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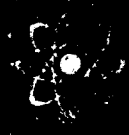
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The 1979 New Mexico Legislative Session Energy Issues and Legislation

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energy report



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THE 1979 NEW MEXICO LEGISLATIVE SESSION[†]

ENERGY ISSUES AND LEGISLATION

by

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ABSTRACT

This report is an account of the energy legislation and associated issues considered during the 1979 session of the 34th New Mexico Legislature. The session's major issue was the federal study of a proposed nuclear Waste Isolation Pilot Plant (WIPP) in New Mexico. A large proportion of time and effort was spent on resolving the state's formal position toward the federal project. However, other energy concerns were also significant even though they were neither as controversial nor as visible as the primary issue. The two most important laws enacted were the Radioactive Waste Consultation Act and the Radioactive Waste Transportation Act. The Legislature considered 47 other energy-related bills, of which 17 were enacted.

[†]This study was undertaken in support of the energy research and development program at Sandia Laboratories. The objective was to provide an awareness of legislative actions which might have impact on these programs. Monitoring of the legislative session was accomplished primarily through a contract with the University of New Mexico.

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EXECUTIVE SUMMARY

This report is an account of the energy legislation and associated issues considered during the 1979 session of the New Mexico Legislature. The key issue of this session was the prospect of a federal radioactive waste disposal facility being established in southeastern New Mexico. A major portion of the Legislature's time and effort was spent on resolving the state's formal position toward the federal waste project. Other energy concerns were also significant, although they carried neither the visibility nor the political implications of the primary issue.

NUCLEAR WASTE LEGISLATION

The federal Waste Isolation Pilot Plant (WIPP) and the associated nuclear waste management policy questions dominated the 1979 session. Although the project is federally funded and directed and the site is 90% federally owned, the question of state involvement has become important. Various citizen groups and public officials have expressed concern over the following aspects of the project:

- Radiation protection
- Radioactive waste transportation
- Geologic suitability of the site
- Resources withdrawn from development
- Retrievability of the waste

- Nuclear Regulatory Commission licensing
- State authority and participation

There were two waves of bills introduced to deal with the concerns arising from the project. Extensive hearings were held early in the session by the House Energy and Natural Resources Committee and by the Senate Conservation Committee to acquaint the members with the arguments of the sponsors and the concerned interest groups. At the end of these hearings, the committees were disposed to refrain from interfering with the project.

When the session was half over, the New Mexico Congressional delegation addressed the Legislature. They urged the state to take an active role in WIPP. In particular, Senator Pete Domenici (R) advocated state development of a formal concurrence process. This impetus led to the second wave of bills.

The two committees rejected most of the bills, retaining portions of those which had merit to develop two substitutes. One became the Radioactive Waste Transportation Act and the other the Radioactive Waste Consultation Act.

The radioactive Waste Transportation Act

This act authorizes the state Environmental Improvement Board to regulate radioactive waste transportation within New Mexico. It was intended to prevent the proliferation of city regulations while providing a means of reducing citizen anxiety over the transportation requirements of WIPP. The

law gives sole authority to the state board. The bill was not controversial during the session, but the major cities lobbied (unsuccessfully) against the Governor's signing of the bill.

The Radioactive Waste Consultation Act

This highly controversial act was often the object of parliamentary ploys. It was the final product of House substitution for several bills and was significantly altered by the Senate. Its survival was aided by the Congressional delegation's expressions of concern and it passed the House as a fairly strong "concurrence act" requiring Nuclear Regulatory Commission licensing.

The Senate gave the bill multiple committee referrals, a move which appeared to negate any chances for passage. Although the bill survived the referrals, it was significantly changed in the process. It embodied a requirement for consultation, and deleted the NRC licensing stipulation. However, it did stipulate that no waste could be disposed of or stored in a disposal facility until the state has concurred. The revisions were intended to remove language and stipulations which might convey a defensive state posture to the federal government. The act established formal bodies to consider the project and to communicate with the federal government, but did not empower them to stand in the way of the development of the project. The act implies that New Mexico wishes to be fully

informed about the project's development, but that the Legislature was disinclined to take any action which might put the state between the federal government and development of WIPP.

ENERGY POLICY

Although New Mexico does not yet have a comprehensive "energy policy" as such, the state government has begun to move in that direction. The executive branch, under legislative mandate, has developed two state energy plans since 1976. The first was presented to the 33rd Legislature in the 1977 session and the second was considered in the 1979 session of the 34th Legislature.

The first plan identified four general problem areas, suggested a state policy, and provided mitigation strategies. The areas of concern were related to natural gas, energy resource development, rising energy costs, and energy conservation. New Mexico, an exporter of natural gas, relies heavily on this energy source for domestic, industrial and agricultural use. The problems considered were supply, transportation, and price. Energy resource development is New Mexico's primary industry. Booms are occurring in both uranium and coal production and in coal utilization. Four related problems were addressed: severance taxes, community impacts, siting of energy developments, and establishment of energy processing plants. The problem of rising energy costs for those on fixed incomes was recognized, as was the need for energy conservation.

In 1977 the 33rd Legislature responded to many of the Plan's recommendations, which were submitted by the executive branch as a legislative package. The Legislature increased the uranium, coal, and natural gas severance taxes, enacted the unique state Natural Gas Pricing Act, and created a Community Assistance Authority. However, it rejected the concept of a coordinated approach to energy development siting, and declined to assist low-income residents facing higher utility rates. It addressed energy conservation by providing assistance for weatherization of homes of certain low-income residents.

The second Plan also identified problem areas and proposed legislation to address them. The plan focused on alternate energy sources, proposing tax credits for certain solar and geothermal applications and proposing funding for other solar applications. It also recommended a tax credit for home weatherization. The plan endorsed continuing the state's energy research and development program and significantly increasing the funding for the Community Impact Assistance program. Compliance with the federal coal surface mining reclamation regulations was recommended in order to retain state jurisdiction. The plan also argued for obtaining state veto power over the WIPP project.

This plan was developed under "lame duck" administrative guidance; as a result it was not presented to the 34th Legislature as a package, nor was it referred to during the 1979

session. However, the various legislative proposals were submitted individually, and some were enacted into law. The state energy R & D program was funded, community impact assistance was appropriated 40% of the recommended funding, and the state complied with the Federal Surface Mine Control and Reclamation Act.

Neither of the State Energy Plans has enunciated an "energy policy" for the state, nor has the Legislature undertaken the development of such a policy. In the past, legislative actions have been more reactive than initiatory. With New Mexico's traditional laissez faire attitude in an atmosphere of western individualism, the State Legislature can be expected to continue responding to current needs.

ENERGY AND ENVIRONMENT LEGISLATION

The 1979 session of the 34th Legislature considered forty-seven additional pieces of legislation which dealt with energy and nine which addressed energy-related environmental matters. Twelve energy bills became law along with five environment bills.

Energy

Uranium The most controversial uranium decision before the Legislature was the recurrent question of uranium mine water handling. Both the 33rd and the 34th Legislatures have debated this question, which revolves around whether water pumped out of the mines should be subject to regulation. Currently it is not regulated and is considered

to be wasted by both the industry and the proponents of regulation. The measure again failed, but the Legislative Council was directed to study the issue, thus keeping it alive. An unsuccessful attempt was also made to increase the uranium severance tax. Computation of the uranium surtax was changed, however, to reflect total changes in the Consumer Price Index. This applies only to yellowcake selling at \$50 or more per pound.

Solar Of the five solar bills introduced, only one succeeded. New Mexico residents may now claim both a state income tax credit and a federal income tax credit on solar heating and cooling systems. However, a proposed tax credit for home weatherization costs was rejected. The Legislature has not attempted to design a comprehensive, state solar-energy policy.

Geothermal Additional time was provided to leaseholders for the development of their geothermal leases. Also, two studies were requested: one of geothermal policy and the other of leasing procedures.

Oil and Natural Gas The state Natural Gas Pricing Act was extended until June 30, 1981, and was brought into compliance with the federal Natural Gas Policy Act of 1978. New Mexico is the only state which has a natural gas pricing law. This law attempts to retain certain natural gas produced within the state for the intrastate market. The intent is to ensure adequate supplies of natural gas at reasonable rates.

Conservation The Legislature has not given priority to energy conservation. Two measures which failed this session would have required state agencies to conserve energy and required public schools and hospitals to perform energy audits.

State Agencies and Legislative Committee The Department of Energy and Minerals was given authority to obtain certain proprietary information relating to energy resource production. In other legislation, an attempt was made to establish a staffed, permanent, interim legislative committee on energy and natural resources. The attempt may have failed because another interim committee on an energy-related matter, the WIPP Consultation Committee, was established, although no duplication of effort was expected.

Mineral Leasing and Mining The state Surface Mining Act was brought into compliance with the federal Surface Mining Control and Reclamation Act of 1977. The only other successful bill in this area amended state law to require a bond to be posted before exploration for state-owned minerals in order to protect the owner of the surface rights.

Indian Resources and Indian-State Relations The Legislature supported creation of Indian resources development institutes at two state universities. The institutes are to provide programs for research, education, and services to aid in more effective utilization of the natural resources and related businesses on Indian lands. However, establishment of the institutes is conditional on the passage of federal legislation creating such institutes and providing for joint state-federal

funding. Two other bills would have authorized the governor to enter into joint-powers agreements with Indian Tribes and would have created an interim legislative committee to consider legislative needs for Indian-State relations. Neither was successful.

Environment

Water A study was funded to examine the feasibility of managing and inventorying data on water availability and use in the state. As mentioned earlier, additional regulation of water use, specifically uranium-mine waste water, failed.

Air The Environmental Improvement Board was given authority to promulgate regulations governing both "prevention of significant deterioration" and visibility as well as requiring "best available control technology" to limit air pollution.

Socio-Economic The Low Income Utility Assistance Act was passed to aid indigent residents with their utility costs. In other actions, an appropriation of \$8 million authorized the sale of severance tax bonds to assist in highway construction in the energy-impacted northwest quadrant. Also \$8 million was authorized for community impact assistance. This brings the total state investment to date in energy-resource roads to \$28 million and in energy-community impact assistance to \$20 million. Although these are large amounts, they represent only 22% and 27%, respectively, of the state's currently estimated needs for assistance to areas impacted by energy-resource development.

THE 1979 NEW MEXICO LEGISLATIVE SESSION
ENERGY ISSUES AND LEGISLATION

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I. BACKGROUND: NEW MEXICO

New Mexico in the past has been relatively isolated from the national mainstream. The State Legislature has followed the tradition of western individualism and laissez faire government. Thus the Legislature traditionally has not assumed the role of planning the state's progress. However, the growing population and the booming energy industries are altering the traditional ways of life. The State Legislature's role is changing to respond to these new demands.

New Mexico's uniqueness as a state lies largely in its climate, natural beauty, and population mix. Pristine skies, scenery, and open spaces combine to produce a desirable living environment and support a large tourist industry. For much of the population, the way of life is founded on centuries-old traditions.

New Mexico's population is comprised of three predominant ethnic groups: "Anglo," Spanish-speaking, and Indian. The term "Anglo" is a New Mexican colloquialism which includes everyone who isn't of Spanish or Indian origin. This group comprises half of the population. Spanish-speaking or Spanish-surnamed people comprise about 40% of the population.* This group derives primarily from the Spanish colonial settlement of New Mexico. Gov. Apodaca, whose four-year term ended in December, 1978, was

*New Mexico Statistical Abstract 1977, Bureau of Business and Economic Research, The University of New Mexico, Albuquerque

the first Hispanic State Executive since 1920. Within the current 34th Legislature, 29% of the House and 31% of the Senate have Spanish surnames. In addition, twenty-five Indian groups live in New Mexico and occupy about 10% of its land. The Bureau of Indian Affairs estimates the Indian population to be about 104,000, 9% of the state population. Each house of the State Legislature currently has one Indian member.

The Albuquerque urban area represents about one-third of the state population of 1.2 million. Only two other urbanized areas have populations greater than 50,000. Because of its low population density and large size (122,000 square miles), New Mexico is still primarily a rural state. The problems and political philosophies of the rural areas are quite different from those of the urban areas, particularly the more metropolitan Albuquerque. In addition to this urban-rural split, the energy "boom" towns present their own unique problems. Each of these areas competes within the Legislature for state resources.

New Mexico is an energy producer and exporter. Energy-related matters are increasingly a major activity focus of the state government. Many of these considerations are closely linked to national energy supply, demand, and policies. Recent intensification of the nation's energy problems increases pressures on state leaders to set policies geared to New Mexico's involvement in energy issues.

New Mexico is endowed with a wide range of raw energy materials. Historically, oil and natural gas have accounted for the greatest proportion of the state's energy production. In the

past decade, the growth of the nuclear power industry has stimulated a boom in development of New Mexico's uranium resources. While oil and natural gas production has been declining in the state, the Grants Mineral Belt in the northwest quadrant, which contains over 50% of the nation's uranium resources, is the principal development area. New Mexico remains the top uranium producing state in the nation. Along with oil, natural gas and uranium, the northwest quadrant also contains low-sulfur, strip-pable coal. Some of these coal reserves are already being used to fuel large mine-mouth power plants which export more than 75% of the electricity they generate to Arizona and California.

Although New Mexico has no nuclear power plants, the state's nuclear experience is not limited to the production of the raw material. Nuclear research is part of the mission of both Los Alamos Scientific Laboratories and Sandia Laboratories, two of the nation's major scientific research facilities. These laboratories have provided New Mexico with a sizeable community of highly-trained, technical specialists.*

Major non-nuclear energy research projects are also important elements of the research and development work of each facility. Solar, geothermal, wind, and biomass technologies are being explored as alternative methods of energy supply by the two scientific labs and three of the state universities.

*New Mexico has more Ph.D.'s per capita than any other state.

II. THE POLITICAL SETTING

CHANGES IN THE LEGISLATURE

The political character of the New Mexico House of Representatives changed at the outset of the 1979 session. Democrats continued to be the majority party in both chambers, but in the House, that majority was held by a slimmer margin. The November 1978 elections had produced seven additional House Republicans. The 1979 party balance was 29 Republicans and 41 Democrats in the House with 10 Republicans and 32 Democrats in the Senate.

This increase in Republican membership in the House of Representatives contributed to the removal of the previous five-term Speaker of the House and a subsequent power shift. Through a surprising coalition of 26 Republicans and 11 Democratic "dissidents," former House Speaker Walter K. Martinez (D - McKinley and Valencia) was replaced by C. Gene Samberson (D - Lea) on the first day of the session.

Rep. Martinez had been one of the leaders of a liberal-moderate, Democrat faction that had been the power base in the House over the past eight years. But the influence of this group, called the "Mama Lucies",* had been declining and it had lost some key members. The moderate-conservative group within the House, discontent over committee assignments of the past

*This group acquired its nickname from the proprietress of a restaurant which they frequented.

(controlled by the Speaker), were in a position in 1979 to take control of important committee chairs and assignments. Many of those legislators supporting the moderate-conservative candidate were from rural districts who felt that their interests had not been represented adequately since the urban "Mama Lucy" group had gained control. In a breach of tradition, Rep. Martinez, who had been chosen as Speaker of the House in a pre-session meeting of the Democratic caucus, was not elected to that position on opening day. Rather, Rep. Samberson was elected to the Speakership by a vote of 37-33. The eleven Democrats voting for Samberson were expelled from the Democratic caucus two days later. This group included the new Speaker himself.

