexico-poverty-rates\\_n\\_1881321.html](http://www.huffingtonpost.com/2012/09/13/new-mexico-poverty-rates_n_1881321.html)

<sup>3</sup> Employment Highlights, *Albuquerque Journal*, Business Journal, October 22, 12.

Notably, deregulation is not a partisan issue; at least it has not been during recent US history. President Carter and Congress deregulated the airline, freight rail, and trucking industries, as well as the micro-brew industry that has spawned an entire new craft beer market in the last decade.<sup>4</sup>

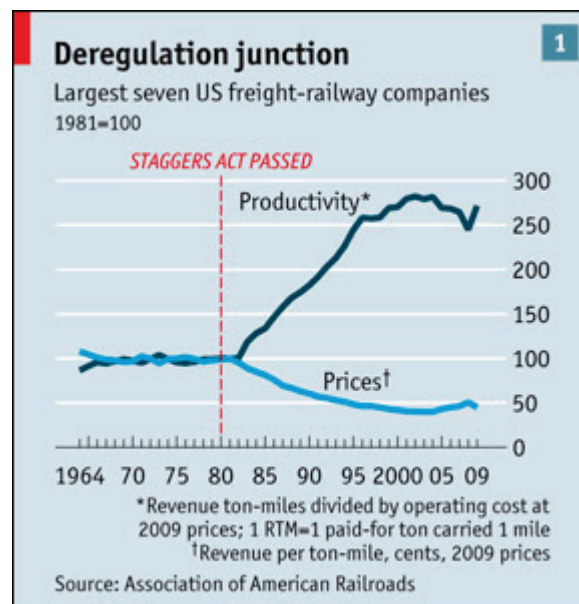
Every day for the next several weeks, the Rio Grande Foundation will be emailing its “Burdenome Regulation of the Day.” Our hope is that as we approach the 2013 legislative session, policymakers in Santa Fe and around the state – many of our proposals are not targeted at the Legislature – will consider addressing these issues in ways that make New Mexico more attractive to businesses and entrepreneurs while encouraging the spirit of free and open competition that has been so integral to the fabric of American life and economic growth.

Unlike so many other economic development schemes, these regulators issues can be addressed without any cost to taxpayers. If there are “costs” associated with demolishing these regulations, they come from removing privileges given by government to special interests. Those benefits will, in turn, accumulate to the population at large instead.

## Day 2: The Economic Benefits of Deregulation

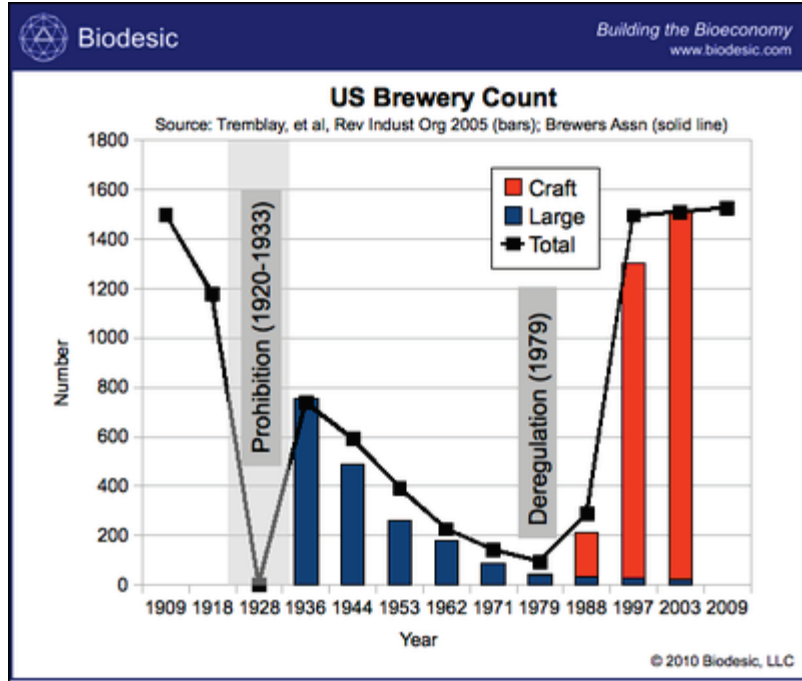
As mentioned in yesterday’s email, President Jimmy Carter and Congress worked to deregulate several major industries during the late 1970s and early 1980s. These regulations set the table for the incredible economic growth of the 1980s and into the 1990s. As the following charts illustrate, deregulation produced significant benefits for consumers in terms of lower costs and increased options.

The following chart is from *The Economist* “High-Speed Railroading,” July 22<sup>nd</sup>, 2010.

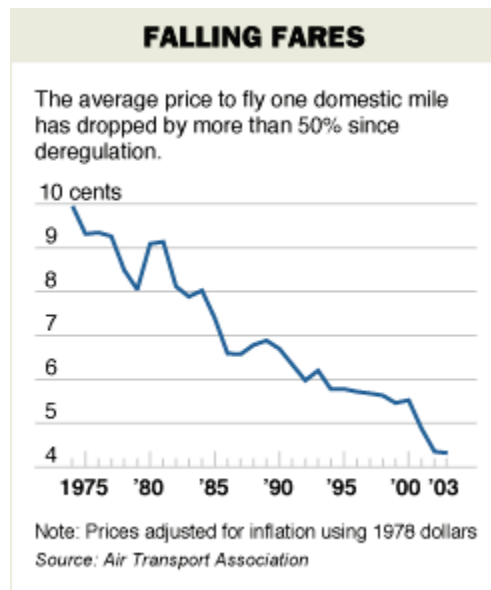


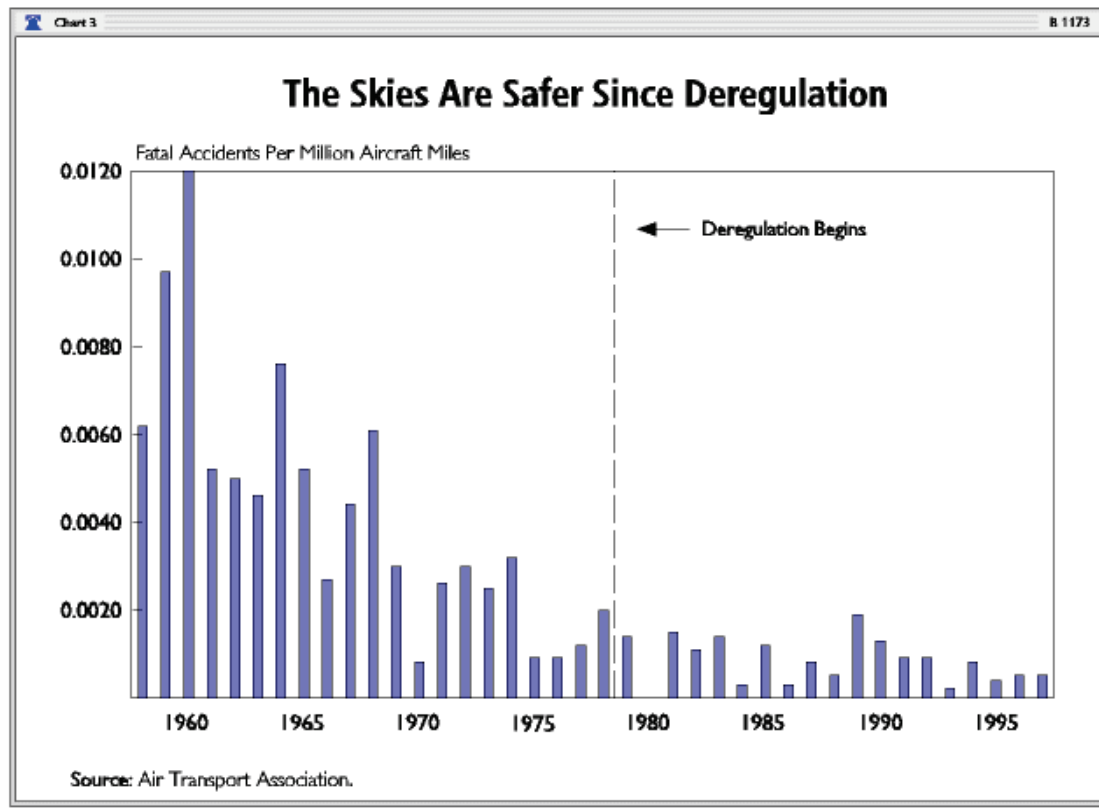
<sup>4</sup> William L. Anderson, “Rethinking Carter,” *Mises Daily*, October 25, 2000, <http://mises.org/daily/535>.

