



State of New Mexico
House of Representatives

STATE CAPITOL

Santa Fe
FIFTIETH LEGISLATURE
FIRST SPECIAL SESSION

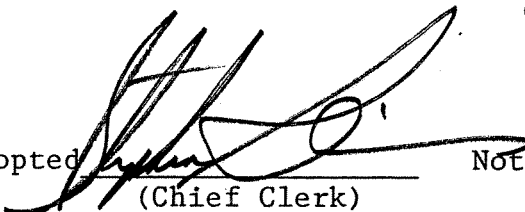
September 23, 2011

Mr. Speaker:

Your **RULES AND ORDER OF BUSINESS COMMITTEE**, to whose Subcommittee has been referred the matter relating to the consideration of the impeachment of the Public Regulation Commissioner from Public Regulation Commission District 3, has had it under consideration, submits the attached report from the Subcommittee adopted by the House Rules and Order of Business Committee and recommends that the report of the Subcommittee, including the procedures for the impeachment proceedings at issue and the projected schedule, be adopted.

Respectfully submitted,

NICK L. SALAZAR, Chairman
House Rules and Order of Business
Committee

Adopted  (Chief Clerk) Not Adopted _____ (Chief Clerk)

Date 9/23/11

The roll call vote was 16 For 0 Against
Yes: 16
No: 0
Excused: Cook, Stapleton, Taylor, Tripp
Absent: 0

**PRELIMINARY REPORT
OF THE
INVESTIGATORY SUBCOMMITTEE
OF THE
HOUSE RULES AND ORDER OF BUSINESS COMMITTEE**

September 23, 2011

The investigatory subcommittee of the House Rules and Order of Business Committee is charged with investigating and making recommendations on whether the house of representatives should consider the impeachment of the public regulation commissioner from District 3 for alleged commission of crimes, misdemeanors or malfeasance in office.

Progress to Date

The house of representatives authorized the creation of this subcommittee on the first day of the First Special Session of the Fiftieth Legislature on September 6, 2011. Pursuant to that authorization, the speaker of the house appointed 10 members to the subcommittee in equal numbers from the majority and minority parties. The co-chairs of the subcommittee are Representative Joseph Cervantes and Representative Zachary J. Cook.

The subcommittee held its first meeting on Thursday, September 8, 2011. Representative Cervantes opened the subcommittee's meeting by welcoming the members of the public and the press who were in attendance and thanking the members of the subcommittee for their participation in this important matter. Representative Cook read a statement prepared by the co-chairs that stressed the seriousness of impeachment and that the impeachment process was a test of the institutional integrity of the legislature. He also stressed how the process must be as open and transparent as possible. Representative Cook concluded his opening statement by declaring that every impeachment proceeding was a trial of both the public official whose conduct was being examined and the legislative institution conducting the proceeding. Raúl E. Burciaga, director, Legislative Council Service (LCS), gave the subcommittee an overview of the impeachment process. He discussed the pertinent articles of the Constitution of New Mexico and noted how there was little guidance in the constitution, and no guidance in statute, for impeachment proceedings. He offered several questions and comments for the subcommittee to consider, including the process of collecting evidence; the appropriate standard of proof at the impeachment stage; the meaning of the constitutional grounds for impeachment; due process; public notice and access; proceedings in special, extraordinary or regular sessions; issues for impeachment consideration; and the hiring of outside counsel. He also provided the subcommittee with the reports from the 2005 subcommittee that had investigated the possibility of impeachment of the state treasurer. There was a thorough discussion of all of these matters by the subcommittee. At the conclusion of this first meeting, the subcommittee, on motion,

authorized the co-chairs to hire an independent counsel to assist the subcommittee's investigation. It was also decided that the subcommittee would meet every Tuesday and Thursday morning throughout the duration of the special session.

The second meeting of the subcommittee occurred on September 13, 2011. At the meeting, Mr. Burciaga and Alise Rudio, staff attorney, LCS, discussed how other states had approached the question of the participation in impeachment proceedings of members of the legislature who were not on the investigative committee and how the provisions of the Open Meetings Act would apply to meetings of this subcommittee. The subcommittee had an extensive discussion of the rules of procedure for the subcommittee, using the rules that had been adopted in 2005 as a starting point. The subcommittee approved rules concerning notice of the subcommittee's meetings, meeting in executive session and the gathering and presentation of evidence in the investigation. A decision on the remainder of the rules was postponed until special counsel had been retained.

The third meeting of the subcommittee occurred on September 15, 2011. The meeting focused on a presentation by former New Mexico Supreme Court Justice Paul Kennedy, who had served as special counsel to the impeachment subcommittee in 2005. Justice Kennedy gave the subcommittee an overview of the 2005 proceedings. He also compared some of the issues that were presented to the 2005 subcommittee with issues in the current proceedings. This meeting provided members of the subcommittee with a comprehensive understanding of how the impeachment process had been handled in 2005.

