

UNAPPROVED MINUTES
of the
FIFTH MEETING
of the
ECONOMIC AND RURAL DEVELOPMENT COMMITTEE

November 11-13, 2009
Room 322, State Capitol
Santa Fe

The fifth meeting of the Economic and Rural Development Committee (ERD) was called to order by Senator Bernadette M. Sanchez, chair, at 10:15 a.m. on Wednesday, November 11, 2009, in Room 322 of the State Capitol in Santa Fe.

Present

Sen. Bernadette M. Sanchez, Chair
Rep. Mary Helen Garcia, Vice Chair
Rep. Andrew J. Barreras
Sen. Mark Boitano
Rep. Ernest H. Chavez
Rep. Nora Espinoza (11/11-11/12)
Sen. Mary Jane M. Garcia
Rep. William J. Gray
Sen. Timothy M. Keller (11/11-11/12)
Rep. Patricia A. Lundstrom
Rep. Debbie A. Rodella

Advisory Members

Sen. Rod Adair (11/12)
Sen. Sue Wilson Beffort (11/12-11/13)
Rep. Nathan P. Cote
Rep. Sandra D. Jeff (11/12)
Sen. Carroll H. Leavell (11/12)
Rep. James Roger Madalena (11/11, 11/13)
Sen. Richard C. Martinez (11/11)
Rep. Andy Nuñez
Rep. Shirley A. Tyler
Rep. Richard D. Vigil

Absent

Rep. Dianne Miller Hamilton.
Sen. Clinton D. Harden, Jr.
Sen. Howie C. Morales
Sen. George K. Munoz
Sen. William E. Sharer

Rep. Zachary J. Cook
Sen. Dianna J. Duran
Rep. John A. Heaton
Rep. Antonio "Moe" Maestas
Rep. Rodolpho "Rudy" S. Martinez
Rep. William "Bill" R. Rehm
Sen. John M. Sapien
Sen. David Ulibarri

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

Staff

Kate Ferlic
Sandy Mitchell
Aldis Philipbar

Guests

The guest list is in the original meeting file.

Wednesday, November 11

Tres Amigas Transmission Project

Phillip G. Harris, president and CEO, Tres Amigas, began by stating that he is a New Mexico native and that after he retired, he formed a group of grid operators to determine what could be done to improve energy policy. He said that he has worked with the Chinese government as well as governments in Europe, but North America is unique and it is difficult to come up with a consistent energy policy. Mr. Harris said there is a need to develop renewable energies in an environmentally friendly way. He emphasized that Tres Amigas is not seeking state funding and that the company has spent two years researching and privately funding the project. He discussed the U.S. grid concept and said that when the Tres Amigas super station is operational, it will be able to deliver electricity between participants in multiple grids and will enable renewable projects to grow.

Mr. Harris said that New Mexico is at the heart of solar and wind resources and that it has been great to work with the people in the southeast region. He said that Tres Amigas is looking at 70 gigawatts of potential power and that a study commissioned by the Western Governor's Association ranked New Mexico's potential at number one for renewable energy generation. He said that New Mexico could produce 70,573 gigawatt-hours of renewable energy annually and that the state has the most to gain and the most potential. He said that the potential impact to local economies is great and will result in hundreds of new jobs and \$78.6 million to local economies per year. However, he noted that to make this happen, New Mexico needs to have transmission lines, and he encourages policymakers to do everything possible to move this forward quickly because New Mexico has the potential but is falling behind other states.

