

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

**September 3, 2013  
New Mexico National Guard Headquarters  
Santa Fe County**

The fourth meeting of the Military and Veterans' Affairs Committee (MVAC) was called to order by Senator Richard C. Martinez, co-chair, on September 3, 2013 at 9:30 a.m. at the New Mexico National Guard Headquarters in Santa Fe County.

**Present**

Sen. Richard C. Martinez, Co-Chair  
Rep. Rodolpho "Rudy" S. Martinez,  
Co-Chair  
Sen. William F. Burt  
Rep. Nathan "Nate" Cote  
Rep. Dianne Miller Hamilton  
Sen. William H. Payne

**Absent**

Sen. Daniel A. Ivey-Soto  
Rep. Bob Wooley

**Advisory Members**

Rep. Eliseo Lee Alcon  
Rep. Thomas A. Anderson  
Sen. Carlos R. Cisneros  
Rep. Yvette Herrell  
Sen. John Pinto

Sen. Craig W. Brandt  
Rep. George Dodge, Jr.  
Sen. Timothy M. Keller  
Sen. Cliff R. Pirtle  
Rep. Dennis J. Roch  
Rep. Edward C. Sandoval  
Rep. Jeff Steinborn  
Sen. Lisa A. Torracco

**Staff**

Peter Kovnat, Staff Attorney, Legislative Council Service (LCS)  
Kathleen Dexter, Researcher, LCS  
Jennifer Dana, Intern, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Copies of all handouts and other written testimony are in the meeting file.

**Tuesday, September 3**

**Welcome and Update on the National Guard and Its Programs**

Brigadier General Andrew E. Salas, adjutant general, New Mexico National Guard (Guard), welcomed the committee to the Guard Headquarters and gave a presentation on the Guard's programs. General Salas described New Mexico as a "unique military treasure"; the state's minimally populated rural areas provide valuable training grounds and air corridors, and the Guard would like to expand its use of these areas. It would also like to establish a presence at Cannon and Kirtland Air Force bases, in part to make those installations "BRAC-proof" — protected from the federal base realignment and closure process. Because the Guard already has members who are F-16 pilots and trainers, it is negotiating with Holloman Air Force Base to assist in the base's F-16 program. It would also like to participate in training at White Sands Missile Range.

In its national defense role, the Guard has deployed more than 4,500 soldiers and airmen/women to 18 countries around the world since 2001. It has also participated since 2006 in the State Partnership program, which pairs state national guard units with countries in need of assistance with emergency management, disaster response and other nonlethal and peacekeeping operations. The Guard's partner in this program is Costa Rica. In its role protecting the lives and property of New Mexico residents, the Guard participates in emergency response situations, such as wildfires, and it hosts the New Mexico Counter Drug program, which treats abuse of both legal and illegal drugs as a national security threat.

The Guard's work toward building strong soldiers and communities centers on organizations such as the State Defense Force, comprising 100 volunteers statewide, and the New Mexico Civil Air Patrol, with 1,000 volunteers in 23 squadrons statewide. It emphasizes education; provides family support before, during and after deployment; assists returning Guard members as they transition into civilian employment; trains Guard members in sexual harassment and assault response and prevention; provides honor guards at veterans' funerals; and hosts the New Mexico Youth ChalleNGe in Roswell, a residential and mentorship program for high school dropouts. The Guard recently completed construction of an Army aviation support facility in Santa Fe, where Black Hawk helicopters are based, and a readiness center in Farmington. Plans are under way for readiness centers in Alamogordo and Las Cruces.

The Guard's \$7.092 million budget request for fiscal year (FY) 2015 is approximately \$250,000 higher than what it received from the state in FY 2014. The additional funds will cover increased state employee health insurance premiums, expansion of the New Mexico Civil Air Patrol enrichment program in middle schools and restoration of funding for the New Mexico Youth ChalleNGe program. The Guard will also request \$1.2 million in capital outlay funding for the statewide readiness center and design of the Las Cruces readiness center.

On questioning, General Salas and committee members addressed the following topics.