This chart is from Jonathan Chait and appeared in the *The New Republic* on August 5, 2010.



The following chart comes from Susan Carey and Scott McCartney and appeared in the *Wall Street Journal* on October 5, 2004.





As these charts clearly show, deregulation in a various industries has reduced consumer prices and increased competition in several major industries over the last three decades. This occurred without harming to passenger safety.

### Day 3 An Introduction to Regulations and Solutions

Regulations are expensive (national total regulatory costs for 2011 came out to \$1.752 trillion)<sup>5</sup>. In economics, there is no such thing as a free lunch. Laws designed to protect consumers and the environment cost money both to enforce and in terms of lost economic activity. That's not to say that any and all regulations are not worth it, but that there are always some tradeoffs. The tradeoffs between human health and pollution, for example, vary over time and by both individual and culture.

But, that doesn't mean that all regulations are created equal or that we can't come to some decisions about the necessity or lack thereof in terms of certain government regulations.

Currently, New Mexico lacks requirements for review of new regulations and rules, and although the state Administrative Procedure Act is still in place (who's purpose was to impose procedural duties for agencies that chose to opt in), it has failed to be self-enforcing on agencies<sup>6</sup>. Due to the

<sup>5</sup><http://cei.org/studies/ten-thousand-commandments-2012>. 5.

<sup>6</sup><http://www.nmcpr.state.nm.us/acr/presentations/1981MSAPA.htm>

absence of a centralized review process, agencies may or may not use their own procedures such as the use of legal council review, internal review committees, and economic analysis<sup>7</sup>.

In 2005 the Small Business Regulatory Advisory Commission (SBRAC) was created to review regulations that might have been unnecessary. Unfortunately the commission has not met for years, and according to Administrative Law Division Director John Martinez, “Less than 10 rules were actually reviewed by the SBRAC in the short time that they met regularly. During that time period, over 800 rule actions took place.”<sup>8</sup>

Several of New Mexico’s neighbors have developed procedures of regulatory review that should be noted. Colorado’s “Department of Regulatory Agencies” reviews regulations and presents all cost-benefit analyses to the public, allowing for further participation concerning the review process<sup>9</sup>. Arizona’s “Governor’s Regulatory Review Council” regularly hosts “seminars for agencies on rule writing, periodic reviews, and the preparation of impact statements”<sup>10</sup>. Utah has both the “Governor’s Office of Planning and Budget” as well as the legislature’s “Administrative Rules Review Committee” that work collaboratively in the regulatory review process<sup>11</sup>. None of these mentioned processes are perfect, and all are need of improvement, but the unfortunate reality is that New Mexico is still very far from any of these modest review mechanisms.

New Mexico desperately needs a strong, centralized regulatory review process. By implementing such a measures and allowing for a cost-benefit analysis to be provided to the public, exposing undue regulations and furthering government transparency. A regulatory review process which would grant rescission powers to the governor in order to repeal unfair or unjustified rules would certainly help to remove the numerous arbitrary burdens which New Mexican businesses face today.

#### New Mexico’s Neighbors:



Texas- Currently, Texas lacks a single, centralized regulatory review process. There do exist individual legislative subcommittees, but these groups rarely use their authority to review rules. Overall, the situation in Texas is very similar to NM.



Arizona- Arizona has what is known as the “Governor’s Regulatory Review Council” (GRRC) which does play a more active role in the review process than the state’s largely inactive legislative review committee. It appears that the GRRC, which is a slight improvement from NM’s abject lack of controls, contains shortfalls as well, such as too narrow of distributional analysis (viewing small business impacts while ignoring public benefits etc.)

<sup>7</sup> <http://policyintegrity.org/publications/detail/52-experiments-with-regulatory-review/>. 307.

<sup>8</sup> Ibid

<sup>9</sup> <http://policyintegrity.org/publications/detail/52-experiments-with-regulatory-review/>. 181.

<sup>10</sup> GRRC, Council Seminars, <http://grrc.az.gov/mainpages/grrcsem.asp>.

<sup>11</sup> <http://policyintegrity.org/publications/detail/52-experiments-with-regulatory-review/>.377.



Colorado- Colorado has the “Department of Regulatory Agencies” which reviews proposed rules submitted by various agencies. The cost-benefit analyses are provided for public use which is certainly a plus concerning transparency. One issue that needs improvement is the State’s legislative review provisions which can “leave regulations in a state of limbo for up to a year”.<sup>12</sup>



Oklahoma- Oklahoma currently has both executive and legislative forms of regulatory review, but reviews often arrive too late during the rule making process and lack the analysis of benefits. The executive review process lacks transparency as well as consistency.



Utah- Utah has both the “Governor’s Office of Planning and Budget” as well as the legislature’s “Administrative Rules Review Committee” that work with agencies throughout the review process. Utah has also fared well concerning transparency due to the “Division of Administrative Rule” website. Although the process is much more effective than New Mexico’s, Utah’s focus on compliance costs while neglecting benefits is an area that needs improvement.

#### Day 4: Eliminate Unnecessary Construction Licensing



The Construction Industries Division (CID) in New Mexico requires that any individual who is engaged in construction-related contracting must be licensed. This includes “general construction work, electrical, mechanical and plumbing and LP gas.”<sup>13</sup> Due to these current licensing requirements of the CID, construction-related projects are significantly more expensive to carry out, reaching levels as costly as an increase of 25 percent.<sup>14</sup>

Contractors who pursue construction-related contracting without obtaining a license risk being ineligible for licensure for one year. The CID can also suspend construction on the project.<sup>15</sup> This prevalence of such barriers to entry varies greatly from state-to-state. In neighboring Oklahoma, construction contracting is almost entirely unlicensed.<sup>16</sup> New Mexico would benefit greatly by abolishing the current onerous licensing system which would remove unnecessary cost burdens on contractors and provide incentives for individuals who would have otherwise pursued construction outside of the state, thus reducing construction costs in New Mexico.

The total abolition of the current CID licensing system is indeed a radical proposal, but one which should be seriously considered. In the absence of such a step, the CID should be restricted

<sup>12</sup> <http://policyintegrity.org/publications/detail/52-experiments-with-regulatory-review/>, p.181.

<sup>13</sup> <http://www.rld.state.nm.us/construction/>

<sup>14</sup> October 31, 2011, interview with Harold Meyers who owns a small business in West Texas and Clayton, NM.