Mr. Harris then answered questions from the committee. He said that the project is already fully funded, and they are just waiting on the state to do cost allocation to build transmission lines. In response to a question about health risks to families, Mr. Harris said that studies have shown no health risks but that the transmission lines are large and can be an eyesore. He added that there is a lot of support from people in the southeast region of the state. In response to a question about determining cost allocation, Mr. Harris replied that Tres Amigas does not have a solution for state allocation, but typically those that use it will pay for it. He said that some states use a general rule, but, regardless of how the cost is allocated, it must be done in order for the state to see the benefit. In response to other questions, Mr. Harris said that Tres Amigas enables the buying and selling of electricity through the super station. He said that they are asking for market-based rates and that the company will charge a toll for every kilowatt-hour that moves through the station. He said that Tres Amigas has leased 14,000 acres from the State Land Office for the super station and that it is likely to be the only one like it in the world. He added that the cost to put the transmission lines in place is estimated to be about \$2 billion, but the company has not run the numbers to get exact figures. He also said that Tres Amigas is working closely with the Economic Development Department (EDD).

Uranium Mining Update

Bill Brancard, director, Mining and Minerals Division, Energy, Minerals and Natural Resources Department (EMNRD), discussed the inactive/abandoned uranium mine inventory project in which the department determines which mines have had reclamation, which are in the process of reclamation and which are still in need. He said that the project came up with 259 mines with reported uranium production in 18 of 33 counties. He said that over 95% of mining occurred in the Grants uranium belt. Mr. Brancard noted that of 259 mines, 122 have had some reclamation, leaving 137 with no reclamation; so the department decided that its focus should be on those. He added that the department also tracks mines by surface ownership. He explained that the next step was to get out in the field and look at the sites to take radiological readings and begin mapping. He said that a lot more work has to be done to move forward with reclamation. He added that the division looks at various dangers posed by mines, including ground water contamination, open pits, high radiation and other risks and then prioritizes the mines by risk. He said that there has been a lot of focus on the "Poison Canyon" and Ambrosia Lake areas, where lots of mining took place. Mr. Brancard then moved on to new uranium mining. He said that uranium mining came to an abrupt halt in the 1980s, when the price of uranium dropped, but there has been a significant price increase over the past five years. He said that uranium is now produced around the globe, and the Office of the State Engineer is issuing more and more permits for exploratory drilling. He said that two companies are moving forward with the mine permit process.

Jon Indall, counsel, Uranium Producers of New Mexico, said that nuclear energy makes up 20% of U.S. energy sources but that U.S. reactors import 90% of their uranium. He said that an estimated 600 million pounds of uranium reserves exist in the United States, and the present plan is to develop about 360 million pounds, most likely in McKinley and Cibola counties. Mr. Indall said uranium production could yield up to 6,921 direct jobs over five years.

During discussion with the committee, it was noted that the Grants uranium belt is one of most controversial issues when it comes to uranium mining. In response to a question about Mount Taylor, Mr. Brancard said that Mount Taylor has been designated by the state and federal governments as a historical site, but both of the new mining projects fall within Mount Taylor boundaries on government land, and they are attempting to mitigate this issue.

Telecommunications Competition and Facility Relocation Cost Recovery

Loretta Armenta, president, New Mexico Qwest, said that the company is losing 6,000 lines a month and may not exist in the future. She added that the bill that Qwest is proposing does not change the regulatory authority of the Public Regulation Commission (PRC).

Michael Horcasitas, regulatory director, Qwest, reviewed the proposed legislation (Bill Number 2 in the bill book). He said that the proposed legislation maintains the PRC's role in determining effective competition; there is no legislative mandate to remove authority from the PRC. He said that the proposed legislation updates the existing 1985 statute to recognize telecommunications competition that did not exist in 1985 but does exist today. Mr. Horcasitas said that these competitors are not regulated by the PRC: cable companies, wireless carriers and

voice over internet protocol providers. He added that the proposed legislation eliminates subjectively in the existing statute and establishes a defined mechanism to guide the PRC.

Roman Maes, lobbyist, added that Qwest understands that technologies have changed, but Qwest feels obligated to its customers and employees and wants the opportunity to come back to lost customers and offer new services. He said that this bill would allow Qwest to be more competitive.

Brian Harris, assistant attorney general, said that he would like to address both bills (Bill Numbers 1 and 2 in the bill book). He said that Qwest and the PRC are in talks to address these issues and that the Attorney General's Office is concerned that the talks constitute an end run around the accepted process. Mr. Harris said that it is important to remember that Qwest's primary goal is to maximize shareholder profits and that the attorney general recommends that this legislation should not be put on governor's call in a session when tax hikes are on the table and could affect those who could afford it the least.

