

# 2018 POLICY AGENDA PRIORITIES

## ACI SUPPORTS:

- Seed standardization legislation to ensure the consistent statewide regulation of seeds;
- Full and increased investment in strategic economic development programs such as JTIP, LEDA, and the Rapid Workforce Development fund, as well as enhancing the tools available, such as the high wage jobs tax credit, to incentivize business investment, and job creation;
- A statewide plan that directs and measures the efforts of public colleges and universities to increase educational attainment and expand research and economic development efforts in communities across the state;
- Policies that provide for the commercially viable development of energy infrastructure, including roads, oil and natural gas pipelines, electric transmission lines, energy storage, and electric and natural gas distribution systems that will benefit end-use markets, including such things as natural gas and electric vehicles and smart-grid technologies;
- Incentivizing New Mexico's National Laboratories to create and continue community projects throughout the state, particularly those focused on technology transfer;
- The elimination of the State Total Suspended Particulate (TSP) standard and re-drafting of the state air quality regulations consistent with the National Ambient Air Quality Standards, to make New Mexico competitive with other jurisdictions and alleviate unnecessary compliance costs;
- Maximization of federal funds through actions such as fully funding the state Medicaid program and Safety Net Care Pool;
- Expansion of the Administrative Hearing Office to conduct hearings on administrative adjudicatory actions arising from all state agencies using its own qualified, professional, objective, and independent hearing officers or administrative law judges;
- The evaluation of the entire state tax code for recommendations to create a stable revenue source without a disproportionate burden on particular industries, individuals, or employers and in conjunction with a statewide economic development plan;
- The creation of public-private partnerships to develop water and other critical infrastructure that will provide public benefits, such as economical infrastructure project delivery and water conservation; and,
- Statewide uniformity of employment laws, such as paid or unpaid leave mandates, wage or fringe benefit mandates, and scheduling mandates; in order to provide a stable environment for employers and promote economic development.

## ACI OPPOSES:

- Mandatory unitary combined reporting.

# DETAILED POSITION STATEMENTS ON 2018 INTERIM POLICY AGENDAS

## AGRICULTURE and FOOD PROCESSING

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### ACI SUPPORTS:

- **Seed standardization legislation to ensure the consistent statewide regulation of seeds;**
- Preserving the integrity of the workers' compensation system to ensure quick and efficient delivery of benefits to injured workers, to maximize medical rehabilitation and return-to-work outcomes at a fair cost to the employers, which will also foster business investment and job creation;
- Legislation requiring that all imported, processed foods, ready for consumption, meet the same standards as identified by the FDA for domestic processors;
- Immigration reform, specifically as it concerns agricultural labor, including further development of new visa and foreign worker programs more efficient than H-2A; and
- Maintaining funding for the New Mexico Department of Agriculture;
- Protecting the integrity of agriculture land valuation as currently exists in statute;
- Revising or eliminating regulations, both federal and state, that are not based on sound, objectively verifiable, scientific evidence.

### ACI OPPOSES:

- Mandatory labeling of food products and any other state requirements creating a regulatory patchwork of policies that place an unfair burden on agriculture and food businesses;
- Increase and use of fees paid by an industry to fund projects outside the scope of state agencies that regulate that industry.

## **AGRICULTURE and FOOD PROCESSING**

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### **Introduction**

Agriculture, outfitting, and food processing industries are key contributors to sustaining strong economic development and job creation in New Mexico. The agricultural and food processing industries consist of \$10.6 billion (12.3%) of the states gross state product and the income generated through the outfitting industry accounts for approximately \$54 million of that number. These three industries create an estimated 55,000 jobs statewide, primarily in the rural counties where agriculture and hunting/fishing take place. The outfitting industry provides an additional revenue source for farmers, ranchers, and food processors through the purchase of landowner hunting permits and by providing wild-game meat for state programs such as Hunters Helping the Hungry. Outfitting in NM is a \$50 million industry and generates over \$3 million in NM gross receipts taxes annually. To ensure the long-term viability of the local agriculture and food industries, and ones ability to earn a livelihood as a hunting or fishing outfitter, it is important for New Mexico to retain and adopt regulatory structures that encourage access to local agricultural and food markets at the lowest cost possible.

### **Seed Standardization**

Seed standardization legislation ensures the consistent statewide regulation of seed, just as is the case with pesticides. Such legislation ensures that the authority to regulate seed lies with the experts at the New Mexico Department of Agriculture. Allowing localities to regulate seeds would create a Patchwork of regulations that threatens the vitality of family farms and rural communities and creates burdensome roadblocks for family farms.

### **Workers' Compensation**

The current system faces a number of challenges such as:

- Case decisions that (1) expand benefits and increase costs to employers, which limits job creation; (2) hinder the quick, efficient delivery of benefits to workers; (3) undermine return-to-work strategies;
- Rising medical costs, healthcare reform, and cost-shifting; and
- Increased claim litigation and legal costs.

According to the Oregon Department of Consumer and Business Services (which ranks states by Workers Compensation premium rates), New Mexico has the 20<sup>th</sup>-highest premiums in the country. This is New Mexico's worst ranking since 1986. In comparison to surrounding states, New Mexico is at a competitive disadvantage in attracting business investment necessary for job growth and economic development.

ACI supports measures to assure the integrity of the workers' compensation system to facilitate a business environment conducive to business investment, job creation, and economic development in New Mexico and to serve the best interests of all employers and workers.

ACI supports:

- A state workers' compensation system that ensures the quick and efficient delivery of reasonable and necessary benefits to workers at a fair cost to employers;
- Administration of the Workers' Compensation Act to assure New Mexico's competitiveness with surrounding states;
- Limiting waste and abuse in the Workers' Compensation System such as situations where a worker:
  - Intentionally removes himself or herself from the workforce by committing misconduct resulting in post-injury termination of employment;
  - Fails to seek comparable employment in good faith;
  - Fails to accept an offer of comparable employment; or
  - Exits the workforce through retirement, self-employment or incarceration.
- Improving the timeliness and efficiency of the delivery of reasonable and necessary medical treatment and services by facilitating the exchange of relevant claim-related medical information between health care providers, workers, and payers to mitigate costs and litigation;
- Preservation of the *Exclusive Remedy*;
- Improving the administrative adjudicatory process to assure due process, efficient case management, and consistent case law in accordance with the Workers' Compensation Act and Administrative Procedures Act; and
- A safe workplace, free of substances that can impair an employee to the detriment of themselves and/or others.

ACI opposes:

- Expansion of presumptive causation coverage to the private sector;
- Any increase for attorney's 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;
- Unqualified expansion of benefits pursuant to the Workers' Compensation Act; and
- Reimbursement for use of medical cannabis while receiving Workers' Compensation, as long as cannabis remains classified as Schedule 1 drug under the Drug Enforcement Agency.

### **Food Importation**

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

### **State Agency Fees**

ACI opposes the increase and use of fees paid by an industry to fund projects outside the scope of state agencies that regulate that industry

ACI supports the New Mexico Department of Agriculture's regulation of dog and cat food sold in the state to ensure safe, balanced and nutritious food for our pets, and the Department's use of the current pet food fee to cover such regulatory activities.

### **Food Regulations**

ACI supports adoption of an updated food code that is in line with the Food & Drug Administration's rules and does not go beyond those rules. When adopting new food regulations, ACI supports regulations that are science-based, and education and resource focused. During the process of adopting new regulations, ACI supports proper notification of rulemaking to the food processing industry and hopes the rules will be made in conjunction with the industry to protect public health while minimizing harm to jobs provided by the industry. ACI believes new regulations should provide the industry a certain amount of certainty and predictability. Furthermore, ACI hopes to see the Environment Department put into place a time period to adjust to compliance, and that SBA-defined small businesses receive a longer period of time. Additionally, ACI seeks clarity in defining the "regulatory authority" referenced in the proposed regulations with regard to recall and registration requirements and who businesses should expect to submit new paperwork to, as they typically do not submit these forms.

House Bill 305 during the 2017 Legislative Session provided further clarification by adding a subsection to the powers and authority of the New Mexico State University (NMSU) Board of Regents granting the regents the ability to authorize NMDA to enter onto public or private property to collect physical or documentary samples and to review records and documents to verify compliance with the federal FDA Food Safety Modernization Act (FSMA).

### **Guest Worker Program**

Although the unemployment rate remains high in New Mexico, farms and ranches across the state depend heavily on personnel from Mexico to ensure that crops are harvested in a timely manner. Without this labor, which is often skilled in agricultural tasks, crops are left to rot in the fields. ACI supports immigration reform, specifically as it concerns agricultural labor, including further development of new visa and foreign worker programs more efficient than H-2A.

### **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.

### **Mandatory Labeling of Genetically Engineered Substances**

ACI opposes mandatory labeling of food products and any other requirements on a state-by-state basis that may create a regulatory patchwork of policies that place an unfair burden on agriculture and food businesses that use or produce these products. Such labeling is predicted to raise food costs for consumers as a result of multiple supply chains, warehousing and delivery needed for compliance.

### **New Mexico Right to Farm Act**

New Mexico adopted a Right to Farm Act in 1981 to protect farming operations from unwarranted nuisance lawsuits created by urban growth. The law was not contested until 2011, when out-of-state lawyers filed class action “Temporary Nuisance” lawsuits in our state. In 2016, a bill amending the Right to Farm Act to protect agricultural operations or facilities from nuisance claims was passed and signed into law. With the amendment, the Right to Farm Act now states that a nuisance claim may not be brought against a previously established agricultural operation or facility, except when the operation or facility has substantially changed in the nature and scope of its operations. Prior to 2016, the law stated that an Agriculture Operation is not a nuisance “except if it is operated negligently or illegally”. The term “negligently” was not defined in the act and judges stated it was subject to interpretation. ACI supports the Right to Farm Act, with 2016 amendments as is.

### **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.

### **Land Valuation**

ACI supports protecting the integrity of agriculture land valuation as currently exists in statute. ACI opposes any proposed new land valuation methods that do not adequately address issues of lost of property tax revenues to counties as a result of new methods, and how this could adversely impact the taxation of agricultural lands as counties try to make up for the lost revenue. ACI further opposes any special land valuation methods that do not protect property owners of small tracts of land.

### **Conduct of Surveillance**

ACI opposes use of a drone or unmanned aircraft to conduct surveillance of an individual or property owned by an individual, any business location, farm or agricultural operation without the consent of that individual, property owners, business owners, farm or agricultural operation. Further, ACI opposes use of a drone or unmanned aircraft to gather evidence or other information pertaining to criminal conduct or conduct in violation of a statute or regulation except to the extent authorized in a warrant.

ACI supports penalties for any person who witnesses cruelty to an animal and does not intervene. Furthermore, ACI also supports legislation to prevent interference with agricultural operations including filming or recording sounds and images without the owners’ consent.

### **Agricultural Development**

ACI supports:

- Funding for research and development for automation and concurrent varietal development for important New Mexico agricultural products;
- Agricultural tourism as a vital new component of the agricultural industry at large, and setting liability insurance requirements in such a way that matches risk levels will allow for further expansion and growth of the agri-tourism industry;
- 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;
- 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; and
- All subsidiary or associated industries that complement agriculture or agricultural service industries and lessening regulatory burdens.

ACI supports legislation and a regulatory structure that promotes the use of best available technology.

### **New Mexico-Mexico Border**

ACI believes that the border has been compromised through a lack of security and could be improved through greater public safety along New Mexico’s border with Mexico. Greater funding opportunities also are needed to pursue this effort. This is critical to the agriculture industry because many ranches and farms dot the state’s 180-

mile border. ACI supports eliminating tariffs and other trade barriers. New Mexico's trade relationship with Mexico and selling U.S. goods internationally benefits rural agricultural communities.

### **Humane Equine Euthanasia**

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 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 Accountability 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 were 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.