<sup>15</sup> Construction & Manufactured Housing: Overview, <http://www.rld.state.nm.us/construction/>

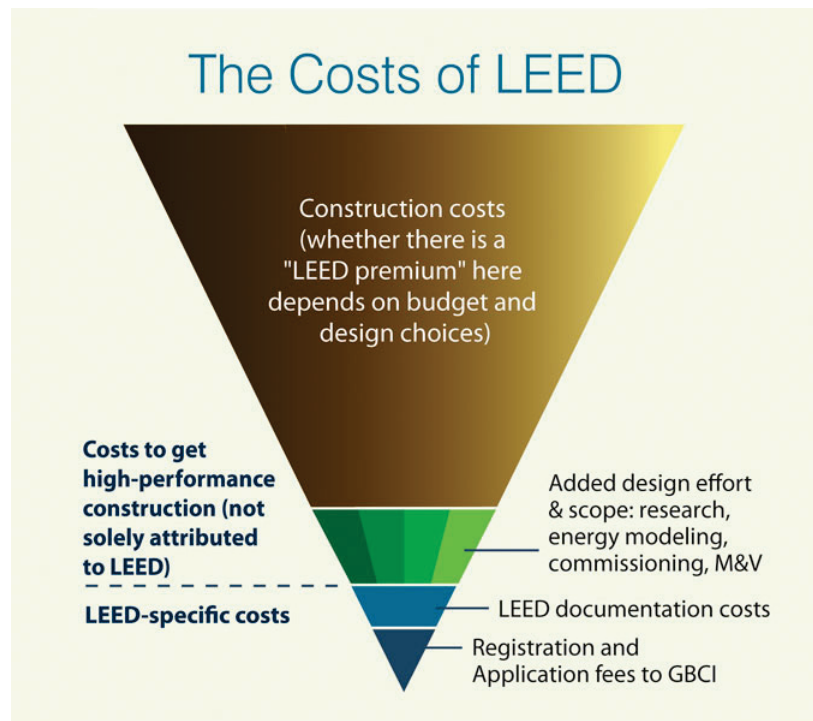
<sup>16</sup> <http://www.contractors-license.org/ok/Oklahoma.html>

to simply approving initial construction plans and the final construction. This would allow construction to take place without the costly burden of unnecessary micromanaging by the CID.

Efforts such as the recent “electronic plan review system” which will allow businesses to submit their proposals online for a faster review process that will save both time and money are modest steps towards improving contractors’ ability to get to work.<sup>17</sup> Much more is necessary in order to provide a free market environment for New Mexico’s contractors, and it begins with limiting the regulatory power of the CID.

### Day 5 Build for Cost-Effectiveness and Efficiency, not Arbitrary LEED Certification

Due to Gov. Richardson’s Executive Order #06-001, New Mexico law currently requires all public buildings over 15,000 ft<sup>2</sup> to be LEED (Leadership in Energy and Environmental Design) Silver certified.<sup>18</sup> According to the US Green Building Council, these building requirements are intended to promote “sustainable site development, water savings, energy efficiency, materials selection, and indoor environmental quality”.<sup>19</sup> The reality is that this effort to make public buildings in New Mexico more “green” increases costs and doesn’t necessarily provide more energy-efficient buildings.



LEED standards can include building a minimal number of parking spaces in order to encourage the use of car pooling or public transportation, the addition of charging facilities for electric cars, and installing large numbers of bike racks.<sup>20</sup> Certification for new schools constructed throughout New Mexico has added between \$2,350 to \$ 7,950 per building, not including additional material or design.<sup>21</sup>

The added costs of LEED Silver would be a small price to pay for buildings that are more efficient and better for the environment, but there have been numerous examples of LEED

<sup>17</sup> <http://www.abqjournal.com/main/2012/07/24/biz/business-briefs-45.html>

<sup>18</sup> US Green Building Council, “LEED Public Policies,” May 1, 2009.

<sup>19</sup> <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=1988>

<sup>20</sup> <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=2599>

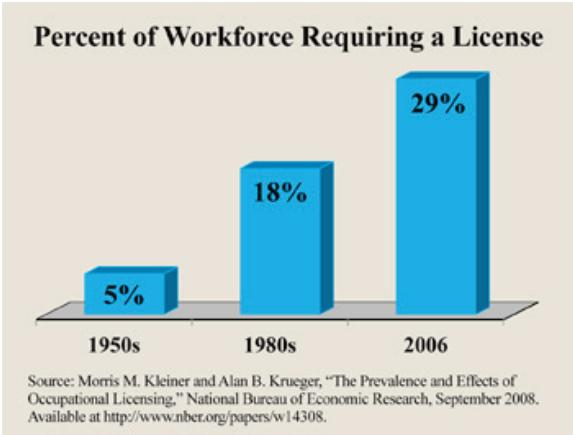
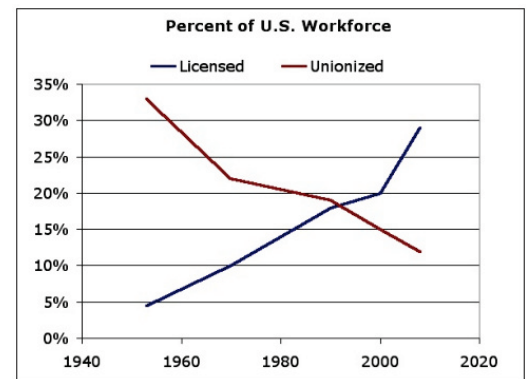
<sup>21</sup> <http://www.abqjournal.com/main/2011/08/01/news/to-build-green-or-not.html>

certified buildings failing to meet their long-term efficiency goals.<sup>22</sup> This failure has even been recognized by the U.S. Green Building Council (USGBC), which noted in its own study focusing on 121 certified buildings that “more than half – 53 percent – did not qualify for the Energy Star label and 15 percent scored below 30 in that program, meaning they used more energy per square foot than at least 70 percent of comparable buildings in the existing national stock”.<sup>23</sup>

The truth of the matter is that in many cases the efforts led by the USGBC have created more costs while failing to provide more energy-efficient buildings. Executive Order #06-001 should be overturned immediately so that tax-payers are not put in the position of funding inefficient building projects that do little or nothing for the environment.

### Day 6 Simplify/Eliminate Occupational Licensing for Low-Income Professions

According to the Institute for Justice, there exist 52 low-income occupations that require licensing in New Mexico, including everything from funeral attendants to animal trainers.<sup>24</sup> These requirements order individuals to pay fees as well as invest a considerable amount of time in training and education. For example, an individual must commit approximately 2 years in experience before receiving a license to become a pest control applicator, while an aspiring emergency medical technician is required to invest 42 days and pass two exams.<sup>25</sup>



These licensing requirements for low-income occupations create barriers to entry for those who can't invest the time or money simply in order to gain governmental permission to work. This results in fewer businesses, which means less competition and higher prices for consumers. If such professions were deregulated and the mandatory licensing system was abolished more entrepreneurs could enter the market and provide their goods and services. The current system solely benefits those businesses that have already attained their licenses, providing protection from potential competitors.

To advocate for abolishing the absurd licensing requirements in New Mexico is not to take the position that standards are unnecessary, rather to promote the idea that such standards should be brought about by consumers and not arbitrarily established by bureaucrats. If state licensing was optional, businesses would have the choice of pursuing or abstaining from going through the licensing process. Consumers could then choose to pay the additional premium set by a licensed business or opt for an unlicensed service that would in most cases be cheaper.

<sup>22</sup> Henry Gifford, "A Better Way to Rate Green Buildings," <http://www.energysavingscience.com/>

<sup>23</sup> <http://www.nytimes.com/2009/08/31/science/earth/31leed.html?pagewanted=2&r=2emc=th>

<sup>24</sup> Dick Carpenter II, Lisa Knepper, Angela C. Erickson, John K. Ross, "License to Work," The Institute for Justice, May 2012, <http://www.ij.org/licensetowork>.

<sup>25</sup> Ibid. 98.

New Mexico needs to rid itself of these unreasonable licensing standards. With fewer state sanctioned obstacles in the way of entrepreneurs, both consumers and small businesses will benefit.

#### Day 7 Pay market wage, not union-imposed prevailing wage for public projects

In 2009 the New Mexico State Legislature passed SB 33, which mandates that prevailing wages be set by collective bargaining agreements.<sup>26</sup> The law attempts to ensure that workers who are hired for public works projects are paid a prevailing wage which is equal to collectively bargained union wages. This regulation holds despite the fact that only 8.7 percent of private-sector construction workers in New Mexico are union members.<sup>27</sup> By negating the merit system which was used by 92 percent of the construction industry, the law places wage setting power among the 8 percent who do use collective bargaining agreements.



