



**MINUTES  
of the  
THREE-HUNDRED-THIRTY-FOURTH MEETING  
of the  
LEGISLATIVE COUNCIL  
November 15, 2010  
Santa Fe**

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The three-hundred-thirty-fourth meeting of the Legislative Council was called to order on Monday, November 15, 2010, at 10:20 a.m. in Room 307 of the State Capitol by Speaker Ben Lujan, co-chair.

**Present**

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

**Special Advisory Members Present**

Representative Eliseo Lee Alcon  
Representative Donald E. Bratton  
Senator Pete Campos  
Representative Anna M. Crook  
Representative Brian F. Egolf, Jr.  
Representative James Roger Madalena  
Senator George K. Munoz  
Senator John Arthur Smith

**Absent**

**Special Advisory Members Absent**

Senator Kent L. Cravens  
Senator Mary Jane M. Garcia  
Representative Antonio Lujan  
Representative Al Park

**Staff**

Raúl E. Burciaga, Director, Legislative Council Service (LCS)  
Kathy Pacheco-Dofflemeyer, Assistant Director for Administration, LCS

Doris A. Faust, Assistant Director for Drafting Services, LCS  
John Yaeger, Assistant Director for Legislative Affairs, LCS  
Jeret Fleetwood, Locator Coordinator, LCS

On a motion made, seconded and unanimously passed, the minutes of the September 22, 2010 meeting were approved as submitted.

### **Redistricting Update**

Mr. Burciaga provided the council with an update on contract negotiations for technical and legal redistricting services. He explained that, as directed by the council, contracts had been negotiated for professional technical and legal services for redistricting, and that attorney rates, photocopying fees and other incidental costs had been reduced. Mr. Burciaga went on to note that the feed bill would have to include some of the redistricting costs and that staff would have specific numbers available by the January council meeting.

The council raised a number of questions regarding negotiation of the contracts and other aspects of the overall redistricting process. Some members asked about the availability of software that would allow members of the legislature and the public to draw and redraw individual districts.

Mr. Burciaga noted that members were allowed access to map-drawing software and technical staff support that allowed for adjustment to districts during the last redistricting session. He said that, at a minimum, similar resources would be available in 2011.

The council discussed the role played by county governments in drawing, freezing and altering voting precincts, as precincts have been used by New Mexico as the basic building block for redistricting. Staff explained that legislation passed and signed during the 2009 legislative session had frozen precinct boundaries until after redistricting.

Speaker Lujan reminded the council that adjustments could still be made to precinct boundaries but only in very limited circumstances.

In response to a question from Representative Stapleton, Mr. Burciaga explained that school board boundaries were not drawn by the legislature, and that changes to the law regarding the makeup of the Public Education Commission may mean that laws governing redistricting may not apply any longer.

### **New Member Orientation**

Mr. Burciaga indicated that new member orientation is scheduled for Thursday, December 16, and that staff would contact house leadership about making presentations to new members. He also noted that the ethics seminar and council meeting are scheduled for the next day, December 17.

Mr. Burciaga went on to explain that House Memorial 6 (2010) requested New Mexico State University (NMSU) to develop an ethics course available to all local and state public

officials. He indicated that while the curriculum developed by NMSU is sufficient in satisfying the ethics seminar requirements of the legislature, it does carry a \$50.00 ethics curriculum enrollment fee plus a \$75.00 registration fee for this seminar. It is scheduled for three hours, one hour more than the two hours required of legislators, but it will be condensed to two hours. Mr. Burciaga also noted that it would cost between \$4,000 and \$6,000 to enroll all members of the legislature in the course, and that the course offered in Santa Fe on December 17 would be recorded for those members unable to attend that day.

Also, Mr. Burciaga reminded the council that while newly elected members of the legislature could not receive per diem and mileage payment as legislators, they could be reimbursed at the rate paid to members of the public if the council authorizes it.

In response to a question from Representative Crook, Mr. Burciaga explained that members of the legislature who are unable to attend the December 17 ethics seminar could satisfy their ethics requirement by either viewing the recording of the December 17 seminar or attending another two hours of ethics training. For instance, he pointed out that attorneys could attend another two-hour continuing legal education course focusing on ethics.

The council discussed some of the issues regarding past pre-session meetings and ethics requirements. Senator McSorley pointed out that recent pre-session seminars included briefings on potentially significant issues facing the legislature during the upcoming session, such as the budget, water and interim committee issues. Other members of the council cautioned that interim committee chairs would have to be present for such briefings, and that even short presentations by each committee would add a significant amount of time to an already lengthy day.

On a motion made, seconded and unanimously approved, representatives-elect who have not yet been sworn in are authorized to receive per diem and mileage payments at the public rate for attendance at the new member orientation and ethics seminar scheduled for December 16-17.

On another motion made, seconded and unanimously approved, the council authorized payment of the \$4,000 bulk registration fee to NMSU, plus per diem and mileage payments, to all members of the legislature for attendance at the ethics seminar scheduled for December 17.

### **Staff Reports**

Mr. Burciaga noted that Ms. Faust had been named as assistant director for drafting services. Ms. Faust indicated that she looks forward to working with all members of the legislature.

