

**MINUTES
of the
SIXTH MEETING
of the
JOBS COUNCIL**

**November 22, 2016
Room 322, State Capitol
Santa Fe**

The sixth meeting of the Jobs Council (council) was called to order by Representative Don L. Tripp, co-chair, on November 22, 2016 at 9:20 a.m. in Room 322 of the State Capitol.

Present

Sen. Mary Kay Papen, Co-Chair
Rep. Don L. Tripp, Co-Chair
Sen. Pete Campos
Terri L. Cole
Jason Espinoza
William F. Fulginiti
Rep. Harry Garcia
Rep. Roberto "Bobby" J. Gonzales
Justin Greene
Steven Kopelman
Rep. Sarah Maestas Barnes
Sherman McCorkle
Sen. Michael Padilla
Alex O. Romero

Advisory Members

Rep. Alonzo Baldonado
Sen. Carlos R. Cisneros
Rep. Kelly K. Fajardo
Rep. Bealquin Bill Gomez
Rep. Conrad James
Rep. Larry A. Larrañaga
Sen. Howie C. Morales
Rep. Debbie A. Rodella

Guest Legislator

Sen. Richard C. Martinez

Staff

Absent

Vicente Alvarado
Dale Armstrong
Scott Bannister
Terry Brunner
Sen. Stuart Ingle
Rep. Tim D. Lewis
Sen. George K. Munoz
Sen. Michael S. Sanchez
Eric Witt
Sen. Pat Woods

Rep. David E. Adkins
Rep. Cathrynn N. Brown
Sen. William F. Burt
Rep. Stephanie Garcia Richard
Rep. Yvette Herrell
Rep. Bill McCamley
Sen. Steven P. Neville
Rep. Patricia Roybal Caballero
Sen. William P. Soules
Rep. Monica Youngblood

Tessa Ryan, Staff Attorney, Legislative Council Service (LCS)
Jeff Eaton, Fiscal Analyst, LCS
Monica Ewing, Staff Attorney, LCS

Minutes Approval

Because the council will not meet again this year, the minutes for this meeting have not been officially approved by the committee.

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Tuesday, November 22

Changes to the Whistleblower Protection Act

Steven Kopelman, executive director, New Mexico Association of Counties (NMAC), and Randy Van Vleck, general counsel, New Mexico Municipal League (NMML), presented the concept for a bill that would address the issue of retaliatory action against employee whistleblowers.

Mr. Kopelman testified as follows. The NMAC and the NMML are arranging meetings with the teachers' union and the New Mexico Trial Lawyers Association to discuss the proposed legislation. The Whistleblower Protection Act, which was enacted in 2010, is very broadly written and has been used to protect bad employee supervisors. Because of this, many whistleblower cases have settled out of court. There are no financial caps on claims filed under the law. Since the law's enactment, the NMML has paid out \$8 million in related claims, and the NMAC has paid out \$5 million in related claims. The NMAC hopes to bring forth a bill in the coming legislative session that would address some of these issues.

Mr. Van Vleck testified as follows. A significant reason for the high payout amounts is the definition of "public employee", which extends the act's protections to contractors working for state and local government bodies. Also problematic are the definition of "unlawful or improper act", which includes "malfeasance in office" and the statutory language "waste of funds" and "abuse of authority". The latter two terms are susceptible to too much subjective interpretation. Another unintended consequence of the law is that pending actions leave employment positions open and unfilled for extended periods of time, sometimes years.

Responding to a member's question, Mr. Kopelman replied that the law has not been amended since its enactment.

A member asked whether other entities are experiencing similar problems. Mr. Van Vleck responded that they are, and he said that local governments are increasingly seeing whistleblower components in the lawsuits against them.

A member asked about the relationship of this measure with the council's goals. Mr. Kopelman replied that a 2015 study indicated that New Mexico employers have a 66% higher likelihood of being named as a defendant in a discrimination lawsuit — the highest in the nation. Mr. Kopelman added that the proposed changes to the Whistleblower Protection Act could positively influence tort reform. A member commented that the New Mexico Association of Commerce and Industry has been working with the United States Department of Commerce to examine related topics in legal reform.

Proposed Legislation — Local Jobs Councils Program

Charles Lehman, program consultant, and director, Employment and Economic Information Center of New Mexico, presented a draft of a bill that would fund a local job-creation grant program; it includes an 80-20 (state-local) match and a \$120,000 appropriation.

