

**MINUTES OF THE STATE COMMISSION OF PUBLIC RECORDS
REGULAR MEETING VIRTUALLY VIA ZOOM – AUGUST 31, 2021
1205 Camino Carlos Rey, Santa Fe, NM 87505**

Members Present

Brian Colón, Esq.	Chairman and State Auditor
Duffy Rodriguez	General Services Department
Stephanie Wilson	Interim Director, Supreme Court Law Library
Anita Tellez, Esq.	Department of Cultural Affairs, Designee
Dylan Lange, Esq.	Secretary of the State, Designee
Matt Baca, Esq.	Office of the Attorney General

Staff Present

Rick Hendricks, Ph. D	State Records Administrator
Georgette L. Chávez	Deputy State Records Administrator
John Kreienkamp, Esq.	Counsel to Commission, Office of the Attorney General
Amanda Griego	Executive Secretary, ASD
Felicia Lujan	Archives Division Director, RMD
Ruben Rivera	Chief Information Officer, ASD
Tanya Vigil	Records Management Division, RMD
Leo Lucero	Director, Records Management Division, RMD
Matt Ortiz	Division Director, ALD
Robert Wise	Information Technology Management Division, ITMD

Public Present

Michael Lujan	
Cheri Lujan	
Katherine Chavez2	
Chris Mechels	
Kathleen Hardy	
Crystal Lawrence	
Roberta Moreno	
Julie Filatoff	State Treasurer's Office
Desban Farden	
Marisa Valdez	
1-505-927-5713	

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Hon. Hector Balderas
Attorney General

Hon. Brian S. Colón
Chairman/State Auditor

Hon. Maggie Toulouse Oliver
Secretary of State

Debra Garcia y Griego
Department of Cultural Affairs

Stephanie Wilson
Acting Director, Supreme Court Law Library

Duffy Rodriguez
Acting Cabinet Secretary

I. OPENING ACTIVITIES

A. Call to Order

Chairman Colón called the meeting to order at 10:00 a.m. and conducted a roll call of the commissioners.

B. Approval of the Agenda

Chairman Colón entertained a **MOTION** to approve the agenda. Mr. Baca **MOVED**. Ms. Tellez **SECONDED**. The motion **PASSED UNANIMOUSLY** by roll call vote.

C. Public Comment

Chairman Colón called for public comment.

Mr. Chris Mechels stated to the commission that he had 3 items he wanted to take up. First, he thought there was an open meetings violation. The Open Meeting Resolution that was passed, signed, and posted at the last meeting requires that the materials for this meeting are available on line before and during the meeting. Mr. Hendricks failed to do that. Mechels stated he could not find any of the materials. The remedy for an open meetings violation typically is to redo the hearing, redo the meeting. He stated that he filing a complaint with the commission and attorney general's office. He stated that last year the Open Meetings Resolution was honored in violation more then in adherence to it. "I thought we were passed that at the last meeting, but I guess not."

The second item Mr. Mechels was a problem about which he had approached the chairman and members of the commission. Mr. Hendricks and Mr. Ortiz have chosen to take down the old interface to the commission, which meant that a lot of links got stranded so people with links to the *New Mexico Register* using that old interface, those links are now broken. and people are using the broken links." Mr. Mechels stated that he encountered it all the time in rules making because they typically link to *Register* issues "Those links are broken. It is not just the rules. Rules Act links typically show up on the Sunshine Portal and on the websites for the various agencies. There are many reasons why people link to the *New Mexico Register* and those links are now broken."

