



**MINUTES
of the
THREE-HUNDRED-FORTY-FOURTH MEETING
of the
LEGISLATIVE COUNCIL
July 31, 2012
Santa Fe**

The three-hundred-forty-fourth meeting of the Legislative Council was called to order on Tuesday, July 31, 2012, at 10:25 a.m. in Room 307 of the State Capitol by President Pro Tempore Timothy Z. Jennings, co-chair.

Present

Senator Timothy Z. Jennings, Co-Chair
Representative Ben Lujan, Co-Chair
Representative Thomas A. Anderson
Representative Donald E. Bratton
Senator Carlos R. Cisneros
Representative Anna M. Crook
Senator Stuart Ingle
Representative W. Ken Martinez
Senator Cisco McSorley
Representative Rick Miera
Senator William H. Payne
Representative Sheryl Williams Stapleton
Representative Thomas C. Taylor
(Speaker Lujan participated by phone)

Absent

Senator Michael S. Sanchez
Senator William E. Sharer

Special Advisory Members Present

Representative Eliseo Lee Alcon
Senator Pete Campos
Representative Roberto "Bobby" J.
Gonzales
Representative Rhonda S. King
Representative Dennis J. Kintigh
Representative James Roger Madalena
Representative Debbie A. Rodella
Senator John Arthur Smith

Special Advisory Members Absent

Senator Mary Jane M. Garcia
Representative Antonio Lujan
Senator George K. Munoz
Representative Andy Nuñez

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
Doris A. Faust, Assistant Director for Drafting Services, LCS
Cassandra Jones, Research Assistant, LCS

Approval of Minutes

On a motion made, seconded and passed, the minutes of the three-hundred-forty-third meeting from June 27, 2012 were approved as submitted.

Interim Committee Business

Mr. Burciaga explained to the council that an incomplete audit of the New Mexico Finance Authority (NMFA) had recently been discovered and that the NMFA Oversight Committee had voted unanimously at its last meeting to request approval from the council for an independent operational review of the NMFA. He explained that such a review would be similar to the 2009 operational review the council authorized to be conducted of the State Investment Council (SIC), Public Employees Retirement Association and the Educational Retirement Board, noting that it would not be a forensic audit but would instead look at governance, policies, procedures and practices specific to the NMFA. Mr. Burciaga went on to indicate that the review would look at the response of the NMFA to the incomplete audit to determine whether that response was in line with best practices. He also explained that the entity conducting the review would report to the NMFA Oversight Committee, Legislative Council and Legislative Finance Committee (LFC), as well as communicate information to the state auditor and the Securities Division of the Regulation and Licensing Department. Finally, Mr. Burciaga said that because it is fairly early in the interim, it is difficult to tell how much money is available for the review, but last year's expenses and the amount reverted suggest that no more than \$150,000 is available.

In response to a question from Senator Cisneros, Mr. Burciaga explained that the state auditor or attorney general would likely conduct a more thorough investigation, comparable to a forensic audit.

In response to a question from Representative Bratton regarding potential duplication of effort between the proposed review and any work performed by the state auditor, Mr. Burciaga explained that the proposed review would look at the NMFA's policies, governance and practices to ensure that the agency is back in operation as soon as possible and that sufficient operational checks and balances exist. Mr. Burciaga also noted that other investigating agencies coordinated during the 2009 operational review of the SIC to ensure that one agency was not stepping on another and that the same type of coordination would take place this time.

In response to a question from Representative Crook, Mr. Burciaga noted that the NMFA would be conducting its own internal audit, but no costs would be shared between that audit and the proposed review.

In response to a question from Senator Smith, Mr. Burciaga noted that the council could direct the LCS to have final say on selection of the entity that will conduct the review. Senator Smith also raised concerns regarding publication of the amount the council has to spend on the review.

Speaker Lujan and President Pro Tempore Jennings discussed the importance of the NMFA as a tool for helping local governments and how critical it is that the issues facing the agency are addressed and that the NMFA gets back up and running.

In response to a question from Representative Gonzales, Ms. Faust explained that the NMFA has about \$37 million in cash balances, and that while it is trying to deploy those funds, projects over \$5 million may not be funded. She also noted that the NMFA will have additional policies proposed at its next board meeting.

On a motion made, seconded and unanimously approved, the council authorized the LCS to contract for an operational and governance review of the NMFA.

Mr. Burciaga noted that the council had authorized creation of a transportation subcommittee, which would include members from the Revenue Stabilization and Tax Policy Committee (RSTP), Economic and Rural Development Committee, Indian Affairs Committee and NMFA Oversight Committee. He explained that each committee had recommended members and that the co-chairs had been provided with a list of each committee's recommendations.