The new Speaker redistributed committee assignments and, for the first time in 25 years, committees were chaired by Republican members.* Republicans took control of half of the twelve standing House committees. (Refer to Appendix A.) Although the chairmanship of the important Appropriations and Finance Committee did not change political parties, the new chairman replaced a "Mama Lucy" Democrat.

The changes which took place in the House of Representatives produced a legislature that would be more conservative than in the past. The House was now more similar to the Senate in its political outlook. Therefore, the 1979 Legislature as a whole was expected to take a conservative and fiscally cautious approach to its tasks.

*Sturiale, P., "Reaction to House Committee Assignments Split," The New Mexican, Santa Fe, NM, Jan. 18, 1979.

The 1979 House Committee assignments produced a new chairman of the Energy and Natural Resources Committee, which would review any radioactive waste legislation introduced during the session. The state representative from Carlsbad, the town nearest the nuclear Waste Isolation Pilot Plant (WIPP), was chosen as chairman. Rep. Jack L. Skinner (D - Eddy) represented the moderate element within his constituency which did not oppose the WIPP project.

Its Senate counterpart - the Conservation Committee - was chaired by the State Senator from the same area. Sen. Joseph E. Gant (D - Eddy) had been Conservation chairman during the 33rd Legislature and had shown himself to be an opponent of legislative actions which might interfere with research on the WIPP project. The combination of these two committee chairmen assured careful scrutiny of any legislation proposing state action on the project.

ENERGY ISSUES FACING THE SESSION

Nuclear Waste Management

During the 1978 session a proposed state constitutional amendment to prohibit the disposal of radioactive waste transported into the state had been defeated, but not without first stimulating controversy and much media attention. Throughout the intervening year, public discussion on the topic within the state continued to grow. Public awareness of New Mexico's role in national nuclear waste policy and of the issues involved had become increasingly more widespread.

Rising Energy Costs

Per capita income in New Mexico* ranks consistently in the lower tenth of the nation and higher fuel prices make significant dents in already limited purchasing power. The rise in residential heating and electricity costs impacts especially hard upon those on low or fixed incomes - the poor and the elderly. The State Energy and Minerals Department had recommended that assistance measures be considered by the Legislature.

Energy Industry Impacts

Energy resource production is New Mexico's primary private industry. The uranium industry is experiencing a boom in the Grants Mineral Belt, the scene of extensive exploration, development, and production activities. Kerr-McGee, United Nuclear, Conoco, Gulf, TVA, Bokum Resources, Sohio, Anaconda, Phillips and several smaller firms all have planned or operational uranium mines in the area.

Coal production is expected to grow in the future. The Pittsburgh and Midway strip mine, also in the northwest quadrant, now provides coal to the 2085 MWe Four Corners Power Plant, owned primarily by Arizona Public Service Company. The Western Coal strip mine serves the 800 MWe San Juan Power Plant (another 470 MWe unit is under construction) of Public Service Company of New Mexico (PNM). Each of these mining

*New Mexico ranked 45 in 1977. Data from Statistical Abstract of the United States 1977, U. S. Dept. of Commerce, Bureau of the Census.

companies plans to expand coal production capacities. Also, PNM plans a 2000 MWe generating station in the Bisti-Star Lake area, where Plains Electric Co. of Texas is also contracting for coal. The Bisti-Star Lake area is on the eastern boundary of the Navajo Reservation. Development of this coal reserve has encountered the opposition of environmentalists. It has also been delayed by the Department of Interior's coal leasing policy and Navajo tribal opposition.

Impacts upon the state resulting from these activities include population and service-demand increases in producing areas, greater highway maintenance costs, effects on water supply and quality, and greater federal and state regulatory investment. In the past, the role of New Mexico's government has been one of non-interference in energy industry activities. Because the state needs the economic stimulation the industry provides, the state has aided its efforts by maintaining a laissez faire policy. Now the impacts of industrial activities are incurring costs to New Mexico which are demanding greater state involvement in mitigating undesirable effects on the environment, economy, and community-level quality of life.

III. THE MAIN ISSUE: FEDERAL NUCLEAR WASTE DISPOSAL

In 1972 the federal government initiated investigations of the geologic suitability of salt beds near Carlsbad, New Mexico, as a site for the isolation of radioactive waste. Public awareness and concern over the proposed Waste Isolation Pilot Plant (WIPP) has grown during the past five years. The public debate greatly increased after the 1978 legislative session.

ISSUE OVERVIEW

New Mexicans are well-acquainted with nuclear energy. Uranium mining and milling has become the state's primary energy resource industry. The Manhattan Project which developed the first atomic bomb was centered at Los Alamos, in northern New Mexico. The bomb was tested in southern New Mexico near Alamogordo. Established in that era, Sandia Laboratories and Los Alamos Scientific Laboratories have played key roles in nuclear research and development. The plans for a nuclear waste repository would bring New Mexico's involvement in nuclear energy to include the back end of the nuclear fuel cycle as well as the front.

The area being examined by the U. S. Department of Energy (DOE) for the location of WIPP lies approximately 25 miles from Carlsbad in the southeastern corner of New Mexico. The surface facility would require approximately 60 acres, but a reserve of about 18,900 acres would be required for the

project. The underground disposal facility would be comprised of two levels - one at a depth of 2100 feet and the other at 2600 feet.

The different types of radioactive waste which have been considered for storage at the WIPP facility include the following:

- a. Transuranic: low-level radioactive defense waste.
- b. High-level defense waste and commercial spent fuel: to be used for research and development experiments in high-level waste isolation. It is possible that permanent disposal of high-level defense waste could also be included if positive research results so indicate.
- c. Spent Nuclear Fuel Elements: also to be used for a demonstration of permanent isolation with a 20-year demonstration period.

The project is federally funded and directed. The 18960-acre site is located on federally-owned land except for 1760 acres of state land. Because it is a federal project on federal land, the state has no legal jurisdiction over the project. However, DOE has sought to cooperate with the State of New Mexico in the development of WIPP. The level of involvement on the part of the state and the form it might take were unresolved up to the beginning of 1979. Whether and in what manner New Mexico should respond to this offer of

cooperation produced differences in opinion among state government officials and the public.

The following aspects of the project generated public concern: 1) radiation protection, 2) transportation of radioactive waste within the state, 3) geologic suitability of the proposed site, 4) potential resources in the site area which will be withdrawn from development, 5) retrievability of the waste, 6) NRC licensing of the plant, and 7) the degree of state authority and participation in the project's development.

Radiation Protection

Because this issue is so basic, an evaluation group had been established by the state to independently assess and review federal documents pertaining to WIPP. This group, the Environmental Evaluation Group, is being funded by the DOE for six years. Mr. Robert Neill, a health physicist, began work as its director in November 1978. His staff will include a hydrologist, an environmental engineer, a mathematician, and scientific liaison personnel. The first document the EEG was to review was the DOE Draft Environmental Impact Statement for WIPP, issued in April 1979.

During the legislative session, in testimony to a joint meeting of the legislative energy committees, Mr. Neill briefed the legislators on the focus of the work of the EEG. He stated that the group would only be investigating the issue of radiation protection, and after reviewing the federal documents, would make recommendations pertaining to risk reduction. He explained that the EEG will be considering: 1) transportation

(recommending preferred options), 2) waste canister designs and materials, 3) site hydrology, 4) radiological migration, 5) retrievability, and 6) plans for environmental monitoring. Mr. Neill emphasized that the aim of his group is to provide top quality independent assessment of the radiation protection aspect of the project. He stated that his main interest is ensuring an intact genetic heritage for New Mexico and the country.

The efforts of the Environmental Evaluation Group operating within the Environmental Improvement Division of the NM Health and Environment Department comprise the state's technical and scientific oversight of the project. It is recognized by officials in that division and department, as well as by the EEG director, that the group is operating in a larger socio-political environment which increases the challenge of their task.

Transportation

This is a related issue which grew in visibility as a result of citizen concern. The degree of citizen concern surrounding transportation plans was conveyed during recent DOE hearings. Federal officials had been previously unaware of the significance of this aspect of the project to state citizens.

Transportation plans include rail and truck waste-carrying modes. Many people living near proposed transportation routes have expressed their uneasiness about the prospect of radioactive shipments traveling through their "backyards." They cited poor highway conditions, deteriorated rail tracks and beds and the

normal hazards of traffic accidents as the reasons behind their apprehension.

Site Suitability

In the search for a suitable geologic medium in which to isolate radioactive wastes, the salt beds near Carlsbad, New Mexico, have long received serious consideration because of their desirable geologic properties. However, differences do exist within the scientific community as to the suitability of salt as a disposal medium.

Because this assessment requires a specialized background, debate over the point has occurred more within the scientific realm, than within the general public. But the debate is known to the public and disagreement over site suitability among those perceived to be scientific experts affects public confidence in the project.

Undeveloped Resources

Reserves of oil, natural gas and potash are located within and near the area where the site is to be established. The DOE intends to acquire 18,960 acres of land. Thirty percent of the petroleum leases on this land have already been acquired by DOE to prevent drilling which could violate siting criteria. All but 1760 acres of the land desired is federal land, controlled by the Bureau of Land Management under the U.S. Department of the Interior. The remaining acreage is owned by the State of New Mexico.

Estimates differ as to the amount and monetary value of the resources that would be affected by land withdrawn for the WIPP project. One rough estimate* reached by the New Mexico Energy and Minerals Department indicated that revenues of \$33-38 million would be lost to the state from the withdrawal of land containing current known reserves. This figure increases if the classification of potential reserves is also included. Disagreement over the amount of the potential loss of state revenue from withdrawal of these resources causes this to be another area of concern surrounding the waste disposal issue.

Retrievability

There has not been a clear understanding of the permanence of the isolation facility and the retrievability of the waste itself. A DOE representative, in a public meeting in Carlsbad, stated that the disposed waste canisters would be retrievable but not retrieved if the disposal proves acceptable. Whether the waste will be stored in a retrievable form or not concerns many in the state, including some members of the Congressional delegation.

NRC Licensing

Another area of uncertainty centers around the question of U.S. Nuclear Regulatory Commission (NRC) authority, or the absence thereof, over WIPP. The NRC is responsible for regulating and licensing certain Department of Energy radioactive

*John Gervers, N.M. Energy and Minerals Department, in testimony to the House Energy and Natural Resources Committee, January 1979.

waste repositories to ensure the protection of public health and safety and the environment.

NRC licensing is seen by some as an important step in the project's development. It would guarantee another quality control level and oversight authority of the plant's design and operation. As the types of waste WIPP would handle have changed, the NRC authority over the facility has also changed. If WIPP is primarily a low-level, defense transuranic waste facility, NRC does not now have the authority to license or regulate it. However, the inclusion of high-level waste in operational quantities and commercial spent fuel elements would place the facility within NRC jurisdiction. At the time of the session, the spent fuel, in quantities not to exceed 1000 canisters, was planned for inclusion, so DOE was expecting WIPP to go through the licensing process. NRC had not arrived at a final decision on whether this limited spent fuel demonstration would require licensing.

Debates at the Congressional level affect current expectations over the licensing requirements for WIPP. NRC has been urging Congress to expand its authority to include WIPP, but no changes in its jurisdiction have been made. Congressional funding for the entire project has been in jeopardy due to the proposed inclusion of commercial high-level (spent fuel) waste, which departs from the initial plan for disposal of waste generated by the defense program. The resolution of this debate could have an impact on NRC authority over the WIPP project.

The MRC licensing question is just one of a number of aspects of the project whose ultimate resolution rests in congressional decisions. This is not uncommon for a federal project; however, uncertainty at the national level over a project such as WIPP produces anxiety at the state level.

State Involvement

As briefly mentioned previously, the State of New Mexico has been invited by the DOE to participate in WIPP's development. There are no legal mandates or precedents for this type of offer, thereby making it a novel situation. However, because the situation is without precedent, it is not clear exactly what "participation" means. Should the state and the federal government disagree, the state may not have any legal basis on which to formally approach an area of disagreement. The federal government has the legal prerogative to exercise total control over the project.

Another issue is potential state veto power over the project. DOE Secretary Schlesinger indicated that New Mexico could veto the project if it so desired. The state attorney general, however, stated that this position is not legally supportable. The whole question of state veto power fits into the larger political realm of state's rights versus national interest. Suspicions have grown over the credibility of the federal government's offer to the state. Establishing reliable lines of communication between New Mexico and the federal government is recognized as a necessity.

THE SESSION

As anticipated, radioactive waste disposal was the leading energy issue during the legislative session. However, approaches to the issue went through a series of changes before any legislation finally passed. There were two waves of waste-related legislation during the session. The first wave was an assortment of bills which received extensive committee hearings. Two of the bills survived to be incorporated into successful legislation. The rest did not, although their committee hearings served to emphasize the degree of controversy surrounding radioactive waste disposal in New Mexico. Still, the overall disposition within committee after these hearings was for the legislature to refrain from any actions which might interfere in the WIPP project.

The second wave followed addresses made half-way through the session by members of New Mexico's Congressional delegation. Both Senator Pete Domenici (R - NM) and Representative Manuel Lujan (R - NM) urged the state to take an active role in WIPP's development. Senator Domenici specifically encouraged the State's leaders to develop an official plan through which a concurrence process could be established with the Department of Energy to formalize New Mexico's input to WIPP. He cited this as an historic opportunity for federal-state cooperation in development of a federal project.

This impetus stimulated introduction of the second group of bills, all but one proposing various concurrence mechanisms. A Senate bill proposed a referendum on the project. A House

Committee Substitute, combining a number of features embodied within the concurrence bills, took a long and slow route through the Senate, where it almost died. However, in the final hour, the legislature did produce the Radioactive Waste Consultation Act along with a bill regulating the transportation of radioactive waste.

FIRST WAVE LEGISLATION

By the end of the first day of the session, four House bills had been introduced relating to radioactive waste. All four were referred initially to the House Energy and Natural Resources Committee. These measures included a state constitutional amendment to prohibit radioactive waste disposal (HJR 1), a two-year moratorium on the transport of waste into the state (HB 3), a tax on waste transportation (HB 4), and ratification procedures for waste being transported within New Mexico (HB 8). The final inventory of first wave bills included three additional measures. These sought to: authorize the State Environmental Improvement Board to regulate radioactive waste transportation (HB 39), impose conditions on the disposal of radioactive waste and construction of such facilities (HB 106), and statutorily prohibit transportation of radioactive waste into New Mexico (HB 247). The general intent of all of these bills was to ensure the protection of the interests of the state.

Federal and State Briefings

Before hearings began on this first series of bills, the House Energy and Natural Resources and Senate Conservation Committees were briefed on current federal and state activities related to WIPP's development.

Mr. D. T. Schueler, project manager of WIPP at the Department of Energy's Albuquerque Operations Office, gave a presentation to the House Committee on the project, its timeline, and current stage of development. One committee member questioned whether commercial spent fuel rods, a high-level waste, would be disposed of at the site along with the low-level waste. Mr. Schueler responded that the facility was being designed to handle experiments in disposal with up to 1000 spent fuel elements. The inquiry reflected the lack of a clear understanding which has resulted from the variety of proposals for the types of radioactive waste WIPP will store.

