

**MINUTES
of the
FOURTH MEETING
of the
MILITARY AND VETERANS' AFFAIRS COMMITTEE**

**October 27, 2011
Martinez Hall Theater, New Mexico State University-Grants Campus
Grants, New Mexico**

The fourth meeting of the Military and Veterans' Affairs Committee (MVAC) was called to order by Senator David Ulibarri, co-chair, on October 27, 2011 at 9:15 a.m. at New Mexico State University in Grants.

Present

Rep. Thomas A. Garcia, Co-Chair
Sen. David Ulibarri, Co-Chair
Rep. Eliseo Lee Alcon
Sen. Richard C. Martinez
Rep. Bob Wooley

Absent

Rep. Dianne Miller Hamilton
Sen. John Pinto

Advisory Members

Rep. Thomas A. Anderson
Rep. George Dodge, Jr.
Rep. Rodolpho "Rudy" S. Martinez
Rep. Edward C. Sandoval

Sen. William F. Burt
Sen. Carlos R. Cisneros
Sen. Eric G. Griego
Sen. Mary Jane M. Garcia
Sen. Clinton D. Harden, Jr.
Sen. Timothy M. Keller
Sen. William H. Payne

Guest Legislator

Rep. Debbie A. Rodella

Staff

Pam Stokes, Staff Attorney, Legislative Council Service (LCS)
Rebecca Griego, Records Officer, LCS
Leslie Porter, Research Assistant, LCS

Guests

The complete guest list is in the meeting file.

Handouts

Copies of the handouts are in the meeting file or have been posted online.

Thursday, October 27

Welcome and Introduction

The members of the committee introduced themselves.

Native American Veterans' Income Tax Settlement (NAVITS) Fund Update

Demesia Padilla, secretary, Taxation and Revenue Department (TRD), offered a briefing on the NAVITS Fund. Discussing its legislative history, she said the fund is a result of Senate Bill 574 (2008) and Senate Bill 541 (2009). She explained that the legislation appropriated \$900,000 for payments to the veterans and \$50,000 to the Veterans' Services Department (VSD) and to the TRD for expenditures related to the processing of claims. As established in Section 7-2H-4 NMSA 1978, she said the secretaries of the two departments are required to cooperate to conduct a study to determine whether Native American veterans who were domiciled on tribal lands have had New Mexico personal income taxes improperly withheld from their military pay during periods of active duty. She stated that this study was presented to the MVAC on October 1, 2008, and she added that the VSD secretary is required to provide a status report to the MVAC no later than October 1 of each year.

Concerning the implementation of the fund, Secretary Padilla said tribal leadership has been consulted and that information is available on the TRD web site. In addition, she mentioned implemented outreach plans and data-tracking methods. However, because there is money left in the fund, she said the TRD has not been completely successful.

Prior to explaining the refund process, Secretary Padilla clarified that federal law did not permit the withholding of state income taxes from military service personnel until 1976, and New Mexico entered into the agreement in 1977; therefore, no refunds are given for service prior to 1977. She also stated that a veteran normally has only three years to apply for the refund, but in this case, because many Native Americans may not have the necessary W-2 form, additional time may be needed to acquire the correct paperwork. Secretary Padilla said the refund process begins with a completed settlement fund claim form signed by the claimant or personal representative and by the VSD that is sent to the TRD. For the claims falling within the years of 1977 and 1982, the TRD sends the information to the Defense Finance and Accounting Service, where the information is reviewed. For claims falling within the years of 1983 and 2005, the TRD sends the request to the Defense Manpower Data Center, where the information is reviewed. Based upon the data review, the TRD makes a determination to approve or deny, or partially approve or deny, each claim. She said each claimant is then sent a letter communicating the decision. Secretary Padilla informed the committee that 1,176 claims have been made to date, with 666 refunds issued with an average payout of \$1,243. She said there are 16 claims in process, and a fund balance of \$253,232, which includes an additional \$250,000 fiscal year 2012 appropriation.