"There was no reason for doing this. Mr. Mechels mentioned that the new website interface was put up in 2018, and you were basically running with the new and old website access together, and that works fine. It still works. People mostly like the old interface. On a whim, apparently, because no reason was provided and board approval was not sought, they took it down." Mr. Mechels stated that this needed to be looked into and suggested that it was not too late to restore the old interface.,

Last item Mr. Mechels took up, which he raised at the last meeting was that there was a rules act violation concerning the LEDA Act, which involved an illegal emergency rule making and since then there has been another emergency rule making on the same issue and a 3rd public rule hearing, which he states was illegal and was improperly noticed on the at least 2 counts. This involves a \$200 million in money being dispersed, and this is a very serious problem. He stated that anyone could look at those rule makings when they were submitted, and they have to go through the commission to get to the *Register*, and anyone could look at any one of the filings and see that had problems. "The question is why doesn't the staff on behalf of the commission take that five minutes. They could cut off not only this current problem but a lot of other problems. Over half of the rule makings in this state this year have been illegal because they just can't be bothered at the

commission staff to look at the incoming rule makings. This is a disgrace. I think it is time the commission acts because it is unclear the staff will act.

D. Approval of the Minutes of the June 15, 2021, Regular Commission Meeting.

Chairman Colón entertained a **MOTION** to approve them as amended to include the time of adjournment. Ms. Wilson **MOVED**.

Mr. Baca **SECONDED**. The motion **PASSED UNANIMOUSLY** by roll call vote.

II. ACTION ITEMS

A. Review and Approval of FY23 Appropriation Request Presentation

Chairman Colón mentioned that the budgeting procedure this year was new and had presented a challenge to meet the September 1 deadline. The commission was approving the presentation of the appropriation request; the actual budget would be a product of legislative and executive action.

Chief Financial Officer Ruben Rivera provided the commission with summary of the FY23 appropriation request. September 1, is the deadline for submission of our FY23 appropriation request.

Mr. Rivera noted that in the 200 category we have slightly increased our request compared to our current year's budget authority by \$29,500.00. This will enable us to fund all of the agency's 35 positions, including the vacant positions. The fixed rate increased by \$600 from the current fiscal year.

Mr. Rivera stated that in the 300 category (Contractual Services) we are requesting an increase of \$52,000 in the general fund authority to accommodate one full-time security guard. This would allow us to help fund security not only for our building, but for the entire West Campus. Security for the campus will be a multi-agency funded security services contract. Mr. Rivera reviewed the 400 category (Other) an increase of \$140,000 in the general fund is requested. The increase is to fund the Albuquerque records facility rent cost as opposed to splitting the cost between funds or funding it entirely through the agency's revolving fund.

Overall the agency is requesting a net increase of \$221,700 compared to the current fiscal year.

Mr. Rivera also reviewed the revolving fund budget with the commission. Revenue in fund 37100 we are anticipating slightly less revenue earned for FY23 of the \$124,900 compared to the current fiscal year of \$131,900.

Expenditures the request for FY23 overall is up by \$45,100. The increase is in the general fund. The increase is for funding of security services in the 300 category and the increase in the 200 category.

Chairman Colón thanked Dr. Hendricks and Mr. Rivera for their work on this and for the presentation. The chairman explained to the commission that although these were not substantial

changes but were important to take note of. This is for the commission to approve the presentation and final upload into DFA system.

The chairman provided the opportunity to the commission for any comments or questions.

Ms. Rodriguez requested that Mr. Rivera go over the issues with security for the building. Mr. Rivera provided background information to the commission regarding the security concerns. Deputy Chávez also states that State Records Center and Archives was working in conjunction with several agencies and General Services Dept. On the west campus because of the escalating situations we are having with security. We will combine our resources with several agencies to provide 24 hour a day, 5 days a week services here to protect our staff, patrons, and property.

Deputy Chávez clarified that the agency was working closely with FMD and GSD.

Commissioner Wilson asked for the total request. Mr. Rivera responded that it \$2,800,890. She asked whether a copy of the appropriation request would be provided to the commissioners. Mr. Rivers responded in the affirmative.

Chairman Colón entertained a **MOTION** to approve the presentation of fiscal year 2023 budget appropriation request. Mr. Baca **MOVED**. Ms. Tellez **SECONDED**. The motion **PASSED UNANIMOUSLY** by roll call vote.

