

PROPOSED MINUTES
for the
FIFTH MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE
November 23-24, 2009
Room 307, State Capitol

The fifth meeting of the Courts, Corrections and Justice Committee was called to order at 1:00 p.m. by Representative Al Park, co-chair, on Monday, November 23, 2009, in Room 307 of the State Capitol, Santa Fe, New Mexico.

Present

Sen. Peter Wirth, Co-Chair
Rep. Al Park, Co-Chair
Sen. Rod Adair (11/23)
Rep. Thomas A. Anderson
Rep. Joseph Cervantes
Rep. Gail Chasey
Sen. Mary Jane M. Garcia
Sen. Clinton D. Harden, Jr.
Sen. Linda M. Lopez
Rep. Antonio "Moe" Maestas (11/24)
Sen. Richard C. Martinez
Rep. William "Bill" R. Rehm
Rep. Mimi Stewart

Absent

Rep. Zachary J. Cook
Sen. John C. Ryan

Advisory Members

Rep. Eliseo Lee Alcon
Rep. Brian F. Egolf, Jr.
Rep. Dennis J. Kintigh (11/23)
Sen. Carroll H. Leavell
Sen. Cisco McSorley
Rep. Bill B. O'Neill
Sen. William H. Payne
Rep. Sheryl Williams Stapleton

Rep. Elias Barela
Sen. Gay G. Kernan
Rep. W. Ken Martinez
Sen. Michael S. Sanchez
Rep. Jack E. Thomas
Sen. David Ulibarri
Rep. Gloria C. Vaughn

Guest Legislators

Sen. Dede Feldman (11/23)
Sen. Nancy Rodriguez
Rep. James P. White

(Attendance dates are noted for members not present for the entire meeting.)

Staff

Maha Khoury
Mark Harben

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Monday, November 23**Ethics Commission Subcommittee Meeting**

The Ethics Commission Subcommittee met from 9:20 a.m. until 12:20 p.m. Subcommittee members reviewed and amended a bill draft creating a state ethics commission. Various issues, including last year's HB 151, were compared and discussed. A motion was made and seconded, without objection, to present the bill draft, as amended by the subcommittee, to the full committee for endorsement.

Call to Order

Representative Park called the meeting to order at approximately 1:00 p.m.

Governor's Legislative Proposals

Rachel O'Connor, DWI coordinator, Office of the Governor, discussed three proposed pieces of legislation relating to driving while under the influence of intoxicating liquor or drugs. One proposal would increase penalties and fines for DWI offenses; another would prohibit pleading down an aggravated DWI charge to a non-DWI charge; and a third would disallow electronic monitoring of DWI offenders in lieu of mandatory incarceration. The Office of the Governor withdrew a fourth proposal that was included in the committee's packet.

Sharon Pino, domestic violence coordinator, Office of the Governor, discussed four proposed bills relating to domestic violence. One bill proposal narrows the definition of "household member", another relates to uniform police reports, a third would de-certify police officers convicted of domestic violence and a fourth creates a leadership commission. Ms. Pino provided the committee with statistics regarding domestic violence and discussed their impact on the state.

Herman Silva, director, Narcotics and Gang Activities, Department of Public Safety, discussed proposed legislation dealing with gang activity. He discussed classification, sentencing and the impact of gang activity on the state.

Committee members asked questions of the panel and discussed the proposed bills, problems and other policy options.

Uniform Law Commission: Proposed Legislation

John P. Burton, uniform law commissioner, and Fletcher R. Catron, estate planning and probate lawyer, explained and discussed three proposed bill drafts with the committee. They examined revisions to the Uniform Probate Code, the Uniform Child Abduction Prevention Act and the Uniform Debt-Management Services Act. Committee members asked questions and discussed the bills with the panel.

Public Comment

The committee recessed at approximately 4:35 p.m.

Tuesday, November 24

The meeting was reconvened at 9:10 a.m. by Representative Park.

Contractor and Subcontractor Liens on Homes and the Stop Notice Act

Lisa Martinez, director, Construction Industries Division, Regulation and Licensing Department, discussed the establishment of a task force to evaluate contractor and subcontractor liens on homes and the Stop Notice Act. The task force included residential and commercial contractors, representatives from the Attorney General's Office and the department and homeowners. Ms. Martinez discussed existing laws and said there is a need for updates, citing abuse by some contractors and subcontractors. She said the Stop Notice Act, driven by financial institutions, was designed to provide the means for contractors and subcontractors to collect money after their work was completed. Ms. Martinez explained that there are problems with invalid lien documents, notice to homeowners, difficulty in resolving liens, pre-filing requirements, owner-occupied exceptions and lending policies and procedures.

Jack C. Milarch, Jr., executive vice president and CEO, New Mexico Home Builders Association, discussed the lien laws currently in place. He mentioned that lien laws tend to be reevaluated during economic downturns. According to Mr. Milarch, there have been attempts to protect consumers from paying contractors and subcontractors twice, along with a provision that takes lien rights away from a contractor or subcontractor working without a license. He admitted that it is too easy to file a lien and said there needs to be a discussion of illegal versus problematic behavior by contractors and subcontractors.

Michael F. Menicucci, attorney, Calvert Menicucci, PC, discussed the problems with notice of liens. He said that the laws associated with liens are extremely old and need to be updated. Mr. Menicucci discussed the task force on lien law and told the committee that the Stop Notice Act and lien law are different.