*Suicides.* The current suicide rate nationwide is 22 veterans and one active service member per day. Guard members are trained to recognize suicidal distress in themselves and others and to intervene and seek help.

*Recruitment and staffing.* Recruitment in general is not a problem for the Guard, though recruitment for the pilot corps is difficult due to a lack of necessary experience. The Southwest Aeronautics, Mathematics and Science Academy in Albuquerque is a possible recruitment venue. At the national level, headquarters-level billets are being reduced by up to 25 percent.

*State Defense Force.* New Mexico's militia — now the State Defense Force — was founded in 1598 and is the oldest in the nation. While there is no formal recruitment for the State Defense Force, the Guard is hoping to increase its ranks.

*Educational assistance.* Educational assistance is provided only to Guard members.

*New Mexico Civil Air Patrol.* The Guard has oversight of the New Mexico Civil Air Patrol, but only at the headquarters level.

*Drones.* The Guard was invited to participate in a drone-based border security program; General Salas declined, though he feels a drone program would be a valid mission for the Guard and good for the state. The Guard will, instead, participate in Holloman Air Force Base's F-16 program.

*Grants armory.* The Guard has not yet made a final decision on the disposition of the vacant armory in Grants. The Cibola County Sheriff's Office is interested in using the space.

Speaking from the audience on invitation of the chair, Colonel Timothy Paul, Guard chief of staff, stated that the mission for the Lakota helicopters stationed in Las Cruces is reconnaissance-based security and intelligence. Gathered information is shared with law enforcement agencies and the Homeland Security and Emergency Management Department. The helicopters are not deployable to combat environments but are deployable to permissible environments, such as Kosovo. Texas has requested that the Guard provide helicopters and crews to run a border security program.

Speaking from the audience on invitation of the chair, Alan Martinez, deputy secretary for veterans' services, stated that while it is not mandatory that unclaimed veterans' remains be buried in the Santa Fe National Cemetery, they are most often buried there rather than at the state's other veteran cemeteries because the Veterans' Services Department (VSD), which is based in Santa Fe, is the official next of kin for these burials.

- ★ General Salas will provide information to Senator Burt on possible impacts of the federal sequestration on the Civil Air Patrol.

## **Freedom to Choose Campaign**

David R. Schmidt, lobbyist; Jessica Gelay, policy coordinator, Drug Policy Alliance; Augustine Stanley, Army veteran; Anetra Stanley, advocate; Nat Dean, advocate; and Len Goodman, executive director, New MexiCann, gave a presentation on the Freedom to Choose campaign to improve veterans' access to medical marijuana treatment. Many veterans of current and previous military conflicts have been diagnosed with posttraumatic stress disorder (PTSD), which was added in 2009 to the list of qualifying conditions for enrollment in the Department of Health (DOH) medical marijuana program. The federal Department of Veterans Affairs (VA) — the primary health care provider for veterans — does not participate in the program, however, because cannabis is listed as a Schedule I controlled substance under federal law. Nearly 40 percent of participants in the DOH program are veterans, all of whom had to seek care outside of the VA system in order to enroll in the program. Once a veteran is enrolled and undergoing medical marijuana treatment, the veteran may face employment discrimination; employers can fire an employee who tests positive for marijuana even if the employee is enrolled in the DOH medical marijuana program. The Drug Policy Alliance has launched the Freedom to Choose campaign to make the public and lawmakers aware of the problems that exist for program participants, many of whom are only using medical marijuana because they have had no success with, or a negative reaction to, traditional medical PTSD treatments. The alliance will also hold a forum in the fall for veterans and their families to address issues that veterans face.

On questioning, the presenters and committee members addressed the following topics.

*Medical marijuana production.* Annual licensing fees for a medical marijuana production license are \$10,000 in the first year, \$20,000 in the second year and \$30,000 per year thereafter. The fees are used to run the program. Production of medical marijuana is tightly regulated in New Mexico, and there has been no federal intervention to date. There are currently 23 licensed producers, each limited to 150 plants. The DOH recently held hearings on how to meet increased demand for medical marijuana due to increased enrollment in the program — whether to increase the number of production licenses or to increase the number of plants each producer can grow. New MexiCann has 16 employees and harvests approximately 250 pounds of marijuana annually; gross receipts in 2013 are projected to be \$1.5 million. New MexiCann regularly sells out within two days of each weekly harvest and turns down up to 275 requests each week.