## **ECONOMIC DEVELOPMENT / RESEARCH and DEVELOPMENT**

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### **ACI SUPPORTS:**

- **Full and increased investment in strategic economic development programs such as JTIP, LEDA, and the Rapid Workforce Development fund, as well as enhancing the tools available, such as the high wage jobs tax credit, to incentivize business investment, and job creation;**
- Full and increased investment for the New Mexico Partnership, local economic development organizations, and the New Mexico Tourism Department, for marketing and promotional activities;
- Government policies that foster continued private-sector investment and innovation by eliminating barriers to broadband network deployment, through cooperative and nonduplicative public-private initiatives;
- Restructuring the capital outlay process to set productive priorities, develop an effective planning process and efficiently fund necessary infrastructure projects;
- Implementation of the local, state, and federal procurement codes in a transparent manner that allows New Mexico companies to effectively compete in the procurement process;
- A sustainable process by which the state supports public-private investments to drive economic development;
- Making New Mexico a Right-to-Work state to maximize the potential for creating economic base jobs at no cost to the public.

## **ECONOMIC DEVELOPMENT / RESEARCH and DEVELOPMENT**

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### **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.

### **Broadband**

ACI supports government policies that foster continued private-sector investment and innovation by eliminating barriers to broadband network deployment. Government policies should work with the market and foster continued private sector innovation to deliver world-class, high-speed internet service that allows New Mexico to better compete for jobs, improve healthcare access, and maximize education opportunities in the 21<sup>st</sup> century information-based economy.

ACI supports development of robust statewide broadband infrastructure, to enhance economic development and vitality in New Mexico, through coalitions with the Legislative Jobs Council, economic development organizations, and the business community.

The private sector has the expertise and a proven track record of meeting consumers' demand at the speeds and with the service options and technologies the consumers want. Directing limited public dollars to build duplicative networks where the private sector already provides service may chill private-sector investment and innovation, put municipalities and taxpayers at risk, and divert resources and attention away from achieving the goal of universal broadband availability.

### **Tourism**

ACI supports a state tourism department with a cabinet position that only focuses on growing New Mexico's tourism market share and supporting tourism-related businesses. ACI supports adequate funding of the New Mexico Tourism Department for marketing and promotional activities, as well as an initial (one-time) state investment for a sustainable tourism training program to meet the growing needs of the industry. The New Mexico Tourism Department reports direct visitor spending in New Mexico reached \$6.3 billion in 2015. The New Mexico True campaign is demonstrating a 7 to 1 return on investment, which is responsible for the visitor economy growth for six straight years, with 21.3% growth in spending since 2010.

The New Mexico Tourism Department stated that in 2015, employment supported by visitor spending increased to more than 90,000, or 8.3% of all New Mexico jobs and that since 2010, there has been a 7.5% increase in direct tourism employment. Overall, tourism has generated 15% of all new jobs in New Mexico in the last five years. Currently, New Mexico appropriates fewer dollars for marketing than all but one of the surrounding states.

### **New Mexico Partnership**

ACI supports increased funding for the New Mexico Partnership as an essential tool, especially to our rural communities who tend to have fewer resources for recruitment of businesses to New Mexico that provide private-sector, well-paying economic-base jobs. ACI supports the continuing use of metrics to determine the effectiveness of the Partnership.

### **Right-to-Work**

ACI supports right-to-work because it will be beneficial to the New Mexico workforce as statistics over the last 20 years have shown a greater increase in jobs in right-to-work states vs. New Mexico and others 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. There is consensus among economic development professionals that many site-selectors will never visit non-right-to-work states. As the legislature seeks ways to improve New Mexico's economy, right-to-work provides a no-cost tool for economic developers.

Private-sector 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.

### **Capital Outlay Funding**

ACI supports the state's public and private sectors working together to restructure the capital outlay process to set productive priorities, develop an effective planning process and efficiently fund necessary infrastructure projects, along with a transition program to move from the current system to a more efficient system. Considerations should include the approval of capital outlay funding that results in immediate job creation and is a long-term cost benefit to the state. Quality infrastructure such as roads and water systems support New Mexico's economic development efforts. 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.

### **Manufacturing Operation Tax Incentive**

ACI supports tax incentives to encourage manufacturing operation startup, expansion, and relocation to New Mexico. Manufacturing is a desirable and key economic-base industry. New Mexico's manufacturing sector severely lags behind the rest of the country in state GDP attributed to manufacturing. Tax incentives would make New Mexico a desirable manufacturing location and would encourage the expansion and relocation of both national and local companies. ACI supports an exemption in place for a limited period of time to boost manufacturing in the near term. Tax receipts will increase to the state due to payroll, and income taxes due to increased employment and multiplier effect of taxes from supplying companies.

### **Procurement**

ACI supports implementation of the local, state, and federal procurement codes in a transparent manner that allows New Mexico companies to effectively compete in the procurement process.

ACI supports:

- Federal, state, and local agencies putting forth requests-for-proposals in a manner that assists New Mexico businesses in responding;
- A set-aside for New Mexico businesses similar to the federal government's small business set aside program; and,
- Training for federal, state, and local agencies that will promote fair competition and transparency.

ACI supports legislation similar to that in existence in 17 other states, beginning as early as the 1970s, because providing historically underutilized and disadvantaged businesses an opportunity to contract with the State will stimulate the growth of these businesses and create more jobs. These programs have been successful in providing opportunities to historically underutilized and disadvantaged businesses, including a \$2 billion program in Texas. The proposed legislation requires the State of New Mexico to make a good faith effort to award state contracts to small, historically underutilized, and disadvantaged New Mexico resident businesses. This includes businesses with at least 51% ownership by a woman, veteran, a person who is African American, Hispanic, Asian-Pacific American, or Native American, or any business owned by an individual who can demonstrate evidence of social disadvantage.

### **International Trade**

ACI supports measures that increase international trade and tourism while continuing to focus on border safety, including:

- Export assistance programs;
- Funding for the Office of the International Trade within the New Mexico Economic Development Department;
- Funding for the New Mexico Trade and Higher Education Center of Mexico City;
- Transportation infrastructure;
- Efforts to encourage direct foreign investments; and
- Increased access to new markets for New Mexico businesses through the deployment of trade delegations and local trade promotion offices in strategic international locations.

### **Public-Private Partnerships**

Sometimes the best solutions to our challenges come from the private sector. The use of private resources to provide solutions to public problems should not be restricted when the benefits to the public can be

demonstrated at a reasonable cost. The establishment of guiding principles governing the creation of public-private partnerships will allow public entities to benefit from these solutions. ACI supports public-private partnerships allowing the state and certain local governments to enter into long-term partnerships with private sector partners to facilitate public projects to address New Mexico's aging infrastructure and critical public services.

ACI supports public-private partnerships that facilitate economic development such as Spaceport America, Regional Economic Development Initiative, broadband access, 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 Innovation and Opportunity Act funding be coordinated to support more customized job training for employers.

### **Jobs Plan**

ACI supports development of a statewide plan incorporating recommendations of the Legislative Interim Jobs Council and the New Mexico Economic Development Department setting forth economic development priorities that are well matched to New Mexico's regional, urban and rural resources, workforces 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 Legislative Jobs Council's unanimously approved plan is based upon a comprehensive analysis of what types of economic development goals appear to be reasonably achievable in the 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 New Mexico Partnership, the Department's marketing arm. ACI supports continued funding for the Local Economic Development Act (LEDA), the Job Training Incentive Program (JTIP), the Rapid Workforce Development Fund (RWDF), and reinstatement of funding for the Economic Development Department's cooperative advertising program. ACI supports recurring, non-reverting funding for both JTIP and RWDF as these serve as critical incentives for New Mexico's economic development, as well as providing opportunities for New Mexicans to gain valuable training that benefits their careers in the long term. JTIP and RWDF funds are key recruitment tools to attract new employers to the state and are an incentive for current employers to expand. ACI also supports 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.

### **Military Installations and National Laboratories**

ACI supports continued funding and expansion of New Mexico military installations and the national laboratories. New Mexico's military installations and national laboratories have a significant direct and indirect impact on New Mexico's economy. Los Alamos National Laboratory directly injects \$1.9 billion into New Mexico's economy and accounts for over 10,000 direct jobs, with an additional \$1.3 billion resulting from indirect economic spending. LANL does over \$388 million in work with New Mexico businesses. According to a 2015 report, Sandia National Laboratories has a \$2.8 billion impact on the state, with over \$381 million going to New Mexico businesses. New Mexico's military installations also have a significant economic impact, including White Sands Missile Range (\$682 million), Holloman Air Force base (\$609 million), Kirtland Air Force Base (DOD, \$4.8 billion; and DOE, \$3 billion).

### **Local Economic Development**

ACI supports the identification of a stable, predictable, and permanent funding mechanism for local economic development entities to support recruitment and expansion efforts.

ACI supports matching state funding to increase the capabilities of community economic development organizations based on a competitive application process using performance metrics.

ACI supports funding certified business incubator and technology commercialization programs to help businesses start, grow, succeed, and remain in our communities. Such funding will provide a high return on investment to our state.

### **Retiree Marketing**

ACI supports development of a state/local program designed to attract retirees with financial resources to New Mexico as an economic base equivalent initiative. A program would consist of additional national advertising on the benefits and advantages of retiring to New Mexico similar to the New Mexico True campaign, a website shared by local communities, return on investment research, and designation of NM certified retirement communities

### **Economic Development Utility Rate**

ACI supports the adoption of rule amendments by the Public Regulation Commission to implement an economic development utility rate in a fashion that allows it to be used as an aggressive strategy to incentivize business growth, recruitment, and retention. Competitive electricity rates are primary factors in site selection criteria, especially for the manufacturing industry. Favorable implementation of an economic development utility rate would make New Mexico more competitive in attracting jobs and investment, since 29 states currently offer some form of electric incentive rate.

### **Government Support of Private Sector Economic Development**

ACI supports the creation of economic development education for elected and appointed municipal, county, and state officials in order for them to make more informed decisions to help promote and spur economic development.

ACI supports state and local government economic development efforts, expenditures, and incentives. 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.

### **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 Economic Development Department's Office of Business Advocacy and its website 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.

### **State Incentives**

ACI supports:

- A greater accountability for all incentives, that includes due diligence on behalf of the state preceding release of public funds, and implementing performance-based measures so that the return on investment to the state in terms of revenues and employment is transparent and measurable;
- A gross receipts tax deduction for certain research and development activity that keeps and creates jobs for New Mexico;
- Incentive programs to grow and attract corporate headquarters; and
- 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.

### **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; and
- Strategically planned and implemented improvement of New Mexico's infrastructure necessary to conduct or attract business in all parts of the state, including 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; and
- Reviewing dated telecommunications laws that pose a barrier to increased investment in new technologies and broadband.

ACI opposes:

- Any effort to expand the scope of franchise fees beyond the cost-based use of the public right-of-way; and
- PRC price regulation in areas of the state where unregulated competitors exist.

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; and
- The appropriate reallocation of existing state resources to the state road fund to ensure adequate transportation infrastructure to support economic development.

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.

ACI supports the continuation of Amtrak's Southwest Chief and the creation of reasonable funding alternatives. Amtrak's Southwest Chief provides New Mexico's rural communities with economic development and job-growth opportunities.

### **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 broadband and other 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.

ACI supports the continued development of the implementation of a "solo worker" program to encourage the growth of independent professionals teleworking from rural communities.

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, to include Arts & Cultural Districts and the newly created Frontier Communities Program. MainStreet works throughout the state's downtown communities to create an economically feasible business environment through the preservation of historical and cultural locations.

**Small Business Innovation Research**

ACI supports tax incentive policies that support local access to the national laboratories located in New Mexico such as the NMSBA.

ACI supports technology commercialization programs such as a SBIR matching fund to bridge promising research through critical stages of development and encouraging business R&D investment in New Mexico.

**Liquor License Reform**

ACI supports the evaluation of the entire liquor license code for the recommendations to create a fair, equitable and responsible solution, without a disproportionate burden to those already owning liquor licenses.

**Criminal Justice Reform**

ACI supports an improved state and local criminal justice system that provides all necessary resources, reforms, and coordination to ensure first rate law enforcement, prosecutorial, judicial and correctional systems.