Mr. Burciaga explained that, in 2009, the council had directed staff to contract with the National Conference of State Legislatures (NCSL) to review the classification and compensation of year-round and session employees, and that a report had been completed by the NCSL. He summarized the report, noting that:

- comparable salary data show that the current pay plan for year-round staff is competitive with market rates for similar jobs in all ranges;
- the session-only classification and compensation system that was developed about 10 years ago has evolved into two separate systems, one followed by the house and one followed by the senate; and the NCSL recommends that it be reunified into a single plan, including the determination for raises and promotions;
- the study found that current pay levels for session-only staff lag behind the market and perhaps could be revised upward; however, the study also notes that these positions have an intrinsic value, that being the ability to be near the action and play a part in the unique professional environment of legislative policymaking and politics, which is something that is not offered by other employers;
- the study also made specific recommendations on the classification of about 15 session-only positions, and the directors and chief clerks are reviewing these positions in more detail;
- the study also found that a number of session-only employees are paid above the maximum pay rate in their classification range, and these specific instances are also under review;
- the NCSL recommends that a revised effort for consensus on compensation policy for session-only staff be initiated by the major legislative stakeholders, beginning with the chief clerks and the LCS director; and
- the study recommends that the directors and the chief clerks should collaborate, to the extent possible, to establish common practices regarding compensatory time and other personnel practices.

Mr. Burciaga indicated that legislative agency directors and the chief clerks have had some discussions about the study's recommendations and will continue to do so.

Mr. Burciaga went on to explain that the chair and vice chair of the Legislative Health and Human Services Committee requested permission from the speaker and pro tem to allow the Milbank Memorial Fund to conduct a one-day seminar the week before the upcoming session on the impact of the federal Patient Protection and Affordable Care Act (federal health care reform law), especially as it relates to how states are affected. He noted that the seminar will take place in Santa Fe on January 11, and the Milbank Memorial Fund will pay for the cost of the seminar, including the conference room, the costs and expenses of the speakers and lunch for all legislators that would like to attend.

The council had a lengthy discussion about the conference's fees and timing. Some members suggested that members, including representatives-elect, reimburse themselves for attendance out of campaign funds. Other members questioned whether the conference may be more helpful if it is held later, once the session begins and after all members have been sworn in and would likely be in Santa Fe. Other questions were raised about the proposed length of the conference, pointing out that it would be difficult for members to digest the intricacies of a complex new federal law in one day.

In further discussing the timing of the conference, some members of the council acknowledged that while attendance might be higher once the session begins, it might be helpful for members to better understand the new laws as soon as possible, in order to better discuss them with constituents.

Other members of the council pointed out that the point of the conference is to keep members, and even non-returning members, as informed as possible, and they recommended that all members be reimbursed for conference costs.

On a motion made, seconded and approved, the council authorized the payment of per diem and mileage to members attending the Milbank Memorial Fund health care conference, subject to approval by leadership, with Representative Gardner voting NO.

On a motion made, seconded and approved, the council also authorized the payment of public per diem and mileage rates to representatives-elect for attendance at the same conference.

Mr. Burciaga noted that statute provides for space for gubernatorial transition teams after the general election. He explained that Governor-Elect Martinez's transition team currently occupies the Room 300 suite of offices in the State Capitol, as well as the two adjacent committee rooms.

In response to a question from Representative Bratton, Mr. Burciaga indicated that the statutes do not provide for transition costs or space for newly elected secretaries of state. The statutes do not provide for any transition assistance for any of the other statewide elected officials, i.e., the commissioner of public lands, attorney general, state treasurer and state auditor. However, the LCS will provide assistance as needed upon the secretary of state-elect's taking of office.

Mr. Burciaga also provided the council with an update regarding the Capitol Parking Facility, reminding the council that the session policy of charging hourly, weekly and monthly fees for public spaces had proved unworkable and the council had adopted a policy offering free public parking spaces on a first-come, first-served basis on a year-round basis.

In response to several questions from members of the council, Mr. Burciaga assured the council that spaces for session staff, executive agencies and offices such as the secretary of state would still be set aside.

In response to a question from Representative Bratton, Mr. Burciaga noted that the increased number of spaces reserved for use by Governor Richardson's office were under the purview of executive branch. However, he said that he would raise the issue with the transition team.

In response to a question from Speaker Lujan, Mr. Burciaga explained that while staff would no longer be permanently assigned to monitor the parking facility, it would still be monitored by Legislative Building Services, Capitol Security and the New Mexico State Police.

Senator McSorley raised a concern about the recently stated intention of Governor Richardson's administration to move the state DNA laboratory from its current location in Albuquerque to Santa Fe, and the assumption of laboratory functions by the Department of Public Safety rather than an out-of-state contractor. He explained that the Courts, Corrections and Justice Committee (CCJ) had already written a letter to the current administration urging that the laboratory not be moved and suggested that the council send a similar letter urging that any move be postponed and decided upon by the next administration.

The council discussed the various issues surrounding the proposed move. Some members of the council noted that the CCJ had recently visited the current DNA laboratory, explaining that its basic function is to mail DNA samples to an out-of-state facility, rather than perform its own analyses, which the Santa Fe facility would do. Other members of the council suggested that independent, out-of-state analyses, while potentially time-consuming, are preferable to having the Department of Public Safety perform analyses, which could present conflict-of-interest issues.

Speaker Lujan noted that he, too, had attended the CCJ meeting, and that conflicting testimony had been offered to the committee. He also pointed out that the council, by law, neither endorses nor opposes legislation, and in fact rarely, if ever, even offers an opinion on such issues.

On a motion made, seconded and approved on a vote of 12 to three, the council directed staff to send a letter to Governor Richardson's office suggesting that any decision regarding relocation of the state's DNA laboratory be delayed until more information is available, which will likely not be until the next administration takes office, with Speaker Lujan, Representative Stapleton and Senator Payne voting NO.

The council directed staff to note the following points in the letter:

- the wisdom of making such a decision during the final days of an administration;
- potential problems resulting from any interruption in the process regarding relocation of the laboratory; and
- questions regarding the independence offered by moving DNA analysis into the same agency charged with prosecution of some crimes.

There being no further business, the council adjourned at 12:22 p.m.