

**MINUTES
of the
FIFTH MEETING
of the
JOBS COUNCIL**

**October 24, 2016
Room 307, State Capitol
Santa Fe**

The fifth meeting of the Jobs Council (council) was called to order by Representative Don L. Tripp, co-chair, on October 24, 2016 at 9:05 a.m. in Room 307 of the State Capitol.

Present

Sen. Mary Kay Papen, Co-Chair
Rep. Don L. Tripp, Co-Chair
Vicente Alvarado
Dale Armstrong
Terry Brunner
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
Sen. Michael S. Sanchez
Eric Witt

Absent

Scott Bannister
Sen. Stuart Ingle
Rep. Tim D. Lewis
Sen. George K. Munoz
Sen. Pat Woods

Advisory Members

Rep. David E. Adkins
Rep. Alonzo Baldonado
Sen. Carlos R. Cisneros
Rep. Bealquin Bill Gomez
Rep. Yvette Herrell
Rep. Larry A. Larrañaga
Sen. Howie C. Morales
Rep. Debbie A. Rodella
Rep. Monica Youngblood

Rep. Cathrynn N. Brown
Sen. William F. Burt
Rep. Kelly K. Fajardo
Rep. Stephanie Garcia Richard
Rep. Conrad James
Rep. Bill McCamley
Sen. Steven P. Neville
Rep. Patricia Roybal Caballero
Sen. William P. Soules

Guest Legislator

Sen. Jacob R. Candelaria

Staff

Tessa Ryan, Staff Attorney, Legislative Council Service (LCS)

Jeff Eaton, Research and Fiscal Policy Analyst, LCS

Monica Ewing, Staff Attorney, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Monday, October 24**Summary of Council Findings**

Mark Lautman, lead program consultant, and director, Lautman Economic Architecture, talked about the council's work over its four years, which focused on identifying ways to restore the state to pre-recession employment levels. In addition to formal council meetings, hundreds of participants attended many other meetings during those four years. He expressed appreciation to all of the participants.

The council's process examined economic development in a non-divisive and non-political way. The economic development and jobs-creation framework developed by the council can be used at the state, regional, county and local levels. The council's contract staff are developing a training curriculum on the framework.

To assess economic development, the council considered economic-base job creation in several program theaters within each of the state's seven districts. The council also considered factor-of-production gaps that could prevent job creation in a particular theater.

Mr. Lautman reported that the job-creation estimates developed by the council showed that, without successful economic development efforts, the state could see a 10% contraction of the economy over the next 10 years. Many of the jobs created recently in the state do not provide long-term employment.

Regarding the regional job-creation estimates, some regions estimated they would be able to create more jobs than necessary for their areas to return to full employment. A nationwide report showed that 73 of the more than 3,000 counties in the country account for a majority of the country's economic growth.

Mr. Lautman said that the North Central region of the state offers significant job-creation potential, but he noted that planning and organizational work are needed. Without such planning within all program theaters, the region could lose 10% of its economy in the next 10 years. Likewise, in the Eastern Plains region, planning and organizational efforts are necessary because very few sectors in that region are being actively managed. Regarding the North West region, he reported that the economic activity in San Juan County largely drives the region's job creation, and programs in that region are underfunded and understaffed.

After reviewing job-creation efforts in each of the state's seven regions, Mr. Lautman noted that if the state does not begin creating jobs, it will likely experience a population contraction. That contraction could present an opportunity for economic prosperity, but only if the economy does not contract at a faster rate than that at which the population contracts, which is rare.

Only three theaters have well-established infrastructure and related statutes: employer recruiting, retention and expansion; film and digital media; and tourism. Those theaters' programs are not funded sufficiently to produce enough jobs. Programs for the remaining theaters are either insufficiently developed, are uncoordinated or are severely underfunded. Mr. Lautman noted that the most significant factor-of-production gaps are a lack of an experienced workforce, commercial real estate and broadband access.