Alan Martinez, deputy secretary, legislative affairs, VSD, elaborated on the issue, stating that the state personal income tax was established in 1919, and employer withholding of this tax was enacted in 1961. He said that New Mexico entered an agreement with the U.S. Department of Defense (DOD) to withhold this tax in 1977, and no taxes were withheld from military pay

prior to this date. He said that there were 15,000 Native American veterans living in New Mexico as of December 2008. Offering a status update on the NAVITS Fund, he said that there have been 1,191 applications received to date with 1,101 of those forwarded to the TRD. He claimed there is a remaining balance of \$172,960.73 for the project. Deputy Secretary Martinez added that despite the outreach efforts of the VSD, there will always be people on Navajo land who are not aware of the fund. He clarified that several Vietnam veterans feel they were inappropriately taxed, and the VSD wants them, and all Native American veterans, to feel they have the option to apply for the refund.

Members of the committee asked for points of clarification, such as the location of domicile upon entering the military and the breakdown of the fund. Deputy Secretary Martinez noted the issue of military personnel continuing to claim New Mexico residency while living across the country, due to the lack of New Mexico state income tax withholding.

Committee members requested information regarding whether any income has been made on investment of the fund. Secretary Padilla said she would gather that information from the Department of Finance and Administration.

Members of the committee asked about additional outreach efforts. Deputy Secretary Martinez stated that in addition to the aforementioned efforts, the information spreads throughout the pueblos via word of mouth.

A member of the public asked the committee to request additional money for the fund because there are many Native American veterans who are seeking financial aid.

SunZia Southwest Transmission Project Update

Tom Wray, project manager, SunZia Southwest Transmission Project, said that the SunZia Southwest Transmission Project reaches from south central and southwestern New Mexico to Phoenix, Arizona. He explained the legend on the many maps illustrating the project. He briefly mentioned the area of discussion and contention for the project, which is the area just north of White Sands Missile Range. He said that within this space, there are two national wildlife refuges, a great deal of land belonging to the U.S. Bureau of Land Management (BLM) and private land. He pointed out the preferred transmission route and the route preferred by the United States Department of Energy. Through maps, Mr. Wray depicted the areas of New Mexico that are most suitable for wind farms and solar energy plants. He further discussed the SunZia project, including a 500-mile proposed route length, its configuration options and the project's five substations, three of which will be in New Mexico. Mr. Wray explained that the project is currently in its draft environmental impact statement stage. He said that this statement will be reviewed by the BLM and the nine cooperating agencies, then it will be subject to a 90-day public review period.

Concerning military operations, Mr. Wray mentioned that participation by the DOD has increased. He offered a list of meetings with military installments since 2009. He highlighted the military areas of New Mexico that will be affected by this project and noted the military

activity in those areas throughout the year. He said that the DOD has withdrawn all objections to the right-of-way applications for the SunZia project.

In conclusion, Mr. Wray offered a few of the lessons learned throughout the process and how to avoid conflicts with the military in projects such as these. He said that the project needs to be aware of military operations, air space and test missions prior to application submittal for the project. He said that early discussion needs to be initiated with military installations on mitigation measures that can avoid conflict and that the project managers need to be prepared to make contacts beyond the local military installation. In response to these lessons learned, he said that in addition to meeting with various representatives from the local military installations, meetings were held with the Office of the Secretary of Defense and the secretary of the army. A copy of his handout is not available online, but it can be found in the meeting file.

Committee members inquired about why this project needs to take place. Mr. Wray replied that the determination of what lines are to be used is based upon energy demand, which has increased. He said that there are currently not enough transmission lines for the demand. He said that the SunZia project will be providing jobs in New Mexico with a revenue impact of \$2.7 million in wages and benefits, with \$8 million paid within the first year of operation.

Approval of Minutes

Upon a motion made by Representative Wooley and seconded by Representative Garcia, the minutes of the previous meeting were approved without opposition.

Veterans Clubs — Nonprofit Gaming Issues

Deputy Secretary Martinez discussed the viability of local veterans' posts. Deputy Secretary Martinez stated that these local posts are vital due to the rural nature of the state. There are 19 service officers throughout the state who are unable reach every community. If these posts start to close, the state will lose the main contact source for veterans in those communities. Deputy Secretary Martinez stated that veterans are attracted to the small, quiet atmosphere of rural New Mexico, and these posts are where those veterans go first when seeking help. He said that most veterans do not want to contact larger government offices, and that is why these posts are so important. These veterans need comfort, he said, for they do not seek professional medical help for mental illnesses upon return; they go to their families. He said the local posts are struggling with financing, and through the legislature's efforts, a tax exemption was passed, which helps. Other revenue needs to be generated. He said the local posts are membership based. Membership fees are about \$20.00. He said that fundraising has become so intensely regulated that the posts can no longer function. He emphasized that regulations should be in place, but not to this extent.