A briefing on state involvement in the project was presented to a joint meeting of both legislative committees by the Secretary of the New Mexico Health and Environment Department, the Director of that department's Environmental Improvement Division, and the director of the EID Environmental Evaluation Group (EEG).* Dr. George Goldstein, Health and Environment Department Secretary, emphasized to the legislators that the goal of the EEG was not to pass judgement on the desirability either of the project or nuclear power. The final

*See "Issue Overview, Radiation Protection" for previous discussion of the EEG.

decision on acceptance or rejection of the project, he felt, will be a social-political one. The purpose of the EEG is to provide objective, scientific information to state decision makers and the public to aid in that decision making process. Mr. Robert Neill, EEG director, gave a summary of his project's concerns. He also emphasized that the EEG would not make decisions on the acceptability of risks connected with WIPP, but that the findings of the EEG would be made public.

The three officials fielded a range of questions from the committees, including whether the EEG project would not be just an exercise in futility if New Mexico did not have veto power over WIPP. Mr. Neill did not agree, stating that DOE Secretary Schlesinger had made a positive and commendable move to include New Mexico in the project's development. Dr. Goldstein added that representatives of DOE had been acting in good faith and that, even without state veto power (which he assumed the state would not have), the EEG's work was still important.

With a House bill proposing a two-year moratorium on importing waste into New Mexico already pending before the House Energy and Natural Resources Committee, a number of legislators inquired into the effects of such a law upon current activities. Dr. Goldstein replied that a two-year moratorium would not affect any present activities since no waste was planned to be disposed of in that period. However, he pointed out that a moratorium or other legislative action affecting R & D would put the state in a bad position. He felt a statewide referendum, leaving

WIPP's fate to the state's voters, would be premature at this point because more definitive information would be forthcoming throughout the next four years.

The Schools of Thought

The predominant attitude of the New Mexico legislature up until 1979 had been to remain uninvolved in the Waste Isolation Pilot Plant because it is a federal project. A House Joint Resolution had been introduced during the 1978 session of the previous legislature, to constitutionally prohibit disposal of imported waste (similar to the one proposed in 1979). It stirred debate, but failed. Sufficient support could not be mustered within the legislature for an obstructionist measure.

The attitude that legislative interference in the project would be ill-advised prevailed into the 34th legislature. Individual proponents of a passive legislative role chaired the House and Senate committees* assigned to hear the waste-related bills. The influence of these two committee chairmen was further enhanced because Carlsbad is located in their districts. Each of these men was recognized as a supporter of the project and both were confident in the quality and candor of the Department of Energy's communication with the state. Senator Gant's overall political influence was further enhanced by his chairing the Senate Democratic Caucus.

*House Energy and Natural Resources Committee and Senate Conservation Committee.

The legislators in favor of a passive legislative role believed that it was still too early for the legislature to involve itself in the project. As federal and state officials had reaffirmed, there was still scientific and technical research being done; the facility was not planned to begin operating until 1986. The DOE Environmental Impact Statement, being prepared by Sandia Laboratories, was yet to be released. The work of the state's Environmental Evaluation Group had barely begun. This group of legislators did not see any utility in taking determinate actions before this additional scientific data was "in," thus precluding any legislative action being taken in 1979. Because the project had been proceeding smoothly thus far without state legislative involvement, preserving the status quo continued to seem the most prudent course, especially in light of the absence of legal authority for state involvement.

All of the "first wave" legislation was advocating, in one form or another, a critical approach to consideration of the WIPP project's benefit to the state. Therefore, approving such legislation would convey a political message to the federal government that New Mexico was independently analyzing the project from the state perspective. New Mexico's relationship with the federal government has not traditionally been adversarial. Since World War II, federal money has supported a major portion of the state's economy. State political leaders are very cognizant of this fact, seeing that preserving a good relationship with the federal government is in the state's

best interest. Therefore, there was a general disinclination to take any actions on WIPP which might be interpreted as antagonistic and which could have negative effects on state-federal relations.

During the 1979 session the passive approach to state involvement in WIPP was challenged by arguments that protection of state interests could not be assured without active participation. The legislators advocating an active role recognized that their assertions went against the traditional viewpoint. Although the legislators espousing this active philosophy were not a unified faction, they were responsible for introducing and co-sponsoring the various WIPP-related measures throughout the session. They tended to be younger, more liberal, and from the urban districts of New Mexico. As the legislation they sponsored revealed, they had each defined somewhat different approaches to state involvement. Some proposed to prohibit radioactive waste disposal in New Mexico while others only sought to ensure protection of state interests.

While approaches differed, the common view remained that, if the state did not take an active interest in the project and review it critically from the state's perspective, then New Mexico would merely be on the receiving end of federal decisions and actions. The activist argument was frequently presented as being pro-New Mexico rather than anti-WIPP. And because WIPP represented experimentation with a new technology, the pressure for the project to succeed made it all the more important to these legislators that the state assess the impact upon itself.

Within the 1979 Legislature the passive philosophy represented the dominant influence at the outset of the session and maintained strong control throughout its duration. The active approach, while faring poorly initially, was given a boost after Senator Domenici's address in which he advocated state participation in the project's development. Both sides achieved certain ends with the passage of the Radioactive Waste Consultation Act.

The Committee Hearings

The hearings held by the House Energy and Natural Resources Committee on the initial radioactive waste measures were the most extensive of the session and brought out all sides of the waste disposal debate. Interest group activity, both in support and in opposition, was heavy. Testimony on the various pieces of legislation from each side became predictable as repetitious arguments were presented in support of or in criticism of the various measures. The schools of thought which produced factions among the legislators were reflected by the interest groups. However, while the politicians were more reluctant to take outright pro or anti-positions on the project, these were clearly the stands advocated by those groups testifying.

The testimony given by scientific experts did not serve to significantly resolve the scientific and technical uncertainties surrounding the project. While claiming neutral testimony, experts were usually brought before the committee by the partisans. Aside from this, testimony typically implied confidence or the lack thereof in the findings of the research being done. It became obvious that a divergence of opinion was present within the

scientific community as well. While these testimonies were enlightening in the issues they raised, they did not necessarily lessen the confusion over the project. Among these scientific experts were a Los Alamos nuclear physicist, who stressed the need for WIPP; a University of New Mexico geology professor, with expertise in risk of salt dissolution; an "astro-geophysicist," who discussed the non-stability of salt; a former uranium company geologist, supporting the salt disposal medium; and a retired Los Alamos physicist opposing the salt site.

Pro-WIPP Forces

Groups supporting the development of the WIPP project also shared in the dominant passive philosophy present within the legislature. They feared that passage of any of the first wave measures would interfere with or possibly halt the project's progress.

Among those who appeared before the committee throughout the hearings in support of WIPP were: A registered lobbyist for Carlsbad Industrial Action, a private pro-development corporation; a registered lobbyist for the Industrial Development Corporation of Lea County, the county adjacent to that containing the WIPP project; a nuclear physicist from Los Alamos Scientific Laboratories representing himself; a registered lobbyist who is also the president of Eberline Instrument Corporation of Santa Fe, a firm manufacturing radiation detection equipment; the mayor of Carlsbad; the Carlsbad Chamber of Commerce President; the president of Barber Oil Company who was also an Eddy County Commissioner (the county containing the WIPP site); a Carlsbad city

councilor; the executive director of the New Mexico Mining Association, also a registered lobbyist; a representative of Americans for Rational Energy Alternatives, a pro-nuclear interest group; the founder of the Energy Association of Tax-payers, a group of businessmen and uranium producers based in Grants in the heart of the uranium belt; and assorted scientific experts with backgrounds in geology and physics.

Their testimonies all revolved around arguments that anti-WIPP claims were pre-mature, obstructionist and emotional. They opposed the proposed measures and frequently expressed their trust in the competency of the Department of Energy to determine the ultimate safety of the WIPP project. These witnesses often advocated keeping the project out of the public decision-making arena and letting scientific research resolve the risk questions. The point was also frequently made that there is an urgent need for a pilot project such as WIPP in order to resolve radioactive waste problems in this country. It was stressed that research and development in radioactive waste disposal are now at a point where actual field work needs to be done. This group also feared that the success of these bills would fuel anti-nuclear arguments, which they considered based on emotion rather than rationality.

Anti-WIPP Forces

Groups opposing the establishment of WIPP in New Mexico advocated developing an active state role and giving the citizens of the state a chance to express their collective opinion. A statewide referendum was the course of action which most strongly

appealed to this group. They were much more leary of total federal control over the project and were particularly concerned over the uncertainty of the project being licensed by the Nuclear Regulatory Commission.

Those advocating this perspective included: A registered lobbyist for New Mexico Friends of the Earth; a registered lobbyist for the New Mexico Land Preservation Council; a representative of the Southwest Research and Information Center of Albuquerque; a representative of Citizens Against Radioactive Disposal, a newly formed state group; a representative of the Carlsbad Nuclear Waste Forum; a representative of Roswell Citizens for Alternatives to WIPP, from a major town along a proposed waste transportation route; other scientific experts and numerous private citizens speaking for themselves.

The testimonies of these groups and individuals revealed great anxiety about the safety of the project and the risk of transportation accidents. They also remained unconvinced that the salt beds were the optimal disposal medium. As representatives of primarily private-citizen interest groups, they strongly advocated that the public be allowed to decide whether they wanted WIPP in the state or not. The argument that New Mexicans are not qualified or well-informed enough to make a decision on WIPP's future struck them as reflective of the arrogance of scientific experts and condescending in its accusations that their opinions were based in emotion, rather than reason.

These two interest group forces contrasted with each other in their styles and political experience. The groups which supported the project and lobbied in opposition to measures which might interfere with it primarily represented business and industry. This is the same echelon from which community and state leaders typically originate and, therefore, they tended to speak the same language and offer arguments with which the state legislators closely identified. Many of them were familiar faces to the legislators either as well-recognized lobbyists or members of their local business communities. They advocated maintaining the status quo and were disdainful of insinuations that the Department of Energy and the federal government were not being honest with the people of New Mexico. Throughout the committee hearings, the impression was given that this group echoed the predominant sentiment of the committee, as well as the legislature as a whole.

Those who lobbied in support of the measures, representing groups opposed to nuclear waste disposal in New Mexico, generally did not share in this degree of established rapport and familiarity with the legislators. While lobbyists from the New Mexico Friends of the Earth, the New Mexico Land Preservation Council and a few private individuals were experienced in state legislative politics and veterans of previous legislative sessions, the majority of those testifying and lobbying appeared to be novices and not so familiar with legislative practices. For many, it was the issue of waste disposal which activated their interest in state politics. These committee hearings represented their initial exposure to

the legislative process. In arguing for an active state role, they were not advocating the more popular stand. Because of their lack of political experience, their relative lack of familiarity with legislative norms, and the unpopular positions they represented, their credibility and persuasiveness may not have equaled that of the other side.

Outcome

The House Energy and Natural Resources Committee did not act on the five pieces of legislation until the end of the first series of committee hearings. The committee preferred to delay action on any waste-related measures until all had been heard before the panel.

Three of the seven first wave measures did not survive committee scrutiny. These were: the state constitutional amendment to prohibit radioactive waste disposal (HJR 1), the two-year moratorium on waste transport into the state (HB 3), and the statutory prohibition of waste transportation into the state (HB 247). Each of these was considered too drastic. A fourth bill, the waste transportation tax (HB 4), was withdrawn from committee by its sponsor so that drafting improvements could be made, but it never reappeared before the committee. A fifth bill, which sought to establish notification procedures for the transportation of hazardous waste into the state (HB 8) suffered from too many specific problems to receive a favorable committee recommendation.

The two remaining bills comprising the first wave each ultimately evolved into successful legislation. One, House

Bill 39, authorized the state Environmental Improvement Board to regulate radioactive waste transportation within New Mexico. It was amended later in the session to become the Radioactive Waste Transportation Act. The other, House Bill 106, was more diversified than the other first-wave legislation and proposed six conditions for waste disposal and its facilities. These conditions were: 1) state concurrence, 2) Nuclear Regulatory Commission licensing, 3) compensation to New Mexico for lost resources and the benefits not accrued from their development, (e.g., potash, oil, and gas), 4) federal liability, 5) meeting National Environmental Policy Act criteria, and 6) Congressional funding for the stabilization of uranium mill tailings piles.

The committee considered enacting legislation that would be conditional upon Congressional action to be a primary weakness with HB 106. Debates were still continuing at the national level over the issues resulting in conditions two and four. House Bill 106 did offer some possibilities for state involvement for which support could be found. It was one of the bills whose concepts were to be incorporated into the House Energy and Natural Resources Committee Substitute that evolved into the Radioactive Waste Consultation Act.

One of the two co-sponsors of HB 106 was Rep. Fred E. Mondragon, an Albuquerque Democrat (brother of the New Mexico Lieutenant Governor). He was the main proponent of an active state involvement in the WIPP project. In addition to co-sponsoring House Bill 106, he also had introduced the two-year moratorium and waste transportation tax measures. Throughout

the House committee hearings on his bills, he argued that his bills were not anti-WIPP but pro-New Mexico and that his primary interest was protecting the interests of the state. After Senator Domenici's address, he also sponsored one of the concurrence bills, proposing a nuclear waste repository advisory board (HB 527).

SECOND WAVE LEGISLATION

At the beginning of the fifth week of the session, New Mexico's senior U. S. Senator, Pete V. Domenici (R - NM), addressed the Legislature. He urged the state to develop a formal concurrence process for the WIPP project. The 1979 Legislature also heard addresses by U. S. Representative Manuel Lujan (R - NM) and the state's junior Senator, Harrison Schmitt (R - NM), but it was Senator Domenici's message which produced the greatest impact on subsequent legislation.

While the Senator conceded that "as a matter of legal precedence, as a matter of law, the federal government has pre-emptive rights to proceed with a project like WIPP,"* he also stressed that the Department of Energy had extended an "historic" opportunity to the state to cooperate in the project's development. Declaring the "ball is now in your court,"** he said it was up to the legislature to devise a concurrence plan which it could submit to the federal government for approval.

*John Robertson "Carter May Back Plan for NM to Decide WIPP" The New Mexican, February 12, 1979, p. A-1.

**Eugene Ward, "U.S. Would Honor State WIPP Veto, Domenici Reports" Albuquerque Journal, February 13, 1979, p. A-6.

Senator Domenici concluded that "the administration would not back a measure in Congress which would give New Mexico specifically or all states an overriding veto power on federal projects,"* but "it is my understanding that the Department of Energy is willing to let you (the state) take the first step. Later if DOE is unwilling to accept your established procedures, they have indicated they will not pursue the WIPP project in New Mexico."**

The effect of Senator Domenici's urging was to reinforce the activist arguments and weaken the arguments that the Legislature was best-advised to stay out of the picture. The Senator's speech inspired the introduction of six measures - four House and two Senate bills. His address was timely since the deadline for bill introductions was noon of the following Thursday. (The bills are described in Appendix B.)

House Action

Instead of holding hearings on the three second-wave House bills, the House Energy and Natural Resources Committee combined them with the first-wave measure, HB 106, to produce a committee substitute. Formally called the House Energy and Natural Resources Committee Substitute for House Bills 106, 360, 500 and 527, its short title was the "Radioactive Waste Concurrence Act." The act contained the following provisions:

*Ibid.