A member asked how the legislature should address the lack of employable workers in the state, other than through workforce training. Charles Lehman, program consultant, and director, Employment and Economic Information Center of New Mexico, said that community colleges, universities and workforce boards are all working on the issue. Additionally, individual industries can identify the skills needed for workers to fill their most critical jobs and work with policymakers to get workers trained. Mr. Lautman added that investment in early education and community colleges is important.

A member noted that Facebook data centers in other states have resulted in 250 to 300 construction jobs. Mr. Lautman said that it is too early to know how the state's Facebook data center will impact the economy, but it is important that industries feel welcome in the state.

Referring to page 18 of Mr. Lautman's presentation materials, a member said that the council's priority should be to solve employment issues. Mr. Lautman said that there was hope that more solutions would have been developed by this point, but with the exception of work being done in the retirement theater, very few people have convened to develop plans to solve problems in specific theaters. Such planning work is tedious and complicated and not the legislature's responsibility. Mr. Lehman added that additional staffing and support are needed in economic development organizations to develop job-creation plans.

A member noted that Facebook representatives sought out certain types of workers and that the New Mexico's Sheet Metal Workers Local Union No. 49 identified 25 apprentices for the

proposed work and has a curriculum that can be adjusted to fit the employer's needs. The member added that some of the available jobs would allow workers who have relocated out of state to return home.

A member remarked on having read that there are 11,000 employment vacancies in New Mexico and underscored concerns about the state's untrained workforce. Mr. Lautman responded that local organizations can come up with solutions to employment problems, but they need staff and resources to do that work. He added that the work of those organizations should be measurable. Mr. Lehman added that many workers are not aware of the jobs that are in highest demand, such as those in health care.

Regarding the recent layoff of 300 workers in the state, a member asked how the state assists workers who are laid off. Mr. Lautman responded that economic development professionals routinely examine surpluses of workers or commercial real estate in their work. Another member noted that many of those laid-off workers were immediately rehired.

A member asked how the difficulty in obtaining permits factors into economic development. Mr. Lautman said that delays in construction are costly, and employers will consider an area's regulatory environment when choosing where to locate.

In response to a question about unemployment benefits, Mr. Lautman said that public benefits can present a barrier to employment.

Job-Creation Retirement Program

John Garcia, executive vice president, Home Builders Association of Central New Mexico, informed the council that growing the state's population is more important to the state's economy than creating jobs. He said that work on the retirement sector is focused on keeping retirees who are at or above 200% of the federal poverty level in the state. Retirees are potential solopreneurs who have banking and health needs that the state can meet, and retirees often have pensions or well-funded retirement accounts.

In planning for a retirement program, a formula was developed that shows that a targeted retiree who stays in the state is the equivalent of one economic-base job created. He noted that 109 million Americans are now over the age of 50 and that 36% of them are dependent on social security upon retirement. The census shows that there are over 80,000 retirees in the state who receive state or local government pensions, and 55% of retirees intend to work at least part time after retirement.

Five states — Texas, Louisiana, Mississippi, West Virginia and Kentucky — have certified retirement communities. New Mexico needs to develop a strategic plan using competitor states' approaches as a guide. Rio Rancho was built on a tourism model, and with some marketing efforts, it could become a medical tourism destination. New Mexico has an

opportunity to leverage its recognition as a tourism destination and its "New Mexico True" tourism campaign.

In response to a member's question, Mr. Garcia said that a certified retirement community offers amenities to address the needs of retirees, including medical facilities and cultural opportunities. In planning a retirement community, the state should focus on identifying retirees' needs and establishing which entity would certify communities.

In response to another member's question, Mr. Garcia said that there are currently no certified retirement communities in the state, but he and others are working with the Tourism Department and the Economic Development Department (EDD) to determine whether a certified retirement community program could be administered by either department.

Local Economic Development Organizations' Tracking of Job-Creation Data and Development of Job-Creation Plans

Mr. Lehman introduced a proposal to establish local jobs councils. The local councils would use the model and information developed by the state-level council to inform the local councils' planning and analysis. The local councils would develop and implement plans to address factor-of-production gaps and attempt to bring out-of-state businesses and jobs to their communities. The local councils would also work with local economic-base employers, economic development organizations and councils of governments. The proposal, he explained, seeks three one-year grants of \$50,000. The funding would be administered through the EDD.