Economically speaking, this is a form of price fixing which pushes out competitors who are willing to work for lower wages. The federal Davis-Bacon law (1931) is estimated to raise costs to taxpayers by 15 percent on federally funded projects.<sup>28</sup> Additional legislation such as SB 33 only raises this cost, and arguably siphons money that could be used for other projects.

Resources are scarce. Adding costs to construction projects means fewer roads and schools for New Mexicans. The Legislature should repeal SB 33 and any other New Mexico law that forces taxpayers to pay a higher-than-market price for public works projects.

#### Day 8 Eliminate Common Carrier Regulations

New Mexico's Public Regulation Commission (PRC) is responsible for approving utility prices, regulating insurance, and licensing motor carriers.<sup>29</sup> Among its broad regulatory powers, the PRC enforces "common carrier" regulations which fix the rates and limit the amount of individuals who can legally provide services such as tow trucks, taxis, moving vans, buses, shuttles, ambulances and railroads.<sup>30</sup> Prospective companies seeking to enter the market must file a "certificate of public convenience and necessity" according to a report by *Think New Mexico*.<sup>31</sup>

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<sup>26</sup> [http://www.abcnm.org/Public\\_Policy/Senate\\_Bill\\_33.aspx](http://www.abcnm.org/Public_Policy/Senate_Bill_33.aspx)

<sup>27</sup> Associated Builders and Contractors, "New Mexico: No Good Government to be Found Here," [www.abc.org/files/Government.../021709%20NM%20Op-Ed.pdf](http://www.abc.org/files/Government.../021709%20NM%20Op-Ed.pdf).

<sup>28</sup> US Chamber of Commerce, "Davis-Bacon Act," <http://www.uschamber.com/issues/labor/davis-bacon-act>.

<sup>29</sup> <http://www.nmprc.state.nm.us/index.html>

<sup>30</sup> <http://www.abqjournal.com/main/2012/10/07/opinion/use-power-of-your-vote-to-bring-prc-into-line.html>

<sup>31</sup> "Think New Mexico," *Rethinking the PRC*, Fall, 2011.

According to a report by Leslie Linthicum of the *Albuquerque Journal*, it took eight years of regulatory and legal wrangling for a one-man taxi company to get permission from the PRC and incumbent operators to get approval to operate.<sup>32</sup>

These certificates are significant barriers to entry leading to higher prices and fewer options for consumers. It is not unreasonable to label this relationship a cartel, which benefits the few well-connected and protected businesses at the expense of everyone else. Arguably, this marriage between public regulators and private businesses creates a symbiotic relationship that continues to block competition as well as engender an environment ripe for corruption. Clearly, the success of Carter-era deregulations discussed in our “Day 2” email could be brought to New Mexico.



As well as being subject to the regulations of the PRC, motor carriers of passengers and household goods are also regulated by the New Mexico Department of Public Safety (DPS).<sup>33</sup> These unwarranted burdens on businesses who seek to provide transportation services etc. must be challenged and abolished. The issue of safety should be exclusively regulated by the DPS and the PRC should curb its meddling in the transportation sector. By maintaining the status quo New Mexicans suffer from higher prices, innovation is stifled, and fewer entrepreneurs are able to pursue their business ideas.

### Day 9 Increase Election Freedom and Election Competitiveness

New Mexico’s Constitution contains no requirements for individuals who are running for Legislature to collect a particular number of signatures in order to get on the ballot.<sup>34</sup>

The advent of new ballot-access legislation prior to the 2012 filing period threw the ballot access process into chaos due to insufficient attention to detail among more than a dozen legislative candidates (including several incumbents).<sup>35</sup> Notably, these undue burdens, while impacting Democrats and Republicans alike, disproportionately impact third-party candidates.



<sup>32</sup> Leslie Linthicum, “Taking a Ride with Taxi Bob,” *Albuquerque Journal* December 2, 2012, <http://www.abqjournal.com/main/2012/12/02/upfront/taking-a-ride-with-taxi-bob.html>.

<sup>33</sup> *Ibid.*

<sup>34</sup> Article IV, Section 3, [http://www.ballotpedia.org/wiki/index.php/Article\\_IV,\\_New\\_Mexico\\_Constitution](http://www.ballotpedia.org/wiki/index.php/Article_IV,_New_Mexico_Constitution)

<sup>35</sup> Rob Nikolewski, “We’ve got one fine primary mess this year,” *Santa Fe New Mexican*, April 8, 2012, <http://www.capitolreportnewmexico.com/?p=9004>

Ballot Access Expert Richard Winger has cited New Mexico's signature requirements along with Illinois, Massachusetts and New York as being among the most onerous in the nation.<sup>36</sup> These regulations have repeatedly resulted in lawsuits against the state being filed by candidates of both major parties and third parties. The current ballot access laws are unwarranted and should be repealed. As long as the candidate meets that Constitutional requirements (age, resident of the district, etc.) they should be allowed to run.

Competition is beneficial in politics, not just economics.

### Day 10: Free the Spaceport!

From day one, the Rio Grande Foundation has been critical of the use of \$209 million of New Mexicans' tax dollars to build a spaceport.

For starters, government has a shaky track record of betting on "the next big thing." The spaceport is also a classic example of wealth redistribution from New Mexico taxpayers (arguably the poorest state in the nation) to wealthy businessman Richard Branson and the millionaires who plan to spend \$200,000 to fly into space.



Despite all of this, the project was built and is now open. Thus, it makes sense to make it as successful as possible. Unfortunately, to date New Mexico's Legislature has failed to pass a law that protects manufacturers, suppliers and everyone else who builds and maintains spacecraft from liability lawsuits. This law would cost nothing to change and will not impact any New Mexican who does not choose to fly into space.

New Mexicans have spent \$209 million on the spaceport. The Legislature would be committing an act of legislative malfeasance by failing to pass these basic protections.

### Day 11 Adopt a Right to Work Law

If labor unions were like any other private club or organization, an individual could choose whether or not to pay dues and become a member. Unfortunately, unions have been granted government protections over the years that have allowed them to dominate certain industries.

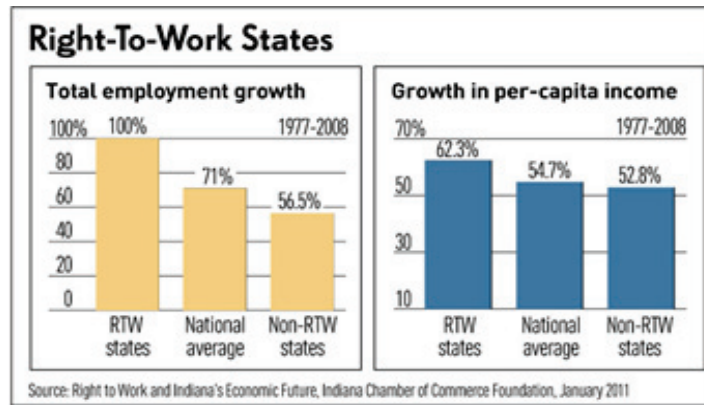
Simply put, "Right to Work" laws prohibit employers and unions from requiring membership in a union or payment of union dues as a condition of employment.

