

**MINUTES
of the
FOURTH MEETING
of the
INVESTIGATORY SUBCOMMITTEE
of the
HOUSE RULES AND ORDER OF BUSINESS COMMITTEE**

**September 20, 2011
Room 309, State Capitol**

The fourth meeting of the Investigatory Subcommittee of the House Rules and Order of Business Committee was called to order by Representative Zachary J. Cook, co-chair, on September 20, 2011 at 9:09 a.m. in Room 309 of the State Capitol.

Present

Rep. Joseph Cervantes, Co-Chair
Rep. Zachary J. Cook, Co-Chair
Rep. Eliseo Lee Alcon
Rep. Gail Chasey
Rep. Anna M. Crook
Rep. Larry A. Larrañaga
Rep. Al Park
Rep. Dennis J. Roch
Rep. Debbie A. Rodella
Rep. Don L. Tripp

Absent

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Douglas Carver, Staff Attorney, LCS
Alise Rudio, Staff Attorney, LCS
Leslie Porter, Research Assistant, LCS
Amy Jaeger, Majority Analyst
Dennis Hazlett, Majority Analyst
Ryan Gleason, Minority Analyst
Mary Rivera, Committee Secretary Supervisor
Jona Armijo, Committee Attendant Supervisor
Jeanette Roybal, HRC Secretary

Handouts

Copies of handouts are in the meeting file.

Tuesday, September 20

Mr. Burciaga began the meeting by noting that the LCS had met with Robert J. Gorence, the special counsel retained by the LCS for the subcommittee, and had reviewed with him what the subcommittee had accomplished during its previous meetings. The LCS had also provided Mr. Gorence with a packet of briefing materials to bring him up to speed. Mr. Burciaga had two housekeeping items for the subcommittee's consideration. First, he had drafted certificates to call the legislature back for an extraordinary session to consider the impeachment of the

commissioner from Public Regulation Commission District 3; these draft certificates were distributed to the subcommittee for review. Second, Mr. Burciaga distributed calendars for October and November, which were annotated to show when subcommittee members have conflicts with the interim committees on which they are voting members, to be used to help the subcommittee members decide when they would be able to meet after the special sessions ends.

Mr. Gorence then introduced himself, relating his 28 years of legal experience, including work as a federal prosecutor and the work done since beginning his own practice. His curriculum vitae was distributed to the subcommittee. Mr. Gorence stated that he is honored to be chosen as special counsel and honored that the subcommittee has trusted him with this charge. He said that he does not see his role as that of a prosecutor because a prosecutor is an advocate. Rather, he sees his job as objectively presenting to the subcommittee the facts he has gathered at the conclusion of his investigation. He stated that he would provide legal opinions at the subcommittee's request and that he would keep in mind the importance of balance, fairness and bipartisanship in this process.

Members of the subcommittee spoke in praise of the selection of Mr. Gorence, noting that his experience is perfect for his assignment, and they thanked Mr. Burciaga for his work in the selection process.

Representative Cervantes welcomed Mr. Gorence and stated his hope that he would develop a good working relationship with all members of the subcommittee. He also noted that the subcommittee had many good candidates who had expressed interest in the work, and he expressed his appreciation to those who took the time to contact all of those interested in the position. He invited Mr. Gorence to discuss a bit more about his time with the Offices of the United States Attorneys. Mr. Gorence detailed his service under a variety of United States attorneys who had been appointed by presidents of both political parties.

Representative Cervantes then turned the discussion to the upcoming schedule for the subcommittee and what tasks need to be completed while the legislature is in session, as it is quite possible that the special session could finish in a matter of days.

A member of the subcommittee asked whether it is necessary to report to the house of representatives before the special session ends. Representative Cervantes noted that the charging language for the subcommittee indicates that a report to the house of representatives is expected. He asked Mr. Burciaga to coordinate with the HRC to arrange for a presentation and for LCS staff to prepare the report. He listed further items that the subcommittee needs to consider, including its forthcoming schedule, what time frame is envisioned for the completion of the subcommittee's work, what Mr. Gorence's plan is for his work, the final rules of procedure for the subcommittee, what procedure would be used to call the legislature back into session, when the New Mexico Legislative Council is going to meet to authorize expenditures in the interim and what process would be used for subpoenas to facilitate the subcommittee's investigation.

Mr. Burciaga indicated that the calendars he had provided were to assist members of the subcommittee in their scheduling. He also stated that Mr. Gorence has a clear calendar over the coming six to eight weeks, which should provide ample time for him to conclude his investigation. He noted that the most important order of business is to ensure that the legislative council meet immediately upon the adjournment of the special session to authorize the

subcommittee's interim work. Mr. Burciaga indicated that he had already been in touch with close to half of the members of the legislative council about the necessity for the meeting.