Minda McGonagle, lobbyist, Veterans and Fraternal Non-Profit Clubs of New Mexico, Inc., discussed the specifics of the situation. She said the veterans' fraternal orders and nonprofits are allowed to have gaming in the form of bingo and raffles. She stated that last year, the legislature corrected a seemingly simple problem. Prior to the legislation, a pull tab could be purchased in a gaming hall as long it was opened in the hall, not in a bar. If it was opened in a bar, a citation would result. The legislation changed this and allows a pull tab to be opened

while sitting down. Ms. McGonagle stated that veterans service organizations are a large part of the state's nonprofit gaming community, which includes American Legion posts, fraternal clubs, the Fraternal Order of Police and Veterans of Foreign Wars posts. She said these clubs are allowed to offer members the opportunity to play video gaming machines and win money. She explained the "giving back" requirement of gaming, stating that the posts must give 16% of the proceeds back to charity, and an additional 10% for taxes. She said that there is a strict limit on the types of organizations the donations can be given to, which include charitable and educational organizations.

Ms. McGonagle emphasized the rigorous regulatory environment. She said that a club may have up to 15 gaming machines regulated by the Gaming Control Board (GCB), and she said there are extensive compliance requirements in addition to the laws and regulations developed to implement and enforce nonprofit gaming. Giving specifics of the process, she said that the minimal internal control standards require a 32-page document establishing conduct related to gaming operations, accounting, staffing and compliance recording. She said policy letters are frequently issued without a public hearing process and are not available on the GCB web site. She said the charity guidelines are not simple, and the organizations to which a club might wish to donate must be negotiated with the GCB. An additional concern is the number of forms that must be manually completed on a daily, weekly and monthly basis. In sum, she said, this results in financial problems for the clubs because they are required to segregate tax payment and charitable/educational funds into individual "exclusive purpose" accounts. She explained that there are months when operational costs, which are not funded, exceed the amount of available funds, resulting in routine bills not being paid.

Ms. McGonagle offered potential regulatory solutions to these issues, including aligning the goal of "gaming integrity and purpose" with the regulatory structure and the simplification of regulations and charity guidelines. Concerning financial solutions, she suggested developing financial rules that provide clubs with the ability to be financially stable and realigning charity guidelines to allow clubs more flexibility to decide contribution priorities to suit the needs of the local community.

In conclusion, Ms. McGonagle stated that nothing is being asked of the committee through this presentation; rather, the issues simply need to be brought forth.

Roger "Bart" Bartosiewicz, quartermaster and gaming accountant, Veterans of Foreign Wars Post 3280 in Clovis, said that the single mission of the posts is to take care of the veterans. He reiterated the frustration over the amount of regulations imposed on them.

Gary Fresquez, gaming commissioner, Veterans of Foreign Wars, Raton post, said his post has given money to college students and has contributed to other areas of the community. He said that he has lost gaming due to GCB regulations. He expressed that compliance with the regulations and policy letters is overwhelming, and he often feels he is drowning in paperwork.

Committee members inquired about several posts and suggested submitting recommendations to the GCB and see if it is responsive to those recommendations. Members stated that the committee can suggest statutory changes.

Members of the committee asked for clarification about whether the GCB has the ability to change rules without a public approval process, and they asked why the GCB is issuing policy letters in response to regulation inquiries, which is considered to be frequently changing internal interpretations and which creates confusion and is a circumvention of the legislative process. Ms. McGonagle replied that this is an issue related to the definition of "charitable organization". Committee members recommended that instead of a statutory change, a regulation change should be made within the GCB.

National Cemetery Funds for Fort Bayard — HJM 10 (2010)

Deputy Secretary Martinez said that HJM 10 requests the VSD to study extending eligibility to the Fort Bayard National Cemetery to receive funding from the Veterans' National Cemetery Fund. Offering a brief background of Fort Bayard, Deputy Secretary Martinez stated that it was established as a United States Army installation in 1866 to protect miners and other settlers in the area along the Apache Trail. He said the first internment was made in 1866, and the Fort Bayard cemetery was established in 1930, which became part of the National Cemetery System in 1973. He said it is currently under the direction of the Fort Bliss National Cemetery. He added that in the 1990s, the State of New Mexico donated 3.95 acres to the cemetery, and it was placed on the National Register of Historic Places on July 7, 2002. He said the cemetery has 4,000 graves.