**John Robertson "Carter May Back Plan for NM to Decide WIPP"
The New Mexican, February 12, 1979, p. A-1.

- a) Definitions for "committee," "disposal facility," "radioactive waste," and "task force;"
- b) The condition that no waste be disposed of or stored in a disposal facility until the state had concurred prior to the issuance of a Nuclear Regulatory Commission License;
- c) Establishing a task force of three members - the Secretaries (or designees) of the Departments of Energy and Minerals, Health and Environment and Chief Highway Administrator - to be terminated on June 30, 1986. Its duties would be to negotiate with the federal government, develop state policy implementing legislation, identify impacts and coordinate other state agency work relevant to the project.
- d) Establishing a legislative "radioactive waste concurrence committee" to be terminated the same day as the task force. Comprised of five House and five Senate members, it would make recommendations regarding state concurrence procedures and methods. Specifically, it would be directed to study:
 - 1) the applicability of the Price-Anderson Act to waste transportation and disposal facilities,
 - 2) waste transportation, and 3) compliance with the National Environmental Policy Act in creating any waste facility,

- e. Regular meetings between the task force and legislative committee,
- f. A \$56,000 appropriation.

The House Energy and Natural Resources Committee considered this committee substitute to be a positive and appropriate response to the issue of state involvement in WIPP and to Senator Domenici's solicitation. From the practical, political standpoint of its chances for success, the substitute offered enough to satisfy activist philosophies but not too much so that the support of the passive-minded legislators would be lost.

Because it carried a \$50,000 expenditure, the substitute had to go to the House Appropriations and Finance Committee. In presenting the measure to this panel, the House Energy and Natural Resources Committee Chairman proposed amendments to correct problems that had arisen in the substitute's definitions of "disposal facility" and "radioactive waste." "Disposal facility" was altered from "an engineered subterranean cavern used for the isolation of radioactive waste" to one "designed primarily" for that purpose. It had been pointed out that a uranium mine cavern, refilled with tailings or radioactive overburden, could have fallen under this definition. "Radioactive waste" was changed to exempt mining and milling wastes. The committee had not intended to affect uranium extraction activities in the state.

With these amendments accepted by the House Appropriations and Finance Committee, the substitute was given a "do

pass" recommendation. Its next stop was House floor adoption of the committee recommendation and then voting on the substitute by the full House.*

During the last half of the session, legislative hours became longer and committee meetings and floor sessions continued through the weekends. The House Committee Substitute came up for a vote on the floor on Saturday afternoon at the end of the seventh session week. It had taken almost two-and-a-half weeks to reach this point and only two more weeks remained in the session. If the measure passed the House, it would still have to successfully face the Senate committee process and receive Senate approval. Time was becoming an important factor in the success of the substitute in the 1979 session.

Five legislators rose to praise the merits of the substitute. Rep. Skinner, Energy and Natural Resources Committee Chairman, advocated the measure as the product of careful consideration by his committee. He stated that its principal provisions were: no waste storage until the state had concurred, the executive task force, and the ten-member legislative committee. Both Reps. Fred Mondragon (D - Bernalillo) and Vernon Kerr (R - Los Alamos) complimented the committee's work. The agreement between these two legislators indicated the degree

*In the New Mexico Legislature, the report of each committee's recommendation on a measure must be adopted or rejected by that chamber before the measure can move on through the process. Usually committee recommendations are adopted by the full chamber. Committee judgements are traditionally respected since they have given the measures more in-depth analysis. Also efficiently expediting legislation through the legislative process is important during the relatively short New Mexico sessions.

of compromise the bill had achieved, as the two had represented opposing philosophies throughout the first-wave hearings. Rep. Mondragon, as mentioned previously, was a definite proponent of an active state role. Rep. Kerr, who had been careful to avoid advocating no state involvement (indeed, he introduced the transportation regulation bill), was known for his pro-nuclear-power beliefs and had strongly opposed those measures which he felt carried anti-nuclear messages or "obstructionist" intents. Two other representatives commended the committee's work, with Rep. Bud Hettinga (D - Dona Ana), also one of the committee's members, calling it the most important piece of legislation of the session. The Radioactive Waste Concurrence Act passed the House unanimously, 57-0.

Senate Action

The Senate did not begin hearings on its two bills until the House Committee Substitute, the Radioactive Waste Concurrence Act, passed the House and was introduced in the Senate. The House bill was given a quadruple committee referral by the Senate, the only measure during the session to be so burdened. The measure was referred to the Senate Corporations, Conservation, Finance, and Rules Committees. Only two weeks remained for the House bill to be heard by the four committees. It was commonly recognized that the Radioactive Waste Concurrence Act was saddled with so many committee referrals because of the controversy surrounding the question of state involvement.

Interest group positions had changed from those initially advocated during the House committee hearings. The two primary

anti-WIPP lobbyists, from the New Mexico Friends of the Earth and New Mexico Land Preservation Council, did not object to all the committee referrals. While they had been advocating an active state role, the mechanism they preferred was a referendum. With Senate Bill 301 now introduced proposing one, they were focusing their energies and support behind it. Their objection to the provisions within the House bill was that the task force and legislative committee would be overbalanced with members who generally supported the project. The four committee referrals could kill the measure and, to these interests, no bill at all was preferable to the House substitute bill. On the other hand, the substitute was now being supported by those groups who had opposed the first-wave bills. The Pro-WIPP forces viewed the committee substitute as a rational response to state involvement that they could accept.

During these final two weeks there was much uncertainty over what was happening to the remaining WIPP legislation, which was comprised of the House Committee Substitute, plus the Senate version of a concurrence bill and the Senate plebiscite proposal. With a backlog in each committee and twelve to fifteen-hour work days, it was difficult for legislators or observers to keep track of where bills were located. Tracking information was frequently unavailable.

The Senate Corporations Committee held hearings the following Tuesday (after the House's passage of the Radioactive Waste Concurrence Act) on Senate Bill 388, which had been the "Nuclear Waste Repository Advisory Board Act." However, because

of the passage of the House concurrence bill, the Senate bill's sponsor amended it to include the major features of the House measure. The product, also called the "Radioactive Waste Concurrence Act", now differed from the House version by increasing the number of task force members and adding \$250,000 to fund it. With both versions now before his committee, the Corporations Chairman, Sen. Ted Martinez (D - Santa Fe), postponed further testimony until the committee's next meeting Thursday.

On Thursday, the committee heard the Senate sponsor's arguments, as well as the House Energy and Natural Resources Committee Chairman's comments. Rep. Skinner preferred his committee's version, but did not have any serious objection to the Senate version. The Senate version would have to receive Senate approval and go through the same process on the House side in order to become law. The House version, on the other hand, could be amended by the Senate and would only need House concurrence. Considering the time limitations, the Corporations Chairman recommended the latter course. The two sponsors of the House and Senate versions agreed and Sen. Martinez offered to convene a joint meeting of his committee and the Conservation Committee the next morning to further expedite the bill's movement.

Prepared with an amended House version the next morning, the sponsors and the bill's followers found that a quorum of each Senate committee could not be arranged due to a schedule conflict with the Senate Finance Committee, which was now meeting almost around the clock. With twenty members and an

important responsibility, Finance took top priority and the rest of the Senate, indeed the legislature, was forced to work around it. Some Senators felt the conflict with the Finance Committee could have been predicted and avoided. Others took it in stride, not surprised that this had occurred. No plans were made for another attempt.

At this point, it appeared that the concurrence attempts were stalled indefinitely. Rep. Skinner and House Speaker Samberson met with Sen. Joseph Gant, the Conservation Chairman, to attempt to learn what the fate of the House version might be. Unable to get any indication from Sen. Gant, Rep. Skinner believed that his committee's effort was dead.

The Senate plebiscite proposal, Senate Bill 301, had not been anticipated to succeed and some doubted it would even be considered by the Senate Conservation Committee. It received a favorable recommendation from the Senate Rules panel, which hears all election-related legislation. The bill's co-sponsors, Senators Tom Rutherford and Edmond "Joe" Lang, young Albuquerque Democrats, were Rules Committee members; Sen. Rutherford chaired the committee. While the bill encountered no resistance in the Rules Committee, roadblocks were predicted to lie ahead in the Conservation and Finance Committees.

Senator Gant, the Conservation Chairman, opposed the plebiscite concept of SB 301. The bill had been referred out of the Rules Committee February 20 but by the final week, it had still not come up on the Conservation Committee agenda.

It appeared that the committee intended to let the bill die there upon adjournment. Then, March 13, four days before the end of the session, it was heard.

Senator Lang, the bill's primary sponsor, strongly argued that the people of the state should have the opportunity to decide on WIPP in 1979. He believed it would be increasingly difficult to stop the project as the financial investment grew. He agreed with opposing arguments that a referendum would carry no legal weight, but stressed that it would have standing as a strong political statement of state opinion. Opponents of the bill criticized the bill's definition of radioactive waste and argued that because everyone knew a plebiscite would produce a "no" majority at this time, the people's money would be wasted on an election.

An amendment was proposed by Sen. Lawrence Goodell (D - Chaves & Eddy) to change the election date from 1979 to 1982. This would remove the need for an appropriation for a special election, since the plebiscite would then occur in a regular election year. It was also felt that removing the appropriation would make the bill more palatable to the Finance Committee. Sen. Lang did not think the date change a good idea, since more money would be invested and a stronger commitment made by that time. The amendment failed 6 - 5.

Senator Timothy Jennings (D - Chaves) suggested that the committee table SB 301 and wait to hear all the WIPP bills. Sen. Lang opposed this as well, because tabling it would, in effect, kill it; voting on it and reporting the committee's

recommendation cut on the floor would provide an opportunity for further debate and the possibility of overturning the committee report. Respecting Sen. Lang's preference, the committee voted a "do not pass" recommendation 9 - 3.

The committee report came up on the Senate floor two days later. Senator Lang asked for a call of the house (when all members must be present for a vote) and argued that if the people of the state are not competent to decide on WIPP, then they are not competent to decide who should represent them in Santa Fe. The longer the state waits, he said, the less chance it will have to make a choice. Members of the Conservation Committee spoke in support of their recommendation. The majority of the chamber voted to accept the committee report, thereby killing the plebiscite bill, 30 - 12.

On the same final Tuesday of the session as the Conservation Committee hearing on SB 301, the assumed-dead House Committee Substitute reappeared in the Corporations Committee. This surprised some followers who had assumed that, after the aborted joint meeting of the previous week, the bill had been sitting in the Conservation, not Corporations, Committee. A factor in the bill's reappearance and quick referral was a petition sent to Sen. Martinez, Corporations Chairman, by the employees of Eberline Instruments Company of Santa Fe. The petition requested that action be taken on the House Committee Substitute. The president of Eberline Instruments, a registered lobbyist, had testified at committee hearings on each WIPP-related bill and supported the establishment of WIPP in New Mexico. He

now favored the House concurrence bill because it did not attempt to halt the project. Speculation about why the bill reappeared related to why the bill had not moved out of Corporations initially. Sen. Gant, as Conservation Chairman, had the ultimate power over the bill's fate on the Senate side. It would have been logical for Martinez to hold the bill until Gant chose to hear it. The Corporations Committee gave the measure a referral without recommendation and sent it on to the Conservation Committee.

Friday morning the bill was considered by Senate Conservation. At that time, amendments to the bill were proposed by Sen. John Rogers (D - Los Alamos and Santa Fe). The amendments, which were adopted, produced the following changes in the bill: 1) changed the word "concurrence" to "consultation" in all but one instance, 2) removed NRC licensing as a disposal condition, 3) allowed for termination of the legislative committee at any time, and 4) reduced the appropriation to \$25,000.

The changing of "concurrence" to "consultation" was a major debating point. It was argued that it weakened the bill to a considerable degree and would serve to demonstrate to the federal government that New Mexico was not interested in concurring on WIPP's development. In fact, Rep. Skinner and Rep. Stratton, members of the House Energy and Natural Resources Committee, as well as Representatives Mondragon and Anderson, were present at the hearing, and opposed the amendments. However, Sen. Gant, the Conservation Chairman, called Sen. Rogers' amendments "a sane, practical viewpoint." When the amendments

were passed, many of the committee members indicated they had been unaware that they were voting for final adoption of the amendments rather than adopting them for discussion.

Sen. Aubrey Dunn (D - Alamogordo), Finance Committee Chairman, requested that a mock-up of the bill as amended be presented to his committee for the bill's third referral. He stated it would receive quick consideration. However, the measure could not be heard in Finance until the favorable Conservation Committee report was adopted by the full Senate. This would not take place until after the Senate reconvened at 6:00 Friday evening. With adjournment of the regular session scheduled for 12:00 Noon the following day, the longer the delays the less likely the bill could successfully be carried through to passage. As of Friday afternoon, the bill had to pass the following steps: 1st, adoption of Conservation Committee report by the full Senate; 2nd, consideration by the Finance Committee; 3rd, adoption of that committee's recommendation; 4th, consideration by the Rules Committee (final referral); 5th, adoption of recommendation; 6th, Senate passage and finally, concurrence by the House on the changes made in the Senate. A number of procedural shortcuts were possible but not probable. Even if all went smoothly, the bill's schedule was very full considering the time remaining. Furthermore, it was predicted that attempts would be made to make further changes to fortify the bill when or if it reached the Rules Committee. That action could easily

cause the bill's death in the committee. In this race against the clock, the bill's chances for success looked very slim.

At six a.m. Saturday morning the Senate Finance Committee considered the bill. Sen. Michael Alarid (D - Bernalillo) proposed an amendment to reinsert the stipulation requiring NRC licensing. This motion failed. Sen. Dunn, the committee chairman, proposed an amendment to reduce the number on the legislative committee from ten to eight. His motion succeeded.

At 11:15 the bill was reported onto the Senate floor. There Sen. Tom Rutherford, Rules Committee Chairman, also tried via a floor amendment to reinsert the NRC licensing condition. It took twenty-five minutes to have the amendment typed and distributed and then it subsequently failed. At 11:45 Sen. Manny Aragon (D - Bernalillo) proposed a floor amendment to establish exclusive prerogative of the state to determine the time and method of concurrence. This also failed.

At 11:58 the House Energy and Natural Resources Committee Substitute as amended passed the Senate 39 - 0. Rep. Vernon Kerr (R - Los Alamos) had been waiting at the chamber and ran the bill back to the House. At 12:00 Noon, just before the fall of the gavel officially ending the 1979 session, the House concurred and the Radioactive Waste Consultation Act was sent to the Governor for his signature or veto.

THE FINAL PRODUCTS

The Radioactive Waste Consultation Act was the final product of what began as the House Energy and Natural Resources

Committee Substitute for House Bills 106, 360, 500 and 527. The House Appropriations and Finance Committee amended the substitute to clarify definitions, but it passed the House without major revision.

On the Senate side, after being burdened with four committee referrals, it seemed that the bill might not even get past its first referral. It was dormant until the last five days of the session, when it was significantly amended by both the Conservation and Finance Committees. The bill finally passed the Senate and received House concurrence in the waning moments of the 1979 session. The act was subsequently signed into law by Governor Bruce King. Major provisions of the Radioactive Waste Consultation Act are:

- a. The definition of "radioactive waste" - "any equipment or materials, except tailings or other wastes resulting from mining or milling processes, resulting from nuclear activities, which emits ionizing radiation and has a concentration of at least one microcurie per gallon or cubic foot and for which there is no further use at the time of transport, and includes, but is not limited to: (1) materials associated with the operation and decommissioning of fission reactors and the supporting fuel cycle; (2) spent fission fuel if it is to be discarded or stored for an extended period of time; (3) fuel reprocessing wastes; (4) radionuclides removed from process streams or effluents; and (5) materials contaminated with radioisotopes including discrete radium sources; but does not include weapons grade material, radioactive waste

resulting from processing weapons grade material or other radioactive material incidental to research which is under the exclusive control of the United States." The exclusion of uranium mining and milling wastes was achieved through amendments approved by the House Appropriations and Finance Committee. The Senate Conservation Committee's amendments added the exclusion of weapon grade waste and other incidental research waste.