The fourth meeting of the subcommittee occurred on September 20, 2011. The principal focus of the meeting was hearing from and asking questions of Robert J. Gorence, Esq., who had been retained as special counsel. Mr. Gorence is well-respected in the New Mexico legal community, having practiced law in New Mexico for 28 years. He is a former first assistant United States attorney and has handled many high-profile cases, both as a prosecutor and as defense counsel. The subcommittee discussed with Mr. Gorence and Mr. Burciaga the schedule for the subcommittee's work after the conclusion of the special session and the mechanics for calling the legislature back into session to consider matters relating to the impeachment of the public regulation commissioner. Mr. Gorence was presented with a variety of questions regarding subcommittee processes and procedures and was asked to present advice on these issues at the subcommittee's next meeting.

The fifth meeting of the subcommittee occurred on September 22, 2011. The meeting concerned the final items of business that needed to be accomplished before the end of the special session. The subcommittee adopted the minutes of its four prior meetings. With advice and input from Mr. Gorence and Mr. Burciaga, the subcommittee also debated, revised and adopted the final rules of procedure for the subcommittee concerning the standard of proof to be applied; concerning reporting to the full House Rules and Order of Business Committee; and concerning access by members of the house of representatives to evidence that had been considered by the subcommittee. The subcommittee also authorized the hiring of a court reporter

to record the presentation of evidence by Mr. Gorence so that the members of the house of representatives could have access to a complete record in case they consider articles of impeachment. The subcommittee also debated and approved, by majority vote, the language in and circulation of certificates by the LCS to obtain the necessary signatures of representatives and senators to be able to call an extraordinary session, with the stipulation that the signatures can only be delivered to the governor upon a majority vote of the subcommittee. The subcommittee received an update from Mr. Gorence concerning the collection of evidence from the Office of the State Auditor, the Public Regulation Commission and the Office of the Attorney General. Mr. Gorence informed the subcommittee that the attorney general required a subpoena before he would relinquish evidence. The subpoena will be issued by the house of representatives, as authorized by Section 2-1-10 NMSA 1978. Mr. Gorence noted that this appeared to be the first time that the subpoena authority of the legislature had been used. Mr. Gorence also discussed his attempts to provide formal notification to the public regulation commissioner of the subcommittee's investigation. Mr. Burciaga discussed the filing of a report with the House Rules and Order of Business Committee and the house of representatives, as required by the charge given to the subcommittee. Finally, the subcommittee decided on the days it would meet after the end of the special session.

Between the meetings of the subcommittee, the co-chairs of the subcommittee met regularly with Mr. Burciaga and LCS staff attorneys, Douglas Carver and Ms. Rudio, who are staffing the subcommittee for the LCS. During these meetings, the co-chairs and LCS staff discussed the hiring of a special counsel, scheduling matters and impeachment procedures. The co-chairs reported back to the subcommittee regarding the matters that were discussed at these meetings at each subsequent subcommittee meeting.

Rules and Procedures for the Investigatory Subcommittee of the House Rules and Order of Business Committee

The subcommittee met twice a week throughout the special session in order that the impeachment investigation could proceed expeditiously. At its final special session meeting, the subcommittee adopted the following rules and procedures.

1. The subcommittee shall give public notice of the date, time and place of its meetings as soon as practicable before the commencement of its meetings.
2. At the request of special counsel or a majority of the subcommittee, the subcommittee shall conduct appropriate proceedings in executive session. Staff members must sign confidentiality statements.
3. The task of gathering and presenting evidence to the subcommittee shall be the responsibility of special counsel. In that regard:

a. all documentary evidence from public records, including affidavits of investigative authorities, shall be presented in open, public sessions;

b. as other evidence is gathered, and at the request of special counsel, the subcommittee shall decide how that evidence is to be presented — i.e., through live witnesses, depositions or otherwise;

c. also at the request of special counsel, the subcommittee will decide whether that evidence is to be presented in public sessions or whether respect for ongoing civil, criminal or administrative proceedings or questions of privilege requires that such evidence be presented in executive session;

d. testimony by witnesses, whether presented in public session or otherwise, shall be under oath, through direct questioning by special counsel. Members of the subcommittee shall, however, retain the right to question any witness presented. Members of the subcommittee may submit questions to the special counsel regarding testimony by deposition;

e. these proceedings are investigative and charging in nature and thus do not require an adversarial hearing. Nonetheless, the public regulation commissioner shall be apprised of the evidence submitted by special counsel, and the commissioner's response to that information shall be invited by way of:

(1) the commissioner's own testimony, under oath, provided through the questioning of special counsel; and

(2) through other means, under terms and conditions deemed appropriate by the subcommittee, upon the recommendation of special counsel; and

f. special counsel is authorized to request the issuance of subpoenas on behalf of the subcommittee.

4. After the presentation of the evidence, the subcommittee, sitting in executive session, shall receive and consider the advice of special counsel with respect to any potential articles of impeachment.

5. The question presented to the subcommittee and the house is, "Is there credible evidence to warrant impeachment?". The subcommittee and the house will apply the following standard of proof:

There is credible evidence to warrant impeachment.