In response to a member's question, Mr. Lautman said that a local council could be run by a council of governments, a municipality or a county. There are many stakeholders in each community, and those people would need to be involved. The local council would operate for three years and develop a job-creation plan.

In response to a question about 2017 legislation, Mr. Lehman said that he would wait to draft legislation until after the council considered the proposal. He added that \$50,000 grants would provide for staff and funding for the development of a local job-creation plan. Local councils would have to provide a matching grant to qualify for the state grant. The grants would be competitive, and communities would apply for them.

Another member suggested that the New Mexico Finance Authority (NMFA) could have funding available for planning efforts.

A member expressed concern that the local jobs councils would be unable to develop solutions to create jobs or address obstacles identified. Mr. Lautman said that the local councils would build on the work of the state-level council and develop a plan for policies or other changes that should be made. A representative from the EDD, who was in the audience, said that, because the department heard the proposal for the first time that day, it could not comment on it.

The council approved the local jobs council grant concept without objection.

Council Program Development Initiative: Solo Work

Mr. Lautman explained that long-term planning in the solo work theater has not been undertaken, but he is optimistic that results of current solo work pilot programs will be available by the next legislative session.

Eileen Yarborough, executive director, Cibola Communities Economic Development Foundation, explained the solo work pilot program under way in Grants. The program received funding from the NMFA, United States Department of Agriculture (USDA) and EDD, \$100,000 from her organization and in-kind space and equipment from New Mexico State University. The funding will provide for five solo work training sessions over five months. The program's goal is to have 10 to 12 trainees in each session. If successful, the program will provide jobs at a cost of approximately \$5,000 per job, which is reasonable given the considerable expense of creating jobs in rural communities.

Ms. Yarborough noted that the jobs created through the program will start at relatively low salaries, but the goal is to secure jobs with salaries that surpass the income a person would receive through public benefits alone.

Bill Hendrickson described the solo work pilot program in Las Vegas. He reiterated the great expense involved in creating jobs in rural parts of the state and said that bringing 300 jobs to a city the size of Albuquerque is equivalent to bringing 10 jobs to Las Vegas. The program has collaborated with New Mexico Highlands University, which has created a space for start-up businesses. The program is learning from the progress of the program in Grants and is searching for funding to hire trainers. He said he is optimistic that the program will have a significant impact in Las Vegas.

Mr. Hendrickson said that the solo work program aims to fill a gap for workers who are not going to attend college or who are underemployed. Employment forecasts show that many of the state's workers are going to work in some kind of solo work field. Mr. Lautman added that solo work programs are in need of financial support from the legislature. The theater is currently not eligible for any of the state's employment incentives, although he is hopeful that the requirements of some of those incentive programs could be modified to provide assistance to solo work programs.

A member expressed support for the solo work program. Another member asked whether funding is available for the program once the pilot is completed. Ms. Yarborough said that the pilot in Grants has enough funding for five months and that she is working with the local workforce board to identify additional funding. She said that the jobs being created through the program are economic-base jobs with out-of-state companies.

In response to a question about the operating cost of the program, Mr. Lautman said that it costs approximately \$3,500 to train and hire a person in the span of one month. Existing programs in other states are achieving 90% placement rates for their participants.

A member noted that the USDA strongly supports the program and is looking to implement the program nationally. He noted that the USDA hopes to continue providing funding for the program if it is successful.

In response to a member's question, Ms. Yarborough said that the solo work program differs from the work of small business development centers (SBDCs), but she said that SBDCs could become involved if participants ultimately need assistance with becoming small business owners. She added that the solo work program is not a new economic development entity but is housed under a local economic development organization. The only new resources involved in the programs are trainers and facilities to conduct training. Mr. Lautman added that there is no program currently that performs the work of the solo work programs, although a well-managed business incubator could be modified to accommodate a solo work program.

Approval of Minutes

The minutes for the council's August and September meetings and the minutes for the council's subcommittee's August meeting were approved without objection.