In response to a question from President Pro Tempore Jennings, Mr. Burciaga explained that subcommittees addressing capital outlay, capitol security, Inspection of Public Records Act (IPRA) issues and the achievement gap as outlined in House Memorial 67 were also before the council for consideration or appointment of members.

President Pro Tempore Jennings explained that the Senate Committees' Committee had discussed the large number of interim committees each senator serves on at the start of the interim. He noted that appointing each of the subcommittees would increase the number of committees for several senators, indicating that the Senate Committees' Committee should meet before appointing any more members to interim committees.

The council had a discussion on the appointment of members to the subcommittees. Several members suggested that leadership from both chambers be appointed to the subcommittee regarding IPRA requests. Other members suggested that Mr. Burciaga and the LCS handle security policy, pointing out that it might not be appropriate for individual legislators to know specific details about security or video surveillance.

In response to a question from Speaker Lujan, Mr. Burciaga explained that the transportation subcommittee would be made up of members from four other interim committees, would meet separately and would return with recommendations on ways to increase the revenue going to the Department of Transportation.

In response to a question from Representative Kintigh, Mr. Burciaga indicated that staff could look at the security policies in place in other state capitols and report back to the council.

The council also discussed a subcommittee to examine ways of eliminating the achievement gap and increasing graduation rates of Hispanic, Native American and African American students, as called for in House Memorial 67 from the 2012 session. Several members of the council pointed out that the measure calling for the appointment of a subcommittee was a simple house memorial, as opposed to a joint memorial, which did not provide the senate with an opportunity to provide input on the issue. Other members suggested that the Legislative Education Study Committee (LESC) look at the issue, instead of appointing a new subcommittee. Representative Stapleton explained that having the LESG look at the issue would not allow members of the community to be members of the working group, as called for in the memorial.

The council then discussed the use of email and IPRA requests for legislative emails. On a motion made, seconded and passed, the council directed the four floor leaders to develop a policy to bring back to the council for consideration. Senator Payne indicated that he would prefer to have more information about how other states are dealing with technology issues.

The council then returned to the issue of an achievement gap working group. Representative Miera explained that the memorial calls for formation of a strategic plan, which is a large undertaking and would have to involve both the LESG and LFC. He suggested that the Senate Committees' Committee meet so that everyone understands that a working group could take several months to develop recommendations.

Other members of the council again raised the issue of appointing a working group based on the recommendation of a simple memorial. Some members noted the demands already placed on all members of the legislature by the large number of interim committees.

On a motion made, seconded and passed, the council agreed to wait for the Senate Committees' Committee to discuss appointment of a transportation subcommittee and an achievement gap working group.

Senator Smith raised the issue of transitioning to a streamlined sales tax and asked that the RSTP study the issue.

On a motion made, seconded and passed, the council amended the RSTP work plan to include an item on streamlined sales tax, based on available resources.

Staff Reports

Mr. Burciaga provided the council with preliminary numbers on the amount paid for redistricting litigation, explaining that the numbers were preliminary because they were pulled from various sources using various methods. He explained that it appears that the State of New Mexico has paid or will pay about \$5.5 million in redistricting litigation costs, noting that full costs were awarded to some litigants and reduced for others. At the request of the council, Mr. Burciaga indicated that staff would provide a breakdown of all redistricting costs and a comparison between this past effort and redistricting 10 years ago.

In response to a question from several legislators, Mr. Burciaga noted that staff would have to look into the issue of whether and how much individual legislators were paid through their involvement in redistricting litigation.

Mr. Burciaga explained that, for the past several years, requests have been granted for use of the house and senate chambers without council approval despite a council policy to the contrary. Mr. Burciaga went on to explain that this issue has come to light because Emerge New Mexico has requested use of the senate chambers for its legislative training in October.

The council had a discussion about whether Emerge New Mexico is a partisan group, and if so, about the appropriateness of allowing a partisan group to use the chambers. Several members raised objections about such use, while others noted that use of the capitol should be available to all citizens.

The council also discussed whether Emerge New Mexico's use of the chambers would be for educational purposes. Senator Cisneros explained that the group would use the chambers for the specific purpose of holding a mock legislative session and providing some training on how a bill becomes a law.

In response to a question from President Pro Tempore Jennings, Mr. Burciaga explained that since the request is for a Saturday, some staff would have to be present in the building to open one door and provide security. He also noted that while legislators would have access to the building through the parking garage, the building would not be open to the general public.

On a motion made, seconded and passed by a vote of 7-6, use of the senate chambers for Emerge New Mexico, for the specific purpose of holding a mock legislative session and providing training, was approved, with Representatives Anderson, Bratton and Crook and Senators Ingle, Jennings and Payne voting NO.

Representative Miera noted that Michael Davis, former state superintendent of public instruction, passed away recently.

There being no further business, the council adjourned at 12:35 p.m.