Representative Rehm told the committee that if there is early notice, the costs involved are dramatically lower than when there is late notice. He discussed various scenarios.

Committee members commented on the issues, discussed policy options and asked questions of the panel.

State Auditor's Legislative Proposals

Hector Balderas, state auditor, said that it was an honor to be in front of the committee. He said that the legislative proposals related to his office are extremely important and discussed their impact on the state. He said that his office "lacks teeth" to pursue the duties of his position. Mr. Balderas said that not only does he face financial constraints, but he also faces cultural and legal factors that hinder his investigations and cases. He said that about 90 agencies are behind in their audit requirements and 64 are not compliant with state law regarding audits. According to Mr. Balderas, approximately a billion dollars has not been properly accounted for or tracked currently.

He then discussed the second bill draft dealing with waste and fraud, which includes the misrepresentation of finances. This bill would put the burden on statewide elected officials to not enter into contracts with state agencies for personal gain and addresses conflicts of interest.

Missing Persons and Domestic Violence

Senator Lopez discussed the recent missing persons cases in Albuquerque. She provided background on the proposed legislation, citing missing persons cases and issues. She introduced her panel.

Agnes Maldonado, executive director, National Alliance to Eliminate Domestic Violence, discussed domestic violence and missing persons and provided the committee with statistics on victims. She explained the process used in AMBER alerts and other alerts for missing persons.

Emily Maestas discussed domestic violence and missing persons, providing the committee with the example of her sister-in-law Sandra Sanchez, who was reported missing and later found murdered. She explained the frustrations with the limitations and problems of the process. Ms. Maestas said that she would like to see the equivalent of the AMBER alert for domestic violence instances and stronger legislation to protect the victims.

Vicki Otero told the committee about her daughter running away and disappearing. She explained the problems and the lack of communication and cooperation among law enforcement entities, not just between different agencies but within the same agency. Ms. Otero said that the process is extremely ineffectual and it is difficult for victims to achieve justice.

Committee members asked questions about the proposed legislation, commented on the issues and discussed policy options.

Liquor Establishment Liability

Ronald C. Morgan, attorney, Morgan Macy, spoke about statistics relating to liability of liquor establishments and insurance coverage. Lora Lee Ortiz, executive director, Mothers

Against Drunk Driving New Mexico, described the problems caused by irresponsible liquor establishments. Gary Tomada, director, Alcohol and Gaming Division, Regulation and Licensing Department, spoke about liquor establishment liability in other states and the nature of establishments with liquor licenses. For example, Allsup's and Giant own 25% of liquor licenses in the state, and there are 160 private clubs with liquor licenses. He discussed the price of insurance and how small locally owned establishments are usually not insured as they cannot afford insurance. Liquor liability insurance for an average bar would run around \$36,000 a year. The panel discussed proposed legislation from last year dealing with the issue and explained its impact.

Committee members commented on the issues, discussed policy options and asked questions of the panel.

Endorsement of Proposed Legislation

Committee members discussed and voted on endorsement of legislation. The bill numbers below correspond with bill numbers shown on the agendas and presented throughout the interim. The Ethics Commission Subcommittee requested that its bill, number 41, be included in the bills for endorsement.

Bill numbers 1, 4, 8, 12, 17, 18, 19, 20, 21, 24, 29, 30, 32, 36, 38, 39, 40 and 41 were endorsed, without objection. Bill number 31 was endorsed, with Representative Maestas objecting, and bill number 37 was endorsed, with Senator Wirth objecting. Bill number 16 was not endorsed, with Representatives Anderson and Rehm voting in favor of endorsement. Senator Harden moved to withdraw bill number 23, and the bill was withdrawn.

Bill number 25 was endorsed, with Representatives Park, Stewart, Cervantes, Rehm and Anderson and Senator Wirth voting in favor of endorsement and Representatives Chasey and Maestas and Senators Garcia, Lopez and Martinez voting against endorsement.

Bill number 26 was endorsed, with Representatives Park, Stewart, Cervantes, Rehm and Anderson and Senator Wirth voting in favor of endorsement and Representatives Chasey and Maestas and Senators Garcia, Lopez and Martinez voting against endorsement.

Bill number 27 was not endorsed, with Representatives Park, Maestas and Anderson and Senator Wirth voting for endorsement and Representatives Cervantes, Stewart, Chasey and Rehm and Senators Garcia, Lopez, Martinez and Harden voting against endorsement.

Bill number 33 was not endorsed, with Representatives Park, Cervantes, Rehm and Anderson and Senators Wirth and Harden voting in favor of endorsement and Representatives Stewart, Chasey and Maestas and Senators Garcia, Lopez and Martinez voting against endorsement.

Bill number 34 was endorsed, with Representatives Park, Cervantes, Rehm and Anderson and Senators Wirth and Harden voting in favor of endorsement and Representatives Stewart, Chasey and Maestas and Senators Garcia and Lopez voting against endorsement.

Bill number 35 was not endorsed, with Representative Chasey and Senators Garcia, Harden and Lopez voting for endorsement and Representatives Maestas, Park, Cervantes and Rehm and Senator Wirth voting against endorsement.

There being no further business, the committee adjourned at 1:40 p.m.