Economic Development Efforts of the New Mexico Gas Company (NMGC)

Tom Domme, general counsel, NMGC, explained that the NMGC will contribute \$10 million to help promote economic development in rural New Mexico, \$5 million of which is slated for general economic development work by existing economic development organizations in the state. The second \$5 million will be used to assist areas of the state with the greatest economic development needs and will be paid out over five years. The first \$1.5 million is currently being distributed to 17 organizations with which the company will collaborate to ensure that the funds are effectively used and tracked. A similar amount will be distributed over the next two to three years.

LaVanda W. Jones, governmental affairs, NMGC, said that the Regional Development Corporation of New Mexico in Española will use funding it receives from the NMGC to assist with workforce and nontraditional students' needs. An organization in Santa Teresa will use NMGC funding to bring supplies to Santa Teresa. The NMSU Arrowhead Center is also working to commercialize technology and business and to transform innovations in the transport of products. Additionally, the Roswell economic development community is in need of resources to help the organizations there to secure federal grants. Ms. Jones emphasized that each area of the state is in need of a different type of economic development assistance.

A member expressed support for the NMGC's efforts and asked whether one of the projects receiving assistance is related to a school that is paying an excessive amount for propane because of a lack of access to natural gas. Mr. Domme said that the NMGC makes the funding

available, and participants granted funding decide whether to partner with the NMGC. If a participant identifies another source of funds, the NMGC will match that amount. He added that this program allows a school or residential or commercial area to cut the cost of infrastructure expansion in half.

In response to another member's question, Mr. Domme said that notice of the availability of funding from the NMGC is published, and the matching funds are then available for five years. He said the company would like to promote the program as much as possible to ensure greater access to natural gas.

In response to a member's question, Mr. Domme said that a school can serve as an anchor for expanding natural gas infrastructure. If a particular school is interested, it can contact the NMGC, which can then identify the amount of matching funds that would be required to receive a grant. He added that the total amount of money available for matching funds is \$10 million.

United States Department of Energy (DOE) Initiative

Mr. Greene informed the council that the DOE recently re-bid for Sandia National Laboratories but did not include economic development in the contract. He presented a draft letter to U.S. Secretary of Energy Ernest Moniz, in which the council could encourage the DOE to include regional economic development proposals in the request for proposals process for the next contract to manage Los Alamos National Laboratory. He noted that the Science, Technology and Telecommunications Committee considered and approved the draft to be sent on behalf of that committee, and he asked that the council also approve the letter.

The council approved the draft letter to be sent on behalf of the council.

Accountability in State and Local Incentives for Job Creation

Jim O'Neill, O'Neill Consulting, LLC, told the council that the state has approximately 25 tax incentives aimed at economic development. He added that the state spends \$250 million to \$300 million each year on incentives with no related accountability measures. He proposed that legislation be drafted to create an accountability system using uniform definitions and sound metrics. When paying out incentives, the state should know, in connection with the incentive: the number of jobs created; the number of economic-base jobs created; and any tax incentives received by the employer. He noted that current audits do not assess these things, and most of the state's credits do not require any such reporting.

The legislation Mr. O'Neill proposed would insert reporting requirements throughout sections describing tax and other incentives. Reported information would help the state determine what kind of return it is getting on its investments.

Mr. Lautman agreed that accountability measures are necessary to support requests for economic development funding. He said that he and Mr. O'Neill met with several experts in the field and spent a considerable amount of time identifying which statutes affect job creation and

considering whether those statutes should all be placed together in the compilation. The legislation, once drafted and if passed, would not be effective until 2018, and the legislation would need to be vetted by stakeholders in government and in the tax community.

In response to a member's question about the time line for preparing the legislation, Mr. Lautman said that he plans to have a group of 10 experts do a formal review of the bill and make any necessary revisions. Mr. O'Neill said that issues of confidentiality will be addressed and reiterated that the only information sought in reports would relate to jobs and taxes.

In response to another member's question, Mr. O'Neill said that new rules require local and state governments to report more information relating to economic development incentives. Mr. Lautman said that there should not be so many obstacles to determining what the state is getting in return for incentive payments.