Discussing the Veterans' National Cemetery Fund, Deputy Secretary Martinez stated it was established in 1987 as a state income tax check-off to fund the expansion of the Santa Fe National Cemetery. He said that as of December 31, 2010, the balance of the fund was \$125,578 and the balance, in full, is being transferred to the City of Santa Fe.

Deputy Secretary Martinez brought forth several issues surrounding the fund. He said that HJM 10 was originally created to offset costs incurred by the City of Santa Fe for the expansion of the national cemetery and that amending current statute would have an impact on the payments due to the City of Santa Fe. He added that negotiations would need to be entered into with the City of Santa Fe if the money collected is to be split between the two entities.

Committee members expressed their concern about the lack of maintenance on the entrance to the cemetery and stated the need to address this issue. Deputy Secretary Martinez said this area is under National Cemetery Administration, whose attention must be sought to fix this problem.

Members of the committee asked why Fort Bliss is not funding the Fort Bayard National Cemetery maintenance. In response, Deputy Secretary Martinez said that the Fort Bayard cemetery falls within the El Paso district of the U.S. Department of Veterans Affairs system, not the Fort Bliss district. He said that Fort Bayard is on the National Register of Historic Places, and it needs to be maintained; yet that can only be done if the cemetery is given more money.

He added that a letter from the committee to the headquarters in Washington, D.C., would carry some weight in this matter. Deputy Secretary Martinez advised that he would work with Cliff Shields, director of the Santa Fe National Cemetery, for the amount it would cost for maintenance. Upon a motion made by Senator Ulibarri and seconded by Representative Alcon and with none opposed, a letter endorsed by the committee will be sent to the National Cemetery Administration request funding for maintenance of the Fort Bayard National Cemetery.

Native American Veterans' Issues and Concerns — Pueblo of Acoma

Dennis H. Felipe, commander, American Legion Post 116, expressed the legion's concern about not having the proper equipment to conduct burials for Pueblo of Acoma veterans, not having the proper infrastructure at the post and not having adequate transportation for the veterans. He listed the requests of the legion, including a bugle to play taps, rifles for the gun salute, a stand for lowering caskets, electric "post building" signs, additional space at the post site, a backhoe for digging graves, paving the parking area around the legion building and funds to purchase a vehicle to provide veterans with transportation to and from the Veterans Health Administration (VHA) clinics and other appointments.

Members of the committee stated that some of these requests can be taken care of, such as the bugle, which will be provided by the VSD. It was suggested that the New Mexico National Guard should be communicated with to donate old rifles to the legion. Deputy Secretary Martinez explained that the VSD has a line item of \$50,000 to assist honor guard teams around the state. He added that the VSD gives each of them \$50.00 per funeral, but due to the cost of gas, most of this money goes to transportation. He also stated that the Pueblo of Acoma is still working on its paperwork to be eligible for the available funding; once it is registered with the Department of Finance and Administration, the pueblo can apply for reimbursements for the funerals.

Committee members addressed the request for a vehicle. Deputy Secretary Martinez explained that a driver of this vehicle must be licensed through the U.S. Department of Veterans Affairs, and the local entity must pay for the maintenance of the vehicle. He said that the VSD is currently working with the All Indian Pueblo Council regarding this issue. When asked where the requested vehicle would be hubbed, Mr. Felipe said it would be housed at the American Legion office. He said that logistics still need to be decided and that the vehicle would be used primarily for the veterans and their needs at the Pueblo of Acoma.

A member of the public told the committee that it is necessary to have an understanding of how the system works in the rural areas of the state. He said the van currently available stays at the stop for only three minutes, and it does not go to the village. He said he has requested a pickup at the village, but he was told this is not possible due to restrictions. He also said that he has argued with the pueblo governors about purchasing vehicles for themselves, but this is not possible due to financial restraints.

Native American Veterans' Issues and Concerns — Pueblo of Laguna

Marvin Trujillo, Jr., veterans director, Pueblo of Laguna, said that Native Americans have served in all military engagements that the United States has been involved in, and they have served in all branches of the military. He offered statistics, explaining that there are approximately 14,623 Native American veterans in New Mexico, and five out of 19 pueblos have a veterans service office at their respective locations. Offering a glimpse at past issues, he said that securing veterans' benefits, outreach to tribal veterans and the discrimination and availability of service officers have been on the list.