During discussion with the committee, Mr. Maes said that the PRC approved this legislation last year by a vote of 3-2. However, it was also noted by a committee member that 33% is still a huge incumbent market share and that there is a much better way to do this than with this bill. Concerns were also expressed about the attorney general's opinion of the bill that some commissioners feel is premature.

On a motion made by Senator Garcia and seconded by Representative Espinoza, Bill Number 2 was endorsed with Senator Keller in opposition.

Mr. Horcasitas then discussed Bill Number 1. He said that proposed legislation allows all New Mexico telephone companies to recover their actual costs when the state or other public entities mandate that network facilities located in the public right of way be relocated. He said that the proposed legislation caps the amount of actual costs a telephone company can recover on an annual basis at \$1 million. Mr. Horcasitas said that the cost recovery would come from a small line item cost recovery fee on the retail customer's monthly bill and requires a 30-day notice to the PRC. He added that the PRC has the authority to verify that only actual costs are recovered. He said that the actual costs do not include any upgrades to the facility being relocated and that these costs are not being recovered through existing rates. He added that the rural telephone companies will also benefit from the bill. Ms. Armenta added that last year, many felt that local governments should pick up this cost but that it is not in their budget, so it puts too heavy a burden on them.

There was some discussion among the committee about the language in the bill. A motion was made, seconded and approved to adopt amendments clarifying the language.

On a motion made by Senator Garcia and seconded by Representative Barreras, Bill Number 1 was endorsed as amended, with Representative Gray and Senator Keller in opposition.

Tax Incentives: Best Practices Bill

Ms. Ferlic, staff attorney, Legislative Council Service (LCS), reviewed Bill Numbers 3 through 5 in the bill book (Bill Number 4 was included as an example and was not up for adoption). She noted that these bills were requested by the committee and stem from state budget shortfalls due to a lack of accountability for tax incentives. She said that nuances in each tax incentive bill make it difficult to draft "catch-all" legislation, so the committee may need to amend each incentive individually. Ms. Ferlic said that Bill Number 3, a constitutional amendment, binds future legislatures to consider the factors outlined in the bill when adopting new tax incentives. She said that constitutional amendments are always germane in a 30-day session.

Richard Anklam, president and executive director, New Mexico Tax Research Institute, emphasized that if the committee is binding future legislatures, it should ensure that the language says exactly what it intends. Tom Clifford, economist, Legislative Finance Committee (LFC), said that the devil is in the details and that the LFC is on record that incentives should be easy to monitor and subject to periodic review. He added that some language in the bill needs clarification, such as "economic development tax incentives".

On a motion made by Representative Garcia and seconded by Senator Keller, the committee voted to adopt the bill as a change in statute and not a constitutional amendment.

On a motion made by Representative Garcia and seconded by Senator Garcia, the committee voted to consider the bill during the 60-day session, with Senators Keller and Boitano and Representative Espinoza in opposition.

Ms. Ferlic then reviewed Bill Number 4 as an example of how the committee or individual legislators could amend existing tax credits in order to meet best practices provisions. Mr. Anklam said that clawbacks and periodic reviews are generally considered good practices but that the committee needs to look at the intent of the incentive before making changes. He said clawbacks should be carefully considered so that people who are just trying to get through rough economic times are not penalized. Mr. Clifford added that it is possible to design clawbacks that are contingent on economic circumstances.

A motion made by Representative Garcia and seconded by Representative Lundstrom to introduce similar legislation during the legislative session was not adopted.

Procurement Code Preferences

Senator Keller said that a bill that moves preference from 5% to 10% for in-state businesses was requested by the committee. Ms. Ferlic added that very rarely does this preference come into play because the definition of "resident business" is so broad.

A motion was made, seconded and adopted to change "resident business" to "New Mexico resident business".

