



**MINUTES  
of the  
THREE-HUNDRED-THIRTY-SECOND MEETING  
of the  
LEGISLATIVE COUNCIL  
August 10, 2010  
Santa Fe**

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The three-hundred-thirty-second meeting of the Legislative Council was called to order on Tuesday, August 10, 2010, at 9:25 a.m. in Room 307 of the State Capitol by Senator Timothy Z. Jennings, co-chair.

**Present**

Senator Timothy Z. Jennings, Co-Chair  
Representative Ben Lujan, Co-Chair  
Senator Carlos R. Cisneros  
Representative Keith J. Gardner  
Senator Stuart Ingle  
Representative Rhonda S. King  
Senator Cisco McSorley  
Representative Rick Miera  
Senator William H. Payne  
Representative Sheryl Williams Stapleton  
Representative Thomas C. Taylor  
Representative Jeannette O. Wallace

**Special Advisory Members Present**

Representative Eliseo Lee Alcon  
Representative Donald E. Bratton  
Representative Anna M. Crook  
Senator Mary Jane M. Garcia  
Representative James Roger Madalena  
Senator George K. Munoz  
Senator John Arthur Smith

**Guest Legislator**

Representative Patricia A. Lundstrom

**Staff**

Raúl E. Burciaga, Director, Legislative Council Service (LCS)  
Kathy Pacheco-Dofflemeyer, Assistant Director for Administration, LCS  
John Yaeger, Assistant Director for Legislative Affairs, LCS  
Jeret Fleetwood, Locator Coordinator, LCS

**Tuesday, August 10**

**Absent**

Senator Dianna J. Duran  
Representative W. Ken Martinez  
Senator Michael S. Sanchez

**Special Advisory Members Absent**

Senator Pete Campos  
Senator Kent L. Cravens  
Representative Brian F. Egolf, Jr.  
Representative Antonio Lujan  
Representative Al Park

On a motion made, seconded and unanimously approved, the minutes of the May 12, 2010 meeting, as amended, of the Legislative Council were approved.

On a motion made, seconded and unanimously approved, the minutes of the June 29, 2010 meeting of the Legislative Council were approved as submitted.

### **Interim Committee Business**

A request by the New Mexico Finance Authority Oversight Committee to meet in December to review proposed legislation for project authorization for the Public Project Revolving Fund, the Economic Development Revolving Fund and the Water Project Fund was authorized.

The Regulatory Process Subcommittee also requested an additional two-day meeting. Mr. Burciaga explained that the subcommittee wants to meet sometime after the lieutenant governor's task force on rulemaking and administrative procedures has completed its work. He also noted that the subcommittee would like to receive testimony on a number of additional subjects, including:

- the Economic Development Department's Small Business Regulatory Advisory Commission;
- the Human Services Department's (HSD's) process for promulgating rules, specifically notice and public comment, and recent rulemaking activity by the HSD;
- the consideration of a constitutional amendment to provide legislative oversight of rules promulgated by agencies, boards and commissions;
- a review of other states that provide legislative review of rules;
- whether or how the legislature may have veto authority over rules;
- a review of Virginia's strong Administrative Procedures Act;
- a transparent and open process that would require fiscal, economic and data analyses on proposed rules;
- time limits for issuing or denying permits;
- a request to the attorney general asking for clarification on the powers provided to the Interagency Behavioral Health Purchasing Collaborative under HB 181 (2008) and how that has been interpreted and implemented by the agencies;
- a request to the attorney general asking for clarification on the agencies, boards and commissions the attorney general represents;
- mechanisms to provide a more deliberative process for promulgation of rules, e.g., budget adjustment requests to the Department of Finance and Administration;
- requests to agencies to provide the subcommittee with rules promulgated and associated justifications for the past eight years;
- legislation to limit or control the executive branch's rulemaking powers, including more oversight;
- consideration of a standing committee or interim committee on rulemaking; and
- a request that the Environmental Improvement Board provide a financial impact statement before proceeding with the greenhouse gas emissions cap and trade bill.

Mr. Burciaga indicated that each item had been discussed at the subcommittee's only meeting and that the subcommittee feels it needs an additional two-day meeting to discuss the items further.

Speaker Lujan noted that the motion authorizing a single meeting for the subcommittee had been very specific and that the proposed additional issues went significantly beyond the original scope of the subcommittee as defined by the council. He emphasized that interim committees should follow the directions provided to them by the council.

Senator Munoz indicated that he had attended the subcommittee's meeting, noting that some executive agencies had not produced the materials requested in advance by the subcommittee. He suggested that another meeting might help the subcommittee develop recommendations.

Senator Payne indicated that the Uniform Law Commission is adopting a model Administrative Procedures Act, which may address many of the subcommittee's concerns. He also noted that if executive agencies are not completely cooperating with the subcommittee, two additional meeting days might not make any difference.

Representative Lundstrom indicated that the subcommittee would be the only interim committee to receive a report from the lieutenant governor's task force on rulemaking and administrative procedures, which might help justify the need for additional meeting days.

Senator Jennings explained that an additional meeting day might be helpful in resolving some of the regulatory issues raised by the subcommittee. He noted that if issues go unresolved, a larger dispute over funding for various agencies may arise during the legislative session.

Senator Ingle pointed out that cap and trade rules and the automotive sales industry present major problems for residents of New Mexico counties that border other states.

On a motion made, seconded and passed, the Regulatory Process Subcommittee was authorized to meet for one extra meeting day, with Senators Jennings and McSorley voting NO.

### **Out-of-State Travel for Retiring and Nonreturning Members**

Mr. Burciaga explained that, in election years, the statutes mandate that nonreturning members of the legislature, including those members defeated in primary elections, may not be reimbursed for travel to national committee meetings without the approval of three-fourths of the voting members of the council.