A member expressed concern about the process used to develop the legislation. The member said that many people who will be affected by the legislation, but who have not been consulted, are also concerned and that the process should be more inclusive. Mr. Lautman responded that because of the detail involved in the project, it has not yet been possible to develop a complete draft for vetting. He said that he is open to the council's input about the process of developing the bill.

Representative Tripp said that the council is not ready to endorse the proposed concept, but the council approved, without objection, continued work on the proposal.

Broadband Report; Update on a Council-Approved Appropriation for a Broadband Study and Plan

Darryl Ackley, secretary, Department of Information Technology (DoIT), introduced representatives from his department, and Mr. Lehman provided an update on the state's work toward improving the state's broadband infrastructure. Mr. Lehman said that many economic-base jobs will be lost or not created without improved broadband infrastructure. The DoIT surveyed the state's economic development organizations and learned that more than half of the rural organizations do not have adequate broadband in their areas.

Secretary Ackley reported that the DoIT has actively promoted broadband improvements as discussed in his materials titled "Status Update on OBGI; Broadband for Business (BB4B) Study; Interim Jobs Council Meeting". He noted that the other materials he provided relate to fiber optics and include a summary of a report that is being reviewed and will soon be ready for consideration.

Secretary Ackley said that states were given money to create comprehensive maps of broadband availability, and New Mexico's grant was run by Gar Clarke, broadband program manager, Office of Broadband and Geospatial Initiatives, DoIT. The department has requested funding to grow that office every year because of the need for a comprehensive broadband plan.

The state's broadband program focuses on broadband for education, business and health. The DoIT is running one of four pilot programs in the nation to expand data broadband dedicated to public safety, which would create a dedicated network for public safety professionals' use. He noted that the DoIT has developed a strategic plan for broadband, and it is available on the website provided in his presentation materials.

Joanne Hovis, president of Columbia Telecommunications Corporation, said that it is important to identify the scope of the state's broadband challenges and to identify the costs of addressing the challenges through public and private approaches. Broadband is a primary consideration when workers and businesses consider relocating.

Secretary Ackley said that he would like the state's technology to last for more than just a few technology cycles, and the DoIT advocates for fiber-optic infrastructure because it can be used with newer technology without upgrades. There will always be more demand for than supply of broadband because of the rapid increase in the amount of bandwidth used in individual households and elsewhere.

While some advocate for solely private or solely government solutions to broadband needs, Secretary Ackley said he believes the solution will involve a combination of both. He discussed three models for partnership options that involve varying degrees of risk for private investors and public sector partners.

Finally, Secretary Ackley said that the DoIT anticipates delivering a report that documents the current broadband status of the state and identifies ongoing needs. The report will provide information on models for the state's consideration. He suggested that the easiest solutions to consider are "dig once" initiatives and public-private partnership (P3) legislation.

A member asked Ms. Hovis about locating her business based on broadband availability, and she said that she sought cable modem connections and paid for two digital subscriber lines connections, and even with those, she is sometimes without service. The question of whether she has a fiber connection for her business is more important than any available tax incentives or parking or available workforce for her bandwidth-intensive business. A member said that during the upcoming session, he will introduce legislation to include technology funding in the mill levy.

In response to a member's question, Secretary Ackley said that broadband coverage in a city varies by area and often depends on where recent construction was undertaken.

Increasing the Investment in Broadband

Katherine Martinez, director of legislative affairs, CenturyLink, discussed the state's investment in broadband and the draft of a bill that would provide for the Public Regulation Commission's (PRC's) jurisdiction over incumbent local exchange carriers and their investments in telecommunications and broadband infrastructure. Senator Padilla said that there are some

statutes in effect that are preventing companies from taking necessary action relating to broadband expansion.

Ms. Martinez said that the proposed legislation is similar to a bill introduced in 2015, and it reflects negotiations from that legislative session. She said that the bill does not change the PRC's regulatory and investigatory authority, but it modernizes and streamlines processes, which in turn reduces costs. She noted that the language in the bill would require the PRC to report on the effects of the bill by 2019 and that if after July 2021 negative findings are shown, regulations could revert to their previous forms.