On a motion made by Senator Garcia and seconded by Senator Sanchez, the bill was endorsed by the committee.

Grants to Energy, Minerals and Natural Resources

Senator Keller said that a bill from New Mexico First would change the law to study triple bottom line impact. He said that the bill would help fund a study of the social, economic and environmental impacts of various pieces of legislation. It was suggested that "triple bottom line" be defined in the bill and that a sunset provision be added. Ms. Ferlic said that a temporary provision of two years could be added.

On a motion made by Representative Lundstrom and seconded by Senator Garcia, the bill was endorsed by the committee.

Thursday, November 12

Individual Development Accounts

Ona Porter, executive director, Community Action New Mexico, said that there are marked disparities in asset ownership among New Mexico residents. She explained that a household is classified as asset poor if it lacks the resources to subsist at the poverty level for three months if it loses its source of income. She said that the state's asset poverty rate is an indicator of economic security and that 19% of those earning between \$48,801 and \$68,800 are asset poor. Ms. Porter said that the state can help by increasing incomes, removing savings disincentives, providing savings incentives and protecting against certain asset stripping, for example by minimizing utility expenses.

Regulatory Process Legislation

T.J. Trujillo, chair, Regulatory Committee, and second vice chair, Association of Commerce and Industry (ACI), reviewed Bill Number 9, which would allow the legislature to nullify an administrative rule or regulation adopted by an executive agency by the passage of a resolution by the majority of the legislature. He said that this constitutional amendment is modeled after legislation in Iowa. He added that Iowa was chosen because its constitution has language similar to New Mexico's. After some discussion, Mr. Trujillo said that this legislation has been very effective in Iowa as an unspoken check on power. Beverlee McClure, president and CEO, ACI, Representative Nuñez and Representative Barreras were also available to answer questions from committee members.

On a motion made by Representative Espinoza and seconded by Senator Garcia, the bill was endorsed by the committee.

The Business Climate in New Mexico

Ms. McClure introduced panel members, all New Mexico business owners, with anecdotal evidence of how the recession has affected the business climate in the state. David Doyle, president and owner, Enterprise Builders, said that he owns a small construction business that employs about 45 people. He said that the construction industry has been hit very hard by

the economy and that he and others are concerned about what will happen in the coming year. Mr. Doyle explained that most projects are privately funded, but banking is in a bad situation now, so it is harder to get loans. He said that he has had to cut 20% of his work force and cut the salaries of those remaining. He said that he is doing whatever it takes to stay in business. He also expressed concern about the \$150 million cut in capital outlay projects, projects on which his company could have bid.

Denise Baker, president and CEO, D.R.B. Electric, Inc., said that her company has been in business since 1986, with steady growth until 2006. Since 2006, business has been declining. She said that D.R.B. used to compete against three or four others bidders, but now it is competing against 15 other bidders. Ms. Baker said that the company used to make a 30% to 40% percent profit, but now it makes about an 8% profit. She noted that it has been bidding jobs at the lowest rate possible and has done everything possible to downsize.

Raymond Mondragon, vice president, ENMR Plateau, said that a recent article assessed the business climate in various states based on labor costs, taxes, cost of litigation, etc., and ranked Texas at the top. He said that southeast New Mexico has to compete with companies in Texas for business. Ms. McClure added that businesses with headquarters outside of the state are starting to look at the cost of doing business in each state, and some are concluding that the cost of doing business in New Mexico is too high.

The panel then answered questions from committee members. In response to a question about recommendations for incentives, Mr. Mondragon said that New Mexico has good incentives, but that the Job Training Incentive Program is the most effective program. He also suggested looking at over-regulation. Ms. McClure suggested putting together a work group to look at ways to streamline and to eliminate duplicity. It was also suggested that, potentially, the best incentive would be to refrain from switching tax systems.