The council discussed authorizing those nonreturning members who serve as officers of national organizations or any of the organizations' committees, rather than all nonreturning members, to attend meetings.

On a motion made, seconded and unanimously approved, reimbursement of conference registration fees, transportation and per diem was authorized for all nonreturning members.

Senator Jennings noted that travel to out-of-state meetings for other members of the legislature is also an issue. He indicated that while limiting members to only two out-of-state meetings is an option, he would probably begin to address the issue by sending out a letter simply asking members to try to limit their travel. He also pointed out that the money spent on travel would have to come from somewhere else in the legislative budget.

In response to a question from Speaker Lujan, Mr. Burciaga explained that the budgeted amount in the account funding legislative travel had been overspent by about \$8,000 in FY 2010. He also pointed out that some travel costs are paid by national committees and that legislators may travel to any meeting they wish and not request reimbursement.

Senator Smith noted that staff members should be included in travel discussions. He explained that difficult federal issues are looming, particularly with regard to health care, and that staff members need to stay as informed as possible.

Mr. Burciaga explained that while staff travel is funded by a separate budget, the LCS is keeping an eye on travel costs. He also pointed out that the National Conference of State Legislatures had recently paid for some staff members to attend a conference dealing with federal health care issues.

Senator Payne suggested reminding legislators that, within limits provided by statute, they can use campaign funds to defray expenses reasonably related to their office.

Senator McSorley acknowledged that while impending health care changes are important, an upcoming Energy Council meeting in Biloxi, Mississippi, would offer legislators a chance to tour the oil spill in the Gulf of Mexico, which presents significant environmental issues.

### **Staff Reports**

Lacy Daniel and Maricela Chavez, law school interns, were introduced to the council. Rebecca Griego, records officer, and Leslie Porter, research assistant, were also introduced to the council as new regular employees.

Mr. Burciaga provided the council with an update on interim committee meeting webcasting. He explained that the webcasts are only available as audio streams and that no major problems have been encountered to date. Mr. Burciaga also pointed out that it is possible to monitor the number of people listening to the webcasts at any given time and that the number of listeners has been relatively low. He also noted that while webcasting efforts are focused on meetings inside the State Capitol, a Mortgage Finance Authority Act Oversight Committee meeting in Albuquerque had been successfully webcast. Finally, Mr. Burciaga explained that while the microphones in State Capitol meeting rooms are not quite sensitive enough to pick up

all of the public comment often solicited at interim committee meetings, they are sensitive enough to pick up side conversations between committee members.

Members of the council congratulated Mr. Burciaga for getting the webcasts up and running so quickly.

In response to a question from Senator McSorley, Mr. Burciaga explained that because most of the committee rooms were already properly wired, the only cost associated with beginning interim committee webcasting had been a little extra work by the information technology staff and Legislative Building Services.

Karen Wells, LCS, provided the committee with a letter on behalf of the chair and vice chair of the Legislative Health and Human Services Committee (LHHS) making a second request for \$30,000 to fund a health insurance rate review analysis and actuarial study. She explained that in researching insurance rate reviews and working closely with the Public Regulation Commission (PRC), it has become apparent that New Mexico's insurance market is unique. Ms. Wells went on to note that several insurance providers are trying to increase their rates before federal health care legislation goes into effect and that many states are seeking similar professional help to try to deal with the issue.

In response to a question from Senator Payne, Ms. Wells explained that the previous superintendent of insurance, Mo Chavez, recommended the study to the chair and vice chair of the LHHS. She also pointed out that New Mexico does not require enough information from insurance companies on rate case hearings to be able to show how insurance rates are constructed.

In response to another question from Senator Payne, Ms. Wells explained that any contract entered into would not have to be bid upon and that while some vendors had already been contacted, no selection has been made.

In response to a question from Representative Gardner, Ms. Wells explained that while the PRC currently performs some actuarial analysis, staffing issues limit its workload significantly.

The council had a lengthy discussion about whether the proposed study, and any resulting recommendations, would ultimately benefit the PRC, as that agency has jurisdiction over insurance rate cases. Other members of the council expressed concern over whether funding an actuarial study of health insurance rates would either duplicate, or even perform, the work of the PRC. Several members pointed out that money could no longer go toward duplication of effort.

In response to another question from Representative Gardner, Ms. Wells explained that the deadline for full implementation of federal health care legislation is in 2014 but that some phases of the law go into effect much sooner than that.

In response to a question from Representative Lundstrom, Ms. Wells explained that the LHHS meets through November, but it plans to take an in-depth look at insurance during its October meeting. She went on to note that the LHHS will provide some information to the Government Restructuring Task Force within the next month. Ms. Wells also emphasized that additional information regarding insurance rates would only serve to protect New Mexicans.

In response to questions from Representatives King and Taylor regarding the nature of the study, staff explained that the money would be used to engage an entity with a health care background to help protect New Mexican ratepayers.

Speaker Lujan noted that while the information sought by the proposed study would be pertinent to some of the decisions facing the legislature and could help residents who need such information, there is still some concern about duplication of effort. He suggested that staff work more closely with the PRC.

Senator Jennings noted that there are other facets of the overall health insurance equation that also deserve attention.

A motion was made and seconded to authorize the transfer of \$30,000 from interim expenses to the LHHS for expert analysis of rate reviews and an actuarial study.

The motion was tabled, with Speaker Lujan and Senator McSorley voting NO.

Mr. Burciaga provided the council with language for requests for proposals (RFPs) for legal and technical services associated with redistricting.

On a motion made, seconded and unanimously approved, the council authorized the issuance of RFPs for legal and technical services associated with redistricting.

There being no further business, the council adjourned at 12:00 noon.