- b. A condition that no waste could be stored or disposed of in a disposal facility until the state has concurred. This was the only instance where the use of the word "concurrence" was not replaced with "consultation" by the Senate. However, the remainder of the original condition proposed was deleted. This had stipulated that state concurrence must occur before the issuance of an NRC license.
- c. The task force, entitled "The Radioactive Waste Consultation Task Force," is to be comprised of three members, the Secretaries of the Energy and Minerals and Health and Environment Departments and the Chief Highway Administrator, or their designees. It is empowered to act as the State's negotiating authority with the federal government, but cannot preempt the authority of other state agencies in so doing. The Legislature retained the power to disapprove of any task force actions. The Senate amendments changed the task force's duty responsibility from "shall develop" legislation to "may recommend." In addition, task force responsibilities include identifying disposal facility impacts within the state and disseminating

such information, coordinating all state agency activity relevant to the project, and compiling an executive summary detailing any ongoing or completed state and federal studies or investigations. The task force may solicit funding and authorize contracts pursuant to its duties.

- d. The Legislative Committee entitled "The Radioactive Waste Consultation Committee," is to be comprised of four House and four Senate members. In pursuing possible recommendations, the committee is directed to consider a) applicability of the Price-Anderson Act to radioactive waste transportation and disposal facilities, b) radioactive waste material transportation, c) compliance with the National Environmental Policy Act, d) procedures for "effective" consultation and negotiation with the federal government, and e) any other relevant matter to waste disposal. The Senate softened the language in the description of the committee's duties by deleting the responsibility for recommending how and when state concurrence should occur and replacing it with how consultation might operate. The committee is directed to work with the task force, review its work and issue a report to the 1980 legislative session on their progress.
- e. A \$25,000 appropriation for funding the legislative committee's expenses. This amount was reduced from \$50,000 by the Senate. No money was appropriated or authorized for the task force.

The Radioactive Waste Consultation Act was revised to remove language and stipulations which might convey to the U. S.

Department of Energy and the federal government a defensive state posture toward the WIPP project. These revisions were achieved primarily through the Rogers amendments in the Senate Conservation Committee. This represented the ultimate success of those legislators who opposed any state laws or policies which might either interfere with the project's progress or damage federal-state relations. In its final form, the act established formal bodies to address the project and communicate with the federal government, but did not empower them with any authority to stand in the way of its development.

The removal from Section 4 of the NRC licensing condition for state concurrence eliminated the most stringent provision of the House Committee Substitute. During the early House Energy and Natural Resources Committee hearings on House Bill 106, the advisability of enacting state laws conditional on future Congressional action had been questioned. This particular inquiry had arisen over disposal conditions within that bill which would have required Congressional legislation guaranteeing: 1) state veto power, 2) NRC licensing of the project, and 3) complete federal liability for any damages resulting from the project. Within the House Substitute measure incorporating this bill and three others, the NRC licensing condition was the only one the committee chose to retain. Sen. Rogers' amendments removed this clause in the Section 4 condition, leaving only the stipulation that no waste shall be stored or disposed of until the state has concurred in creation of the facility.

The meaning of concurrence was also altered by the Rogers amendments. It had been argued that there was no substantive difference between the terms "concurrence" and "consultation." With the word "concurrence" being replaced with "consultation" in all instances except within Section 4, the concept of "consultation and concurrence" now implies that New Mexico will be formally informed on the project's development rather than participating in decisions over its development. The Rogers amendments revised the mandates of both the task force and legislative committee to reflect the connotations of the concept of consultation. The Legislature still retained ultimate approval authority over task force decisions and empowered the legislative committee to review the work of the task force.

These changes made the measure more acceptable to its critics, by removing and revising those portions of the act which might have been implemented to put the state between the federal government and continuation of the WIPP project. A task force and legislative committee have been created to specifically focus on the WIPP project, but the degree to which the panels are empowered to negotiate with the federal government is still uncertain. The 1979 Legislature did respond to activist arguments and Senator Domenici's suggestions by establishing formal consultation and concurrence oriented authorities. The act allows for involvement, but not for a substantive exercise of independent authority.

In the final analysis, it can be argued that this approach to state concurrence was the safest one, considering the novelty

of the situation. Any more aggressive involvement by New Mexico could have overstepped the legal boundaries of federal prerogative. By taking a neutral stance toward WIPP, the state is avoiding the potential political and legal problems that might have arisen out of a more assertive concurrence mechanism.

The Radioactive Waste Transportation Act was the other important piece of legislation in this issue area to succeed during the 1979 session. The Act gives the N.M. Environmental Improvement Board exclusive authority to regulate waste transportation. This was seen as a logical move to help reduce citizen anxiety over the transportation aspect of the WIPP project. The additional intent of the bill's sponsor, Rep. Vernon E. Kerr, a Los Alamos Republican and Los Alamos Scientific Laboratory employee, was to prevent the proliferation of a multitude of local transportation regulations. The law preempts local authority.

This bill did not generate opposition during the session, but afterward, while awaiting the governor's final decision, opposition arose. Cities along proposed transportation routes, notably Albuquerque and Santa Fe, lobbied against the governor signing the legislation. They argued that they wanted authority to promulgate their own regulations. Feeling it an infringement upon local control, these cities asked for the governor's veto of the measure. Their protests were not effective, however; the governor signed the bill.

IV. ENERGY POLICY DEVELOPMENT IN PERSPECTIVE

The decisions of the 1979 legislative session need to be understood in the broader context of New Mexico's developing energy policies and practices. This overall perspective allows interpretation of events which cannot be fully appreciated if viewed in isolation from the state energy picture as a whole.

NEW MEXICO'S STATE ENERGY PLANS

The executive branch of New Mexico government has been required to develop state energy plans since 1976. To date, two plans have been produced. The first, "A State Energy Plan for New Mexico - Issues and Alternatives",* was developed in response to statutory mandate by the Energy Resources Board. This executive branch agency, created in 1975, was the first state authority created to deal specifically with energy issues and policies. Its first administrator was John F. O'Leary, who subsequently left that position in early 1977 to become the Deputy Secretary of the U. S. Department of Energy.

The first energy plan was comprised of nine issue-identification papers each of which included a statement of the problem, a suggested state policy, and possible alternatives for mitigating the problem. The 1977 plan covered nine state energy issues: 1) natural gas pricing, 2) transportation of New Mexico natural gas, 3) natural gas supplies for use in

*Energy Resources Board "A State Energy Plan for New Mexico" Santa Fe, New Mexico, January 1977.

New Mexico, 4) the impact of rising energy costs on low-income residents, 5) energy mineral taxation, 6) energy development siting, 7) the establishment of energy processing plants in New Mexico, 8) community impacts from energy development and 9) energy conservation. The Energy Resources Board deemed these issues to require legislative action.

As a result of state government reorganization, in March 1978 the Energy Resources Board was incorporated into the new State Energy and Minerals Department. In fulfillment of its statutory mandate, this new state agency undertook revision and expansion of the previous state energy plan. This effort, the "New Mexico State Energy Plan," was released in December 1978. This second plan followed a similar format to that of the first, but included a wider range of state energy issues.*

The Thirty-third Legislature responded in 1977 to a number of the issues presented in the first plan. The Legislature increased the uranium, coal and natural gas severance taxes, enacted a State Natural Gas Pricing Act, and created a Community Assistance Authority to aid energy-impacted communities in funding capital improvement projects. The Legislature did not approve legislation recommended by the plan which sought to mitigate

*In addition to the nine issues of the 1977 plan, the 1978 plan also covered mineral leasing, coal development, geothermal and solar development, water resources, radioactive waste disposal, electricity generation, agriculture, federal coal leasing and uranium impacts. A discussion of energy policy activities from 1977 through the 1978 session can be found in "A Brief Survey of Energy-Related Legislation In The 1978 Session of the 33rd New Mexico Legislature" Sandia Laboratories, SAND 78-1333, to be published in September 1979.

increasing utility rates for low-income residents and to develop a coordinated approach to energy development siting. Remaining energy-related actions included creating a Solar Rights Act and the Solar Energy Research and Development Institute at New Mexico State University, establishing a Federal Lands Action Group for negotiating energy development on federal land within the state, and providing funds for weatherization of homes of low-income residents.

The Thirty-Third Legislature mainly addressed in-state energy-related concerns in 1977. It enacted laws, appropriated money, and created authorities to manage the broad involvement New Mexico has in energy production, consumption, and innovation. The Energy Resources Board plan had served more as an issue-response document than a comprehensive plan. As the executive branch's initial effort in this direction, it achieved some legislative victories and suffered some defeats. The prime example of this was the debate over increasing the uranium severance tax. The Energy Resources Board had advocated that a 25 percent tax rate was both reasonable and desirable, while the Legislature preferred a 10 percent rate. Predictably, the uranium industry lobbied heavily against the increase. The final tax rate established was a 4.5 percent tax of the market value of U_3O_8 .

The 1978 plan was developed during the last nine months of the four-year administration of Governor Jerry Apodaca. Along with the plan, the Energy and Minerals Department developed a package of legislative proposals for consideration during the

1979 session. Included in its package were: 1) a \$20 million appropriation to the Community Assistance Council, 2) \$3 million for continuing the state's energy research and development program, 3) a 25 percent tax credit of up to \$400 on home weatherization material costs, 4) \$800,000 for a solar retrofit program for low-income families, 5) amending state solar tax credits to include the installed cost of the equipment (as opposed to the existing credit on equipment cost alone), 6) a 25 percent income tax credit for up to \$2,500 on the installed cost of geothermal or wind energy systems, 7) \$2.5 million for school solar hot water heaters, 8) a 25 percent tax credit for up to \$5000 on commercial solar equipment installations, and 9) retaining state jurisdiction over coal surface mining and reclamation. The Department also argued for obtaining state veto power over WIPP.

The Democratic Party remained in office after the November 1978 election, but the new Governor, who had previously held the position (1971 - 1974), differed significantly in administrative style from his predecessor. This guaranteed an almost complete turnover in the secretaries of state agencies; the Energy and Minerals Department did acquire a new head in the new administration. With this change, the 1978 State Energy Plan lost its principal advocate, the former Energy and Minerals Department Secretary. Many of the ideas in the plan's legislative proposals were introduced as legislation, although these pieces of legislation appeared as isolated measures rather than components of an energy plan. Reference to "The Plan" was

not made during the session. It appears that the Legislature was not being asked to think in terms of implementing a state energy plan.

Successful measures reflecting plan components were the \$2.5 million appropriated to the State Energy Research and Development Fund and approximately \$8 million appropriated for community impact assistance. The state also complied with the federal Surface Mine Control and Reclamation Act to allow state oversight of surface coal mining activities.

The 1979 Legislature did extend the termination date of the 1977 Natural Gas Pricing Act as well, at the request of the Governor. The Energy and Minerals Department had not taken a position on this during the previous administration, awaiting the outcome of the congressional debate on natural gas pricing.

Whereas 1977 had been a session of many energy issues with a few major debates on specific proposals, 1979 was essentially a single-issue session. The former session had addressed a gamut of state energy problems, but the latter session centered around radioactive waste disposal as the main energy issue. This was not to the exclusion of other energy issues, but actions taken or not taken in these other areas were frequently extensions or modifications of groundwork laid in 1977. Radioactive waste disposal legislation had not been successful in the past and became a time-consuming subject in the 1979 session. No other energy issue received more media attention or public interest than that of the radioactive waste legislation.

ROLE OF THE LEGISLATURE

Development of an energy plan for New Mexico includes legislative participation, but is basically the continuing responsibility of the State Energy and Minerals Department. The Legislature in New Mexico has neither the time nor the expertise to deal with the details of developing such a plan or making it operational. However, if implementation of the plan requires statutory enactments or changes, or appropriations from state revenues, the Legislature can either facilitate or hinder effective implementation of any plan. The Legislature did not act on all the recommendations presented to it in either the 1977 or 1978 plans. It has not created any mechanism for energy development siting, a move advocated in both plans. It has not yet regulated uranium mine dewatering as advocated, not only in the most recent state energy plan, but by many interest groups within the state. It would not have responded to the issue of state participation in radioactive waste disposal if it had not been strongly urged to do so by the Congressional delegates and the federal government. But, the New Mexico Legislature has been taking a more active role in resolving some of the state's energy problems.

Moving into an active role is challenging for the part-time New Mexico Legislature. Its short annual sessions, designed for only one policy-making session every two years, and the lack of legislative salaries are structural barriers to greater participation in energy policy making. A proposed constitutional amendment would have established a \$300 per month annual salary

for state legislators, but this proposal was rejected by New Mexico voters during the 1978 elections. (Currently, legislative compensation consists of \$40 per diem during sessions, plus 15¢ per mile for one trip per year to Santa Fe.)

The New Mexico Legislature has been criticized for what it has not done in meeting state energy problems head-on. This criticism is not unfounded, but the efforts it has made may be erroneously overlooked if the political environment and structure within which it must operate is not understood. New Mexico is not traditionally progressive. In the past, changes have been accomplished through a network of personal and professional connections, referred to as "good old boy" politics in the past decade. Now demographic characteristics of the state are rapidly changing with the influx of immigrants from eastern and northern states. The urban element of the state is growing. The urban-rural conflict in the Legislature is becoming more apparent as their different problems and concerns compete for state resources. The growing dominance of the energy industry, with its economic, social, political and environmental impacts, places increasing stress on the State Legislature.

The state energy plans have not been a panacea for the state's energy problems and issues. The Legislature has been reluctant to make structural changes. However, it is beginning to recognize that energy resource management will require planning and foresight if New Mexico is to retain the quality of living and the natural beauty upon which it has prided itself and from which it has profited.

V. OTHER ENERGY LEGISLATION

The task of the 34th Legislature in 1979 included consideration of 47 bills related to energy production and use, as well as 12 which dealt with environmental matters. This chapter describes those bills and provides some insight into their relationship to the state energy picture.

ENERGY PRODUCTION AND UTILIZATION

Uranium

In New Mexico uranium occurs in water-bearing geologic formations. In order for it to be extracted, the mines must be de-watered. Mine dewatering in New Mexico by uranium companies currently involves the discharge of tens of millions of gallons per day. While the companies do utilize some of this effluent in their milling processes, almost all of the water is discharged as runoff with no further use being made of it.

Under state law, mine dewatering does not require the possession of water rights from the aquifer being affected. Groundwater rights in New Mexico are allocated under the doctrine of prior appropriation for beneficial use. This means those seeking new rights to water from a groundwater source cannot impair existing rights. Because mine dewatering does not fall under the definition of beneficial use, companies can dewater their mines without applying for appropriation rights. However, dewatering removes so much water, a lowering of the groundwater

table and possible impairment of the established water rights of other users of the aquifer can result. Senate Bill 110 sought to include mine dewatering under the laws and procedures relating to the appropriation of groundwater. This would have required the uranium companies to apply for or purchase water rights and to demonstrate that they would be putting the water to a beneficial use.