6. The subcommittee shall make a report to the full committee. If the report recommends articles of impeachment, the subcommittee shall present the articles of impeachment through the

committee to the whole house.

7. If and when articles of impeachment are presented to the house, all house members shall be given access to all the evidence considered by the subcommittee.

Rules 1 through 4 were adopted at the September 13, 2011 meeting of the subcommittee. Rules 5 through 7 were adopted at the September 22, 2011 meeting of the subcommittee.

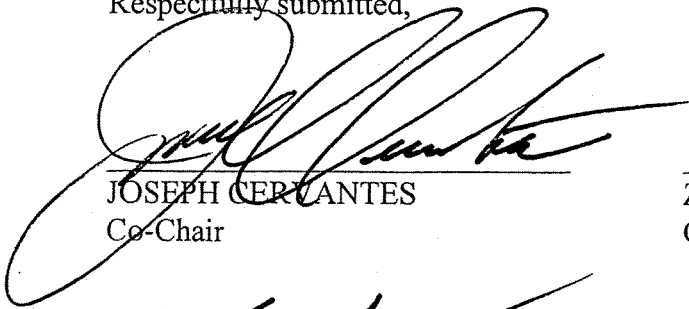
Projected Schedule for Further Subcommittee Meetings

While the subcommittee was able to make a good start on the important constitutional task with which it has been charged, given the compressed timetable of the special session calendar and given the numerous items on the call for the special session, it was not possible for the subcommittee to conduct the thorough investigation that is required in such a matter. While the subcommittee realizes that all parties concerned desire this investigation to be completed as soon as possible, the citizens of the state and the commissioner deserve a fair and complete investigation. Keeping the competing needs for thoroughness and expeditiousness in mind, the subcommittee, upon the authorization of the New Mexico Legislative Council, plans to complete its work according to the following timetable:

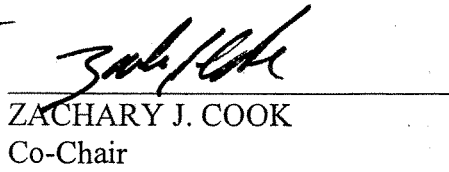
October 21, 2011, 1:30 p.m. — meeting to update the subcommittee on the progress of the investigation; and

November 1, 2011, 9:30 a.m. — meeting for presentation of the evidence compiled by Mr. Gorence, and consideration of whether articles of impeachment are warranted.

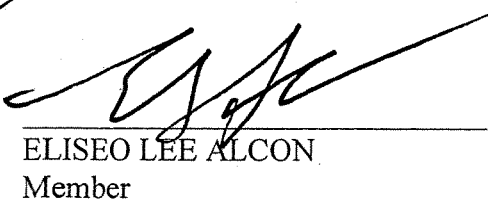
Respectfully submitted,



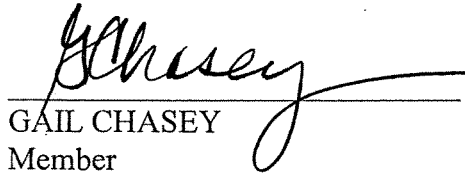
JOSEPH CERVANTES
Co-Chair



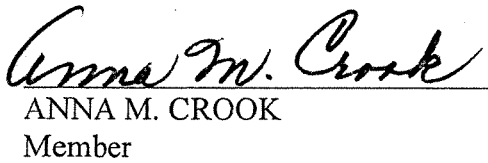
ZACHARY J. COOK
Co-Chair



ELISEO LEE ALCON
Member



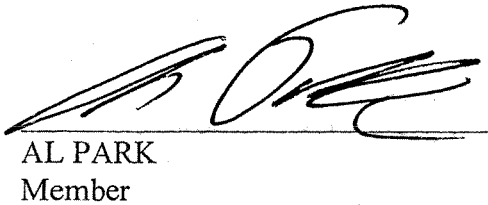
GAIL CHASEY
Member



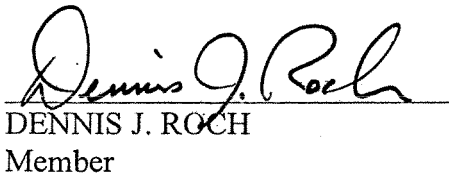
ANNA M. CROOK
Member



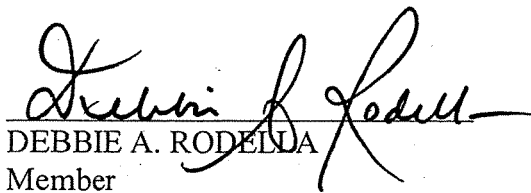
LARRY A. LARRAÑAGA
Member



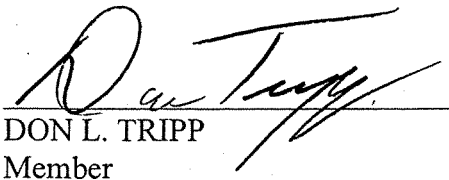
AL PARK
Member



DENNIS J. ROCH
Member



DEBBIE A. RODELLA
Member



DON L. TRIPP
Member