According to economist Dr. Richard Vedder, both population and income growth have been significantly faster in the 22 states with right-to-work laws than in those states that allow forced unionism. Texas, Oklahoma, Arizona and Utah all have right to work laws in place. Indiana

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<sup>36</sup> Richard Winger, "Ballot Access: A formidable barrier to fair participation."  
<http://archive.fairvote.org/reports/1993/winger.html>

became the latest state in the nation to adopt such a law. A recent Rio Grande Foundation paper found that New Mexico would have New Mexico’s employment in 2011 would have been approximately 21 percent higher had a Right to Work law been enacted in 1980.<sup>37</sup>

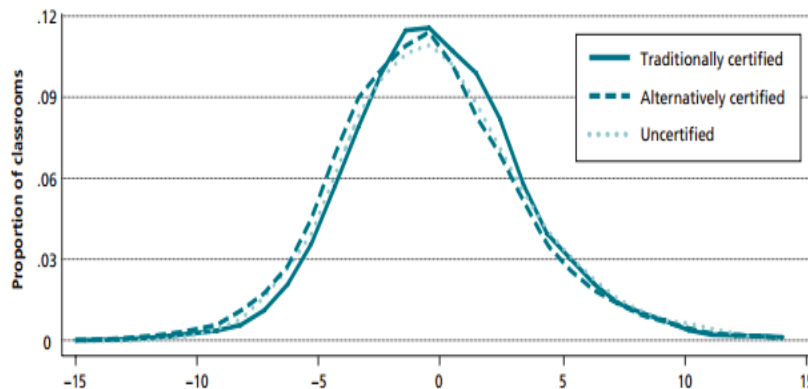


If New Mexico’s political establishment wants to stand up to special interests and create jobs, there are few policy prescriptions with better track records of success than passage of a “Right to Work” law.

#### Day 12 Adopt Teacher Certification System Based on Student Outputs, not Inputs

There is increasing evidence that excellent teachers are among the most important factors in improving educational outcomes in public schools.<sup>38</sup> Unfortunately, there is also a great deal of evidence that traditional teacher certification tools do not have a significant impact on teacher quality.<sup>39</sup> The following chart illustrating the small impact of teacher certification.

Figure 1. Teacher Impacts on Math Performance by Initial Certification



<sup>37</sup> Eric Fruits, Ph.D., “Right to Work and Economic Growth: A Comprehensive Analysis of the Economic Benefits to New Mexico of Enacting a Right-to Work Law,” July 2012, Rio Grande Foundation, [http://www.riograndefoundation.org/downloads/rgf\\_right\\_to\\_work.pdf](http://www.riograndefoundation.org/downloads/rgf_right_to_work.pdf).

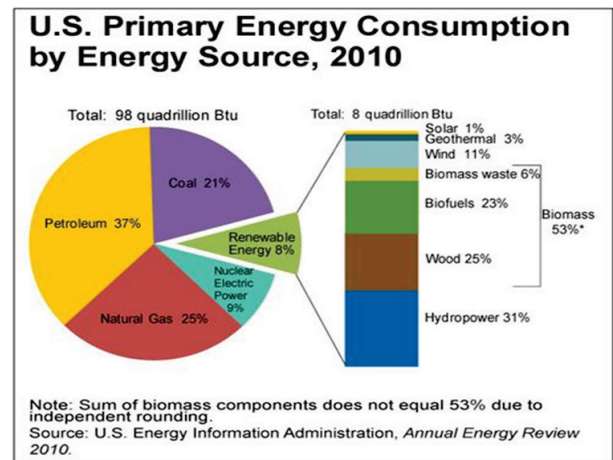
<sup>38</sup> Raj Chetty, John Friedman, and Jonah Rockoff, “The Long-Term Impacts of Teachers,” National Bureau of Economic Research, December 2011, [http://obs.rc.fas.harvard.edu/chetty/va\\_exec\\_summ.pdf](http://obs.rc.fas.harvard.edu/chetty/va_exec_summ.pdf).

<sup>39</sup> Robert Gordon, Thomas Kane, Douglas Staiger, “Identifying Effective Teachers Using Performance on the Job,” The Brookings Institution, April 2006, [http://www.brookings.edu/views/Papers/200604hamilton\\_1.pdf](http://www.brookings.edu/views/Papers/200604hamilton_1.pdf).

It is widely-recognized that more, better, teachers are essential to improving our educational system, yet government licensing policies are designed to limit supply. A PhD physicist who has retired from Sandia Labs would need years of additional schooling to put their considerable schools to work as a teacher in the classroom.<sup>40</sup>

Teacher licensing is an issue both for those who would like to become teachers through alternative paths and for accomplished and effective teachers who would move up in terms of pay much faster absent the “three-tiered licensing” system New Mexico has in place.<sup>41</sup>

According to the New Mexico Effective Teacher Task Force,



The current teacher recognition process in New Mexico places emphasis on years of experience and credentials obtained. Members of the Task Force recognize these factors are important; however, they fail to offer teachers any acknowledge of student achievement. Many New Mexico teachers see the growth of students in the classroom, but work in a system that does not recognize or reward them for it.<sup>42</sup>

The Legislative Finance Committee recently confirmed the fact that teacher licensing in New Mexico is ineffective, saying: “New Mexico’s three-tiered career ladder system does not align pay with student achievement.”<sup>43</sup>

The New Mexico Legislature must enact legislation to allow for truly alternative teacher certification paths for qualified professionals. Eliminating the “three tiered” licensing system (which measures inputs) in favor of a system that measures and rewards outputs in terms of student achievement would also be sensible.

### Day 13 Eliminate or Dramatically Overhaul New Mexico’s Costly Renewable Portfolio Standard

In March, 2004, then Gov. Bill Richardson of New Mexico signed into law Senate Bill 43. This bill required sources of renewable energy to make up 5 percent of the investor-owned electric utilities sales by 2006, and 10 percent by 2011. In 2007 the law was expanded by Senate Bill 418, which accelerated the timeline and increased the mandate such that renewable sources

<sup>40</sup> New Mexico Public Education Department, “

<sup>41</sup> Teach NM, “3-Tiered Licensure System,” <http://teachnm.org/home/3-tiered-licensure-system.html>.

<sup>42</sup> New Mexico Effective Teaching Task Force: “Final Report and Recommendations,” August 26, 2011, <http://ped.state.nm.us/ped/TTFDocuments/NM%20TTF%20Report%20FINAL.826.pdf>.

<sup>43</sup> Legislative Finance Committee, “Promoting Effective Teaching in New Mexico,” November 15, 2012, <http://www.nmlegis.gov/lcs/lfc/lfcdocs/perfaudit/Public%20Education%20Department%20%E2%80%93%20Promoting%20Effective%20Teaching%20in%20New%20Mexico.pdf>.

account for 10 percent of all power generated by 2011; 15 percent for 2015; and 20 percent for 2020 and thereafter.<sup>44</sup>

Renewable sources include energy from solar, wind, geothermal, biomass and small hydroelectric facilities. One might assume that any combination of “renewables” would be adequate in achieving the standard, but this is not the case. The standard was made even stricter by the Public Regulation Commission (PRC) which has adopted diversity requirements for Investor Owned Utilities (IOU’s). These mandates require proscribe that the Renewable Portfolio Standard (RPS) must be fulfilled with:



- No less than 20% Wind;
- No less than 20% Solar;
- No less than 10% Other technologies;
- No less than 1.5% Distributed Generation (2011-2014); and
- 3% Distributed Generation by 2015.<sup>45</sup>

According to the report “The Economic Impact of New Mexico’s Renewable Portfolio Standard,” New Mexico’s RPS will cost utility rate payers \$2.3 billion over the decade from 2011 to 2020.<sup>46</sup>

In this situation, both the PRC and the Legislature can have an impact. The PRC should consider eliminating the provisions mandating that certain percentages of various sources of power be used. The Legislature should reduce or eliminate the RPS levels entirely at least until new more cost-effective technologies are in place that make wind and solar economically viable absent a regime of subsidies and mandates. Nationally, wind and solar combined generate less than 5 percent of electric power generation.<sup>47</sup>

### Day 14 Reduce Unnecessary Regulations that Drive Up Cost of Health Care

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<sup>44</sup> David Tuerck, Paul Bachman, and Michael Head, “The Economic Impact of New Mexico’s Renewable Portfolio Standard” American Tradition Institute and Rio Grande Foundation, February, 2011, [http://www.riograndefoundation.org/downloads/rgf\\_nm\\_rps\\_study.pdf](http://www.riograndefoundation.org/downloads/rgf_nm_rps_study.pdf).