## **EDUCATION and WORKFORCE DEVELOPMENT**

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### **ACI SUPPORTS:**

- **A statewide plan that directs and measures the efforts of public colleges and universities to increase educational attainment and expand research and economic development efforts in communities across the state;**
- Quality child care and education programs that are focused on a child's success in school, measure child outcomes and encourage continued training opportunities and other initiatives to retain staff in early childhood settings;
- Coordinated high school and college workforce development programs that address New Mexico's needs such as STEM, skilled trades, healthcare, job search and soft skills;
- Ongoing workforce analysis to determine the number and level of skills needed for current employers, as well as those needed for future economic development, and widely disseminating this information;
- Educational initiatives that contribute to increasing the overall educational attainment of New Mexico's populace, including more efficient transfer between institutions and increased access to alternative educational pathways.
- Efforts to ensure fiscal and program accountability at all levels for state-funded programs, from early childhood through higher education, rooted in student outcomes;
- Creative and innovative efforts to reduce school dropout rate and alternative ways to assess the effectiveness of schools that are created to serve dropouts;
- A sustainable plan for the lottery scholarship to maximize the state's return on investment; and,
- Development of a teacher evaluation based on measurable student achievement and a policy that encourages continued training opportunities and training teachers.

### **ACI OPPOSES:**

- Any additional distribution from the NM Land Grant Permanent Fund.

## **EDUCATION and WORKFORCE DEVELOPMENT**

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### **Introduction**

ACI recognizes the importance of developing and maintaining strong education and workforce development systems. The state needs a foundation of high-quality early-care and education programs, as well as effective and innovative public schools (from Pre-K through grade 12) that graduate students prepared for secondary education and 21<sup>st</sup>-century jobs. The state must support a diverse system that provide a variety of options for our students and their families, including home school and non-public schools.

A strong community college system that works with public schools, home schools and non-public schools, the higher education system as a whole, and New Mexico employers to develop, train, and retain a globally competitive workforce is vital to the state's economic health.

ACI supports a world-class university system (public and private) that is demand-driven, responsive to the needs of New Mexico businesses and communities, fosters innovation, and facilitates entrepreneurship.

Without a quality education system, the state cannot recruit and retain quality employers and will not be able to compete economically.

### **Higher Education**

ACI supports the efforts by the Higher Education Department's leadership to create a statewide, long-term Higher Education Strategic Plan by the fall of 2017 that incorporates stakeholder inputs from the business, education and public sectors, with the goal of creating a broadly-supported agenda that will ensure the viability and effectiveness of the Higher Education system in New Mexico. ACI supports the goal of raising the attainment percentages of higher education certificates and degrees in the New Mexico workforce, as well as expanding research and development efforts, and coordinating federal and state-funded workforce development programs that serve local communities.

ACI supports increased funding for higher education and encourages a more efficient use and leveraging of the state's current investment to spur economic growth.

ACI continues to support one outcome-based funding formula that allocates funding according to institutional performance on student success and recognizes unique institutional missions. For example, incentives for ensuring successful transfer of students between institutions should be a priority.

ACI also cautions that we do not sacrifice the efficiency and effectiveness of two-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 four-year universities to maintain their integrity, mission focus, and student outcomes.

ACI supports the Higher Education Department's leadership in creating a statewide plan to direct and measure efforts of public colleges and universities to increase the number of New Mexicans with postsecondary credentials, expand research and development efforts, and coordinate federal and state-funded workforce development programs that serve local communities.

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

ACI supports attracting entrepreneurial students to New Mexico's public universities by allowing institutions to offer in-state tuition to international undergraduate students who are seeking bachelor's degrees in STEM or business fields and who are interested in starting businesses in New Mexico.

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

ACI supports the implementation of data systems to identify and publicize graduate employment, salaries, and other relevant information and to connect them with relevant k-16q data systems.

ACI supports increased career counseling services for high school and college students to improve student success.

ACI supports the creation of alternative pathways into higher education for rural, nontraditional, and economically disadvantaged students, including initiatives such as apprenticeships, internships, boot camps, and increased online offerings.

### **NMHED Trifecta**

ACI supports the Higher Education Department's continued implementation of the "Trifecta," which consists of common course numbering, revision of the General Education Core, and the creation of meta-majors. Based on national best practices and developed in conjunction with all of New Mexico's public post-secondary institutions, the Trifecta policy initiative will continue to help promote increased graduation rates while decreasing student time to degree and excess credit accumulation.

### **Early Childhood Care and Education**

ACI supports high-quality early childhood care and education programs as one of the best ways to invest in the next generation and to provide better opportunities for New Mexicans. ACI supports an early childhood care and education system that is data-driven, based on a mixed-delivery model, accessible to those children most at risk for school failure, of the highest quality possible, while utilizing the most efficient and effective use of resources. Early childhood care and education should be family-centered and responsive to the working family.

During the 2016 special legislative session when a majority of agencies received general fund reductions, the Early Childhood Services (ECS) program in the Children, Youth and Families Department was appropriated an additional \$1.5 million for home-visiting and childcare assistance services, which was continued in the FY18 appropriation. The appropriation for the Medical Assistance Program of the Human Services Department (HSD) included language to align home-visiting programs with CYFD, avoid duplication of services, and to the extent possible, leverage general fund appropriations with federal match money. This may allow CYFD and HSD to collaborate on a targeted Medicaid-funded home-visiting pilot

ACI opposes any additional distribution from the New Mexico Land Grant Permanent Fund (LGPF) 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.

- 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 supplanting general fund monies.
- 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.

ACI supports efforts to measure and publicly report on childhood care and education outcomes such as the annual home visiting report and the soon-to-be-published first annual child care data report. Before final adoption of any new rules affecting childcare programs, a review of regulatory actions and their effect should be conducted.

Finally, ACI supports investments in improving the preparation and qualifications of New Mexico's early childhood care and education workforce, including scholarships and financial incentives to encourage the recruitment and retention of highly qualified early childhood care and education professionals. Expansion of early childhood care and education efforts should be in tandem with a qualified workforce to implement high quality programming.

ACI's supports new policies and funding for early childhood that preserve and strengthen New Mexico's mixed delivery system of high-quality private and public provides. Additionally, the New Mexico QRIS should recognize



Montessori accreditation and Head Start Federal verifications and ratings when they align with FOCUS standards or meet the child outcomes intended by the FOCUS standards.

### **Dual Credit Courses**

ACI supports increased investment in higher education for dual credit courses which are proven to support high school and college completion. Higher education partners should receive workforce or additional state dollars to cover the costs of instruction on campus and by college faculty, understanding that increased access to dual credit courses is vital to closing the growing gap in middle-skilled workers and growing the state's economy.

Every additional dollar invested in the courses offered by higher education partners produces a \$13 return for four-year degrees and \$6 for career certifications or two-year degrees for New Mexico's families. Early access to college-level course work leads to reduced student loan debt and one to two years of additional income when graduates enter the workforce sooner.

Additionally, dual credit returns between \$1.12-\$1.28 for every \$1 to the state when students earn four-year degrees and around 71 cents for two-year degrees. Dual credit students need fewer remedial courses, which saves money, while graduates who enter the workforce faster add one to two years to their lifetime income, generating additional personal income and gross receipts taxes for the state.

### **Workforce Development**

ACI supports efforts to address the needs of undereducated, unskilled, and underutilized adult talent so that they have an opportunity to contribute to the State's economic well-being. Further, ACI supports a consolidated and streamlined workforce development system that effectively administers Job Training Incentive Program (JTIP), Rapid Workforce Development (RWDF), job training, and other workforce development programs as provided in the federal Workforce Innovation and Opportunities 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 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 supports the rapid workforce deployment program to provide priority training for new and expanding employers.

ACI supports leveraging federal and state investments in workforce training programs, both credit and non-credit, and particularly the state's High Skills program that supports local businesses that rely on community colleges to provide targeted employee training. ACI also supports funding used 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.

ACI supports continuation of and funding support for the nationally certified skills assessment system (WorkKeys), as approved by the Legislative Jobs Council, that measures work readiness in mathematics, reading, and other workplace competencies.

ACI supports soft-skills and job search training programs for New Mexico students and job seekers including such employability skills as computer and technical literacy, communication, customer service, teamwork, and time management.

ACI recognizes that in order for the state to better plan for worker shortages, ongoing supply-demand workforce 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, and widely disseminating this information. ACI supports the funding of such an effort. It is the first step in addressing the workforce needs of our state.

### **High School Equivalency Certificate (Formerly the Graduate Equivalent Diploma (GED))**

ACI supports efforts to increase high school graduation rates. However, ACI recognizes that for those who have not completed high school, a high school-equivalency certificate is the last alternative in allowing them to earn a slightly higher wage and perhaps open other opportunities for post-secondary education. The reality is that many individuals have limited high school equivalency certificate options to improve their lives and increase their opportunity. ACI supports providing students with multiple testing options to achieve a high school-equivalency certificate as this provides students with competitive pricing and alternative testing methods.

### **Fiscal 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, such as those promoted by Complete College America and its member states, to determine longitudinal results that can be shared with all stakeholders.

### **Efforts to Reduce Dropout Rate**

ACI supports investment in promising new models that are able to meet the needs of our future economy. We acknowledge that to some degree, the unique workforce development needs of our community are dynamic and our state should be investing in new, innovative school designs that are adaptable to an unknown future. ACI also supports alternative accountability metrics to evaluate schools that are designed to serve students who are off-track or have dropped out of school. Further, ACI supports the implementation of the New Mexico Graduates Now initiative and other New Mexico initiatives such as Mission Graduate. ACI supports efforts that are based on models of best practices including community school, early college high schools, expansion of Advanced Placement and career-tech programs of study. Such programs engage students by linking education with relevant work and skill-based experiences, benefiting individual students and impacting the future economic well-being of New Mexico.

ACI encourages the implementation of the Community Schools Act (HB 542, 2013) in recognition of the growing success of New Mexico Community Schools, including community schools in the Albuquerque Public Schools, Santa Fe Public Schools, Gadsden, and Laguna school districts. National data demonstrate how the creation of a support community around each school, including parents, businesses, healthcare, and other social service organizations, can improve student achievement.

### **Lottery Scholarship**

ACI supports necessary changes to the Legislative Lottery Scholarship Program to keep the program sustainable within the original funding source.

### **Next Generation Science Standards (NGSS)**

ACI supports the adoption of the Next Generation Science Standards (NGSS). These K-12 science content standards represent a national effort that has taken more than five years, overseen by the National Academy of Sciences, the National Science Teachers Association, the American Association for the Advancement of Science and Achieve. It represents a research-based, up-to-date set of standards that can be used by local educations to develop curriculum and classroom learning experiences that prepare students in the 21st century for college, careers and citizenship. In the deployment of these standards, ACI urges the Governor and the Legislature to develop a plan that addresses performance-based assessments, the additional classroom materials and resources necessary as well as the professional development required for teachers, to ensure successful deployment in New Mexico.

### **Teacher Prep**

ACI supports better accountability for teacher preparation programs. Ensuring our new teaching candidates and non-traditional teaching candidates, have high levels of content knowledge and proper preparation before entering the classroom will yield more effective teachers and better student outcomes.

### **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 intervention. 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 accountability metrics for charter schools that accurately reflect the individual charter's mission, as well as the flexibility and autonomy necessary to provide quality educational innovation along with the accountability standards that support effective educational outcomes for New Mexico students. ACI supports the replication and expansion of academically high-performing, high-demand charter schools, especially those that choose to locate in high-need areas.

### **Truancy**

ACI supports efforts and programs that aim to improve attendance, to then improve high school graduation rates. The Public Education Department (PED) reported 21.5 percent of high school students were habitually truant in FY14 (had 10 or more unexcused absences), a 5 percentage point increase over FY13. PED's analysis notes 16.3 percent of all New Mexico students were habitually truant in FY14, an increase of 3 percentage points from FY13. Improving student attendance can help improve student outcomes. A recent report, *The Importance of Being in School: A Report on Absenteeism in the Nation's Public Schools* states that: "Because students reared in poverty benefit the most from being in school, one of the most effective strategies for providing pathways out of poverty is to do what it takes to get these students in school every day. This alone, even without improvements in the American education system, will drive up achievement, high school graduation, and college attainment rates."