The State Engineer heads the Water Resources Division within the Natural Resources Department. All water rights transactions within declared groundwater basins must be approved by the State Engineer. In testimony on Senate Bill 110 to the Senate Conservation Committee, the State Engineer indicated that there is a small portion of the uranium belt which is not included in any declared basin. If mine dewatering were to be regulated, the role of the State Engineer is unclear. If the purpose of the legislation would be to protect groundwater supplies, but if the groundwater is not in a declared basin, the State Engineer still would have no jurisdiction. If the State Engineer is given authority over mine dewatering in declared basins, then he could in effect regulate the course of the uranium industry in New Mexico. This indirect power is not one the State Engineer would welcome. It would also add a new activity to the heavy workload of the division.

The uranium companies opposed the bill because of the additional regulatory burden and expense it would add to bringing a mine on line. They also claimed that the volume of water for which a dewatering right would have to be

obtained could not be easily ascertained before operations have begun.

Indian tribes also opposed the bill; they claim the state has no jurisdiction whatsoever over their water. The governor of the Laguna Pueblo, which has the world's largest open-pit uranium mine located on its land, supported the concept that companies should not waste New Mexico's water. However, he wanted Indian land and water specifically exempted from state regulation in the bill.

The mine dewatering bill had also been introduced in the 1977 session. The controversy that had surrounded it then reappeared again this session. The bill failed a second time. The bill's sponsor, Sen. Tito Chavez (D - Bernalillo), did succeed with Senate Memorial 52 which directs the Legislative Council to study the issue of mine dewatering and to report its findings to the next session. The issue is not yet dead. The uranium industry has stated that it will develop a proposal for the regulation of mine water effluent so that the waste of this resource will cease.

The uranium severance tax was the subject of two bills. One of the major battles of the 1977 Legislative Session had been over increasing this tax. The tax was increased in the face of one of the strongest lobbying efforts ever seen by the New Mexico Legislature. The rationale for increasing the tax was the balancing of revenues with production. Oil and natural gas have traditionally been the top severance tax revenue sources and have been utilized for 25-30% of the operating

expenses of New Mexico's public schools.* Oil and gas revenues are declining as reserves are being depleted. Since uranium is now the leading mineral in production, it was deemed appropriate that the industry should carry its proportionate tax burden. The ultimate 1977 increase to 4.5% of the market value of U_3O_8 was a compromise on the lower end of what increase advocates had sought. Another increase in the tax was proposed in House Bill 542, introduced by Rep. Judith Pratt (D - Bernalillo) a freshman representative from Albuquerque. HB 542 was killed by the House Taxation and Revenue Committee.

The method of computing the uranium severance tax surtax was changed with the passage of House Bill 188. Previously, the surtax had been tied to one-fourth of the percentage increase in the Consumer Price Index. Under the new law, the surtax will reflect the total percentage change in the CPI, rather than a fraction of it. The surtax will apply to uranium-bearing material containing U_3O_8 selling at \$50 per pound or more. The price of New Mexico yellowcake has not yet reached that amount. The surtax will probably not be applicable for at least two or three more years, depending on market conditions.

Solar

Five bills were introduced which related to Solar Energy; only one became law. The successful bill, House Bill 480, was sponsored by the House majority leader, Rep. Raymond Sanchez (D - Bernalillo). It amended the existing state law which

*New Mexico Digest 1978, J. R. Spencer

allowed residents to claim a state personal-income-tax credit of up to \$1000 in an amount equal to twenty-five percent of the equipment cost for solar heating and cooling a principal residence or swimming pool. Previously, a credit could not be taken if one had been taken on federal income taxes. HB 480 allows both state and federal credits. Two other similar solar tax bills, House Bills 303 and 466, were rejected in favor of this one. The success of HB 480 was mainly due to its being introduced for the executive branch.

A fourth bill, House Bill 523, would have allowed a state personal income tax credit of up to \$400 for the cost of home weatherization equipment. This would have included not only passive solar additions but also insulation, insulated glass, and other materials and devices which would enhance the energy efficiency of a home. The House Taxation and Revenue Committee killed this measure.

Both House Bills 480 and 523 had been introduced on suggestions by the Energy and Minerals Department. The new Republican Chairman of the House Taxation and Revenue Committee kept a conservative rein on the state's financial balance sheet during the 1979 session. House Bill 480 was not considered to strongly affect state revenues, since it allowed for taking the additional federal solar tax credit, along with the existing state credit. House Bill 523, on the other hand, would have created an additional tax credit of up to \$400, which the committee did not want the state to absorb.

The 1977 Legislature had enacted a Solar Rights Act. House Bill 333 sought to clarify the nature of the right and the mode of claiming or transferring it and to provide for local regulation. Its proposed amendments to the Act were not major. Although it passed the House, it died in the Senate Judiciary Committee upon adjournment.

This bill would have refined the Solar Rights Act but its failure should not hamper the development of solar energy in New Mexico. New Mexico is seen by solar energy advocates within the state as a perfect setting for the promotion and utilization of this energy source. A Solar Energy Institute has been established at New Mexico State University. The Legislature has not attempted to design a comprehensive state solar energy policy. This has not hindered solar energy exploitation and the legislature has tended to respond to requests for legislative action which would facilitate solar development. Responding to specific needs in the energy arena is the common mode of operation for the New Mexico Legislature, rather than taking the lead with policy innovations.

Geothermal

Two House bills, one Senate bill and two Senate Joint Memorials were introduced relating to geothermal resource development. A geothermal energy research project is located in the Jemez Mountains north of Albuquerque. As geothermal is a potentially important energy resource in the state, these measures sought to improve state geothermal leasing procedures.

House Bills 446 and 447 succeeded. A House Energy and Natural Resource Committee substitute for House Bill 446 allows additional time to develop geothermal resources. It provides for a five-year secondary lease term, in addition to the primary five-year term. Rental and royalty payments were adjusted accordingly. House Bill 447 provides procedures and powers to the Oil Conservation Commission relating to geothermal resources. The single Senate measure, Senate Bill 476, was very similar to House Bill 446 and died in the Senate Conservation Committee upon adjournment.

Senate Joint Memorials 9 and 10 passed both houses, and as joint memorials, did not require gubernatorial action. SJM 9 requests the New Mexico Legislative Council to include geothermal policy study in the work of the 1979 interim committees. SJM 10 requests the State Commissioner of Public Lands to institute a study of the current state geothermal leasing procedures.

Oil and Natural Gas

The most important piece of legislation in this subject area was the passage of the Senate Bill 200 which will extend the provisions of the state Natural Gas Pricing Act until June 30, 1981. Otherwise, the act would have expired at the end of June 1979. The act also made necessary changes resulting from the federal Natural Gas Policy Act of 1978. New Mexico is the only state which has its own natural gas pricing law.

Another Senate bill, SB 4, was almost identical to SB 200. However, SB 200 was sponsored by Sen. Aubrey Dunn (D - Alamogordo), Senate Finance Committee Chairman and commonly acknowledged as

the most powerful member of the Legislature by virtue of that chairmanship. His committee had final review of the bill. He was also a member of the Senate Conservation Committee, the bill's first committee referral. This combination of factors contributed to the success of Sen. Dunn's measure over the other version. A House Version of this concept was also introduced, but killed by the House Energy and Natural Resources Committee in favor of the Senate bill.

The intent of the new Natural Gas Pricing Act is to retain certain natural gas produced in New Mexico for the intrastate market. The new federal law would have encouraged this gas to be sold in the interstate market, since it can command a higher price there. The new state law allows a gradual price increase on gas now held at a fixed price level. The purpose of the act is to ensure adequate supplies of natural gas to New Mexico consumers at reasonable rates.*

Conservation

Only two energy conservation measures were introduced, but neither piece of legislation succeeded. These would have required conservation by state agencies and energy audits of public schools and hospitals in the state. As described previously, a conservation-oriented bill that would have allowed a state tax credit for home weatherization costs was killed in committee. The legislature has not given priority

*"Highlights of the Thirty-Fourth Legislature, First Session 1979," New Mexico Legislative Council Service - April 20, 1979.

to conservation measures. Its focus has been more toward increasing benefits to New Mexico from resource production and toward addressing the problems created by a growing state role in the national energy area.

State Energy Agencies and Legislative Energy Committee

State government reorganization was the major project of the 1977 and 1978 sessions. Before the reorganization effort, New Mexico's state government was comprised of a maze of 390 agencies, boards and commissions. Reorganization produced an executive branch of twelve cabinet-level departments, plus a small number of administratively-attached state authorities.*

The Energy and Minerals Department was created during the reorganization. It incorporated the offices of the Energy Resources Board, Coal Surface-mining Commission, Bureau of Mining and Mineral Resources, Oil Conservation Commission, State Mine Inspector and State Geologist. The Public Service Commission, which regulates utilities, is administratively attached to this department. The department's broad responsibilities are managing research, development, and regulation in energy areas.

The 1979 bills that became law, one Senate and one House, amend the act creating the department. Senate Bill 377 further streamlined its organization by eliminating three bureaus within the Mining and Minerals Division. House Bill 428 provides the

*"Responsive Government '78 - The Reorganization of the Executive Branch of New Mexico State Government: Authorization, Implementation and the Task Ahead", Executive Report, New Mexico State Government.

Department Secretary with powers to obtain energy information that could be regarded as proprietary.

House Bill 244 proposed the establishment of a joint interim legislative energy and natural resources committee. It would have created a permanent interim committee authorized to have its own staff. The bill died upon adjournment in the Senate Finance Committee.

A New Mexico Legislative Energy Committee was created during the 1975 legislative session and produced a series of three reports on utilities, taxes and revenues, and statutes and regulations to the 1977 Legislature. This was an interim committee during 1975-76 and it was not reactivated for the 1977-78 interim. The committee had been the topic of some controversy. It was speculated that it was not re-established for the next interim period as a result of this controversy, which had been based in political differences. A joint, interim natural resources committee did function during the period between the 1978 session and 1979 sessions, but it did not have its own staff and did not produce any substantive report.

House Bill 244 would have re-established a committee similar to that created during the 1975 session. The political differences of past sessions may have contributed to its failure again in 1979. Another factor in the failure to reactivate such a committee was the establishment of the legislative WIPP Consultation Committee. There was a disinclination to establish two energy-related interim committees, even though there was no

indication that any duplication of effort or expense would be involved.

Mineral Leasing and Mining

House Bill 371 became the State Surface Mining Act. As a result of passage of the federal Surface Mining Control and Reclamation Act in 1977 and the subsequent promulgation of interim regulations, states are required to bring their own laws into compliance with the federal law. This bill was developed and approved by the Legislature to that end. Modifying the state surface mining program in response to the federal law will enable New Mexico to be the primary administrator of surface mining control and reclamation in the state. Otherwise, the federal government would oversee state surface mining activities.

Energy resource production is New Mexico's most important industry. Several bills were introduced relating to mineral leasing and mining claims on state land. Only one, Senate Bill 203, succeeded. This amends state law to require a lessee of state mineral rights, or any third party conducting exploration or development, to post a bond before exploration is commenced to provide protection for those holding the surface rights. The effect of this amendment is to protect surface owners of the land over state-owned minerals during exploration as well as during actual resource development. Three other Senate bills failed. One would have updated state law relating to methods and procedures required for staking a mining claim. Another would have extended state mineral lease royalty deductions to include milling and concentrating along with reasonable

transportation, smelting, and reduction charges. The third bill provided a secondary term of ten years to mineral leases and extended the period for discovering and producing the mineral in paying quantities. These three bills died upon adjournment in the Senate Conservation Committee.

Utilities and Public Service Commission

The New Mexico Public Service Commission (PSC) is the state authority regulating public utilities. It is administratively attached to the Energy and Minerals Department and comprised of three commissioners plus staff. The increasing inflation of energy costs has focused more attention on the PSC since it oversees electricity, gas and telephone rate changes. The effects of inflation and subsequent requests by utilities for rate increases have also increased the PSC workload.

In light of these factors, the performance of the PSC is coming under closer scrutiny. For example, during Senate hearings on reconfirmation of the PSC chairman in this session, conflict of interest questions were raised regarding his financial investments in energy resources while serving as a commissioner. The PSC chairman offered explanations to the satisfaction of most state senators. He was reconfirmed by a vote of 30 - 12.

Three House bills were aimed at facilitating the work of the Public Service Commission. House Bill 23 would have allowed hearing examiners to conduct hearings in certain instances. The hearing system now requires the three commissioners to personally

conduct hearings. House Bill 35 would have extended the powers of the PSC to acquire proprietary information relevant to its investigations from utilities and those businesses which provide utilities with goods or services. House Bill 530 sought to increase the number of commissioners from three to five. None of these bills succeeded. With other important issues taking precedence this session, this type of reform was not one to which the Legislature was willing to devote time.

Indian Resources and Indian-State Relations

New Mexico has a large Indian population and about seven million acres of Indian land. Indian groups in New Mexico include eighteen Pueblo Indian tribes, two Apache tribes, a Ute tribe, and three small Navajo groups as well as the main Navajo Reservation (a third of the Navajo Tribe). Indian tribes are self-governing under the jurisdiction[?] of the federal government. The state has no legal jurisdiction over Indian lands or activities taking place upon them.*

This situation is frequently problematic for the state since Indian and state activities may overlap and sometimes conflict. Resolution of conflicts is not facilitated by the jurisdictional separation. Communication between Indian tribes and the state usually must be channeled through the federal government.

*An overview of Indian energy resource development issues with a focus upon uranium in New Mexico is found in "Survey of Indian Issues in the State of New Mexico Relating to Uranium Mining and Milling," Sandia Laboratories, SAND 78-1759, to be published in September 1979.

The Legislature has made various attempts to deal with the lack of state authority in previous sessions. Some proposals have been aimed at changing the current legal arrangement while others have sought to establish formal channels of communication and cooperation without affecting the legal structure. During the 1979 Session, three bills were introduced relating to Indian-New Mexico relations. The only successful measure was the House Appropriations and Finance Committee Substitute for House Bill 275. Entitled the "Indian Resources Development Act," this bill was introduced by Rep. Reginald A. Begaye (D - San Juan & McKinley), a Navajo. The act proposes the creation of Indian Resource Development Institutes at New Mexico State University and the University of New Mexico to provide research, educational, and services programs to directly and indirectly contribute to the more effective utilization of the natural resources and related business activities on Indian lands. Establishment of these institutes is conditional on the passage of federal legislation creating such institutes with provisions for joint state-federal funding. This stipulation introduces uncertainty as to when these New Mexico institutes can be established.

Two other bills, one Senate and one House, died in Senate committees. Senate Bill 49 would have empowered the governor to enter into written joint powers agreements with any Indian tribe regarding taxation practices. Tribal-state taxation conflicts have been the subject of a number of recent court cases in New Mexico, Montana, Arizona and Utah. The New

Mexico case was dismissed on the grounds that the New Mexico federal district court did not have jurisdiction. This bill was an attempt to avoid the necessity for litigation to resolve differences. Tribal taxation powers, state powers to tax non-Indian activities on Indian land, and Indian-state double taxation of industries on Indian land are particularly controversial for energy resource extraction and electric power generation. Whether this bill would have been viable as law is questionable. It died in the Senate Judiciary Committee.

House Bill 246 would have created a joint interim legislative committee on Indian-state relations to identify, study and recommend legislation related to problems existing or likely to arise between New Mexico and the various Indian groups in the State. An unsuccessful Senate bill during the 1978 session was introduced with the same intent. The 1979 version was passed by the House, but died in the Senate Finance Committee at the end of the session.