Regulatory Structure

Kelly O'Donnell, superintendent, Regulation and Licensing Department (RLD), said that 250,000 people are licensed by the RLD and that the overriding goal of the department is public safety followed by consumer protection and economic development. She noted that many industries want to be regulated because regulation serves a benefit; for example, one of the main drivers behind the mortgage finance reform bill that passed last year was the home mortgage industry. She said that those who do not want regulation are on the fringes of the industry. She acknowledged that people do get frustrated with the RLD, but usually it is because the department does not have the resources to police everything. She said that the RLD is trying to respond quickly to consumer complaints and is trying to be more sensitive to issues such as the length of time it takes to get a beer and wine or a liquor license. She said that the RLD has decreased the time it takes to get those licenses and is still working on it. She also acknowledged that the RLD gets a lot of complaints against its Construction Industries Division (CID), but the CID is down 17% in staff and is still turning around inspections within 24 hours.

Combined Reporting

Michael Mazerov, senior fellow, state fiscal project, Center on Budget and Policy Priorities, reviewed with the committee the proposed legislation (Bill Number 12 in the bill book, for discussion only) that would require any corporation that is subject to the Corporate Income and Franchise Act to file a combined tax return. Senator Wirth said that the state is looking at how combined reporting would work in New Mexico and how to implement it successfully. He said that the bill does not raise the current tax rate and asked why New Mexico companies should pay, and why multistate companies should not. Senator Wirth noted that New Mexico and Oklahoma are the only two states west of the Mississippi River that do not require combined reporting, and he called it a question of fairness.

In response to a question from a committee member, Senator Wirth said that the state is estimating an additional 20 percent in corporate income tax revenue. It was also suggested that the state address those who are gaming the system before imposing a new tax system that could be a burden.

Abuse of Credit Checks by Employers

Representative Lundstrom explained the proposed legislation (Bill Number 13 in the bill book) that would prohibit the use of consumer credit reports by employers. She also suggested adding an effective date of July 1, 2010.

On a motion made by Senator Garcia and seconded by Representative Garcia, the bill was endorsed by the committee.

Transportation Weight-Distance Revenue Enhancements

Secretary Rick Homans, Taxation and Revenue Department (TRD), said that road fund revenues are declining, and these funds directly affect the State Road Fund. He said that New Mexico is one of only four states to administer a weight-distance tax (WDT); the other 46 states apply a much higher registration fee on commercial vehicles. He said that the WDT is applied to commercial vehicles registered in New Mexico, whereas the trip tax is applied to those not registered in the state and yields about 10 times the revenue of the WDT. He also noted that even though New Mexico does not impose high registration fees like other states, the total annual fees collected by the state are still on par. However, he added that since 2007, permit fee revenues have been declining. Secretary Homans discussed the WDT enforcement initiative plan, which will have a projected \$7 million positive impact on the State Road Fund at no cost to the state general fund. Colonel Forrest Smith, Department of Public Safety (DPS), discussed the WDT enforcement operations at ports of entry. He said that the focus of the enforcement blitz was on WTD and trip tax compliance and the safety of state highways. He said that in 2009, there were eight drug seizures in Gallup resulting in the confiscation of 515.2 pounds of marijuana and 226 pounds of cocaine. He also discussed the "No Tax No Tolerance" intrastate operation, saying that the DPS was able to stop only about 45% of the commercial vehicles identified as not having a WDT permit due to a lack of manpower. He added that having two mobile license plate/DOT readers will help with compliance. In summation, Secretary Homans said that the trucking industry has a significant impact on the state's economy. He said that there has been a decline in interstate freight of 20% to 25% which results in a decline in revenues. He

said that compliance with the WDT is essential to the State Road Fund revenue stream.

Secretary Homans and Colonel Smith then answered questions from the committee. Secretary Homans said that any penalties are based on the amount of underreporting on taxes and truck weight. In response to a question about why New Mexico has not gone to an international registry, Secretary Homans said that the WDT is more accurate and that there have been objections from the small local trucking companies about moving to an international registry. He added that the state has a good compliance record.