A member asked if the proposed program featured a cap on how much an applicant could receive through it, and Mr. Lehman replied that it did not. Another member asked if the Economic Development Department (EDD) supported this legislation. Mr. Lehman replied that the EDD neither supported nor opposed the proposed bill, but rather commented that the measure might duplicate its efforts.

Beth Davis, research and marketing director, EDD, who was in the audience, commented that the legislation's requirement that grant recipients have a strategic plan is already a requirement and said that the EDD utilizes a strategic planning and budgeting process.

A member commented that, under the Local Economic Development Act (LEDA), local governments are required to develop a strategic plan, but the proposed legislation seems more targeted. Mr. Lehman agreed. A member asked what problem the measure is attempting to address that existing groups are not handling well. Mr. Lehman replied that, while this may be similar to other programs, it is more specific than those. Mark Lautman, lead program consultant, and director, Lautman Economic Architecture, who was in the audience, clarified that the legislation would provide funding to allow recipients to take the next step in the Jobs Council process: move on from identifying problems to finding solutions.

A member suggested that there is a disconnect between local economic development organizations' work and the council process. Mr. Lautman responded that many of those organizations are busy and understaffed and clarified that the proposal is not intended to interfere with an organization's work.

Members of local economic development organizations in the audience were invited to share their perspectives on the proposal. Raymond Mondragon, president-elect of NM IDEA, and Eileen Yarborough, president of NM IDEA, expressed support for the proposal. Debra

Inman, vice president of Albuquerque Economic Development, said that aspects of the bill are confusing. Myra Pancrazio, executive director of the Estancia Valley Economic Development Association, commented that local communities already have a process and funding for plans, which each community must develop by working with the EDD. She also remarked that there is too little communication between those entities.

A member commented that, rather than endorsing and pursuing the measure, it would be better to try to improve that communication and coordination.

No motion was made to endorse the legislation.

Proposed Legislation — Memorial to Study Retirement-Based Tax Incentives

John Garcia, executive vice president, Home Builders Association of Central New Mexico, presented a draft of a memorial that would request a study on enacting retirement-based tax incentives.

A member remarked that state taxes are a factor that retired persons consider when deciding where to relocate to in retirement, but more than that, they consider where the grandchildren are. Mr. Garcia agreed that proximity to grandchildren, along with proximity to friends and family, are factors in retirees' location decisions. When asked by a member if the memorial addressed military benefits, Mr. Garcia said that it does not.

The council endorsed the memorial without objection.

Investments in Broadband Infrastructure

Katherine Martinez, director of legislative affairs, CenturyLink, presented the draft of a bill that would clarify that LEDA funding may be used for broadband infrastructure development.

The council endorsed the bill without objection.

Ms. Martinez also presented the draft of a bill that would help develop broadband infrastructure in areas of the state where that infrastructure is scarce. A member remarked that multiple related proposals have been brought forth to the Science, Technology and Telecommunications Committee and that concerns about those proposals were raised. The member suggested that, in light of the fluidity of the industry and the activity in the area of broadband infrastructure development, it might be prudent for the council to refrain from endorsing the bill. Another legislative member agreed and also expressed concerns about particular segments of the bill.

A member asked about how federal funding for broadband infrastructure would interact with the funds that the measure, if enacted, would make available. Ms. Martinez replied that the bill provides that, if a provider is already receiving a federal grant, it may not access the funds that would be provided by the measure.

A member expressed a preference for endorsing the bill in concept, given that broadband, like electricity was a century ago, is foundational to economic growth. The member asked if the telecommunications industry supported the bill proposal. Ms. Martinez replied that the industry has not had an opportunity to comment on the proposal.

A member moved to support the idea in concept. The motion was not seconded.

Appropriation for Solo-Worker Program

Ms. Yarborough, speaking as executive director of Cibola Communities Economic Development Foundation, and Bill Hendrickson, executive director, Las Vegas-San Miguel County Economic Development Corporation, presented a draft of a bill that would make an appropriation to the EDD for a solo-worker program. Mr. Hendrickson asserted that, in the future economy, a majority of jobs will be solo-worker jobs needing internet connections; he added that the idea of residents in rural areas working from home would be socially desirable.

A member asked how the grants from the appropriation would be awarded. Mr. Lautman said that the idea was to provide post-performance matching funds after the new job was created. A member moved to endorse the legislation; it was seconded; and the proposed bill was endorsed by the council.

Approval of Minutes

The minutes for the council's October meeting were approved with one change.