Senator Padilla said that it is important that all involved industries are consulted. He recalled that the carriers and the Communication Workers of America were neutral with respect to the 2015 bill. Ms. Martinez added that many economic development organizations and chambers of commerce supported the bill in 2015.

A member noted that the bill provides for a way to increase investment in infrastructure at no cost to the state and said that the New Mexico Association of Commerce and Industry (ACI) supports the bill.

A member said that franchise laws in the state have not changed in 40 years. He added that attempts to revise the laws were opposed by the wireless industry. He encouraged continued work to remove obstacles to the law's revision that occur at the local level.

The council endorsed the bill without objection.

Public-Private Partnerships

Mike Puelle, chief executive officer (CEO), Associated General Contractors of New Mexico, made note of the P3 bills introduced in the 2013 and 2015 sessions. He stressed the importance of the state's infrastructure to its successful economic development and job creation and the growing competition for legislative appropriations.

He explained that the legislation does not replace, but rather supplements, the Procurement Code. It expands the financing- and procurement-of-infrastructure options to meet public needs. The bill requires transparency and the use of best practices by public and private partners. He noted that private investors are interested in partnering with governments because the agreements provide stable, long-term investments. The public and private partners share risk and are provided with protections.

A member noted that P3s are useful for some types of projects and not for others. Another member noted the importance of requiring the projects to adhere to labor, wage and other public resource laws.

Another member expressed support for the legislation and remarked on the lengthy testimony on the bill in previous sessions. The member asked about opposition to the bill. Mr. Puelle said that the bill provides for a comprehensive analysis of a proposed project. He said that this means that these projects could receive even more scrutiny than other public projects. He added that some people are concerned about user fees being charged for infrastructure built through P3s. He said that the bill provides for availability payments, which is tax revenue paid to a private partner only if the partner maintains a project in a certain condition that makes it available for use.

A member noted that home-rule municipalities and universities have already used P3s to finance projects. Mr. Kopelman expressed the support of the New Mexico Association of Counties for the bill.

Barriers to Entrepreneurial Job Creation

Russell Wyrick, state director, New Mexico SBDC, introduced several of the organization's representatives from across the state. Several of those representatives identified economic issues within their areas of the state, including: workforce quality and the lack of soft skills; workforce housing availability; regulatory environment; broadband access; construction permitting and inspections; and difficulties accessing state incentives for businesses. Several members noted a concern with the law governing the licensing of handymen. The law, which was passed in 1978, limits a licensed handyman to \$7,200 of income per year. They suggested raising the limit to approximately \$30,000 per year.

A member asked whether the SBDCs across the state offer business assistance in Spanish. He suggested that Spanish-speaking business owners might need assistance with, for example, tax issues. An SBDC representative noted that, in the previous week, the SBDC offered a "*si se puede*" program in Spanish and discussed the importance of obtaining licenses, registering businesses and paying taxes.

Legal Environment-Related Barriers to Job Creation

Mr. Kopelman, speaking as the executive director of the New Mexico Association of Counties, explained that the state's legal environment is an important factor in economic development. He said that employers in New Mexico are at the greatest risk of facing a costly employment discrimination lawsuit because of the state's laws. He suggested that this fact could influence a business's decision to locate in the state.

Mr. Espinoza, speaking as the president and CEO of the ACI, added that another study reported that most employers would consider the legal environment in a state when deciding whether to do business there. It is important that businesses see the state's legal environment as fair and reasonable.

T.J. Trujillo, ACI board member, said that another significant issue is judicial compensation. Because the state's judges are compensated at some of the lowest rates in the

country, fewer people consider becoming judges, and it is important that the best candidates become judges. He added that political action committees are also becoming involved in judicial retention elections, so judicial election processes should be reexamined.

Mr. Trujillo noted that New Mexico is the only state in the country without an Administrative Procedures Act that applies to all boards, commissions and agencies, and having such an application could improve consistency and transparency in rulemaking.

Regarding the state's Tort Claims Act, Mr. Kopelman noted that the language of the act's waiver of immunity is clear; however, several court decisions have interpreted the waiver language in ways that have caused costly lawsuits. The money being paid for claims for which immunity should have existed could be used to pay for public projects instead. The immunity provisions should be clarified.