*Types and forms of medical marijuana.* Producers grow two types of medical marijuana: marijuana with tetrahydrocannabinol (THC), which will "get you high", and marijuana with cannabidiol (CBD), which will not. Producers recommend one or the other type based on each participant's description of symptoms. The marijuana is available in many forms, including edibles and tinctures. Each strain of medical marijuana is lab-tested, and each final package is labeled for the percentage of THC or CBD and the number of doses.

*Drug Policy Alliance.* Founded in the 1990s, the alliance is a Santa Fe-based nonprofit that works to change the focus of addiction treatment from a criminal justice model to a medical

model.

*Federal Department of Justice (DOJ) memo.* One interpretation of the recent DOJ memo on marijuana is that where states have laws that legalize marijuana in some form, those laws hold; where states do not have laws, federal laws hold.

*Employee drug tests.* Bernalillo County employees are not allowed to take any sort of medication on the job that will affect their job performance. Medication taken off the job must be by prescription.

*Program eligibility and cost.* Doctors do not "prescribe" medical marijuana; they evaluate patients and recommend to the DOH that a patient enroll in the program if the patient meets one of the qualifying conditions. Medical marijuana is not covered by insurance policies or Medicaid; the participant pays for the marijuana, which can cost more than \$350 per ounce. Some producers discount their product for certain participants, including veterans.

*Program perceptions.* Medical marijuana is perceived by some as a drug being used for recreation under the guise of medicine. A psychiatrist recently filed a petition to remove PTSD from the list of qualifying conditions based on the psychiatrist's assessment that medical marijuana is not an effective treatment for the disorder. After considering the petition, the New Mexico Medical Board decided to keep PTSD on the list.

*VA policy.* The VA allows veterans who participate in state-run medical marijuana programs to receive health services through the VA, but only for other treatments.

### **Veterans Procurement Preference**

Lawrence Maxwell, state purchasing agent and director, Purchasing Division (PD), General Services Department, and Paul Kippert, Information Technology Procurement Bureau, PD, gave a presentation on challenges posed by the state's procurement preference for resident veteran-owned businesses. The preference, which became effective in January 2013, gives preferences ranging from seven percent to 10 percent, depending on a qualifying business's annual revenue. Businesses must apply for the preference through the Taxation and Revenue Department (TRD), which issues three-year certificates that must be presented to the PD during any bid process.

The PD is having implementation problems because certain issues are not addressed in the statute that created and governs the preference. The statute does not address whether: 1) a business that qualifies for the preference based on its annual revenue at the beginning of the three-year certification period still qualifies if its annual revenue changes within that period; 2) a joint bid submitted by a combination of businesses qualifies for the preference even though only one of the businesses is a resident veteran-owned business; 3) a resident veteran-owned business that is awarded a state contract may subcontract the work to a nonqualifying business; or 4) if a contract award is protested, a project should proceed while the protest is in progress or should be

halted until the protest is resolved.

On questioning, the presenters and committee members addressed the following topics.

*Value of the preference.* The preference helps veterans who exit the military and start new businesses.

*Three-year certification.* A business may apply for the preference on the TRD web site, and certification is based on a business's declaration in January of its revenue for the previous year. The TRD does not feel it is authorized to review a business's ongoing eligibility within the three-year certification period.

*Protests.* If a project is halted while a protest is resolved, the contractor may be harmed because prices for materials may increase beyond what was contained in the original bid. Initial protests are filed with the TRD; appeals to TRD decisions are heard by the district court.

*Statute versus rules changes.* Problems with the preference need to be addressed in statute because any rules changes that the PD might make to address the problem would not apply to local government bodies.

