

Not Perfect Yet—Improving State Government Through Restructuring

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Government Restructuring Task Force

- *Created in 2010*
- *Followed several earlier attempts to restructure state government*
- *Budget Gap*
- *Charge to task force: efficiency, consolidation, elimination*
- *In 2011 session: 26 bills, joint resolutions and memorials introduced*



An Example

- *The Water Quality Control Commission, or WQCC, approximately 40 years old.*
- *Adopts rules for ground water and surface water, hears discharge permit and compliance order appeals*
- *Composition changed in 1993, 2001, 2003, 2007*
- *9, 11, 12, 14 members*



Task Force Recommendations

Natural Resources/Environment

- *Eliminate state game commission and move Game and Fish into EMNRD*
- *Combine mining and coal surface mining commissions*
- *Abolish technical advisory committee to office of interstate markets and natural lands protection committee*



Task Force Recommendations Natural Resources/Environment

- *Realign NMED and WQCC and EIB by moving rulemaking authority to NMED*
- *Transfer licensing authority and advisory council under Medical Imaging and Radiation Therapy Health and Safety Act*
- *Repeal PSTC and Wastewater TAC*



Task Force Recommendation

- ▶ *Combine all state agency hearing officers into a single state agency (create a central panel)*
- ▶ *Cost: \$500,000*
- ▶ *Principle served: efficiency, transparency*



Task Force Recommendation

- ★ *A constitutional amendment (one of three proposed) to allow the legislature to overturn agency rules on a two-thirds majority vote*
- ★ *Principle served: accountability and transparency*



Regulatory Process Subcommittee 2010

- *Created by NM Legislative Council drawn from three interim legislative committees*
- *Focus on “ameliorating the impact that state agencies rulemaking has on public safety, economic development, consumers and the environment.*



Regulatory Process Subcommittee

- *RPS reviewed the work of the lieutenant governor's Model State Administrative Procedures Act Task Force*
- *Also considered the way the legislature could exert its power when it finds the state agencies have overstepped their rulemaking authority.*



APA Task Force

- *Created by Lt. Gov. Denish, modeled after a failed bill that would have established such a body to work on fair and consistent rulemaking*
- *Diverse membership*
- *Senator Keller carried the bill that resulted from the work of the Task Force.*