Extension of the Solar Market Development Tax Credit

Representative Sarah Maestas Barnes and Regina Wheeler, chief executive officer (CEO), Positive Energy Solar, presented the draft of a bill that would extend the Solar Market Development Tax Credit. Representative Maestas Barnes stated that the proposed bill is good for the state economy, the environment and electricity consumers. She asserted that there is a roughly ten-fold return on investment from the existing solar tax credit. She also stated that New Mexico was ranked seventh among states in a measure of solar job growth as a share of total employment in that sector.

A member noted that the employment figures on the map in the handout seem low in one county, given that there is a large solar manufacturing plant in that county. The member also asked who are the beneficiaries of the tax credit. Ms. Wheeler responded that they are members of households whose income varies, but that precise figures are not currently available, since the Energy, Minerals and Natural Resources Department does not collect household income data for this tax program.

A member noted that there are not many armed forces veterans employed in the industry. Ms. Wheeler replied that she thinks there is an opportunity for more veterans to be employed in this industry. A member commented that it might be a good idea to enact a solar consumers' bill of rights to help protect consumers from unscrupulous solar companies. A member asked if the

credit is available to people who lease their solar systems. Representative Maestas Barnes replied that it is not.

Update on the Council Broadband Study and Plan

Mr. Lehman reviewed a presentation map showing that New Mexico does not have adequate broadband internet connectivity in many areas of the state.

A member expressed support for a comprehensive plan to expand broadband infrastructure because such a plan is necessary to access federal and other non-state funding.

Another member commented that there are many organizations involved in the field of information technology development and asked if those organizations were involved in deciding on recommendations for expanding broadband infrastructure. Mr. Lehman replied that they are and added that it is important for public- and private-sector partners to continue to be involved in those decisions.

Accountability in State and Local Incentives for Job Creation

Mr. Lautman presented on the concept of a proposed economic development accounting and planning act. He explained that New Mexico has neither the protocols for an economic development planning process nor the metrics in place to determine whether its planning efforts are working.

Mr. Lautman highlighted four components of the initiative and briefly described them.

1. Architecture – Pull all the statutes related to economic development into a new section of the statutes.
2. Accounting – Include a section to collect and organize incentives and eligibility requirements and appropriations related to the creation of new economic base jobs.
3. Planning – Include a section establishing a planning framework for those engaged in the procurement of new economic base jobs.
4. Economic Base Index – Include a section establishing a new data collection and analytics system that reports incremental changes in the number of economic base jobs created.

Mr. Lautman reviewed the expected benefits and potential risks of passing some or all of the proposal. Mr. Lautman said he is convinced that this can be done but the challenge is that the legislation's complexity could make it difficult for people to support. He requested that the council provide guidance on how it wishes to proceed with the initiative.

The council co-chairs indicated that whether the council continues this work next interim will be decided in the coming year.

A member commented that many people in the economic development community had concerns about participating in the work on the initiative because they were asked by Mr.

Lautman to sign confidentiality agreements related to that work. The member also said that others expressed concern because they were not solicited for input in the process.

Prompted by the co-chair's invitation, several members of the audience articulated as follows their responses to the proposed initiative and to the work completed toward it.

Mr. Mondragon commented that a lack of communication contributed to many of those individuals' concerns and said that communication should be improved if going forward on the proposal.

Richard Arguello, executive director, Union County Community Development Corporation, remarked on the great need for economic development in rural areas of New Mexico.

Ms. Yarborough stressed that local economic developers need to have a voice in any large-scale reform efforts like this.

Davin Lopez, president and CEO, Mesilla Valley Economic Development Alliance, commented that he agreed with some of Mr. Lautman's ideas, but not others. Mr. Lopez suggested that some of the confusion surrounding the initiative stemmed from proposed legislative language; he suggested, therefore, that concepts be discussed and agreed on before such language is developed.

Jobs Council — Looking Ahead

Mr. Lautman presented a handout of activities proposed for the next council, if it is formed again, to engage in. They are:

1. conversion of the council assessment into a plan exemplar;
2. Accounting and Planning Act development, including:
 - a. internal user reviews;
 - b. stakeholder review; and
 - c. legislation preparation; and
3. new program theater development, including
 - a. solo-work program development; and
 - b. retirement program development.

Recognition of Achievement

Mr. McCorkle introduced Eric Peevy, a governor-appointed member of the New Mexico Military Base Planning Commission, and lauded him for his role in attracting two F-16 squadrons to Alamogordo. Those squadrons, Mr. McCorkle said, will bring 650 civilian contract jobs to New Mexico.

Adjournment

There being no further business, the council adjourned at 12:47 p.m.