Miscellaneous

An appropriation of \$2.5 million from the State Energy Conservation Fund was made for energy R & D in New Mexico. An allocation of \$2 million was made to the three New Mexico Energy Institutes. These are at the University of New Mexico, New Mexico State University, and New Mexico Tech. The remaining \$500,000 was allocated to the Solar Institute at New Mexico State University. The vehicle for this expenditure was House Bill 366, sponsored by the chairman of the House Appropriations and Finance Committee.

Two House Joint Memorials were passed with provisions that they be sent to the appropriate officials in Washington, DC. HJM 2 requests the Federal Water Resources Council, in cooperation with the U.S. Department of the Interior, to study, catalogue and set priorities for the development of hydroelectric power projects on all usable waterways within the nation and requests the President and Congress to implement orderly development of such projects at these sites. HJM 15 urges the Commodity Credit Corporation of the U. S. Department of Agriculture to consider financing a pilot project in New Mexico to convert wood and agricultural wastes into fuel. This form of legislative action carries no legal authority, but merely expresses an opinion of the Legislature.

ENERGY-RELATED ENVIRONMENT

Although not directly aimed at energy concerns, this legislation is related to energy issues.

Water

House Bill 67 directs the New Mexico Water Resources Research Institute at New Mexico State University to study the feasibility of managing and inventorying data on water availability and use in New Mexico. Thirty thousand dollars is appropriated to carry out the task. The findings are to be reported to the 1980 legislative session. As water is New Mexico's most precious natural resource, there is a definite need to know how much water, both ground and surface, exists within the state. Planning to meet increasing demands on state water resources

from industrial and population growth is essential in order to avoid potentially serious supply problems.

Air

Senate Conservation committee Substitute for Senate Bill 347 amends the New Mexico Air Quality Control Act. The amendments empower the New Mexico Environmental Improvement Board, the policymaking panel for the Environmental Improvement Division of the Health and Environment Department which also promulgates regulations, to expand its authority over air quality. Now the board will also be able to promulgate regulations governing standards for "prevention of significant deterioration" and visibility as well as requiring "best available control technology" utilization by industry to limit air pollution. This state legislation was necessary in order for New Mexico to retain jurisdiction over air quality management under the 1977 Federal Clear Air Act Amendments.*

Socio-Economic

Rising utility rates are costing everyone more money, but persons in low income brackets are affected most severely. An unsuccessful attempt was made during the 1978 session to require utilities to establish lifeline rates to provide a minimum amount of electricity or gas at the lowest possible rates for all individuals. A bill introduced in 1979 took a different approach to this problem and succeeded.

*Significance of this bill obtained from Highlights of the Thirty-Fourth Legislature First Session 1979. New Mexico Legislative Council Service April 20, 1979.

House Bill 358 was introduced by Rep. Ron Gentry (D - Valencia), a freshman legislator who worked as a lineman for Public Service Company of New Mexico (until he relinquished his job when notified by his employer that he would not be granted time off the job to participate in the legislative session).* It had 32 co-sponsors and was entitled the "Low Income Utility Assistance Act." It was amended by the House Taxation and Revenue, Appropriations and Finance and Senate Finance Committees. The final amended version authorizes the Human Services Department to determine the eligibility of indigent residents, establish payment amounts and make utility assistance payments to utilities on behalf of the eligible recipient. To be classified as eligible, individuals must have incomes at or below a standard of need established by the Department, not exceeding the poverty level set by the U. S. Community Services Administration. Indigency due to medical expenses or other emergencies can also classify one as eligible if the Department so determines. Payment amounts are to be set by the Department, but may not exceed \$250 per case per year. No more than \$1 million may be used for funding this payment assistance plan, but the Human Services Department may utilize part of this allocation to match available federal and local government money and other resources for funding the program. The program began July 1, 1979.

*Albuquerque Journal, Wednesday, February 14, 1979, p. A-6.

The growth of the energy industry in New Mexico is causing numerous impacts, particularly in the areas of highway maintenance and construction and boom-town effects in communities in energy growth areas. In the 1977 Legislature, the Community Assistance Authority was created to help energy-impacted communities manage their growing pains by soliciting funding and allocating grants toward that end. During the 1978 session, \$10 million in severance tax bonds were issued to finance road improvement and construction in the northwest quadrant of New Mexico, where the energy impact is the greatest.

In 1979, a Senate Finance Committee Substitute combined four House Bills and seven Senate bills to address both highway needs and community assistance. A total of \$16 million was authorized in the sale of severance tax bonds. The State Highway Department is eligible to receive \$8 million for highway improvements. The New Mexico Community Assistance Council can receive \$7,975,000 for the purpose of making project grants to New Mexican communities pursuant to the 1977 New Mexico Community Assistance Act. The State Health and Environment Department may also receive \$25,000 for making grants through community action agencies within counties, in amounts no greater than \$50 per grant, to aid indigent persons in obtaining residential sewer connections.

Within this same piece of legislation, a state gasoline tax, gasoline inventory tax and rebate, a special fuels tax, and an excise tax on title certificate issuances were also established as additional revenue from energy-related sources.

Funds were also appropriated for road and bridge repair throughout the state.

Archaeological/Paleontological

Legislation passed in 1978 established a state paleontological staff which was directed to identify, catalogue, study and preserve fossils found in the San Juan Basin and Colorado Plateau of northwestern New Mexico. Legislation in the 1979 session appropriated \$200,000 to this group for additional study of paleontological resources in New Mexico and for reporting their findings to the 1980 session.

Expanded uranium and coal production in the northwest quadrant of the state has stimulated interest in the paleontological and archeological resources also present in the area. The San Juan Basin is one of the few regions of the world where the fossil series trace the time from dinosaur extinction through mammal dominance.* The prospect of potential coal development in the Star Lake-Bisti region has particularly sparked concern over the destruction of fossil material of the late Cretaceous and early Tertiary Age. The U. S. Bureau of Land Management issued a draft environmental statement on coal development in this region during the fall of 1978, which included a section on paleontological resources in the proposed development area and concluded that some destruction of these resources would occur. The effort by the Legislature to encourage obtaining

*Ward, E., "Museum for State Natural History May be Proposed," Albuquerque Journal, Aug. 4, 1979.

information about the paleontology of the energy development region will broaden knowledge and appreciation of resources occurring there.

State Agencies

The Environmental Improvement Board is the policy-making panel authorized to promulgate regulations and standards for environmental protection in all areas, except water quality.* It approves or denies variance requests, assurances of discontinuance and schedules of compliance. It is the board which sets policy for the Environmental Improvement Division within the state Health and Environment Department. Its regulatory responsibilities are exempted by state law from the authority of the Secretary of that department. The Environmental Improvement Board consists of five members appointed by the governor for a maximum of five years with no more than three from one political party.

Senate Bill 373, introduced by Sen. Jack M. Morgan (R - San Juan), a Senate Conservation Committee member, sought changes in the board's membership. His bill would have increased the number of members to seven. It also would have created five Environmental Improvement Board districts. Three members would be appointed from the district containing Bernalillo, Sandoval and Los Alamos Counties, which include the major

*The New Mexico Water Quality Control Commission oversees state water quality.

cities of Albuquerque and Los Alamos, and one from each of the remaining four districts.

Arguments for the increase in membership were based on the feeling that the Albuquerque area was too heavily represented on the board. While Albuquerque has the most significant air quality problem in the state, the board's authority also affects energy development activities in northwestern New Mexico. There have been complaints that the economic interests of that quadrant were not being considered equally with the environmental interests by the board. It was argued that increasing membership and creating districts would help balance the regional representation on the board and give the rural areas more input.

One argument against the change was that the proposed districts do not match state planning districts and therefore do not fit smoothly into current state operations. Another argument was that a change in the number of members would not change the complexion of the committee if appointments to the committee remained political and qualifications such as professional background were not included.

The bill died in the Conservation Committee. The current arrangement of a small lay board is satisfactory to the Director of the Environmental Improvement Division. The Legislature is reluctant to interfere in positive working relationships between advisory boards and state agency divisions.

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APPENDIX A: THE NEW MEXICO LEGISLATURE

STRUCTURE

The New Mexico Legislature is comprised of a forty-two member Senate and a seventy-member House of Representatives. Senators are elected to four-year terms while representatives serve two years. All Senate and House districts are single-member.

The Legislature is organized around a two-year cycle. The cycle begins with a sixty-day "regular" session in odd-numbered years. During this session, legislation may be introduced on any subject the legislators deem important to the state. The second session of the cycle, held in even-numbered years, convenes for thirty days and is restricted to fiscal matters, bills drawn on behalf of a special message by the governor, and bills vetoed by the governor during the previous sixty-day session. This "short" session, as it is called, is primarily centered around budget, appropriations and revenue considerations.

Special sessions of up to thirty days may be called at the end of the regular and short sessions by the governor. During such sessions only matters proclaimed in the governor's call for the session may be considered.

The New Mexico House of Representatives has 14 standing committees. These are: Agriculture; Appropriations and Finance; Business and Industry; Consumer and Public Affairs;

Education; Energy and Natural Resources; Government and Urban Affairs; Judiciary; Labor; Taxation and Revenue; Transportation; Voters and Elections; Printing and Supplies; and Rules and Order of Business. The last two - Printing and Supplies and Rules and Order of Business - meet at the call of their chairmen and deal with in-house matters, rather than substantive legislation. However, the remaining twelve meet regularly during legislative sessions and usually receive bills relevant to the committee's title.

The New Mexico Senate has eight standing committees. These are: Conservation, Corporations, Education, Finance, Judiciary, Public Affairs, Rules and Committees committee. Legislation is referred to the appropriate committee in each house for initial consideration.

The two most important and powerful committees are the House Appropriations and Finance and Senate Finance Committees. These committees hold the pursestrings. Any legislation with an appropriation attached, including the Executive Budget proposal, must be reviewed by both.

PROCEDURE

An overview of how legislation progresses through the legislature is shown in Table I. This is a somewhat simplified outline, but it does show the major steps through which legislation proceeds.

Bills are the most common form legislation takes, but there are other types. Resolutions are required for chamber matters

or directives to state agencies. Proposed constitutional amendments are handled through Joint Resolutions. Memorials are vehicles for expression of opinions, as are Joint Memorials. Only Bills result in statutory enactments.

Drafting of legislation is assisted by attorneys and staff members of the Legislative Council, the permanent legislative staff agency which provides legal and research support to both houses, individual legislators and committees. Further staff support comes from the Legislative Finance Committee, also a permanent legislative agency, which does fiscal impact analysis of legislation and budget matters.

Some bills include emergency clauses. This means they become effective immediately upon signature of the Governor. Otherwise, the usual effective date is ninety days after adjournment and receipt of the Governor's signature.

Although there is much formality and established procedure in the progress of any piece of legislation, it must always be kept in mind that this is merely the framework around which the politics of the legislative process is organized. Each formal step represents the culmination of the political activities preceding that step.

It is a rare piece of legislation that does not have some impact - whether large or small - on one or more interest groups within the state. The interplay between the legislators, constituencies and interest groups comprises the dynamics of the legislative process. Appreciating this as the primary element of legislative decision-making in a representative

political system aids in understanding the end results of the legislative process. An understanding of formal procedure cannot alone provide that insight. Legislative process is a combination of formal procedure and informal norms, practices and interactions.

MEMBERSHIP

Table II gives a list of New Mexico Senators and Representatives serving in the 1979 session, along with their party affiliation, district, occupation and committee assignments. Table III gives committee memberships.

Each chamber has a leadership structure. In the 1979 Senate, the leadership positions were:

President of the Senate	Lt. Gov. Roberto A. Mondragon
President Pro Tem	Sen. I. M. Smalley
Majority Floor Leader	Sen. C. B. Trujillo
Majority Whip	Sen. Tom Rutherford
Minority Floor Leader	Sen. John E. Conway
Minority Whip	Sen. John B. Irick

In the House of Representatives, leadership included:

Speaker of the House	Rep. C. Gene Samberson
Majority Floor Leader	Rep. Raymond G. Sanchez
Majority Whip	Rep. Jerry W. Sandel
Minority Floor Leader	Rep. Hoyt Pattison
Minority Whip	Rep. Frank M. Bond

Democrats were the majority party in the 1979 Legislature.
Party divisions in each chamber were as follows:

<u>Senate</u>		<u>House of Representatives</u>	
Democrats	33	Democrats	39
Republicans	9	Republicans	29

TABLE I

Typical Path of Legislation in New Mexico Legislature in
Both House of Representatives and Senate

Bill drafted, sponsored by one or more legislators, and submitted to Chief Clerk of that chamber for introduction.



Bill has its first and second reading of title and author and is referred to one or more standing committees by the Speaker (House) or President Pro Tempore (Senate).



Committee schedules consideration of bill, receives testimony on it (including presentation by bill's sponsor) and reports bill out of committee with "do pass" or "do not pass" recommendation. If the committee offers a substitute for the original bill this is sent back for first reading. Bills (usually those involving fiscal impact) may have double referrals.



Committee report read on the floor of chamber to entire body and accepted/rejected by voice vote or roll call vote if requested by 1/5 of membership.



Bill receives third reading; major debate may be held with floor amendments considered (if any) and accepted/rejected. Bills voted upon by roll call and accepted/rejected by majority of quorum.



Bill sent to other chamber where process is repeated.



If bill passes in House and senate, it is sent to Governor to sign or veto.

