



**MINUTES
of the
THREE-HUNDRED-NINETY-FOURTH MEETING
of the
LEGISLATIVE COUNCIL**

**August 12, 2020
House Chambers and Video Conference Meeting
Santa Fe**

The three-hundred-ninety-fourth meeting of the Legislative Council was called to order by Senator Mary Kay Papen, co-chair, at 12:08 p.m. on Wednesday, August 12, 2020, in the House Chambers and by video and audio conference via an online platform.

Present

Rep. Brian Egolf, Co-Chair
Sen. Mary Kay Papen, Co-Chair
Sen. Pete Campos
Rep. Daymon Ely
Rep. Candy Spence Ezzell
Rep. Doreen Y. Gallegos
Sen. Stuart Ingle
Rep. Patricia A. Lundstrom
Rep. Rod Montoya
Sen. Clemente "Memé" Sanchez
Sen. John Arthur Smith
Rep. Sheryl Williams Stapleton
Rep. James G. Townsend
Sen. Peter Wirth

Absent

Sen. William H. Payne
Sen. James P. White

Special Advisory Members Present

Rep. Eliseo Lee Alcon
Rep. Gail Chasey
Rep. Kelly K. Fajardo
Sen. Roberto "Bobby" J. Gonzales
Rep. Dayan Hochman-Vigil
Sen. Daniel A. Ivey-Soto
Rep. Georgene Louis
Rep. Antonio Maestas
Sen. George K. Munoz
Rep. Patricia Roybal Caballero
Sen. Benny Shendo, Jr.
Sen. Mimi Stewart
Rep. Elizabeth "Liz" Thomson
Rep. Christine Trujillo

Special Advisory Members Absent

Rep. Phelps Anderson
Rep. Deborah A. Armstrong
Sen. Ron Griggs
Rep. Jason C. Harper
Sen. Steven P. Neville
Sen. Michael Padilla
Sen. Cliff R. Pirtle
Rep. Jane E. Powdrell-Culbert
Sen. Gabriel Ramos
Rep. Patricio Ruiloba
Sen. William E. Sharer

Guest Legislators

Rep. Christine Chandler
Rep. Joanne J. Ferrary
Rep. Harry Garcia
Rep. Raymundo Lara
Sen. Gerald Ortiz y Pino
Sen. Nancy Rodriguez
Rep. Andrea Romero
Sen. Antoinette Sedillo Lopez
Rep. Melanie A. Stansbury
Sen. Pat Woods

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Amy Chavez-Romero, Assistant Director for Drafting Services, LCS
Jon Boller, Senior Staff Attorney, LCS
Sara Wiedmaier, Research Assistant, LCS
Jeret Fleetwood, Researcher, LCS

Interim Committee Budgets

Mr. Burciaga explained that due to the ongoing COVID-19 pandemic, interim committees would be meeting less often for the 2020 interim. He recommended that interim committee budgets be approved at 50 percent of the amount appropriated for the 2019 interim.

On a motion made, seconded and passed, the council approved interim committee budgets at 50 percent of the amount appropriated for interim committees during the 2019 interim.

Requests for Proposals for Redistricting Legal and Technical Services

Mr. Burciaga explained that every ten years, in anticipation of redistricting, the legislature issues requests for proposals for legal services and technical services for state and congressional redistricting. He said that after proposals were received, staff would return to the council with the proposals so that the council could grant final approval.

On a motion made, seconded and passed, the council authorized LCS staff to issue requests for proposals for legal services and for technical services for state and congressional redistricting, with the understanding that staff will return to the council with the proposals.

Governor's Executive Orders

Michael Browde and Tom Hnasko, outside counsel for the council, reported on their investigation of the issue of whether the governor exceeded statutory authority in directing the Department of Finance and Administration to make a sum greater than \$750,000 available to the Department of Health through certain executive orders. Mr. Browde and Mr. Hnasko also discussed possible options to address the issue.

Mr. Browde first cautioned that resorting to a judicial resolution to this issue would most likely be premature at this juncture, given that the court often will refuse to take up an issue such as this as a purely legal matter. Also, he noted that discussion of any particular judicial approach should only be taken up in executive session. Mr. Hnasko, with respect to Section 11-12-24 NMSA 1978, said that it is clear that the legislature has appropriated a maximum of \$750,000 per applicant per emergency and that the governor's interpretation of that statute in her response to the council's letter is incorrect and warrants a response. However, he cautioned that, without information such as where the money came from and how much of it has already been spent, pursuing a remedy through judicial means would likely be premature.

Mr. Browde and Mr. Hnasko recommended that LCS and Legislative Finance Committee (LFC) staff continue to gather more information; that close attention be paid to the emergency powers statutes with an eye toward updating those statutes; and that a subsequent letter of response be sent to the governor.

The council had a lengthy discussion regarding the appropriateness of pursuing a judicial remedy and what that remedy would entail; other information staff and outside counsel might need in order to proceed; the constitutional authority of the legislature to appropriate money; and the possibility of cooperation between legislative and executive staff before the legislature meets in January 2021 to propose improvements to the emergency powers statutes.

A motion to have outside counsel continue investigating the executive orders and report back to the council by September 1 ended with a vote of eight votes in favor of the motion and seven votes against. However, because a majority of the members of the House of Representatives voted against the motion, it was blocked by the members of the House of Representatives pursuant to Section 2-3-1 NMSA 1978.

The council directed outside counsel and staff to continue working on the issue and report back at the next council meeting. The council also directed staff to send a letter to the governor requesting additional assistance in researching the issue.

Staff Reports

Mr. Burciaga noted that since the last council meeting, appointments have been made to the New Mexico Civil Rights Commission. He also said that because House Bill 5 (2020 1st S.S.) identifies the LCS as an agency to help staff the commission, he has been in contact with the Risk Management Division of the General Services Department.

Senator Smith noted that the LFC would be meeting on August 26 through 28, 2020 in Red River. The council briefly discussed direction from the council that interim committees meet in Santa Fe.

Representative Lundstrom asked that a group of legislators be appointed to work on plans for the 2021 legislative session.

Adjournment

There being no further business, the meeting adjourned at 1:48 p.m.