<sup>45</sup> New Mexico Public Regulation Commission, “Resource Diversity and the RPS,” <http://www.nmprc.state.nm.us/utilities/renewable-energy.html>.

<sup>46</sup> David Tuerck, Paul Bachman, and Michael Head, “The Economic Impact of New Mexico’s Renewable Portfolio Standard” American Tradition Institute and Rio Grande Foundation, February, 2011, [http://www.riograndefoundation.org/downloads/rgf\\_nm\\_rps\\_study.pdf](http://www.riograndefoundation.org/downloads/rgf_nm_rps_study.pdf).

<sup>47</sup> Zachary Shahan, “11 percent of Energy Production from Renewables in 2010,” April 12, 2011, [http://cleantechnica.com/2011/04/12/11-of-u-s-energy-production-from-renewable-resources-in-2011/?utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed%3A+IM-cleantechnica+%28CleanTechnica%29](http://cleantechnica.com/2011/04/12/11-of-u-s-energy-production-from-renewable-resources-in-2011/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+IM-cleantechnica+%28CleanTechnica%29).

Health care is among the most heavily-regulated areas of the economy. One particularly costly regulation requires health insurance companies to be licensed and regulated within their respective states. Among other things, this forces young, healthy individuals looking for “bare bones” insurance plans to pay for a slew of coverage items that they have no need or desire for and that dramatically increase the prices of their plan. New Mexico’s 59 mandates are more than all but a handful of states, thus driving insurance prices in the Land of Enchantment higher than necessary.<sup>48</sup>

Aside from the mandates, New Mexico is a relatively sparsely-populated state that allows fewer opportunities for “risk pooling” (the very point of insurance).<sup>49</sup> This drives up the cost of health insurance plans in the state. Enabling additional health insurance companies to do business in the state along with larger risk pools will inevitably drive down the cost of this insurance.

The Public Regulation Commission should allow any insurance company licensed in another state to do business in New Mexico. Absent that ideal situation, the PRC should negotiate “compacts” with other states to allow reciprocity agreements between states to allow insurance companies licensed in one state to practice in both states.

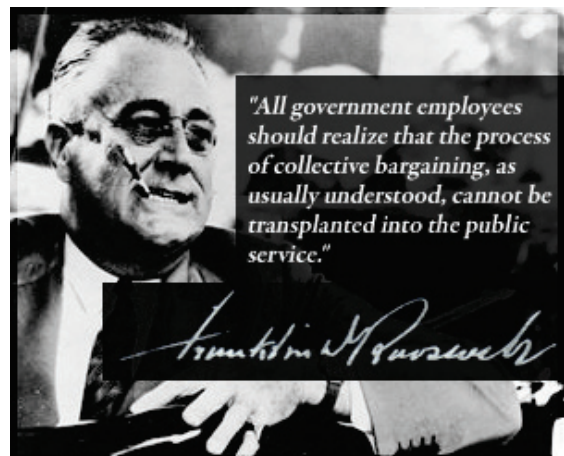
The Legislature should undertake an effort to reduce or eliminate regulations, perhaps making them optional under certain low-cost health plans targeted at young people. Foisting 59 mandated coverages on anyone who purchases health insurance is like mandating that a young or poor person purchasing a car must buy a fully-loaded BMW or go without a car.

#### Day 15 Encourage Excellence and Restore FDR’s Vision by Eliminating Costly Collective Bargaining

“Collective Bargaining” for government workers began in New Mexico in 1992. The law lapsed in 1999 and Gov. Gary Johnson wouldn’t sign a bill to renew it. But in 2003, Gov. Bill Richardson signed a collective-bargaining bill that, unlike the first one, did not have an expiration date.<sup>50</sup>

The term “collective bargaining” is defined as: “a process of negotiations between employers and a group of employees aimed at reaching agreements that regulate working conditions.”<sup>51</sup>

It sounds innocuous on its face and is often called a “right” by government employee unions and their advocates, but it really represents a closed-circuit whereby government unions organize their members



<sup>48</sup> Victoria Craig Bunce, “Health Insurance Mandates in the States, 2011,” Council for Affordable Health Insurance, 2012, [http://www.cahi.org/cahi\\_contents/resources/pdf/MandatesintheStates2011ExecSumm.pdf](http://www.cahi.org/cahi_contents/resources/pdf/MandatesintheStates2011ExecSumm.pdf).

<sup>49</sup> [http://en.wikipedia.org/wiki/Risk\\_pool](http://en.wikipedia.org/wiki/Risk_pool).

<sup>50</sup> Steve Terrell, “Lawmaker warns workers: State isn’t safe from GOP efforts to bust unions,” *Santa Fe New Mexican*, February 22, 2011, <http://www.santafenewmexican.com/local%20news/-New-Mexico-is-next-in-line->.

<sup>51</sup> [http://en.wikipedia.org/wiki/Collective\\_bargaining](http://en.wikipedia.org/wiki/Collective_bargaining).

for political power, elect politicians, and then “negotiate” with those very same politicians who are largely dependent on the government employee unions for their campaign donations and political support.<sup>52</sup> The union representing many government workers, the American Federation of State County and Municipal Employees (AFSCME) was the largest outside spender of the 2010 elections.<sup>53</sup>

Allowing government employees to collectively bargain was opposed by prominent liberals like Franklin Delano Roosevelt who said “The process of collective bargaining, as usually understood, cannot be transplanted into the public service.<sup>54</sup>” Even George Meany, the president of the AFL-CIO, seemed to oppose collective bargaining for public employee unions, “The main function of American trade unions is collective bargaining, it is impossible to collectively bargain with the government.<sup>55</sup>”

Collective bargaining is bad for taxpayers and has led to government growth beyond what is economically-supportable along with unfunded government employee health care and pension obligations in excess of \$25.8 billion.<sup>56</sup>

The problem with collective bargaining is that government employees do not operate in a free market environment. Union workers do not compete in the same way as private sector workers (union and non-union alike).

Surprising to some, collective bargaining is not necessarily popular with union members. It is very popular, however, with union leadership. In 2005, Indiana Governor Daniels signed an Executive Order eliminating collective bargaining for state employees. At that time there were 16,408 dues paying union members. Today only 1,490 out of 28,700 are dues paying union members- 95 percent chose not to pay union dues when given the choice.<sup>57</sup>

The New Mexico Legislature must pass legislation to abolish public employee collective bargaining in the state. Employees are individuals and should be treated as such.

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<sup>52</sup> Daniel Disalvo, “The Trouble with Public Sector Unions,” *National Affairs*, Fall 2010,

<http://www.nationalaffairs.com/publications/detail/the-trouble-with-public-sector-unions>.

<sup>53</sup> Brody Mullins and John D. McKinnon, “Campaign’s Big Spender,” *Wall Street Journal*, October 21, 2010,

<http://online.wsj.com/article/SB10001424052702303339504575566481761790288.html>.

<sup>54</sup> Franklin Delano Roosevelt, “Letter on the Resolution of Federation of Federal Employees Against Strikes in Federal Service,” August 16, 1937, <http://www.presidency.ucsb.edu/ws/index.php?pid=15445#axzz1ra9SmdJ2>. Read more at the American Presidency Project: [Franklin D. Roosevelt: Letter on the Resolution of Federation of Federal Employees Against Strikes in Federal](http://www.presidency.ucsb.edu/ws/index.php?pid=15445#axzz1ra9SmdJ2)

[Servicehttp://www.presidency.ucsb.edu/ws/index.php?pid=15445#ixzz1ra9keHik](http://www.presidency.ucsb.edu/ws/index.php?pid=15445#ixzz1ra9keHik)

<sup>55</sup> Daniel Disalvo, “The Trouble with Public Sector Unions,” *National Affairs*, Fall 2010,

<http://www.nationalaffairs.com/publications/detail/the-trouble-with-public-sector-unions>.