When reviewing a new state-by-state analysis of national assessment, data demonstrate that students who miss more school than their peers score lower on the National Assessment for Educational Progress (NAEP). The Report Card highlights the significant chronic absenteeism problems in New Mexico with 26% of the state's 4th and 8th graders reported missing three or more days of school in a month. The literature indicates that a combination of efforts to both prevent student absences and to provide interventions that support children in attending school may be most effective in reducing chronic absenteeism. For this reason, ACI supports continued funding for truancy prevention efforts by the Public Education Department and increased focus on the social and emotional needs of young people who are facing adverse circumstances which may undermine their ability to attend school.

## **ENERGY and EXTRACTIVE INDUSTRIES**

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### **ACI SUPPORTS:**

- **Policies that provide for the commercially viable development of energy infrastructure, including roads, oil and natural gas pipelines, electric transmission lines, energy storage, and electric and natural gas distribution systems that will benefit end-use markets, including such things as natural gas and electric vehicles and smart-grid technologies;**
- Creation of stable and predictable financing that allows energy companies to fund a move to sustainable energy generation sources and to prioritize long-term energy solutions that are affordable and considerate of New Mexico's environment.
- Ongoing efforts to implement the state's 2015 energy policy plan based on strong input from the business community and others;
- Standards or regulations, both on the state and federal level, based upon objectively verifiable and widely accepted science, which are commercially viable and encourage innovation, job creation, job retention, and emerging technologies;
- Continued growth of New Mexico's energy and extractive industries through reasonable government policies and practice that are commercially-viable and that encourage investment of private capital in New Mexico, and that result in private sector job creation;
- The development of promising new or continuing mineral extraction projects involving deposits of copper, garnet, potash, dolomite, zeolite, coal, uranium, rare earth elements, and other precious, specialty, and industrial minerals, as well as shale resources, all of which hold significant potential for bringing jobs and economic development to rural parts of New Mexico;
- Promotion of recycling and reuse of produced or otherwise available water, and removal of legal impediments to such activities; and
- State management of natural resources, including water and minerals, rather than local government regulation, which could be used to restrict or preclude development, to the detriment of the state.

### **ACI OPPOSES:**

- Legislation, regulations, or other initiatives that would impose unreasonable burdens on the oil and gas industry's responsible exploration, production (including hydraulic fracturing and venting and flaring activities), transportation, and processing/refining activities; and
- Legislation, regulations, designations and management plans that unreasonably curtail or limit access by energy and extractive industries to federal public and state trust lands for development.

## **ENERGY and EXTRACTIVE INDUSTRIES**

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### **Introduction**

New Mexico's energy and extractive industries, and related service businesses, are essential components of New Mexico's base economy, particularly in rural areas in need of job retention and revitalization. Their direct and indirect effects on our economy and standard of living are very significant. They provide and create new high wage jobs for their employees, whose spending in turn has significant secondary economic development and job creation effects in many other sectors of the economy. Further, the indirect influences on private industry development of all kinds would ensure a healthier balance between public and private economy segments in New Mexico as opposed to state and federal contracts and spending. Finally, it should not be forgotten that production of natural resources also generates substantial tax revenue for state and local governments. The development, adoption, and implementation of clear and specific rules that provide a stable, predictable regulatory environment for New Mexico's energy and extractive industries are critical to the economic success of the state.

### **Energy Infrastructure**

ACI supports policies that promote new and upgraded energy infrastructure, including natural gas pipeline, gathering and refining systems, electric transmission facilities and "smart grid" technologies, storage facilities and technologies, and maintenance and support roads, all to better facilitate generation and distribution systems for the reliable delivery of energy products to end-use markets within and outside of New Mexico, as referenced throughout the 2015 New Mexico Energy Policy and Implementation Plan.

The modernization and expansion of New Mexico's energy infrastructure is vital to fostering all manner of economic development opportunities for New Mexico.

### **State Energy Plan**

ACI supports ongoing efforts by the New Mexico Energy, Minerals, and Natural Resources Department to implement the state's 2015 Energy Policy and Implementation Plan. Strong involvement from the business community was provided to ensure the plan will focus on economic growth and job creation.

### **Economic Development**

ACI supports the development of promising new mineral extraction projects and related industries, involving such resources as humate, rare earth elements, garnet, Mancos shale deposits and copper flat, all of which create economic development opportunities for New Mexico. Humate, sometimes referred to as Leonardite or Carbonaceous Shale, is not a mineral, but rather an organic material which lies above coal seams with some of the world's best reserves located in the San Juan Basin of New Mexico.

ACI supports

- Continued growth of New Mexico's energy and extractive industries through reasonable government policies and practices, relative to other states, that encourage investment of private capital in New Mexico, resulting in private sector job creation;
- The development, utilization, and exploration of long-term sustainable, diverse and environmentally responsible energy resources that fully realize the tremendous potential of New Mexico's energy resources;
- 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;
- 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: secondary and tertiary oil and gas recovery techniques; small nuclear 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
- Sustaining sensible levels of ongoing production from New Mexico's significant coal reserves to allow coal's continued contribution to base energy loads through the development of clean coal and carbon sequestration technologies, secondary uses of CO<sub>2</sub> in "hothouse" agricultural applications, and regulatory initiatives and policies that recognize coal as one of several energy resources worthy of including in the energy mix acknowledged as necessary and desirable by the 2015 New Mexico Energy Policy and Implementation Plan.

### **Predictable Regulatory Environment**

ACI supports stable and predictable investment policies to allow the energy industry to transition to a cleaner more sustainable generation with greater certainty. Through this commitment, energy companies are looking for more predictable financing that promotes certainty in investment recovery and allows them to look at long-term solutions which will encourage the transition to alternative energy resources.

ACI supports the development, adoption, and implementation of clear and specific rules to create a predictable regulatory environment for the energy and extractive industries in New Mexico, as outlined in the 2015 New Mexico Energy Policy and Implementation Plan.

ACI supports legislation and regulation to clarify the jurisdiction of each state agency that has a natural resources and/or environmental function to provide a stable and more predictable regulatory environment for New Mexico's energy and extractive industries.

### **Regulation Within Reason**

ACI recognizes that government policies can play a key role in developing a diverse mix of energy resources including vital transmission and distribution systems to allow for intra-state and interstate utilization of our state's rich energy and mineral resources. Government policies will be effective if collaboratively developed with industry based upon a comprehensive understanding of science, economics and market mechanisms.

ACI supports:

- The state's advancement of clear and timely positions in response to federal designation and withdrawal proposals, drawing upon analyses of economic impacts that take into account loss of economic and mineral development opportunities and associated impediments to job growth; and
- Government policies that rely on market mechanisms and well-targeted, self-executing incentive programs rather than mandates and prohibitions and therefore opposes government mandates for, or prohibitions on, the use of particular energy sources by electric utilities or rural cooperatives.

ACI 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;
- Standards or regulations that are not based upon objectively verifiable and widely accepted science or that are so prescriptive as to stifle innovation and emerging technologies; and
- 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.

### **Recycling and Reuse of Impacted Waters**

ACI supports the promotion of, and removal of legal impediments to, the recycling and reuse of produced or otherwise available water. Laws and regulations encouraging the use of recycled and reused impacted waters would reduce reliance on fresh water aquifers and would spur economic development and job creation.

### **Copper Mine Rule**

ACI supports the new Copper Mine Rule which will strengthen the protection of groundwater compared to prior rules, while also providing a greater degree of predictability to encourage much needed economic investment in the state and create a regulatory framework that is consistent and reliable.

### **Support for New Mexico Uranium Production and Nuclear Power Generation**

ACI supports the resumption of permitting and licensing uranium production, milling, and waste operations in New Mexico. Uranium mining and environmental and worker safety standards have vastly improved since the 1970s. The New Mexico Mining Act and strict federal regulations provide protection to mining and milling employees, the public and the environment. Bonding requirements also now guarantee reclamation.

ACI also supports nuclear power as a dependable, affordable and clean source of energy. New Mexico is well-positioned to develop all phases of the nuclear fuel cycle and become a net exporter of nuclear-based energy. We have ideal conditions to support additional research, manufacturing and potential siting of small modular reactors in New Mexico, to house fuel pellet facilities and to pursue private research and development of safe waste-disposal technologies.

New Mexico should capitalize on its uranium resources and infrastructure to provide high-paying jobs, economic development and create additional sources of tax revenue in our state, while also performing a vital role in contributing to the global nuclear renaissance.

### **Hydraulic Fracturing**

ACI supports the continuation of responsible development of New Mexico's oil and gas natural resources using the well completion technique of hydraulic fracturing. New Mexico's oil and gas industries have a long-standing history of responsible use of hydraulic fracturing for production in the state. Hydraulic fracturing is a well-regulated technology that has been used for more than half a century, both in New Mexico and around the country. It is used on nearly every well being drilled today. Hydraulic fracturing operations have proven to be safe and protective of ground water, human health, and the environment.

ACI opposes legislation, regulations or other initiatives that are not based on sound, objectively verifiable, and scientific evidence and that would impose unreasonable burdens on hydraulic fracturing and related activities or other production enhancement technologies, or that would inhibit the use, reuse and recycling of produced waters and hydraulic fracturing flowback fluids, and other available non-potable water sources.

### **Support of Emerging Alternative Energy Development**

ACI supports alternative energy development, including renewable sources and energy efficiency, to supplement traditional energy industries. ACI supports further development of traditional resources and conservation to meet projected increased 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 justifiable cost limits, and that promote new employment opportunities without jeopardizing the growth potential of our considerable existing base of energy industry jobs statewide.

ACI supports appropriate fixed-cost recovery pricing by utilities that balance the economic ability of retail customers to install customer-owned renewable energy systems while still ensuring that customers pay for their use of the electrical grid.

### **Capital Outlay Reform**

ACI supports capital outlay reform and strong consideration of gubernatorial vetoes that take into consideration locally imposed limitations on tax revenue from severance of oil, natural gas, and minerals. ACI recognizes that production of natural resources generates substantial tax revenue for state and local governments and that locally imposed limitations on the development of extractive industries, such as those imposed in Mora County, potentially limit future severance tax revenue and expenditures for statewide capital outlay projects.

### **Federal Public Lands and State Trust Lands Development and Rights-of-Way**

ACI supports the development of a diverse mix of these industries in currently non-producing areas of New Mexico. ACI opposes legislation or regulation that would diminish access to or development of public lands by these industries. ACI supports a balanced, pro-business approach to rights-of-way valuations for Tribal, Federal, and State Trust lands. ACI supports a multiple use principle on public lands and that industry regulations should reflect this principle.

### **Research and Market-Driven Commercialization**

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

### **Early Childhood Land Grant Act**

ACI supports the creation of an early childhood land grant fund through transferring control of unleased federal subsurface mineral acreage beneath private land to the NM State Land Office.

### **Energy Investment**

ACI supports legislation that promotes a stable regulatory environment supportive of long-term investment and certainty.

## ENTREPRENEURSHIP & TECHNOLOGY

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### ACI SUPPORTS:

- **Incentivizing New Mexico's National Laboratories to create and continue community projects throughout the state, particularly those focused on technology transfer;**
- Incorporation of computer science and computational thinking into New Mexico standards of learning;
- Creation of an Apprenticeship Job Creation Tax Credit;
- Incentivizing individuals to invest in a new or existing New Mexico company;
- Opening the Angel Investment Tax Credit to out-of-state investors to increase the diversity pool of potential investors;
- Entrepreneurial mindset training as a component of the mandatory training for individuals drawing unemployment through the Department of Workforce Solutions;
- Continued investment in programs that focus on job creation, such as the Job Training Incentive Program (JTIP) and the Local Economic Development Act (LEDA); and
- Adoption of new technologies for broadband expansion.



## **ENTREPRENEURSHIP & TECHNOLOGY**

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### **Introduction**

According to the National Center for Rural Entrepreneurship, the Great Recession that began in late 2007 was a powerful call to action. This recession led to business failures, reshaped markets, and threatened the future of many existing businesses. There is a growing recognition that effective economic development now requires a focus on existing and new entrepreneurs.

The state of New Mexico can help communities build a prosperous future through the development of entrepreneurship. Entrepreneurial development is a necessary component of any economic development strategy and is the most promising strategy for rural and small metro areas. Creating an entrepreneurial environment requires a “growing our own” mentality and a systems approach of collaboration that connects services, capital, and talent.