III. PRESENTATIONS

A. Felicia Lujan – Director , New Mexico State Archives

Felicia Lujan, director of State Archives of New Mexico made a presentation on the history of film making in New Mexico, highlighting 2 historic films.

Commissioners Tellez and Wilson thanked Felicia for her great work with this important aspect of her work.

IV. DIRECTORS REPORT

Deputy Chávez reported that the agency had 6 vacancies out of 35 positions, placing our vacancy rate at 17.14 percent. She provided a list of the all vacant positions and reported information regarding fiscal year 2022 budget.

In addition, Deputy Chávez reported on the budget balances as of August 1, 2021. The general fund balance in the 200 category was \$2,221,228; the balance in the 300 category was \$1,430; and the 400 category balance was \$60,900.

On July 12, 2021, SRCA staff returned to the Carruthers building and began implementation of a plan to safely provide robust services upon re-opening on August 9th. Management and staff created hybrid schedules and implemented new procedures to provide in-person and virtual services. The Information Technology Division sustained its support to ensure that the agency efficiently and effectively continued these services during telework hours. Since the safety of staff and patrons continues to be

management's first priority, we have made masks, gloves, hand sanitizer, and cleanser available to all divisions. Appointment hours and contact information have been posted to our website.

Chairman Colón asked the commission if they had any comments, questions or concerns.

Ms. Tellez commented on a comment Mr. Mechels made to let him know that the website was updated for security purposes there were significant operational issues that alerted the staff and wanted to protect the website from vulnerability. That is the main reason why it was updated also to enhance the content management which will make it easier to update. The SRCA IT staff has also worked on how fast the website is operating compared to other agencies' sites.

V. SCHEDULING OF NEXT MEETING

Chairman Colón stated that the next meeting was scheduled for November 16, 2021

- ***Chairman Closing Comments***

Chairman Colón took the opportunity to thank the team at State Records and Archives Center and the commission, "stating your work is highly valued and it's always a privilege to share this with the commission".

Chairman Colón characterized the role of the commission as limited. The attorney general was responsible for enforcement. He asked Mr. Kreienkamp for some texture on the questions raised about the Open Meetings Act.

- ***Counsels Comments***

Mr. Kreienkamp addressed the allegation of an OMA (Open Meet Act) violation. This is plainly not an OMA violations, as for the uploading of the documents to the website for today's meeting as you will remember beyond the previous meeting minutes the only action items on today's agenda was the appropriation request. There was no document available before or even during the meeting. Mr. Kreienkamp states that the document is not ready yet the process that chair and staff outlined early on that, so there was no document to post online for that.

As for the presentations on the agenda those are not action items that's not a possible OMA violation. Again there wasn't documentation to post for those on the website. Mr. Kreienkamp states that there is no creditable allegation of an OMA violation. However, he will continues to pay attention to these issues.

Ms. Tellez stated that it's her understanding that under the OMA, that only the notice and agenda that needs to be provided but not every specific document. Mr. Kreienkamp explained that, that is correct under the Open Meetings Act. When the commission first transitioned to virtual meetings at the beginning of the pandemic there was a clause that was inserted that stated meeting documents that would normally be provided in the back of the room, such as meetings agendas and meeting minutes, those would be available in advance. It's not a requirement in the Open Meetings Act, but it is a best practice. In this case regardless this documentation was not available and indeed the language used in the resolution states the documentation will be posted where possible, and again there is no creditable violation.

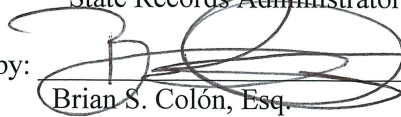
Submitted by:



Rick Hendricks Ph.D.
State Records Administrator

11/30/2021
Date

Attested by:



Brian S. Colón, Esq.
Commission Chair

12/10/2021
Date

Minutes approved on:

11/30/2021