

State of New Mexico  
House of Representatives

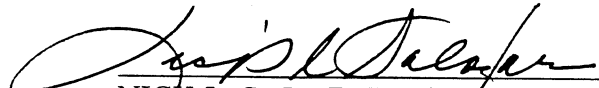
FORTY-SEVENTH LEGISLATURE  
FIRST SPECIAL SESSION

October 10, 2005

Mr. Speaker:

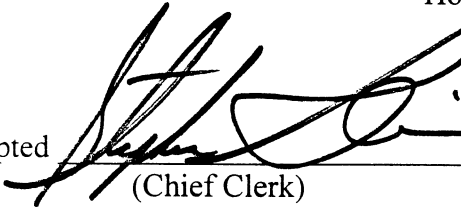
Your RULES AND ORDER OF BUSINESS COMMITTEE, to whose Subcommittee has been referred the matter relating to the consideration of the impeachment of the State Treasurer, has had it under consideration, submits the attached report from the Subcommittee adopted by the House Rules and Order of Business Committee and recommends that the report of the Subcommittee, including the procedures for the impeachment proceedings at issue and the projected schedule, be adopted.

Respectfully submitted,



NICK L. SALAZAR, Chairman  
House Rules and Order of Business Committee

Adopted

  
(Chief Clerk)

Not Adopted

\_\_\_\_\_  
(Chief Clerk)

Date

10/10/05

The roll call vote was 15 For 0 Against

Yes: 15

No: 0

Excused: Begaye, Chasey, Park, Taylor

Absent: 0

PROPOSED REPORT  
OF THE  
SUBCOMMITTEE  
OF THE  
HOUSE RULES AND ORDER OF BUSINESS COMMITTEE

October 10, 2005

The subcommittee is charged with investigating and making recommendations on whether the House of Representatives should consider the impeachment of State Treasurer Robert Vigil for the alleged commission of crimes, misdemeanors or malfeasance in office.

Progress to Date

The House authorized the creation of this subcommittee as the first order of business at the opening of the First Special Session of the Forty-Seventh Legislature on Thursday, October 6, 2005. Pursuant to that authorization, and at the recommendation of the majority and minority leaders, the Speaker appointed the members of the subcommittee — in equal numbers from the majority and minority — and the subcommittee had its initial meeting on that first day of the special session.

At the initial meeting, called by Co-chairmen Representatives Martinez and Youngberg, the subcommittee received its charge and heard a general presentation by Professor Michael Browde of the University of New Mexico School of Law on the critical procedural steps facing the subcommittee in order to carry out its mandate in a deliberative and expeditious manner. The subcommittee authorized the co-chairmen to proceed immediately to hire a Special Counsel to aid the subcommittee in establishing procedures, gathering evidence and, if necessary, formulating and proffering articles of impeachment.

On Friday, October 7, the co-chairmen retained the services of former Justice Paul J. Kennedy to serve as Special Counsel to the subcommittee. The subcommittee met with Special Counsel and asked him to begin work on several preliminary questions, including: the process of collecting evidence, the appropriate standard of proof at the impeachment stage, the meaning of the constitutional grounds for impeachment and the potential role for the state official being investigated in the subcommittee's process. Justice Kennedy outlined a schedule that might lead to completion of the work of the subcommittee and a final report to the House by the end of October.

On Saturday, October 8, at the request of the subcommittee co-chairmen, Special Counsel met with the respective House caucuses to keep them apprised of his evaluation of possible processes, to hear their concerns and to answer their questions.

On Sunday, October 9, the subcommittee met again to receive the Special Counsel's

preliminary report on the questions previously propounded to him and his general recommendations concerning the process and timetable that would enable the subcommittee to complete its work and report expeditiously to the full committee and the House.

### Current Status of Investigation

As the foregoing indicates, the subcommittee has worked diligently throughout the special session. Special Counsel has begun the process of gathering essential evidence. The subcommittee has considered at some length a number of process-related questions. It is now prepared to recommend to the full committee and the House the adoption of the following procedures and schedule for the conduct of its work.

#### A. Procedures for the Impeachment Proceedings at Issue

1. The subcommittee shall give public notice of the date, time and place of its meetings as soon as practicable before the commencement of its meetings.
2. At the request of Special Counsel or a majority of the subcommittee, the subcommittee shall conduct appropriate proceedings in executive session. Only subcommittee members, a House Judiciary Committee staff member, an analyst for the majority, an analyst for the minority and designated Legislative Council Service staff may attend executive sessions. Staff members must sign confidentiality statements.
3. The task of gathering and presenting evidence to the subcommittee shall be the responsibility of Special Counsel. In that regard:
  - a. All documentary evidence from public records, including affidavits of investigative authorities, shall be presented in open, public sessions.
  - b. As other evidence is gathered, and at the request of Special Counsel, the subcommittee shall decide how that evidence is to be presented—i.e., through live witnesses, depositions or otherwise.
  - c. Also at the request of Special Counsel, the subcommittee will decide whether that evidence is to be presented in public sessions, or whether respect for ongoing criminal proceedings or questions of privilege requires that such evidence is presented in executive session.
  - d. Testimony by witnesses, whether presented in public session or otherwise, shall be under oath through direct questioning by Special Counsel. Members of the subcommittee shall, however, retain the right to question any witness presented. Members of the subcommittee may submit questions to the Special Counsel regarding testimony by deposition.