For our state to grow and prosper, economic development must place equal emphasis on creating and growing new businesses in New Mexico and recruiting businesses from outside New Mexico. This includes helping existing businesses grow and prosper.

### **Coding Courses in Schools**

ACI supports the incorporation of computer science and computational thinking into New Mexico standards of learning. Inclusion of computer science and computational thinking would require the Standards of Learning established by the Board of Education and the program of instruction for K-12, developed and implemented by each local school board, to include computer science and computational thinking, including computer coding.

Computer science opens more doors for students than any other discipline in today’s world. Learning even the basics will help students in virtually any career — from architecture to zoology. Just as we teach students how to dissect a frog, or how electricity works, it’s important for every 21st century student to have a chance to design an app or an algorithm, or learn how the Internet works.

A 2015 Gallup poll found that 9 out of 10 parents want schools to teach computer science – so our children grow up not just using technology but learning how to create it. In fact, among low-income families, the majority of parents and teachers believe the computer science should be required for students to learn.

A survey of high school students shows that computer science ranks among students’ favorite subjects, behind only graphic design and performing arts. Now that computing is the No. 1 source of all new wages in the U.S., it’s important that every child should have access to learn computer science in schools.

### **Talent Development/Retention**

ACI supports the creation of an Apprenticeship Job Creation Tax Credit focused on information technology job creation. The creation of such a credit is an effort to encourage such programs as the New Mexico Information Technology Apprenticeship Program (NMITAP).

ACI supports inclusion by the New Mexico Department of Workforce Solutions of entrepreneurial mindset training as a component of the mandatory training for individuals drawing unemployment. This would expand unemployment training to go beyond simply looking for a job, and include how to create a job.

ACI supports entrepreneurship training at an earlier age to inspire students who might not otherwise consider starting their own businesses to do so. ACI also supports the creation of entrepreneurial internships in higher education institutions which will support students and give them an opportunity to learn, build, and grow an entrepreneurial mindset while receiving course credit.

ACI supports efforts by the public and the private sector that effectively match New Mexico’s current talent pool with prospective job openings.

### **Access to Capital**

One barrier to entrepreneurship in our state is the growing difficulty of obtaining capital for proof-of-concept, early stage, and later stage companies.

Incentivizing individuals to invest in a new or existing New Mexico company and rewarding New Mexico

entrepreneurs and their employees for taking risks is critical to building a healthy entrepreneurial ecosystem. Therefore, ACI supports:

- Making the sale of New Mexico businesses exempt from New Mexico capital gains tax
- A capital gain reinvestment tax credit to incentivize New Mexicans with capital assets to reinvest their capital into fellow New Mexico companies.

ACI supports enticing out-of-state investors to invest in New Mexico and increase the diversity pool of potential investors, the Angel Investment Tax Credit should also be opened to out-of-state Angel investors. Providing a mechanism for greater private investment into companies in our state will enhance job growth and retention.

ACI supports a review of current policies by the SIC to place greater priority on funding for in-state investments and job creation. Preference should be given to New Mexico investments when all other factors are equal. ACI supports the New Mexico Economic Development Department's new initiative known as the New Mexico Catalyst Fund, a \$20 million fund that will support the maturation of seed- and early-stage companies. This injection of capital will spur job and economic growth and yield positive returns.

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

ACI supports:

- Funding the Certified Business Incubator Program to help businesses start, grow, succeed, and remain in our communities as such funding will provide a high return on investment for our state;
- Funding of the Small Business Development Centers, including support for their work to develop solopreneurs;
- Programs and incentives to encourage New Mexico companies to do business with each other;
- A study to determine the impact of phasing in the GRT rate for start-up companies; and,
- Streamlining the application process to incorporate.

### **Soloworkers**

The Legislative Jobs Council has identified solo work as a means to improve the state's rural and urban economic by creating and sustaining economic-base jobs and expanding business owned and operated by solo workers engaged in economic-base jobs.

ACI supports:

- Efforts to fund a solo workers program;
- A payroll tax credit for out-of-state companies that have telecommuters living in New Mexico; and
- Infrastructure development, including broadband, that will support the development of solo-workers across the state.

### **Broadband**

ACI supports adoption of new technologies for broadband expansion. There are new and developing technologies that will help the entrepreneurial community across the state, especially in rural communities.

### **Technology Commercialization**

ACI supports the development of effective partnerships between New Mexico's Institutions of Higher Education, local economic development organizations, the private sector, 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 Established Program to Stimulate Competitive Research (EPSCoR).

ACI supports the tenets set forth in the *Technology Research Collaborative Act* (HB 562, 2013 Regular Session), as detailed in the (2015) State Science and Technology Plan, *Innovate! New Mexico*, and encourages the Governor and Legislature to work together to move this important initiative tied to New Mexico long-range strategic investments forward.

**Small Business Compliance with DoD Cybersecurity Contract Requirements**

The Department of Defense (DoD) is implementing a new contract clause in all contracts, effective January 1, 2018, that will require companies the handling of electronic data to be compliant with a very vigorous set of cybersecurity standards (Clause 252.204-702, implementing NIST SP 800-171r). The 110 controls that are required to be put in place under this new requirement will pose a significant cost burden for small businesses that they have to bear themselves (compliance will not be cost-reimbursable under most contracts). ACI supports any assistance that the State of New Mexico can give to small businesses that have DoD contracts (or subcontracts) through its Economic Development Department, similar to, for example, the existing ISO-9001 program that was implemented a few years ago.

## ENVIRONMENT

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### ACI SUPPORTS:

- **The elimination of the State Total Suspended Particulate (TSP) standard and re-drafting of the state air quality regulations consistent with the National Ambient Air Quality Standards, to make New Mexico competitive with other jurisdictions and alleviate unnecessary compliance costs;**
- Regulatory and administrative process reform that eliminates delays in permit processing and promotes consistent, reasonable administrative processes and enforcement procedures;
- State management of natural resources, including water and minerals, rather than local government regulation, which could be used to restrict or preclude development, to the detriment of the state; and
- Evaluate relief measures for industry in Dona Ana County, given ozone NAAQS non-attainment designation due to pollution transport from Juarez, Mexico.

### ACI OPPOSES:

- Authorizing or funding non-governmental entities and private citizens to enforce state environmental regulations and permit requirements;
- Authorizing government denial of environmental permits, including air quality construction and operating permits, based on a company's past compliance history;
- Regulations that are more stringent than the federal regulations, unless specifically authorized by the Legislature to meet unique state conditions or concerns; and
- Decisions concerning threatened or endangered species, both federal and state, that are not based on sound, objectively verifiable, scientific evidence.

## **ENVIRONMENT**

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### **Introduction**

ACI supports protecting public health and the environment through reasonable, economically feasible, and carefully considered programs that are developed and implemented based on clear statutory authority, sound, objectively verifiable science, and careful consideration and accommodation of state economic development priorities. ACI supports efforts on the state and local level that are necessary to assure that EPA's new ozone National Ambient Air Quality Standard (NAAQS) non-attainment designations are representative of conditions in those areas. Objective scientific evaluations establishing a cause-and-effect relationship should precede development of environmental regulatory and permitting programs.

### **The TSP Standard and National Ambient Air Quality Standards**

Currently, New Mexico and Albuquerque/Bernalillo County regulations include a Total Suspended Particulate (TSP) ambient air quality standard. This standard is antiquated, does not reflect current science regarding impacts to public health and the environment, and does not reflect or aid in assuring attainment of the National Ambient Air Quality Standards (NAAQS) for particulate matter. In fact, there has not been a TSP NAAQS in over 20 years because scientific studies indicate that impacts to human health and the environment are caused by particles less than 10 micrometers in size rather than TSP. However, in New Mexico, the TSP standards remain in place, imposing unnecessary and substantial compliance costs on New Mexico businesses. To make our state competitive with other jurisdictions and alleviate unnecessary compliance costs, ACI supports the elimination of the TSP standard and the re-drafting of the state air quality regulations congruent with the NAAQS.

ACI supports an evaluation of potential relief measures for industry in Dona Ana County given pending ozone NAAQS non-attainment designation. Dona Ana County's proximity to Juarez, Mexico negatively affects its attainment designation due to Mexico's lack of enforcement and lax environment air quality regulations.

### **Regulatory and Administrative Process Reform**

ACI supports regulatory and administrative process reform that improves timely permit processing and promotes consistent, reasonable administrative processes and enforcement procedures. 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 placing a reasonable limit on fines and penalties that state or local governments may assess without court action.

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 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. The current practice of holding two formal evidentiary hearings for permitting is inefficient, increases the cost to the applicant and other affected parties of participating in permitting decisions and unreasonably delays permitting decisions.

ACI supports replacing the internal hearing officer system for administrative proceedings with hearing officers independent of the agency.

### **Predictable Regulatory Framework for Environmental Issues**

ACI supports the development, adoption, and implementation of clear and specific rules to create a predictable regulatory framework dealing with environmental issues in New Mexico. Such a framework is needed to retain and attract investment of private capital to grow these industries and expand job growth in the state.

### **State and Local Environmental Regulation**

Where concurrent federal, state or local regulations are appropriate, state, and local restrictions should be no more stringent than federal regulations on the same subject. In the case of resource management, 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.

### **Threatened or Endangered Animal and Plant Species**

All decisions concerning threatened or endangered species, both federal and state, must be based on sound, objectively verifiable, scientific evidence, and federal agencies must follow all applicable laws and processes to establish compliance measures.

ACI opposes the artificial increase of in-stream flows for the purpose of ESA and water quality compliance.

ACI opposes the introduction of any new species into New Mexico that is currently listed or proposed for listing on the state or federal threatened or endangered species list.

### **Climate Change and Greenhouse Gas Regulation**

If greenhouse gas emission legislation is adopted; it is most appropriately done at the federal level in order to avoid a disproportionate impact to New Mexico's economy

ACI supports New Mexico taking no action to develop a state plan for regulating greenhouse gas emissions from existing power plants under EPA's 111(d) while the rule is stayed pending judicial review.

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.

### **Natural Resources Trustee Claims**

ACI opposes 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, as broader authority to assert claims would place an undue and uncertain liability risk, legal costs, and potential new financial burdens on affected businesses in New Mexico. The trustee's authority should be limited to pursuing claims under federal law.

### **Returning Previously Contaminated Property to Productive Use**

ACI supports the passage of uniform environmental covenants legislation providing the legal infrastructure for creating, administering, and enforcing land use controls on properties during and after completion of remediation. This would allow owners of the impacted property to undertake responsible risk-based remediation approved and enforced by the regulatory agency overseeing the remediation, and to then transfer or sell the property subject to the approved use controls. These restrictions have been used effectively throughout the United States.

### **Environmental Equality**

Environmental regulation and permitting should not override or be a substitute for existing local land use planning and zoning laws, which have taken into account social and demographic concerns. Environmental regulation and permitting should not dictate the particular use of land, but should instead require only that the use comply with applicable environmental standards.

## HEALTHCARE

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### ACI SUPPORTS:

- **Maximization of federal funds through actions such as fully funding the state Medicaid program and Safety Net Care Pool;**
- Implementation of evidence based, transparent managed-care and care-management programs that promote appropriate use of medicines and reduce inappropriate utilization of limited healthcare resources, and, wherever possible, create electronic processes that will allow prior authorization to proceed expeditiously so that it does not adversely impact patient care;
- Enhancement of economically viable programs that ensure access to health care and coverage for all New Mexicans;
- Taking aggressive steps to ensure an adequate provider workforce to meet the increasing demands on the health care system and avert a looming crisis in provider access, particularly in areas of primary and behavioral healthcare;
- Efficient operation of the New Mexico Health Insurance Exchange with strong involvement from the business community;
- Healthcare management programs and policies to minimize premium cost impact on individuals, businesses, and carriers, and promoting and investing in processes that improve the management of chronic diseases/conditions in an outpatient setting to decrease unneeded hospitalization;
- Improvements to the health care system and Centennial Care which ensure cost-efficiency with sustainable provider funding and re-aligned incentives;
- Take a phased approach to replacing fee-for-service medicine with more effective, value-based, alternative payment models;
- Outcome-based health care that promote the best outcomes for individual patients while controlling costs and minimizing the adoption of burdensome regulatory policies;
- Providing sufficient reimbursement rates for federally funded programs to avoid cost-shifting to other publicly funded and commercial insurance plans; and
- Initiatives that promote the appropriate use of opioids and other controlled substances to decrease the risk of dependency and combat overdose, by taking a multi-disciplinary clinical approach, which may include the use of evidence based medically appropriate forms of pain-management.