Mr. Trujillo gave an overview of the U.S. Department of Veterans Affairs, explaining that the Veterans Benefits Administration includes the regional offices in Albuquerque; the VHA is the VA Medical Center on Gibson Boulevard in Albuquerque; and the National Cemetery Administration is in Santa Fe. He gave a brief background on the basic claims package, he offered an illustration of the U.S. Department of Veterans Affairs structure and he stated that the end results of the structure are service connection benefits, pension benefits and health care benefits.

Concerning the Pueblo of Laguna veterans office, Mr. Trujillo said it was established in October 2007 and is located at the Laguna tribal administration building. He said the office is the first of its kind in New Mexico and is tribally operated. While a number of social service organizations exist at the pueblo, none is designed to focus on the specific needs of military veterans. He stated that his office works collaboratively with the VSD, the U.S. Department of Veterans Affairs regional office, the VA Medical Center and other organizations to ensure that access to resources and services is available. He stated that the scope of work includes service-oriented disabilities; improved disability pensions; health care; military medals and records; burial and memorial benefits; appeal of VHA claim decisions; and state and federal veterans benefits. Mr. Trujillo illustrated the future goals of the office, including a Native American liaison position within the VSD, continuing veteran service officer training, vans for transportation and a Native American veterans memorial.

Senator Ulibarri asked Deputy Secretary Martinez to research using the vans available, and he encouraged Mr. Trujillo to work with the VSD to accomplish this.

Navajo Code Talkers Museum and Veterans Center Update

Keith Little, president, Navajo Code Talkers Foundation, gave a brief background of the Navajo code talkers, stating that during World War II, the Japanese had broken all of the other United States' codes and were up to date on the plans of the United States. He said the Allied Powers were desperate for a safe and reliable form of communication and found it using the Navajo language. The military proceeded to recruit eligible Navajo men. He said that the code was based on English words from enlistee battlefield language that was given a Navajo coded name, not plain Navajo. He said this system evolved into an unbreakable code. He said he is envisioning a museum and veterans' center and is here to solicit funding for it.

Wynette Arviso, Navajo Code Talkers Foundation, discussed the mission of the Navajo Code Talkers Museum and Veterans Center: to preserve and pass on the legacy and language of

the Navajo code talkers while educating the public and providing a place of refuge, renewal and healing for all veterans and military personnel and their families. The vision for the museum is one that provides clear and consistent communication of the history and language of the Navajo code talkers; tells the story of the role of the Navajo code talkers in the successful outcome of World War II; and presents the development and deployment of the once-secret Navajo voice code used by the U.S. Marine Corps in the Pacific theater. The veterans center will provide a place for veterans and armed services personnel to meet and visit one another in an inviting and comforting atmosphere; offer a wide range of integrated services and resources for veterans of the armed services and their families; and honor, respect and celebrate their service. Ms. Arviso gave examples of components of the center, including oral history archives, exhibits and collections and support services. She said the project cost is estimated to be \$42.6 million, which includes a \$10 million endowment. She explained that New Mexico is being asked to contribute \$4 million.

Addressing how the legislature can help in other ways, she asked that Senate Bill 511 (2011) be reintroduced. It is an act making an appropriation for a feasibility and market study for a national Navajo code talkers museum and veterans center. The bill appropriates \$175,000 to conduct a feasibility and market study regarding visitors and traffic. In addition, she asked the committee to follow up on Senate Joint Memorial 51 (2010), a joint memorial requesting Congress to support and preserve the Navajo code talkers' legacy and their substantial contribution to the country. She also requested the legislature to support them in bringing a work session to Albuquerque to collaborate with other states so there is not a duplication of services in the establishment of this museum and veterans center. She thanked the committee and asked for its continued support.

Senator Ulibarri asked staff to follow up on whether or not the entities listed in the memorial have acted, and he stated that SB 511 will be considered for endorsement by the committee.

Committee members asked what the military has done to preserve the code talkers' language and requested any information regarding this. Members also inquired about military contributions to the museum. In response, Ms. Arviso stated that the military has not requested that information, but she said that the military has verbally supported their endeavors. She added that the museum might be able to borrow specific items for display, although these discussions still need to take place.

Adjournment

There being no further business before the committee, it adjourned at 4:30 p.m.