There was discussion among subcommittee members regarding scheduling matters. Mr. Burciaga discussed the process for calling an extraordinary session and noted that six years ago, the LCS had gathered the necessary signatures without knowing when the extraordinary session might be called or whether it would need to be called. It turned out, however, that the legislature did not have to be called back into a special session in 2005. There was some discussion regarding whether members of the subcommittee could participate in meetings during the interim by telephone or videoconference. Mr. Burciaga stated that he would have to confirm whether telephonic or similar participation is acceptable with the legislative council, but he noted that the legislative council had previously authorized telephonic participation. He also stated that he would examine teleconferencing capabilities for subcommittee members.

Representative Cervantes suggested that he and Representative Cook should talk with the leadership of the house of representatives concerning the possibility of presenting a report on the subcommittee's activities to the full house of representatives on Friday, September 23. He also thanked members of the subcommittee for their suggestions for future meetings that would save the taxpayers money, including the possibility of having the subcommittee meet in the interim on days that interim legislative committees are already meeting.

Mr. Gorence addressed the time it might take for him to complete his work for the subcommittee. He noted his past experience with criminal trials and pointed out to the subcommittee that six years ago, there had been a year's worth of investigative work done by the Federal Bureau of Investigation prior to the subcommittee beginning its work. He stated that in this investigation, there would not be the quantity of information that was present in the prior proceedings but that he did not yet know what information may have been collected by the Attorney General's Office, the Public Regulation Commission or the state auditor. He is in the process of having letters drafted to these agencies so that he can obtain the information they are able to give, with the goal of having subpoenas ready to be issued by the house of representatives prior to the end of the special session. He anticipates that he would need three to four weeks in order to have made sufficient progress to warrant convening the subcommittee for an update.

Members of the subcommittee indicated that it was important not to characterize this impeachment proceeding as less urgent than the impeachment considered in 2006 because the state is affected by this matter every day. Mr. Gorence concurred with the urgency and stated that he would conclude his work as quickly as feasible.

Representative Cervantes stated that he envisions that the subcommittee would meet two or three times in the interim, once to get a status report and once to have a final presentation of evidence by Mr. Gorence, with one possible additional meeting between the aforementioned meetings for an updated status report, if necessary. There was further discussion of possible dates to meet after the special session has ended. Representative Cervantes stated that a letter should be written by Mr. Gorence to Jerome Block, Jr., to inform him formally of the investigation and to offer him the opportunity to participate and provide evidence as warranted. Representative Park moved to authorize the letter; the motion was seconded by Representative Chasey. The motion passed with no objections.

The members of the subcommittee proceeded with a discussion regarding the language in the certificate to call the legislature in for an extraordinary session to consider impeachment. Although during the prior impeachment process, signatures on the certificate had been collected in advance of the subcommittee finishing its investigative work — and, in fact, had been collected during a special session — members of the subcommittee expressed concern that collecting the signatures on the certificate in advance of the investigation could be perceived as prejudging the results of the investigation, as the certificates state that "an emergency exists in the affairs of the state of New Mexico". Some members of the subcommittee felt that the language does not indicate prejudgment and that collecting the signatures is purely administrative. Mr. Burciaga noted that the language used in the certificates is virtually identical to that used six years ago and that it tracks the language of the Constitution of New Mexico. The mechanics of collecting the signatures were also discussed, including whether they could be collected by mail or during meetings of interim legislative committees. Representative Cervantes requested that Mr. Burciaga and Mr. Gorence give the subcommittee further guidance at the subcommittee's next meeting on Thursday, September 22.

Members of the subcommittee had questions about the rules of procedure that had not been adopted and asked Mr. Gorence whether the impeachment proceedings are subject to judicial review. Mr. Gorence answered that he would want to do further research on the issue of judicial review, but he stated that his "off-the-cuff" answer is that there could be no judicial review of impeachment, though there could be judicial review of collateral consequences. He told the subcommittee members that he would respond at their next meeting. Mr. Gorence also stated that he would want to give Rule 5, concerning the standard of proof, more thought before he has a recommendation for the subcommittee. Members of the subcommittee also discussed Rule 6, concerning the subcommittee's reporting to the HRC and the full house of representatives, with Mr. Gorence and Mr. Burciaga. Members of the subcommittee also requested guidance from Mr. Gorence regarding when the subcommittee should, or could, go into executive session. Mr. Gorence informed the subcommittee that he would look into the issues surrounding proposed Rules 5, 6 and 7, as well as the other issues that the subcommittee had discussed. He added that he also needs to examine the options the subcommittee has regarding perjury, and he noted that the subcommittee should think about how it wants to obtain evidence from individuals, whether through a sworn statement, through live testimony or through testimony under oath. In response to a question from a member of the subcommittee, he stated that he does not think that collusion between witnesses would be an issue.

Adjournment

Given the large number of items to be discussed at the subcommittee's next meeting, it was agreed that the subcommittee would meet at 8:30 a.m. instead of 9:00 a.m. on Thursday, September 22. There being no further business before the subcommittee, the fourth meeting of the subcommittee adjourned at 10:30 a.m.