Development of Citing Regulation for Wind Farms

Eileen Mulvihill, Ph.D., New Mexico Cares, discussed the proposed memorial regarding regulations for wind farms. She said that the state wants 40% of its energy to come from wind farms, which means massive wind farms that may be inappropriate in some areas. She pointed out the potential ill-health effects that wind farms can have on neighboring communities, especially with regard to noise levels. She also suggested that the memorial call for a study of the economic impact of wind farms that have already been developed.

On a motion made by Representative Vigil and seconded by Senator Adair, the bill was endorsed by the committee.

Paula Tackett, director, LCS, and Raul Burciaga, deputy director for drafting services, LCS, gave a brief presentation on the vetoes made by the governor to the special session legislation to fix the 2009 budget shortfalls.

Friday, November 13

Spaceport Legislation

Steve Landeen, chair, New Mexico Spaceport Authority, reviewed the proposed legislation (Bill Number 17) that would require informed consent of space flight participants and establish a public policy that all space flight participants who execute waivers assume the risks of engaging in space flight activities. He hoped that this bill would be endorsed by the New Mexico Finance Authority Oversight Committee. He also said that this bill is important to job growth in the state and that it is about the consumer assuming the risk and the state recognizing the waiver as legitimate. Geno Zamora, EDD, added that the state is at the cutting edge of commercial space flight and that this bill ensures that travelers are informed of the risk.

Mr. Landeen then answered questions from committee members. He said that Virgin Galactic already has more than 300 participants who have paid deposits. In response to a question about educational programs, Mr. Landeen said that there is about \$1 million to \$2 million a year available for educational space programs administered by public schools. Mr. Zamora added that the bill has already been added to the governor's call.

New Mexico Rodeo Council

Robert Detweiler, chair, New Mexico Rodeo Council, reviewed the proposed legislation

(Bill Number 18 in the bill book), which would create the New Mexico Rodeo Council and attach the council to the EDD. He said that the proposed legislation would create a profitable partnership and allow New Mexico to remain competitive with other states. He said that every year, rodeo participants and fans spend millions of dollars all over the state, and he cited Carlsbad as a community benefiting from the rodeo. In response to a question from a committee member, Debbie Romero, director of boards and commissions, Office of the Governor, said that there is a rodeo council that was created by executive order but that the council would like to see its creation in statute. She added that the bill is on the governor's call and that currently the council's budget is under the Department of Finance and Administration, but it would need to be moved under EDD. Secretary Mondragon, EDD, said that he would be happy to manage the rodeo council's budget. However, some committee members expressed concerns that there may not be any money to transfer with it.

On a motion made by Representative Garcia and seconded by Senator Garcia, the bill was tabled.

Arts and Cultural Districts

Rich Williams, state coordinator, New Mexico Arts and Cultural Districts, EDD, reviewed the proposed legislation (Bill Number 19 in the bill book) that would clarify and expand the types of arts and cultural districts and their designation procedures.

On a motion made and seconded, the bill was endorsed by the committee.

Film Production Tax Credit

Lisa Strout, New Mexico Film Office, reviewed the proposed legislation that would clarify certain provisions of the film production tax credit, provide for withholding of income taxes by pass-through entities and provide an exemption from gross receipts taxes. Ms. Strout said that the film industry is counterintuitive to the economy; it usually grows as the economy dwindles. She also said that a lot of companies in California are looking to move to New Mexico because of the state's model.

Ms. Strout then answered questions from the committee. Some concern was expressed by committee members over the fact that the committee was discussing tax increases and tax incentives in the same day. However, it was also pointed out that this bill adds more accountability, not more tax credits. Ms. Strout added that 43 other states offer film tax incentives.

A motion was made and seconded to endorse the legislation. The motion failed by a vote of 5-4.

Other Legislation

The committee voted to table the rest of the tax legislation under consideration. The committee decided that decisions on tax increases should not be made piecemeal, but rather as part of an overall plan.

There no longer being a quorum, the committee adjourned at 11:20 a.m.

- 11 -