- e. These proceedings are investigative and charging in nature, and thus do not require an adversarial hearing. Nonetheless, the State Treasurer shall be apprised of the evidence submitted by Special Counsel, and his response to that information shall be invited by way of:
  - (1) his own testimony under oath provided through the questioning of Special Counsel; and
  - (2) through other means under terms and conditions deemed appropriate by the subcommittee, upon the recommendation of Special Counsel.
- f. Special Counsel is authorized to request the issuance of subpoenas on behalf of the subcommittee through the Legislative Finance Committee.
- 4. After the presentation of the evidence, the subcommittee, sitting in executive session, shall receive and consider the advice of Special Counsel with respect to any potential articles of impeachment.
- 5. The question presented to the subcommittee and the House is "Is there clear evidence to warrant impeachment?". The subcommittee and the House will apply the following standard of proof:

There is clear evidence to warrant impeachment.
- 6. The subcommittee shall then make a report to the full committee. If the report recommends articles of impeachment, the subcommittee shall present the articles of impeachment to the full committee and through the committee to the whole House. The presentation shall include a summary of the supporting evidence with due regard for the nature of any evidence that was dealt with in a confidential manner to protect the integrity of the ongoing criminal proceedings.
- 7. If and when articles of impeachment are presented to the House, all House members shall be given access to all the evidence considered by the subcommittee, recognizing that it may be necessary to make some evidence available to House members on a confidential basis to protect the integrity of the ongoing criminal proceedings.

B. Projected Schedule for Completion of the Work

As the foregoing portion of the report makes clear, it is not feasible for the subcommittee to complete its work during the current special session. Members of the committee, however,

are confident that the remaining work can be completed within the next three weeks. Thus, they request that the House take whatever steps are necessary:

1. to allow the subcommittee to continue its work after the adjournment of this special session; and
2. for the legislature to call itself into extraordinary session at the end of October for receipt of the subcommittee's final report and the possible consideration of articles of impeachment.

Under such circumstances the subcommittee pledges to proceed according to the following timetable:

October 10-25: Per Special Counsel's proposed investigative process, the subcommittee will meet periodically and as necessary.

- The Special Counsel will report on the progress of the investigation to the co-chairmen in executive session on October 14 or 15.
- The subcommittee will meet on October 17 and, if necessary, on October 18, to consider evidence.

October 26: Subcommittee will meet to consider the final report.

On or before  
October 27: Extraordinary session certificates delivered to governor.

October 28: Legislature to convene in extraordinary session to allow the House Rules and Order of Business Committee to receive the recommendations of the subcommittee, which will then be presented to the House through the co-chairmen of the subcommittee.

### The Compressed Timeframe

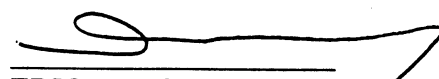
The subcommittee recognizes that it will be operating under a significantly compressed timeframe necessitated by the current circumstances. Such circumstances may not be presented in impeachment inquiries that may arise in the future and, thus, it is well for the subcommittee to identify special circumstances that compel the subcommittee to proceed as expeditiously as it has.

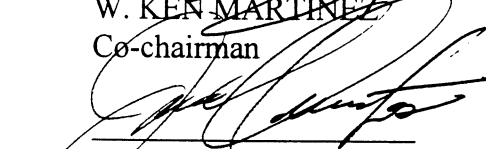
1. The Office of the State Treasurer is responsible for the investment of billions of dollars of state funds.

1. The Office of the State Treasurer is responsible for the investment of billions of dollars of state funds.
2. The State Treasurer is currently under indictment by federal authorities for crimes that go to the very heart of his responsibilities as the custodian and investor of those state funds.
3. There exists a sense of need to reassure the public and the investment community that the integrity of the Office of the State Treasurer is not compromised.

Respectfully submitted,


  
W. KEN MARTINEZ  
Co-chairman


  
ERIC A. YOUNGBERG  
Co-chairman

  
JOSEPH CERVANTES  
Member

  
ANNA M. CROOK  
Member

  
LARRY A. LARRANAGA  
Member

  
TERRY T. MARQUARDT  
Member

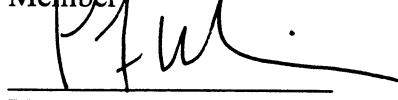
  
KATHY McCOY

  
DEBBIE A. RODELLA

Member

  
DANIEL P. SILVA  
Member

Member

  
PETER WIRTH  
Member