<sup>56</sup> J. Scott Moody and Wendy P. Warcholik, Ph.D., “Fixing New Mexico’s \$25.8 billion unfunded retirement system.” *Rio Grande Foundation*, February 2010,

[http://www.riograndefoundation.org/downloads/rgf\\_nm\\_unfunded\\_retiree\\_system.pdf](http://www.riograndefoundation.org/downloads/rgf_nm_unfunded_retiree_system.pdf).

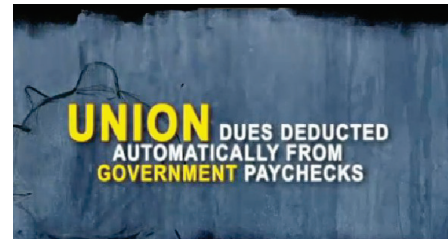
<sup>57</sup> Bob Williams, “Why government employee collective bargaining laws must be reformed now,” *State Budget Solutions*, June 5, 2012, <http://www.statebudgetsolutions.org/publications/detail/why-government-employee-collective-bargaining-laws-must-be-reformed-now>.

## Day 16 Preserve Government Employee Paychecks

One sign of the close relationship between government employee unions and the government officials they support is the eagerness with which states (including New Mexico) have collected union dues of government employees on behalf of the very same public employee unions that are supposed to be “adversarial” in their efforts to protect employees from the unfair demands of their bosses in government.

The fact is that public employee unions in New Mexico have trouble keeping members if governments don’t collect dues on behalf of the unions. According to Bob Williams of State Budget Solutions<sup>58</sup>:

Voters in Washington State approved a “paycheck protection” law in 1992. The law stated that employees must give annual written consent before unions could collect money for political activity. Before passage, approximately 82 percent of the members of the Washington Education Association contributed to the union’s political action committee. After the law’s first year of implementation only 11 percent of teachers contributed to the union’s political fund.



In 1997, Idaho lawmakers required political committees to get annual written consent from workers before obtaining contributions through automatic payroll deductions. According to news accounts, the number of union members contributing to union political committees dropped by 75 percent.

In Wisconsin, when Gov. Scott Walker eliminated payroll deductions for union members, the Wisconsin American Federation of State, County and Municipal Employees (AFSCME) say its membership fall from 62,818 in March 2011 to 28,745 in February 2012. 6,000 of the 17,000 members of the American Federation of Teachers (AFT) quit the union.

Robert Chanin, the former general counsel for the National Education Association, once said in U.S. District Court: “It is well-recognized that if you take away the mechanism of payroll deduction, you won’t collect a penny from these people, and it has nothing to do with voluntary or involuntary. I think it has to do with the nature of the beast, and the beasts who are our teachers...[They] simply don’t come up with the money regardless of the purpose.”

## Day 17 End Liquor License Larceny

According to the *Santa Fe Reporter*:

Currently, there are a set number of liquor licenses available in New Mexico, based on the principle of one license per 2,000 people. That restriction dates back to post-

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<sup>58</sup> *Ibid.*

Prohibition times. Beer and wine licenses for restaurants are separate, and there are different prices for bars than for retailers selling packaged alcohol.

Because of the limited number of licenses, they commonly go for \$500,000 a pop or more—a prohibitively large sum for would-be new business owners.<sup>59</sup>

The article goes on to note that:

According to the Texas Alcoholic Beverage Commission website, a two-year packaged liquor retailer in Texas pays \$1,500. By contrast, a recent packaged liquor license sold in New Mexico cost \$750,000, according to the New Mexico Alcohol and Gaming Division. Retailers and bars pass that price on to consumers.<sup>60</sup>



All New Mexicans understand that the state has had and continues to have serious problems with alcoholism and drunk driving. On the other hand, our current licensing laws are extremely arbitrary and are not designed to address the real issue of problem drinking.

The current environment creates artificial scarcity and limits the ability of those of modest means to involve themselves in the business of serving liquor. In other words, it creates a cartel run by those who can afford to invest outrageous sums in liquor licenses. Current law, therefore, penalizes small businesspeople and their potential employees.

Rather than limiting liquor licenses based on an arbitrary population number in a way that has caused tremendous price inflation, New Mexico legislators should consider regulatory changes designed so the number of licenses enables their price to reach a market price similar to that of one or more surrounding states.

#### Day 18 Allow a Freer Market for... Lawyers?

It is not often that the Rio Grande Foundation argues on behalf of lawyers, but on the issue of reciprocity, New Mexico's "anti-free market" restriction of the supply of lawyers is economically-harmful. Regulations on lawyers are not made the Legislature or some administrative body, but by the five member New Mexico Supreme Court itself.

New Mexico finds itself sandwiched between our adjoining and more enlightened States of Utah, Colorado, Arizona, Texas, and Oklahoma. It is



<sup>59</sup> Wren Abbott, "License to Sell," *Santa Fe Reporter*, March 14, [6618-license-to-sell.html](http://www.santafereporter.com/2014/03/14/6618-license-to-sell.html).

<sup>60</sup> *Ibid.*

bound by states that foster the free movement of legal professionals, and encourages the free flow of legal commerce. When businesses are looking to locate their headquarters or large offices, they want the flexibility to bring in their own experienced legal departments without the burden of time consuming, expensive, delaying, wasteful or redundant bar examinations rather than having their hiring pool artificially limited.

The state is one of only eleven jurisdictions in the United States that has not adopted what is called “admission-by-motion procedure” that enhances reciprocity.<sup>61</sup> New Mexico requires experienced and competent lawyers to take a bar examination administered by New Mexico to gain admission. New Mexico does not impose the same requirement for other professions such as doctors, other medical professionals and certified public accountants.<sup>62</sup>

The American Bar Association has commented in its commission on ethics that the effect of requiring attorneys already licensed and experienced in legal practice to take another bar exam is an “erection of an excessive barrier” that is “lengthy, expensive and burdensome”; and while reciprocity was not necessarily needed when the rules were originally promulgated because people maintained law offices in a single jurisdiction over their entire careers, geographic mobility and the increasing demands of multi-state clients make this an obvious reform.

New Mexico’s Supreme Court should end its economically-harmful, regulatory provincialism, and adopt the American Bar Association’s “Admission by Motion” procedure.

### Day 19 Reform Laborious Path for School Principals

Like the “Three-Tiered Licensure” system now in place for teachers, New Mexico mostly measures inputs as opposed to outputs when it comes to licensing principals. For example, New Mexico requires a master’s degree and at least six years of teaching experience before it is possible to become a principal.

Of course, being a teacher and being a principal are two completely different jobs requiring vastly different skill sets. Also, limiting the pool of potential principals reduces significantly the talent available, removes potentially excellent teachers from the classroom, and results in a distinct lack of innovative ideas and promotes a relatively homogeneous mindset.

After all, teachers have all been through schools of education, the same certification programs, and grown acclimated to teaching in today’s classrooms. The ability for innovative and visionary outsiders to bring new ideas to the schools as administrators is quite limited.



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<sup>61</sup> American Bar Association, “Model Rule for Admission by Motion” [http://www.americanbar.org/content/dam/aba/administrative/legal\\_reports\\_and\\_resolutions/20110201\\_legal\\_model\\_rule\\_on\\_aom.aui](http://www.americanbar.org/content/dam/aba/administrative/legal_reports_and_resolutions/20110201_legal_model_rule_on_aom.aui)

<sup>62</sup> House Memorial 2 to Adopt the American Bar Association’s Motion Procedure <http://www.nmlegis.gov/Sessions/12%20Regular/memorials/house/HM002.pdf>

Additionally, principal pay (like that of teachers) is highly inflexible and determined by various statewide formulae based on inputs rather than outputs like student achievement. These rigid formulas and the lengthy service requirements only serve to make finding good school principals more difficult given the widely-reported, ongoing principal shortage.<sup>63</sup>

The final problem with principal licensing in New Mexico is the same overriding problem we have with the state's teacher licensing system, which is an emphasis on inputs in the form of credentials rather than outputs in the form of more educated students.