### ACI OPPOSES:

- Additional financial burdens on the health care industry, which ultimately lead to increased patient costs. The state needs to make legislative and regulatory decisions that focus on efficiency and effectiveness, while minimizing provider job loss and negative impacts to the provider infrastructure.

## HEALTHCARE

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### Introduction

ACI supports measures that help ensure access to healthcare and health insurance coverage for all New Mexicans, maximize federal funds, are sustainable, transparent, and which promote a strong and high quality health care provider system and workforce.

### Safety Net Care Pool

While the cost of indigent care to hospitals may be reduced through the Medicaid Expansion, the Safety Net Care Pool is currently underfunded, which fails to maximize federal funding for New Mexico. All hospitals are reviewing what services to cut and/or modify; if the Safety Net Care Pool is not properly funded, the range of services provided locally will constrict more dramatically. A successful negotiation and compromise between the state, counties, hospitals, and other stakeholders is needed to avoid an economic and healthcare crisis across New Mexico.

ACI supports:

- The successful negotiation between all stakeholders for a positive resolution regarding the funding of the Safety Net Care Pool;
- Exploring all opportunities to retain Safety Net Care Pool funds for healthcare services;
- The establishment of a task force to re-evaluate the Safety Net Care Pool, local health department programs, and other programs to determine if there are ways the existing system can be improved and modernized to result in more efficient use of funds; and
- The formation of programs to maximize healthcare coverage and access to care.

### Maximization of Federal Funds

ACI recognizes the importance of federal funds to New Mexico's healthcare system and to the overall economy. New Mexico should take the following steps to maximize federal funds and the impact on the economy:

- Improve the Medicaid eligibility system and process to ensure timely enrollment and provider payments;
- Pursue all available federal grant funding for healthcare services, provider infrastructure and training, Marketplace activities, and the Health Information Exchange;
- Support full funding for the Medicaid program and utilize all possible mechanisms to access and leverage additional federal funds; and,
- Identify stable and sustainable sources of funding for the Medicaid match.

### Provider Workforce

- Provide for adequate training, recruiting and retaining of New Mexico's healthcare workforce, with a focus on primary care and behavioral health providers.
- Develop economic incentives to recruit and retain providers throughout the state, with an emphasis on underserved areas.
- Aggressively fast-track additional provider training programs, including for family medicine residencies, rural residencies, nurses, and mid-level providers.
- Increase funding for loan repayment programs for providers willing to serve in underserved and rural communities.
- Review existing funding mechanisms for post-secondary education of healthcare professions.
- Promote improvements to provider licensing and credentialing requirements in order to enhance provider recruitment efforts in conjunction with affected business entities.
- Require medical licensing boards to allow reciprocity of licensing and training from other states.
- When possible, providers should be encouraged to use in-state resources to maximize opportunities for New Mexicans.
- Enhance primary care access for New Mexicans.
- Continue the differential for providers who are working in rural areas.

### System Improvements

ACI recognizes the necessity of reform in the health care system. Reforms must improve patient outcomes, promote wellness and provide cost efficiencies. System improvements and reforms must continue to be made in the public and private healthcare systems and should:



- Maintain a strong network of providers by offering realistic reimbursement rates that take into account the rising cost of labor as well as state and federal mandates;
- Improve access to care for underserved areas through mechanisms such as telehealth and the full utilization of all providers' potential scope of practice;
- Reduce legal and regulatory obstacles which drive up costs and which inhibit the adoption of cost-saving practices (e.g. provider liability issues, HIPAA standards, federal Medicaid requirements, state processes for developing and enforcing regulations, staffing mandates);
- Minimize additional layers of state and federal mandates on hospitals, physicians, and other providers on safety and other regulatory issues. Streamline information reporting systems and requirements to avoid duplication and cost while providing data to promote efficiency and patient safety;
- Continue to promote realigned provider incentives such as through Patient Centered Medical Homes and incentivize best practices and quality-of-care metrics including reimbursement policies that encourage the use of the most cost-effective providers and treatment modalities;
- Improve chronic disease management programs, i.e. personal health coaching and care coordination for the 5% of beneficiaries who drive 50% of medical utilization;
- Implement culturally appropriate wellness and prevention programs and increase personal responsibility by educating individuals about the cost of their medical treatment and rewarding improved lifestyle choices;
- Expand use of information technology to reduce administrative costs and promote efficiencies, including personal health records, e-prescribing, clinical decision support systems, public health systems, and telehealth;
- Reduce criminal fraud and abuse with effective rules and enforcement consistent with due process principles;
- Ensure ongoing viability of New Mexico providers, especially those hardest-hit by federal cuts through the ACA, Medicare, and sequester activities;
- Not impose additional financial burdens on the healthcare industry which ultimately lead to increased patient costs;
- Support legal reforms (including reasonable tort reforms) that enhance medical providers' abilities to deliver cost-efficient and safe services;
- Involve the business community in appropriate SIM grant committees and subcommittees; and
- Encourage healthcare facility and infrastructure build out in rural communities.

### **Behavioral Health**

ACI recognizes that successful management and treatment of behavioral health issues and substance abuse problems are a critical component of a healthy workforce. Unmanaged behavioral health problems are as debilitating to a workforce as unmanaged physical health problems and contribute to underemployment, unemployment and high dependency on government programs and government health coverage in New Mexico.

ACI therefore supports:

- Investment in and the development of a robust behavioral health system and network of providers in New Mexico; and
- The dedication of resources to expand access to behavioral health services.

### **Healthcare Insurance Exchange**

ACI supports the efficient operation of a healthcare insurance exchange, including leveraging federal resources to ensure coverage options for all New Mexicans. ACI recommends the following:

- Continued involvement of the business community as a key partner in Exchange activities including strong roles in outreach and education;
- Monitor and evaluate the financial efficacy of enrollment and outreach activities, as well as develop a plan for financial sustainability of those activities after federal funds are no longer available;
- Strong coordination between Medicaid and the Exchange to ensure efficiencies and to avoid duplication of effort and costs and to optimize synchronization of enrollment and outreach activities;
- Maximize use of one-time federal funds and minimize ongoing costs of the Exchange to ensure the least impact on premium rates on the Exchange. Keep Exchange expenses as lean as possible to allow sustainability at reasonable costs;

- Support continued development of the Exchange as a market-based solution and oppose models such as Single-Payer or other “public plan” models that focus on price control; and
- Given recent federal reports regarding the viability of SHOP programs, explore options and alternatives to SHOP that may be more financially sustainable given low employer take-up of SHOP.

### **Healthcare Transparency**

Transparency in healthcare can help provide consumers with access to information, including pricing information, so that they can make informed, value-based purchasing decisions. ACI therefore supports:

- The continuation of and greater accessibility to existing transparency databases such as the Hospitalization Inpatient Discharge Database to promote efficiency and patient safety;
- Streamlined reporting systems and requirements to avoid duplication and cost increases; and,
- Strong representation from the business community on the Health Information System Advisory Committee.

ACI opposes:

- Legislation that would interfere with the health care industry’s ability to enter into privately negotiated contracts with health care providers.

## **REGULATORY and GOVERNMENT ACCOUNTABILITY**

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### **ACI SUPPORTS:**

- **Expansion of the Administrative Hearing Office to conduct hearings on administrative adjudicatory actions arising from all state agencies using its own qualified, professional, objective, and independent hearing officers or administrative law judges;**
- Expedient implementation of HB 58 (2017) creating a uniform system for agency rulemaking, including the Attorney General's adoption of default rules for agencies to use in rulemaking proceedings in the event an agency does not have their own set of rulemaking procedures, and amending existing rulemaking requirements to conform to HB 58;
- Creation of uniform and consistent agency adjudicatory procedures across all state administrative agencies, boards, and commissions to assure fairness and due process,
- 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;
- Providing PRC commissioners with adequate advisory professional/technical staff; and
- Reformation of the plural executive system, by moving certain elective official functions to existing executive agencies and replacing certain elective officials with appointees.

### **ACI OPPOSES:**

- Duplicative, ambiguous or unnecessary regulations or actions, including unnecessary occupational licensing requirements, that could increase the cost of doing business in New Mexico;
- Active participation by the Attorney General as a party in litigation, rulemaking and other agency or commission decision-making, unless specifically authorized by the Legislature; and
- The use of ballot initiatives to bypass local elected officials and the expenditures of public funds for local elections as a means for public polling.

## **REGULATORY and GOVERNMENT ACCOUNTABILITY**

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### **Introduction**

ACI supports measures that assure 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.

ACI supports the development, adoption, and implementation of clear and targeted rules to create a predictable regulatory environment in New Mexico. Such an environment is needed to retain and attract investment of private capital to grow industry and expand job growth in the state. Examples of regulatory revisions that embody these principles include the Water Quality Control Commission's Copper Mine Rule and Dairy Rule. ACI supports the development and implementation of these rules and others that achieve a predictable regulatory environment.

### **Independent Hearing Officers**

Adversarial administrative hearings in most New Mexico agencies are currently administered by staff of the agency charged with the decision. Generally, the applicable statutes set no qualifications for staff conducting the hearings. The lack of independent forum and qualifications for staff creates mistrust of the process and the decisions reached. To eliminate that mistrust, ACI supports the phased-in expansion of the authority of the Administrative Hearings Office, which was created in 2015, to conduct adjudicatory hearings with its own qualified, professional, objective, and independent hearing offices or administrative law judges for all state executive agencies, exclusive of actions setting or regulating prices for goods and services rendered

### **Administrative Rulemaking**

In 2017, the Legislature passed HB 58, which creates a uniform system of state agency rulemaking, including public notice public hearings. HB 58 requires agencies to adopt rules for rulemaking that conform to the minimum requirements of the statute and require the Attorney General to adopt default rules that will apply in the absence of agency-specific rules. ACI believes that state agencies, including the Attorney General, should move expeditiously to implement HB 58. In addition, ACI recognizes and recommends that specific enabling or other legislative acts that authorize or require an agency to deviate from the uniform procedures should be amended to minimize or eliminate such departures.

Because creation or revision of rules can impose significant costs on those subject to the rules, rulemaking procedures should require an assessment of the rule's economic and employment impact, particularly on small business.

### **Administrative Adjudicatory Processes**

ACI supports enactment of statutory provisions that: (1) afford uniform and consistent process for agency rule-making and adjudicatory action across all administrative agencies, boards and commissions; (2) require specific legislative authority to impose or use any fees, assessments or penalties collected by an administrative agency, board or commission; and (3) 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 applicable law.

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

ACI supports requiring agencies to provide notice of the expected schedule for a decision on a proposal.

### **Administrative Enforcement Process Reform**

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

Statutes authorizing agencies to impose civil penalties for violation of regulations do not limit the aggregate amount the agency may assess without court action. ACI believes that major civil penalty sanctions should only be imposed through the judicial process. To accomplish this, ACI supports placing a reasonable limit on fines and penalties that state or local government agencies can assess in administrative enforcement actions.

### **Public Regulation Commission**

ACI believes that providing commissioners with the necessary technical/advisory staff would enhance the decision-making process and lead to better decisions. Thus, ACI also supports the creation of an advisory staff, subject to ex-parte rules, 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.

### **Reformation of the Plural Executive System**

New Mexico has a “plural executive” that spreads executive branch authority among the governor and ten other executive officials that are chosen in statewide elections. While the governor heads the Executive Branch of New Mexico state government, the powers are not absolute as other elected officials maintain executive powers. Officials in the executive branch can serve two consecutive, four-year terms.

ACI supports reforming the plural executive system by moving certain functions to existing executive branch agencies and replacing the election of certain officials with appointees.