Roxanne Rivera-Wiest, president, New Mexico Associated Builders and Contractors, Inc.; Mike Puelle, director of public policy and government relations, Associated General Contractors-New Mexico Branch; and Archie Garcia, executive director, Veterans Procurement Assistance Center, spoke from the audience on invitation of the chair regarding the following issues:

- (1) the preference is so generous and margins in the construction industry so tight that all state contracts could potentially go to resident veteran-owned businesses;
- (2) the statutory language focuses on whether a business is owned by a veteran, but the jobs may not be held by veterans; and
- (3) some businesses have shifted their ownership structures to move a veteran into the ownership position in order to qualify for the preference.

- ★ Deputy Secretary Martinez will reconvene a former working group consisting of representatives from the TRD, PD and Construction Industries Division of the Regulation and Licensing Department to review the veterans' procurement preference and make recommendations to the committee at its final meeting on how the statute could be revised.

### **Service Member Child Custody Act**

Deputy Secretary Martinez and Amanda Pagan, attorney and principal, New Mexico Family Law, P.C., and chief warrant officer two, U.S. Army, gave a presentation on the Service Member Child Custody Act, which has been introduced but not passed in the last three legislative sessions. The act provides protections for service members whose deployments separate them

from their children by facilitating communication between the service-member parent and his or her children; prohibiting the at-home parent from filing for sole custody while the service-member parent is deployed; and eliminating custody jurisdiction conflicts. The measure is supported by First Lady Michelle Obama and Dr. Jill Biden, and similar measures have been enacted in 47 states.

On questioning, the presenters and committee members clarified that the bill passed the house but later died for lack of a vote, either in committee or on the senate floor, each time it was introduced. The bill will be presented at the committee's final meeting for possible endorsement again.

### **Business Outreach to Veterans**

Colonel Joseph C. Long, director, Veterans Business Outreach Center (VBOC), gave a presentation on a program to help prepare veterans for entrepreneurship after they leave the military. The VBOC, which operates under a five-year grant from the federal Small Business Administration, conducts outreach events and one-on-one counseling sessions statewide through its VBOC On the Road initiative. In its first two years of operation, the VBOC has conducted 17 events with 538 attendees and 82 counseling sessions.

On questioning, Colonel Long clarified that the VBOC operates with a three-person staff and that, of the more than 180,000 veterans in New Mexico, approximately 13 percent own their own businesses.

- ★ Deputy Secretary Martinez will contact the federal Department of Defense regarding the status of munitions stored at the former Fort Wingate and provide information to Senator Pinto.

### **Veterans Business Incubator**

Deputy Secretary Martinez informed the committee that a task force comprising representatives from the VSD, Economic Development Department, Workforce Solutions Department and South Valley Economic Development Center, as well as veterans who own businesses, is meeting to develop and open a veterans business incubator in Albuquerque within the next year. The task force is currently looking for funding sources and a location, and it plans to make the incubator self-sustaining within four years. The planning process will include conversations with representatives from the business incubator in Santa Teresa. The incubator would not rely on government funding but would accept it if it were offered.

### **Minutes**

On a motion by Senator Martinez, seconded by Representative Cote, the minutes from the August 7, 2013 meeting were unanimously approved.

### **Virtual Reality Treatment for PTSD**

Representative Hamilton recapped the progress of a committee-endorsed bill from the

2013 session that would have appropriated funds to Western New Mexico University (WNMU) for a virtual reality program for PTSD. The bill did not pass; however, the VSD received \$100,000 in the General Appropriation Act of 2013 for such a program. Representative Hamilton will present a bill for endorsement at the committee's final meeting to establish the program at WNMU.

- ★ Representative Hamilton will meet with Deputy Secretary Martinez, Representative Martinez and Dr. Joseph Shepard regarding the 2013 VSD appropriation for virtual reality treatment for PTSD.

### **Navajo Code Talkers Museum**

Senator Pinto reported that the Navajo Code Talkers Museum and Veterans Center project received a donation of land between Gallup and Window Rock, and it needs \$1 million to proceed with construction.

- ★ Mr. Kovnat will add the project to a future MVAC agenda.

The committee adjourned at 2:10 p.m.