### Day 20 Make Education "Alternatives" Truly Alternative

According to Merriam-Webster, charter schools are: : a tax-supported school established by a charter between a granting body (as a school board) and an outside group (as of teachers and parents) which operates the school without most local and state educational regulations so as to achieve set goals.<sup>64</sup> Unfortunately, in New Mexico, charter schools are still beholden to large numbers of rules and regulations associated with traditional public schools.



According to the National Alliance for Public Charter Schools, New Mexico law requires charter school teachers to have the same certification requirements as traditional public school teachers. It requires charter schools to adhere to the same three-tiered salary schedule as traditional public schools and, for teachers who have been employed at the school for three consecutive years, adherence to the NM School Personnel Act is required as well.<sup>65</sup>

Charter schools are supposed to act as an alternative to traditional public schools. While New Mexico's charters have attempted to do this, they have been hamstrung by regulations that force them to adhere to similar, strict regulations, thus making charters less of a real choice for parents and students.

New Mexico's Legislature should eliminate certification requirements, adherence to the three-tiered salary schedule, and tenure for all charters. These regulations are generally problematic for traditional public schools (as outlined above on the certification issue). Giving charters the freedom to avoid these regulations would allow for the gathering of real-world evidence as to the benefits or detriments of these policies.

### Day 21: Regulatory Conclusions

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<sup>63</sup> Jimmy Guterman, "Where have all the principals gone?: the acute school-leader shortage," *Edutopia*, <http://www.edutopia.org/principal-shortage>.

<sup>64</sup> Merriam-Webster, definition of "charter school."

<sup>65</sup> National Alliance for Public Charter Schools, "Measuring up to the Model," <http://www.publiccharters.org/law/ViewComponent.aspx?comp=16>.

Over-regulation is a serious problem for New Mexico's economy. Nonetheless, given the diversity and multi-faceted impacts of regulations, it is impossible to come to a conclusion on the overall economic impact if all of the regulations discussed here were eliminated or reformed. No one predicted the rise of discount airlines like Southwest, Frontier, JetBlue and others in the wake of airline deregulation. Nor did the micro-brew industry come about immediately after that industry was deregulated, rather it took nearly two decades to hit its stride.

It is also worth noting that not all of these regulations have an obvious, immediate impact in terms of dollars and cents. Allowing alternative teacher certification, for example, may allow dozens or even hundreds of retired employees of the Sandia and Los Alamos Labs to get into the classroom as highly-knowledgeable teachers. These people and their hands-on expertise in various scientific fields could have a tremendous impact on New Mexico students in the field of science, thus raising our educational performance measures and making New Mexico a more attractive place to do business.



Unfortunately, you never know until you try. The more potentially-impactful the deregulation would be, the more powerful the special interest that attained that preference in the first place. Unions, incumbent businesses, and those whose jobs are made more secure and less competitive due to professional licensing will all fight hard against deregulation in their industries.

Adopting any of the regulatory reforms outlined above would increase economic freedom and spur economic growth in the Land of Enchantment. Additionally, New Mexico's Legislature should consider adopting legislation, along the lines of SB 311 which passed Indiana's Legislature in bi-partisan fashion during the 2012 session and would require cost-benefit analysis for new regulations.<sup>66</sup>

Last Day's Email:

We hope you have found these regulatory emails to be interesting and informative. If you like our work, please consider making a tax-deductible [donation to the Rio Grande Foundation](#).

Also, while these are some of the most relevant regulations to average New Mexicans, this list is by no means exhaustive. We are confident we've missed some important regulations and we'd love to have information on economically-harmful regulations from you so that we can publicize and discuss them in the future. Send us an email at: [info@riograndefoundation.org](mailto:info@riograndefoundation.org)

Lastly, the Legislature is in session now. Please don't forget to alert your legislators on these important issues.

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<sup>66</sup> <http://www.in.gov/apps/lsa/session/billwatch/billinfo?year=2012&request=getBill&docno=311>

**Day 1: Additional Regulations: This regulation was brought to our attention by one of the readers of our regulatory emails**

Limitation of Retail Purchases

Government should almost never intervene between a willing buyer and a willing seller. Unfortunately, under New Mexico law 57-1-18, it is unlawful for stores to place a limit on retail purchases. In other words, if a retailer is selling 2 liters of Coke for 10 cents apiece, that retailer *must* sell you as many 2 liters as you wish to purchase. This can obviously hinder retailers' "loss-leader" strategy of offering a few items for a below-market cost in order to get people into their stores to buy other items.

This sounds innocuous enough when it comes to 2 liters of Coke, but what about more potentially-nefarious goods like ammunition? As a store owner, if a customer wants to buy my entire stock of shotgun shells or .22 caliber ammunition, I am legally prohibited from placing limits on the number they may buy.



Clearly, this is an unnecessary and problematic regulation that hinders business owners from running their businesses as they please.

The Legislature should repeal this section of law.

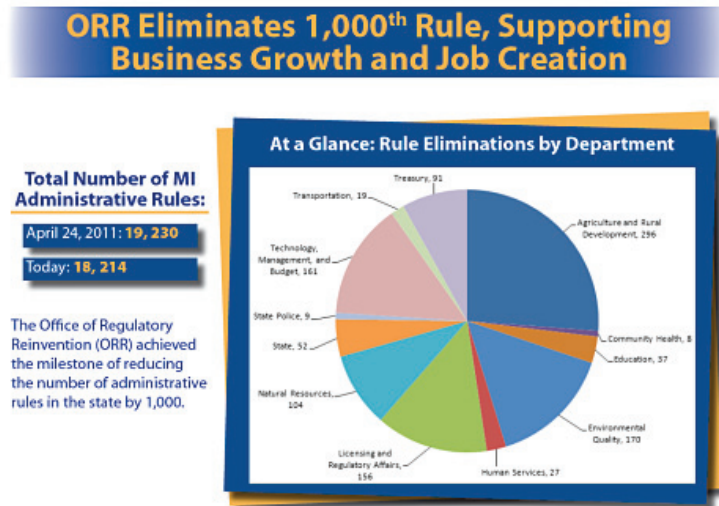
**Day 2: Michigan Leads on Deregulation**



The adoption of a Right to Work law late in 2012 (which Rio Grande Foundation supports<sup>67</sup>) was widely reported and remarked upon. Less well known is the state's ongoing effort to enact regulatory reform<sup>68</sup>

From the Michigan Department of Licensing and Regulatory Affairs (LARA):

Governor Rick Snyder has announced that the Office of Regulatory Reinvention (ORR) has achieved the milestone of reducing the number of administrative rules in the state by 1,000. The ORR and Department of Environmental Quality (DEQ) recently rescinded the Solid Waste Alternative Program rules that led to reaching of this milestone. This rule set was eliminated at the recommendation of the DEQ and the Advisory Rules Committee (ARC) that reviewed environmental regulations. These rules were obsolete because they covered a grant program that is closed.



“We have made great strides in streamlining Michigan’s regulations, while ensuring health, safety and consumer protections remain,” said Gov. Rick Snyder. “We are eliminating nearly 10 rules for every one rule added. The result is that Michigan’s regulatory environment has become more favorable for business growth and job creation, and more user friendly for all of our customers.”

Gov. Rick Snyder created the Office of Regulatory Reinvention in April 2011 with the goal of creating a regulatory climate that is simple, fair, efficient, transparent and supportive of business growth and job creation. At the beginning of the ORR’s review, Michigan had 19,230 administrative rules. Today, Michigan has 18,214 administrative rules.

New Mexico should embark upon the same process by closely examining and getting rid of unnecessary and conflicting rules and regulations.

<sup>67</sup> <http://www.errorsofenchantment.com/2013/01/12/day-10-adopt-a-right-to-work-law/>

<sup>68</sup> <http://abc10up.com/state-agency-removes-1000-rules/>