The division of power within the executive branch continues to be criticized by scholars and political practitioners. Different executives and their agencies often pursue different goals and agendas. ACI supports amending the New Mexico State Constitution to eliminate certain offices, such as the Secretary of State and State Treasurer, and consolidating those functions into existing agencies. ACI further supports amending the Constitution to replace certain elected officials, such as the PRC, with appointees. ACI believes that these actions will result in an organized, more qualified, and stable government and regulatory environment in New Mexico.

### **Occupational Licensing**

ACI believes that occupational licensing and licensing requirements should be required only when necessary to protect the public from exposure to serious threats to health, safety, or finances. Such licensing should not principally protect existing licensees from competition. Unnecessarily strict licensing requirements raise costs to consumers and deprive some people of the opportunity to work.

ACI supports a study, by an appropriate interim committee, of the New Mexico occupational licensing laws and the regulations issued under them. The committee should consider and report which of those laws and regulations principally protect the public and which, if any, principally protect existing licensees.

### **Limit Attorney General Involvement**

ACI opposes active involvement by the Attorney General, without specific statutory authority, in litigation, rulemaking and other policy decisions delegated to another executive branch agency, as an improper exercise of authority and expenditure of funds, and contrary to public policy. In ACI's view, it is the Legislature's choice on which executive branch agency to delegate quasi-legislative rulemaking and policy authority, and not within the Attorney General's authority to interpose his judgment in that process.

### **Balanced Appointments**

ACI supports the election or appointment of 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.

### **Timely Decisions**

ACI supports measures, including mandatory notification to the appropriate authority when deadlines are not met, to promote prompt action by administrative bodies. 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 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.

### **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 coherently address statewide priorities. ACI believes that

the creation of an open, public process for establishing and funding multi-year statewide capital project priorities is essential to a more fiscally responsible expenditure of public funds.

### **Government Accountability**

ACI supports reviewing and amending state laws to assure transparency and accountability for government and public officials to create a government and regulatory climate conducive to business investment, economic development, and job creation.

ACI supports fair, reasonable, and consistent reporting requirements that disclose contributions and gifts to governmental officials and candidates for office and disclose how contributions are spent. Until these disclosure requirements are addressed, any type of enforcement efforts will continue to remain discretionary and arbitrary, regardless of whether enforcement is conducted by an elected official, agency, or commission.

### **Constitutional Convention or Revision Commission**

ACI supports a new state constitution or the amendment or partial revision of the existing state constitution upon recommendation of a legislatively-created independent revision commission. Furthermore, ACI recommends that the constitutional convention or revision commission consider creating a redistricting commission, and changing the judicial selection and retention process. A constitutional convention or revision commission is preferable over a piecemeal approach to constitutional amendments. According to New Mexico Legislative Council Service, during the 59 regular sessions in the period between 1951 and 2016, a total of 1,890 proposals to amend the constitution were introduced by legislators. Of that number, 209, succeeded in passing the legislature and were submitted to the voters for ratification.

### **Judicial Reform**

The New Mexico Constitution was amended in 1988 to provide for the merit appointment of appellate and district judges. That amendment also provided for a contested election after appointment, with retention elections thereafter. Recent experience has shown that the existence of contested elections has undermined the merit selection process and made judicial races partisan, resulting in many cases with less qualified judges. ACI supports replacing contested elections for judicial appointees with retention elections in all cases.

## TAXATION

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### ACI SUPPORTS:

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

### ACI OPPOSES:

- **Mandatory unitary combined reporting;**
- Gross receipts tax pyramiding and legislation that aggravates such pyramiding;
- Shifting of property tax burdens from residential property to commercial property that could result from caps on residential valuation or tax rates; and
- Taxation of foreign source dividends for corporate income tax filers.

## **TAXATION**

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### **Introduction**

The most important aspect of business taxation in New Mexico is that it is more burdensome than most states, consistently ranking the state in the bottom half (or worse) of virtually all comparative analyses of business tax climates. Proposals to alter New Mexico's taxation of business must be evaluated in the context of the entire tax code as it affects business. ACI recognizes that any serious tax reform will decrease taxes for some while raising taxes for others. The private sector needs to lead the efforts to reform the tax code through collaborative efforts. The plan must include an incremental approach to implementation.

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

- 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.

### **Sound Tax and Fiscal Policy**

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. If after all possible budget reductions have been made and tax increases are still necessary, they should be broad-based, simple to administer. Further, they should not be made without consideration of 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'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;
- Is competitive with other states so as to maintain and encourage rather than deter private sector investment and job creation in New Mexico; and
- Periodically reviews tax incentives to ensure effectiveness and return on investment.

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; and
- Creates a budget based upon spikes in revenue sources to fund permanent programs.

### **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 less competitive with other states. This problem increases as rates increase over time. Solutions to business tax pyramiding should be broad-based and systemic.

ACI supports:

- Eliminating the tax on most business purchases including business services and related inputs and all temporary staffing services; and
- Repeal of the tax credit provided by Section 7-9-96 NMSA, passed in 2005, which has been ineffective to address pyramiding.

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 the corporate income tax. Until the Corporate Income Tax is abolished, however, ACI supports continued reductions in the maximum corporate tax rate and the expansion of the elective single sales factor in the multi-state tax apportionment formula for corporate income tax, as provided by the amendments to §7-2A-5 and §7-4-10 NMSA 1978 enacted in 2013. The single sales factor formula will provide an incentive for headquarters operations and manufacturers of any size who make sales outside New Mexico, whether new or existing, to invest in additional plant, equipment, and jobs here. The existing three-factor system is 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 (e.g., revenue importing business activities). 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; and
- Eliminating the corporate income tax sales factor "throw-back" rule to encourage producing and exporting products from New Mexico (single sales factor apportionment election for headquarters operations and manufacturers removed throw-back rule under phased-in implementation).

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; and
  - Be difficult to comply with and administer and target multi-state businesses.
- Taxation of foreign source dividends. Currently, New Mexico is one of only three states without a statute, regulation, or rule allowing an exclusion for foreign source dividends reported by corporations filing on a combined or consolidated group method. Although New Mexico permits separate entity corporate filers to exclude all or a large portion of their foreign source dividends from the corporate income tax base, no formal exclusion is permitted to corporations filing on a combined or consolidated group method. ACI supports statutory or regulatory provisions granting corporations filing on a combined or consolidated group method the same exclusion for foreign dividends currently provided to separate entity filers.

## **Property Tax**

Legislation is needed to equalize and stabilize, in a revenue neutral manner, the property tax burdens on residential and commercial properties. The cap on residential property tax valuations creates inequities in the property tax system that should be eliminated.

ACI supports reasonable legislation or regulations clearly defining functional and economic obsolescence for property tax purposes.

ACI supports development of a legislative framework to allow for tax abatement incentives in certain geographic areas in order to encourage private development, re-development, and investment in real property without adding additional costs to local governments.

## **Specialty and Excise Taxes**

ACI opposes punitive or excessive specialty or excise taxes narrowly focused on businesses that provide specific types of consumer products.

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 incentive policies to attract, grow 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.

The Taxation and Revenue Department should administer and evaluate applications for tax credits and other economic development incentives in a consistent and fair manner that is in accordance with state law and regulations. Further the state should adopt a uniform model for structuring tax credits so that technical requirements of the applications are reviewed and approved by the agency or agencies with the most expertise in the subject matter and remaining processing by the Taxation and Revenue Department.

Tax expenditures proposals (and extensions of existing tax expenditures), implemented to facilitate economic development should be rigorously evaluated, and substantial evidence demonstrating the expected net economic benefits should be the basis for approval of such tax expenditures

### **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:**

- 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 with respect to all tax programs including tax credits 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;
- Detection and prosecution of tax fraud while respecting and protecting the rights of taxpayers;
- 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;
- Continued reductions in state expenditures to proportionately bring New Mexico’s budget in line with surrounding states; and
- Adequate enforcement to ensure that out-of-state businesses be required to pay the New Mexico gross receipts tax.

### **Indian Lands Double Taxation**

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

## **WATER and LAND USE**

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### **ACI SUPPORTS:**

- **The creation of public-private partnerships to develop water infrastructure that will provide public benefits, such as economical infrastructure project delivery and water conservation;**
- Office of the State Engineer (OSE) in refining policies to provide clarity in the OSE's application of administrative procedure;
- Efforts to promote Wildfire and Water Source Protection and urges the Legislature and Administration to work together and with diverse stakeholders to identify recurring funding for forest and watershed restoration;
- Updating the New Mexico State and Regional Water Plans with strong involvement from the business community;
- A regulatory structure that encourages the development of new water sources and the infrastructure to support those sources;
- Allowing the transfer of water across major basin boundaries when it meets the conditions promulgated by the Office of the State Engineer (OSE);
- 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; and
- Active Water Resource Management (AWRM) rules which only include those limited measures necessary to protect senior water rights and compact delivery requirements.

### **ACI OPPOSES:**

- Federal regulatory initiatives and directives that threaten the authority of the states to govern the appropriation, allocation, protection, conservation, development, and management of the waters within their borders.

## **WATER and LAND USE**

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### **Introduction**

Water is vital to our state's growth and economic vitality, and 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. Water allocation can best be accomplished through a free market system operating under the laws of the State of New Mexico that includes the consideration of measures such as statewide water banking.

### **Public-Private Partnerships**

Sometimes the best solutions to our challenges come from the private sector. The use of private resources to provide solutions to public problems should not be restricted when the benefits to the public can be demonstrated at a reasonable cost. The establishment of guiding principles governing the creation of public-private partnerships will allow public entities to benefit from these solutions. ACI supports public-private partnerships allowing the state and certain local governments to enter into long-term partnerships with private sector partners to facilitate public projects to address New Mexico's aging infrastructure and critical public services. These partnerships are not to be used to acquire water rights.

### **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.

### **Wildfire and Water Source Protection**

ACI recognizes that forests store and filter a majority of New Mexico's water supply. ACI is concerned that the occurrence of high-severity wildfires and subsequent post-fire flooding increasingly threaten the state's water security and cause extensive soil erosion and debris flows that degrade water quality for communities downstream. Restoring overgrown forests is a proven solution to make forests safer and healthier, and such treatments are already underway at a small scale. However, the 2011 Las Conchas Fire and 2012 Whitewater Baldy and Little Bear fires demonstrated that the pace and scale of these treatments is insufficient to guarantee water security for communities.

ACI supports efforts to promote Wildfire and Water Source Protection and urges the Legislature and Administration to work together and with diverse stakeholders to identify recurring funding for forest and watershed restoration and economic development for biomass utilization. By preserving and restoring our forests, we can sustain New Mexico's water supply, increase social and economic benefits for local communities, and contribute to an improved quality of life.

### **State and Regional Water Plans**

ACI supports OSE's and ISC's efforts to update the New Mexico State and Regional Water Plans with strong involvement from the business community. The business community needs to have meaningful representation on regional steering communities because water planning and resources are critical to the business community and future economic development across New Mexico.

### **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.

## **Land Use**

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. Land use planning and zoning should be accomplished at the local government level. The free market should determine what farmers want to grow and how they use their land.

## **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 seven priority basins.

## **Federal Jurisdiction**

Nothing in federal rule, regulation, directive, order, or policy should affect, erode, or interfere with the lawful government and role of the State of New Mexico relating to: (a) the appropriation and allocation of water from any and all sources within their borders; (b) the withdrawal, control, use, or distribution of water; (c) affect or interfere with any interstate compact, decree or negotiated water rights agreement; or (d) application, development and/or implementation of rules, laws, regulations related to water.

## **Clean Water Act and Surface Water**

ACI supports industry and state legal challenges to the EPA and U.S. Army Corps of Engineers (USACE) rule redefining “waters of the United States” currently pending in the courts, and urges reconsideration of the rule by the new administration. The new rule is vague and dependent upon site-specific factors so it will be expensive to administer, yet lacks adequate consideration of the characteristics of waters in the arid west. Despite its uncertainties, the rule is likely to expand the extent of regulatory control of ephemeral waterways, arroyos, ditches, etc. By classifying these ephemeral waterways, arroyos, ditches, etc. as jurisdictional, the EPA and USACE would have the authority to determine if actions within these areas impact species of plants and animals regulated by the U.S. Fish and Wildlife Service (USFWS) thereby bringing the regulatory analysis process of endangered species onto private lands. Additionally, cultural resources studies may also be required for actions in these newly determined jurisdictional waterways.