Mr. Kopelman also addressed the state's Whistleblower Protection Act, which he said needs improvement. The act prohibits retaliation against public employees who are "whistleblowers", but he said that the language in the act is so broad that it has been applied to protect whistleblowers who are not meeting their obligations as employees. This is a problem for employers who need to make personnel decisions but are restricted by protections offered by the act. He added that there should be a cap on the damages available to whistleblowers.

A member agreed that the Whistleblower Protection Act needs to be revised to strike a better balance between employers' needs and employees' protections. He agreed that the language is too broad, and judgments against governments impair public services and result in increased insurance premiums.

Another member asked whether legislation to revise the Whistleblower Protection Act would be introduced. Mr. Kopelman said that the presentation is informational, but forthcoming legislation would propose a cap on damages and clarification of protections offered. He said he would seek input from trial lawyers and other organizations on the draft legislation. A member agreed that judicial compensation should be addressed.

Employment Law — Statewide Uniformity

Mr. Espinoza discussed a proposed bill intended to create uniformity in employment laws throughout the state. The bill would restrict a political subdivision of the state, a home-rule municipality or an institution of the state from adopting a law that regulates hours, scheduling or leave provided by a private-sector employer or that requires a private-sector employer to provide paid or unpaid leave, a fringe benefit or another benefit that creates an expense for the employer.

Mr. Armstrong, speaking as president of TLC Plumbing, noted that the legislature and businesses will soon be controlled mostly by millennials, and he suggested that those young adults will drive the market with respect to employment benefits, rather than allow labor laws to dictate how business is run. He encouraged the council to consider the bill.

A member expressed support for the bill and noted frustration at referenda that enable a small percentage of residents in an area to dictate how an employer conducts business. In response to another member's question, Mr. Espinoza said that Albuquerque is the only political subdivision that has taken the action that would be restricted under the bill.

The council endorsed the bill without objection.

Issues in Workers' Compensation

James Magoffe, a member of the Workers' Compensation Advisory Council, said he is dedicated to improving and clarifying the state's workers' compensation law. He added that issues have arisen after the court decision that held that farm and ranch workers are eligible for workers' compensation benefits. He suggested that if an employee is fired for cause, the employee should not have access to full workers' compensation benefits.

Mr. Magoffe said that New Mexico's economic outlook ranks thirty-fourth in the country, and it is ranked forty-fifth in terms of costly employment-related litigation. He said it is critical for the state to control costs while promoting safety.

Senator Candelaria said that, under the current law, an employer can be penalized for not bringing an injured worker back to work, even if the reason the employee is not brought back is the employee's poor conduct. He said that this outcome is contrary to the legislature's intent when it included the penalty on employers. He added that a worker's conduct should be considered. He gave an example of an employee who was terminated for sexual harassment, and because he did not voluntarily remove himself from the workplace, the state was required to pay him full workers' compensation benefits, and the state paid a penalty because the worker did not return to employment.

Because the court has said that the legislature's intent with respect to some provisions in the Workers' Compensation Act is unclear, the language needs to be clarified. Senator Candelaria said that he will introduce a bill in 2017 to clarify the legislature's intent: if a worker is terminated for cause after returning from an injury, the state will not be penalized. This bill was not presented to the council in draft form. If the state continues to make significant indemnity payments, the state's "use rating" will increase, impairing the state's business. He will also carry a bill to align New Mexico with most other states with respect to subrogation. Under current law, if a worker is injured because of a third-party's action and the worker receives workers' compensation benefits, the Workers' Compensation Administration is prohibited from pursuing reimbursement from the third party for the benefits paid. The bill would allow the administration to seek reimbursement.

In response to a member's question, Senator Candelaria said that, under current law, if an employee reports an injury, an employer is responsible even if the employer can show that the injury occurred off the worksite. Mr. Magoffe said that many employers require employees to certify at the end of each workday that they were or were not injured at work that day.

Adjournment

There being no further business before the council, the council adjourned at 5:27 p.m.