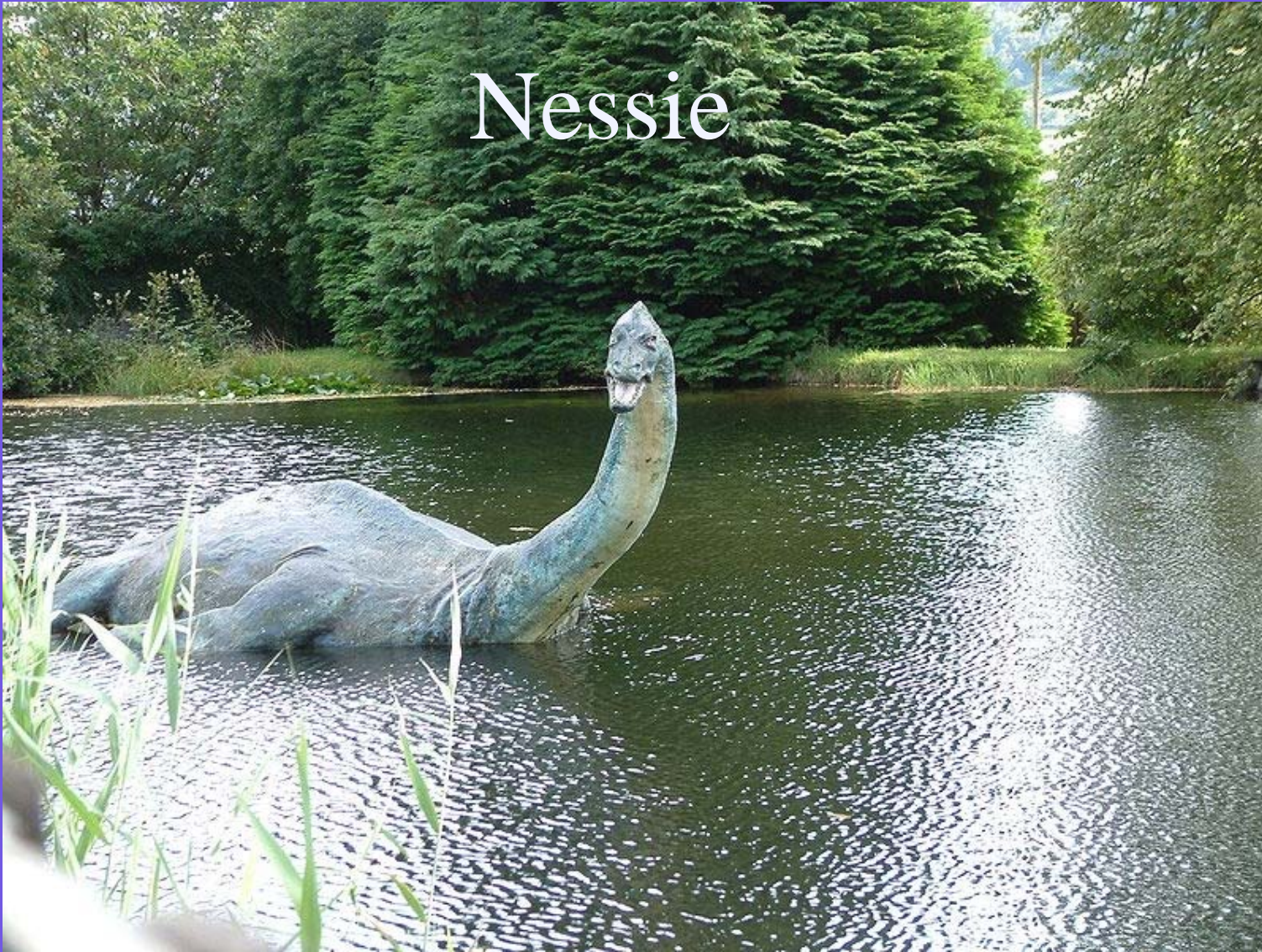


Overturning Rules

- ✦ *SJR 3, HJR 3, Senate Bills 91, 190, 459, and House Bills 69*
- ✦ *Constitutional Amendment*
- ✦ *Direct Repeal of Greenhouse Gas Rules*



Nessie



Economic Analysis

- ▶ *House Bills 22 and 409*
- ▶ *Regulatory Impact statements*
- ▶ *Economic Impact Statements*
- ▶ *Penalty for underestimating !*



Specific and Express Authority

- ✦ *Senate Bill 235 and House Bill 345*
- ✦ *Powers only granted by legislature—
nothing by implication*



About Me / The Disclaimer

Judge-like duties in the Executive Branch with a strong overlay of public outreach

Mission: Create a reviewable record without any of the standard trappings of the judiciary (a bailiff, a black robe, a raised bench, contempt power).

Or: Service to Cabinet Secretary in reviewing the work of the Bureaus and Divisions prior to Judicial or higher administrative review



Inhouse ALJs

- ✦ *There may be a combination of functions within an agency; that does not mean the same person is performing inconsistent functions. The combination of functions may be the subject of suspicion or criticism, but where it exists it has been designed by the legislature. Any attack upon combination must be a constitutional one, that due process is violated when an agency is investigator, prosecutor and judge in one case. This claim has been rejected by the courts. Kennecott Copper Corp. v. FTC, 467 F.2d 67, 79 (10th Cir. 1972), cert. denied, 416 U.S. 909 (1974); Withrow v. Larkin, 421 U.S. 35 (1975).*





"I don't doubt that it's perfectly innocent, Margaret, but it does have the appearance of impropriety."



Ethical Considerations, As ALJ

- ▶ *Bias, prejudice or appearance of same—impartiality is essential*
- ▶ *No ex parte contacts regarding merits, notwithstanding the need to discuss logistics of hearing with staff*
- ▶ *The media-discuss only public, procedural information*
- ▶ *Ultimately, transparency in record and process*



Central Panel

- ✦ *Senate Bills 7 and 104*
- ✦ *A new state agency--\$\$\$\$*
- ✦ *Touching attempts to keep the ALJs part of the team*



Fundamental Change is Disturbing

- ★ *We often feel uncomfortable in these discussions, but we know the discussions will continue. Folks on all sides will want to choose their battles wisely.*



Contact Information and Questions?

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