With respect to wetlands, the new regulation would allow the USACE to potentially designate isolated wetlands that are remote from active waterways, as Waters of the US if the USACE determines that they have a “significant nexus” or connection to existing navigable waterways.

New Mexico’s definition of “surface waters of the state” should be consistent with, and no more expansive than, the federal definition in its interpretation and applications. The definition should not include dry tributaries, playas, potholes, bar-ditches, dry arroyos, or lagoons that are situated miles from rivers and streams and hold rainwater for short periods of time.

## **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.

## **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 curtail 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.

#### **Outstanding National Resource Waters**

ACI supports federal designations as such, Outstanding National Resource Waters only when they are limited in scope and supported by factual information and scientific data that demonstrates the need for such designation.

#### **Scientific and Technological Strategies for Increasing Capacity**

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.

#### **Statewide Water User Fee**

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

#### **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. 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**

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.

#### **Water Quality Control Commission**

An evaluation of the makeup, size and necessity of the Water Quality Control Commission (WQCC) should be conducted. While some of our members are not supportive of the WQCC because they feel their duties could be carried out by the Environment Department, other members like the WQCC because it provides an opportunity for participation in the regulatory process. However, it can cost hundreds of thousands of dollars to actively participate. Therefore, ACI supports reevaluating the structure of the Water Quality Control Commission.

## **WORKPLACE ISSUES**

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### **ACI SUPPORTS**

- **Statewide uniformity of employment laws, such as paid or unpaid leave mandates, wage or fringe benefit mandates, and scheduling mandates; in order to provide a stable environment for employers and promote economic development;**
- Preserving the integrity of the workers' compensation system to ensure quick and efficient delivery of benefits to injured workers, to maximize medical rehabilitation and return-to-work outcomes at a fair cost to the employers, which will also foster business investment and job creation;
- The New Mexico Department of Workforce Solutions in their efforts to gain federal approval to the changes in the unemployment insurance program which will provide both short-term and long-term relief from significantly higher rates that create an additional burden on employers;
- Repeal of New Mexico's prevailing wage law on construction of public works projects;
- Uniform, clear, consistent and fair employment laws, which include a minimum wage solution, at the federal or statewide level, that includes amendment to the New Mexico Minimum Wage Act; and
- Amending the Public Workers Minimum Wage Act to clearly define "Willful Violation."

### **ACI OPPOSES**

- Excessive employment laws or regulations that expose employers to legal, regulatory, and financial risks;
- Erosion of the Exclusion Remedy under the Workers' Compensation Act; and
- Case decisions that expand benefits or erode the efficiency and financial integrity of Workers' Compensation System that ultimately disserve employers and workers in New Mexico.

## WORKPLACE ISSUES

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### Introduction

ACI opposes any unreasonable state-level expansion of mandated rights, benefits, and protections that fails to account for or 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, while maintaining viable businesses and job opportunities. Layoffs, furloughs, and workforce reductions are typically last resorts.

As federal and state laws provide workers with many safeguards and benefits related to their health, safety, civil rights, minimum wage, overtime pay, family and medical leave, disability, and other interests, employers should not be exposed to unnecessary, burdensome compliance obligations exposing them to undue costs or penalties.

ACI supports workplace, employment, tax, and other laws that enable employers to retain high-performing employees, add jobs and offer benefits, while assuring business viability and competitiveness in state, regional, national, and international markets.

### Local Government Employer Mandates

Allowing localities to mandate employer-provided benefits would create a patchwork of local regulations imposing significant compliance burdens on employers and discouraging them from growing and investing. Furthermore, locally mandated benefits frustrate the Legislature's goal of a thriving statewide economy and place New Mexico employers at a competitive disadvantage to employers in other states not burdened with unnecessary local regulations.

### New Mexico Workers' Compensation System

The current system faces a number of challenges such as:

- Case decisions that (1) expand benefits and increase costs to employers, which limits job creation; (2) hinder the quick, efficient delivery of benefits to workers; (3) undermine return-to-work strategies;
- Rising medical costs, healthcare reform, and cost-shifting; and
- Increased claim litigation and legal costs.

According to the Oregon Department of Consumer and Business Services (which ranks states by Workers Compensation premium rates), New Mexico has the 20<sup>th</sup>-highest premiums in the country. This is New Mexico's worst ranking since 1986. In comparison to surrounding states, New Mexico is at a competitive disadvantage in attracting business investment necessary for job growth and economic development.

ACI supports measures to assure the integrity of the workers' compensation system to facilitate a business environment conducive to business investment, job creation, and economic development in New Mexico and to serve the best interests of all employers and workers.

ACI supports:

- A state workers' compensation system that ensures the quick and efficient delivery of reasonable and necessary benefits to workers at a fair cost to employers;
- Administration of the Workers' Compensation Act to assure New Mexico's competitiveness with surrounding states;
- Limiting waste and abuse in the Workers' Compensation System such as situations where a worker:
  - Intentionally removes himself or herself from the workforce by committing misconduct resulting in post-injury termination of employment;
  - Fails to seek comparable employment in good faith;
  - Fails to accept an offer of comparable employment; or
  - Exits the workforce through retirement, self-employment or incarceration.
- Improving the timeliness and efficiency of the delivery of reasonable and necessary medical treatment and services by facilitating the exchange of relevant claim-related medical information between health care providers, workers, and payers to mitigate costs and litigation;
- Preservation of the *Exclusive Remedy*;



- Improving the administrative adjudicatory process to assure due process, efficient case management, and consistent case law in accordance with the Workers' Compensation Act and Administrative Procedures Act; and
- A safe workplace, free of substances that can impair an employee to the detriment of themselves and/or others.

ACI opposes:

- Expansion of presumptive causation coverage to the private sector;
- Any increase for attorney's 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;
- Unqualified expansion of benefits pursuant to the Workers' Compensation Act; and
- Reimbursement for use of medical cannabis while receiving Workers' Compensation, as long as cannabis remains classified as Schedule 1 drug under the Drug Enforcement Agency.

### **Unemployment Insurance**

ACI supports the New Mexico Department of Workforce Solutions in their efforts to gain federal approval of the 2016 changes to the unemployment insurance program enacted by the Legislature and signed into law by the Governor, which provided financial relief and predictability for businesses. ACI believes these changes comply with federal standards.

### **Medical Cannabis in Workers Compensation System**

Unlike 48 other states, New Mexico law does not provide express language that employers, self-insured entities or insurers are not required to reimburse a worker for the costs associated with the purchase or use of medical cannabis. As such, employers are exposed to potential criminal and/or civil liability under federal and state criminal laws since marijuana is classified as Schedule I under the Controlled Substance Act.

ACI supports legislation that mitigates the legal and compliance exposure related to medical cannabis reimbursement by employers at present, as proposed in 2016 as the not-enacted HB 195. ACI supports the decision in the *Garcia v. Tractor Supply* case that permits employers to set alcohol and drug free workplace policies that do not accommodate medical cannabis. ACI supports legislation and regulations to appropriately assure workplace safety. ACI supports the premise that medical cannabis may be reasonable and necessary medical treatment based upon objective evidenced-based medical guidelines and in compliance with the Lynn & Erin Compassionate Use Act; however, the current system of authorizing the use of medical cannabis and the medical cannabis distribution processes are not compatible with the normal pain management systems used within workers' compensation. This leaves workers' compensation medical cannabis ripe for abuse, misappropriation, and inappropriate carrier reimbursements. Because the New Mexico courts have ruled it is the desire of the Legislature to integrate medical cannabis into the workers' compensation system these problems must be resolved immediately.

- **Workplace Safety** – ACI supports an employer's right to set alcohol and drug free workplace policies, which may or may not accommodate medical cannabis.
- **Federal & State Law** – The Federal Controlled Substances Act classifies marijuana as an illegal Schedule I drug which is in conflict with the *Vialpando v. Ben's Automotive Services* decision in May 2014, that required the employer to reimburse the costs associated with the worker's purchase and use of medical cannabis. Similar decisions were reached, although under different circumstances, in *Maez v. Riley Industrial* in January 2015 and *Sandra Lewis v. American General Media, et al* in June 2015.
- **Workers' Compensation Act & Regulations** – ACI supports legislation and regulation to assure that medical cannabis is validated as reasonable and necessary medical treatment for a worker to reach maximum rehabilitation and return to work outcomes under the Workers' Compensation System in New Mexico.

### **Minimum Wage**

A uniform, national, or statewide, minimum wage reduces the administrative burden on employers in New Mexico, as well as creates a business environment conducive to investment, business viability, and job creation.

ACI supports a minimum wage solution that is:

- Uniform, consistent, and carefully designed to maximize economic development, business investment and job creation;
- Considers impacts to state, county, and local economies;
- Minimizes adverse impacts on small and medium size employers;
- Clarifies the compliance requirements such as "tipped wages";
- Mitigates unnecessary legal and compliance risk to employers; and
- Provides balanced information and cost-benefit analysis to the general public.

### **Repeal the 2009 Amendments to the 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.

### **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" under Section 13-4-14(C), NMSA 1978. 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.

### **Concealed Firearms in Restaurants and Bars**

ACI opposes legislation permitting an individual to carry a concealed firearm in restaurants or bars with full alcohol licenses in the interests of public safety and the mitigation of 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 domestic abuse leave to get emergency medical care resulting from domestic abuse with appropriate requirements, such as permitting leave to be taken in increments of not less than one hour to reduce administrative burden of employers in tracking such leave. Employers should also be able to require that employees use accrued paid leave benefits before taking it as unpaid leave, similar to the FMLA. State law should also provide guidance on how employers should appropriately address an employee's absence within the organization while maintaining restrictions on external disclosure without a legitimate business purpose or as permitted by law.

**Pay Equality** ACI supports revision to the New Mexico Fair Pay for Women Act (enacted in 2013) to provide for real-world business application of the law. The federal Equal Pay Act allows for businesses to justify differences in employee pay based upon (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex. The New Mexico Act, however, only allows for differences in pay based upon (i) seniority system, (2) merit system, or (3) a system that measures earnings based on the quality or quantity of production. The lack of an allowable non-

discriminatory differential based on business reasons fails to take in to account the many non-discriminatory business realities that impact and influence employee 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. Comprehensive immigration reform is needed at the federal level to ensure that the United States' annual legal intake of foreign workers is realistically in line with the economy's need for foreign labor. New Mexico needs a worker program that provides an adequate supply of legal workers.

### **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, as they adversely impact an employer's labor costs and makes it more difficult for employers to ensure business viability through reductions or expansions of their workforce. Additionally, expansion of mandatory leave benefits may stifle the ability of an employer to offer innovative and flexible paid leave programs.

### **Prevailing Wage Laws**

ACI supports the repeal 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. 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.

### **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 Worker Adjustment and Retraining Notification (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.

### **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, federal requirements achieve the desired results in deterring business and individuals from doing so.

### **Department of Labor’s Overtime Rule**

ACI believes that enacting significant changes to the Fair Labor Standards Act (FLSA) regulations and duties test further exacerbates an already complicated set of regulations for employers, particularly small employers and employers in industries where managers often conduct exempt and nonexempt work concurrently. Substantial changes to the overtime regulations could further limit workplace flexibility for employees. The DOL’s Overtime Rule threatens not only the business community as a whole but especially the entrepreneurial community. ACI supports the court ruling of U.S. District Judge Amos Mazzant in Texas who agreed with 21 states and a coalition of business groups that the rule is unlawful. Mazzant says the rule is unlawful because FLSA does not allow the DOL to decide which workers are eligible for overtime pay based on salary levels alone. FLSA says that employees can be exempt from overtime if they perform executive, administrative or professional duties, but Mazzant says the rule “creates essentially a de facto salary-only test.”

### **Retirement Program Mandates**

ACI recognizes that many New Mexicans retire without adequate savings, however state-run retirement plans for private sector workers that include an employer mandate will create an overly burdensome financial and legal obligation for the state. Rather, the state should consider taking action to provide better information to private employers and their employees about the importance of saving for retirement, the variety of existing plans and options available currently, including possibly creating a website portal that would allow the private sector to easily compare and shop for state-vetted retirement providers.