TABLE II

LEGISLATORS - PARTY, DISTRICT,
OCCUPATION, AND COMMITTEE ASSIGNMENTS

Senators

ALARID, Michael (D - Bernalillo - 12) Super market owner;
Corporations, Finance

ALTAMIRANO, Ben D. (D - Catron/Grant - 28) Retail grocer;
Corporations (Vice-chairman), Finance

ARAGON, Manny M. (D - Bernalillo - 14) Attorney;
Finance, Judiciary

BECHT, Paul F. (R - Bernalillo - 22) Attorney;
Finance, Public Affairs

CHANDLER, Caleb J. (D - Curry - 27) Deputy Chief of Police;
Finance, Judiciary

CHAVEZ, Tito D. (D - Bernalillo - 13) Attorney;
Judiciary, Public Affairs

CHAVEZ, Willie M. (R - Valencia - 29) Radio Station Manager;
Education, Rules

CONWAY, John E. (R - Lincoln/Otero - 39) Attorney;
Corporations, Judiciary, Committees Committee

DUNN, Aubrey L. (D - Otero - 40) Newspaper Executive;
Finance (Chairman), Conservation, Committees Committee
(Vice-chairman)

EOFF, W. S. "Smitty" (R - McKinley - 4) Rancher, investments;
Conservation, Judiciary

FIDEL, Joseph A. (D - Socorro/Valencia - 30) Insurance, Real
Estate; Corporations, Finance

GANT, Joseph E. (D - Eddy - 34) Potash mining and refining;
Conservation (Chairman), Rules, Committees Committee

GOODELL, Lawrence (D - Chaves/Eddy - 33) Investments;
Conservation, Judiciary

GURULE, Albert (D - Bernalillo - 10) Educator; Corporations,
Public Affairs

GWALTNEY, Lamar E. (D - Dona Ana - 36) Retail Liquor;
Public Affairs (Vice-Chairman), Judiciary

HANSEN, Gladys (D - Dona Ana - 37) Construction;
Education, Finance

HOUSTON, Les (D - Bernalillo - 19) Attorney;
Finance, Judiciary

IRICK, John B. (R - Bernalillo - 20) Insurance, Real Estate;
Corporations, Finance, Committees Committee

JENNINGS, Timothy A. (D - Chaves - 32) Rancher, Businessman;
Conservation, Judiciary

KING, Don L. (D - Torrance/Santa Fe - 25) Rancher, Farmer;
Education (Vice-chairman), Conservation

LANG, Edmund J. "Joe" (D - Bernalillo - 15) Attorney;
Judiciary, Rules

LEE, Bill L. (D - Lea - 42) Rancher;
Conservation, Finance

LEGER, Ray (D - San Miguel, Guadalupe/De Baca) School Superinten-
dent; Public Affairs (Chairman), Rules

MARTINEZ, Alex G. (D - Santa Fe -24) Railroad Agent;
Corporations (Chairman), Education, Committees Committee

McADAMS, Harry M. (D - Lea - 41) Radio Broadcaster;
Conservation, Finance, Committees Committee

MERCER, Joseph H. (R - Bernalillo - 21) Attorney;
Education, Judiciary

MONTOYA, Theodore R. (D - Sandoval/Bernalillo/Rio Arriba - 9)
Attorney; Judiciary (Chairman), Corporations

MORGAN, Jack M. (R - San Juan - 1) Attorney;
Conservation, Finance

MORROW, John L. (D - Colfax/Union/Harding/San Miguel - 7) Rancher;
Conservation (Vice-chairman), Finance

OLGUIN, Ronald G. (D - Bernalillo - 11) Salesman, Xerox Corp.;
Conservation, Education

PAPEN, Frank O. (D - Dona Ana - 38) Banking;
Education (Chairman), Rules, Committees Committee

PINTO, John (D - San Juan/McKinley - 3) Educational Administrator;
Rules (Vice-Chairman), Public Affairs

ROGERS, John D. (D - Los Alamos/Santa Fe - 23) Scientist;
Finance (Vice-Chairman), Education

RUTHERFORD, Tom (D - Bernalillo - 16) Hot Air Balloonist;
Rules (Chairman), Education, Committees Committee

SCHLIENTZ, Kenneth M. (R - Quay/Curry - 26) Gas Marketing;
Finance, Rules

SITTA, Raymond E. M. D. (D - San Juan - 2) Physician;
Finance, Judiciary

SMALLEY, I. M. (D - Sierra, Luna/Hidalgo - 35) Attorney;
Judiciary (Vice-Chairman), Conservation, Committees
Committee (Chairman)

THOMPSON, Donald L. (D - Bernalillo - 17) Teacher;
Education, Finance

TRUJILLO, C. B. (D - Taos/Mora/San Miguel - 6) Insurance;
Finance, Committees Committee

VALENTINE, William R. (R - Bernalillo - 18) Dentist;
Conservation, Public Affairs

WOOD, Bob E. (D - Roosevelt/Chaves - 31) Banker;
Conservation, Finance

LOPEZ, Abedon (D - Rio Arriba - 5) Filled seat vacated by
Sen. Emilio Naranjo; Employment Representative;
Corporation, Rules

Representatives

ANDERSON, Phelps (R - Chaves - 58) Businessman;
Appropriations and Finance, Government and Urban Affairs

APPELMAN, Ruby V. (R - Bernalillo - 20) Business Consultant;
Business and Industry, Education

ARAGON, Robert (D - Bernalillo - 13) Student;
Appropriations and Finance, Labor

AUTREY, I. Russell (D - Dona Ana/Luna - 33) Businessman;
Appropriations and Finance (Vice-Chairman), Voters
and Elections, Printings and Supplies

BANISTER, George R. (R - Curry - 65) Manager, feed dealership;
Education, Judiciary

BARNARD, H. B. (D - Curry - 64) insurance agency;
Appropriations and Finance, Judiciary, Rules

BERRY, Dan C. (D - Lea - 61) Rancher;
Taxation and Revenue, Transportation (Chairman)

BIGBEE, John F. (R - Guadalupe /DeBaca/Torrance/Lincoln - 50)
Rancher; Appropriations and Finance, Labor, Printing
and Supplies (Chairman)

BOND, Frank M. (R - Santa Fe - 47) Business Manager;
Judiciary, Transportation, Rules

BROWN, D. Polk (D - San Juan - 3) Rancher, Farmer;
Consumer and Public Affairs, Labor

BROWN, T. E. "Tom", Jr. (D - Eddy/Chaves - 56) Plumbing & heating
executive; Energy and Natural Resources, Labor

BUFFETT, George D. (R - Bernalillo - 24) Candy Manufacturer;
Labor, Taxation and Revenue, Printing and Supplies

CATANACH, Leo D. (D - Santa Fe - 48) Abstractor;
Appropriations and Finance, Government and Urban Affairs,
Printing and Supplies

CATES, Brad (R - Bernalillo - 27) Attorney;
Judiciary (Vice-Chairman), Transportation

CAUDELL, James A. (R - Bernalillo - 28) Construction;
Labor (Chairman), Business and Industry, Printing and
Supplies

CRAWFORD, Von Rue (R - Hidalgo/Luna - 32) Grocer;
Agriculture, Taxation and Revenue

DALY, John W. (R - Bernalillo - 26) Realtor;
Business and Industry (Vice-Chairman), Transportation

FETTINGER, George E. (D - Otero - 53) Attorney;
Judiciary (Chairman), Voters and Elections, Rules

FOY, Thomas P. (D - Grant - 39) Attorney;
Agriculture, Judiciary

GARCIA, Robert N. (D - Bernalillo - 17) Realtor;
Consumer and Public Affairs, Taxation and Revenue

GARCIA, Silas T. (D - Sandoval/Santa Fe - 45) Insurance, Real
Estate; Agriculture, Business and Industry

GENTRY, Ron (D - Valencia - 9) Electrical Construction;
Education, Labor

GURULE, Frank P. (D - Bernalillo - 12) Accountant;
Government and Urban Affairs, Taxation and Revenue

HARTMAN, Ralph D. (D - Dona Ana - 34) Utility President;
Education (Chairman), Government and Urban Affairs

HETTINGA, Bud (D - Dona Ana - 36) General Contractor;
Energy and Natural Resources (Vice-Chairman), Business
and Industry

HILL, Stuart C. (R - Bernalillo - 31) General Contractor;
Appropriations and Finance, Voters and Elections, Rules

HILLERY, Daren R. (R - Bernalillo - 19) General Contractor;
Consumer and Public Affairs, Energy and Natural Resources

HOBSON, Maurice (R - Lincoln/Otero - 52) Banker;
Appropriations and Finance, Labor

HORAN, Frank L. (D - Bernalillo - 22) Attorney;
Government and Urban Affairs, Judiciary

HUNDLEY, Adele Cinelli (D - Bernalillo - 14) Investments;
Education, Taxation and Revenue

KELLY, Paul J. (R - Chaves - 59) Attorney;
Consumer and Public Affairs (Chairman), Judiciary, Rules

KENNEDY, Stephen W. (R - McKinley - 5) Gallup Indian Trading Co.;
Voters and Elections (Vice-Chairman), Taxation and
Revenue, Printing and Supplies

KERR, Vernon N. (R - Los Alamos - 43) Chemist
Appropriations and Finance, Energy and Natural Resources,
Printing and Supplies

KLOEPPPEL, Richard J. (D - Sandoval - 44) Educational Administrator;
Business and Industry, Education, Printing and Supplies

LUJAN, Ben (D - Santa Fe - 46) Ironworker;
Agriculture, Consumer and Public Affairs, Printing and
Supplies

LUNA, Fred (D - McKinley/Valencia - 8) Contractor;
Appropriations and Finance, Transportation

MARTIN, James L. (R - Catron/Socorro/Torrance - 49) Businessman;
Agriculture (Chairman), Taxation and Revenue

MARTINEZ, Walter K. (D - McKinley/Valencia - 7) Attorney;
Taxation and Revenue, Voters and Elections; Rules

McMILLAN, Colin R. (R - De Baca/Chaves - 57) Consulting
Geophysicist; Taxation and Revenue (Chairman), Voters
and Elections

McMULLAN, John J. (R - Bernalillo - 30) Realtor, Builder;
Energy and Natural Resources, Government and Urban
Affairs (Chairman)

MERESHON, John J. (D - Lincoln/Otero - 51) Farmer;
Appropriations and Finance (Chairman), Agriculture

MONDRAGON, Fred E. (D - Bernalillo - 16) Hospital Administrator;
Appropriations and Finance, Voters and Elections

MORA, E. Kelly (D - Colfax/Union - 68) Safety engineer;
Energy and Natural Resources, Government and Urban Affairs

MORAN, Robert M. (R - Lea - 62) Oilwell drilling contractor;
Appropriations and Finance, Government and Urban Affairs

MORELAND, C. L. "Cliff" (D - Quay/Union - 67) Gulf Oil Jobber;
Appropriations and Finance, Transportation, Printing and
Supplies (Vice-Chairman)

NUNEZ, Felix (D - Bernalillo - 11) Zoning Inspector;
Business and Industry, Education

O'DONNELL, William (D - Dona Ana - 35) Educator, retired;
Agriculture, Taxation and Revenue

OTTS, James K. (D - Eddy - 54) Air Conditioning Company;
Business and Industry (Chairman), Education

PACHECO, Fermin, Sr. (D - Mora/Harding/San Miguel - 69) Gas
distributor; Appropriations and Finance, Transportation

PADOVEN, John S. (R - Bernalillo - 21) Urban economist;
Energy and Natural Resources, Government and Urban Affairs

PATTISON, Hoyt (R - Lea/Roosevelt/Curry - 63) Farmer, Engineer;
Agriculture, Consumer and Public Affairs, Rules (Vice-
Chairman)

PEÑA, Dennis S. (D - Bernalillo - 23) Pharmacist;
Consumer and Public Affairs, Judiciary

PRATT, Judith A. (D - Bernalillo - 18) Student;
Business and Industry, Labor

ROBBINS, Gary D. (R - Roosevelt - 66) Farmer, Real Estate;
Agriculture, Taxation and Revenue

ROMERO, Celestino (R - Taos - 42) Elementary School principal;
Education (Vice-Chairman), Business and Industry

ROSALES, Cecilia R. (R - McKinley - 6) Management Supervisor;
Consumer and Public Affairs, Education

RYAN, Murray (R - Sierra/Grant - 38) Safety Supervisor;
Education, Taxation and Revenue

SAAVEDRA, Henry "Kiki" (D - Valencia/Bernalillo - 10) Recreation Superintendent; Appropriations and Finance, Voters and Elections
 SABINE, Randall T. (R - Dona Ana - 37) Business Management; Transportation (Vice-Chairman), Business and Industry
 SALAZAR, Nick L. (D - Rio Arriba - 40) Thermonuclear Research; Consumer and Public Affairs, Energy and Natural Resources, Printing and Supplies
 SAMBERSON, C. Gene (D - Lea - 60) Attorney; Rules (Chairman)
 SANCHEZ, Raymond G. (D - Bernalillo - 15) Attorney; Judiciary, Transportation, Rules
 SANDEL, Jerry W. (D - San Juan - 1) Oil well servicing and drilling; Energy and Natural Resources, Taxation and Revenue, Rules
 SCOTT, Boyd F. (R - San Juan - 2) Allen Theaters, Inc. Appropriations and Finance, Government and Urban Affairs
 SKINNER, Jack L. (D - Eddy - 55) Businessman; Energy and Natural Resources (Chairman), Taxation and Revenue
 STRATTON, Hal (R - Bernalillo - 29) Attorney; Energy and Natural Resources, Judiciary
 THOMPSON, John Lee (D - Bernalillo - 29) Vice-president, Clark Truck Equipment Co.; Business and Industry, Government and Urban Affairs, Printing and Supplies
 TRUJILLO, Manuel D. (D - Taos/Rio Arriba - 41) Educator; Business and Industry, Education
 VIGIL, Samuel F. (D - San Miguel - 70) Educational Administrator; Agriculture, Taxation and Revenue, Printing and Supplies
 BEGAYE, Reginald (D - San Juan/McKinley - 4) Educator; Appointed to fill seat vacated by Leo C. Watchman

Source: N. M. Legislative Council Service

TABLE III

SENATE STANDING COMMITTEES

CONSERVATION

Gant, Joseph E. - Chairman (D)	Lee, Bill L. (D)
Morrow, John L. - Vice Chairman (D)	McAdams, Harry M. (D)
Dunn, Aubrey L. (D)	Morgan, Jack M. (R)
Eoff, W. S. (Smitty) (R)	Olguin, Ronald G. (D)
Goodell, Lawrence (D)	Smalley, I. M. (D)
Jennings, Timothy Z. (D)	Valentine, William R. (R)
King, Don L. (D)	Wood, Bob E. (D)

CORPORATIONS

Martinez, Alex G. - Chairman (D)	Gurule, Albert (D)
Altamirano, Ben D. - Vice Chairman (D)	Irick, John B. (R)
Alarid, Michael (D)	Montoya, Theodore R. (D)
Conway, John E. (R)	Lopez, Abedon (D)
Fidel, Joseph A. (D)	

EDUCATION

Papen, Frank O. - Chairman (D)	Mercer, Joseph H. (R)
King, Don L. - Vice Chairman (D)	Olguin, Ronald G. (D)
Chavez, Willie M. (R)	Rogers, John D. (D)
Hansen, Gladys (D)	Rutherford, Tom (D)
Martinez, Alex G. (D)	Thompson, Donald L. (D)

FINANCE

Dunn, Aubrey L. - Chairman (D)	Irick, John B. (R)
Rogers, John D. - Vice Chairman (D)	Lee, Bill L. (D)
Alarid, Michael (D)	McAdams, Harry M. (D)
Altamirano, Ben D. (D)	Morgan, Jack M. (R)
Aragon, Manny M. (D)	Morrow, John L. (D)
Becht, Paul F. (R)	Schlientz, Kenneth M. (R)
Chandler, Caleb J. (D)	Sitta, Raymond E. (D)
Fidel, Joseph A. (D)	Thompson, Donald L. (D)
Hansen, Gladys (D)	Trujillo, C. B. (D)
Houston, Les (D)	Wood, Bob E. (D)

TABLE III

JUDICIARY

Montoya, Theodore R. - Chairman (D)	Goodell, Lawrence (D)
Smalley, I. M. - Vice Chairman (D)	Gwaltney, Lamar E. (D)
Aragon, Manny M. (D)	Houston, Les (D)
Chandler, Caleb J. (D)	Jennings, Timothy Z. (D)
Chavez, Tito D. (D)	Lang, Edmund J. (Joe) (D)
Conway, John E. (R)	Mercer, Joseph H. (R)
Eoff, W. S. (Smitty) (R)	Sitta, Raymond E. (D)

PUBLIC AFFAIRS

Leger, Ray - Chairman (D)	Gurule, Albert (D)
Gwaltney, Lamar E. - Vice Chairman (D)	Pinto, John (D)
Becht, Paul F. (R)	Valentine, William R. (R)
Chavez, Tito D. (D)	

RULES

Rutherford, Tom - Chairman (D)	Leger, Ray (D)
Pinto, John - Vice Chairman (D)	Lopez, Abedon (D)
Chavez, Willie M. (R)	Papen, Frank O. (D)
Gant, Joseph E. (D)	Schlientz, Kenneth M. (R)
Lang, Edmund J. (Joe) (D)	

COMMITTEES' COMMITTEE

Smalley, I. M. - Chairman (D)	Martinez, Alex G. (D)
Dunn, Aubrey L. - Vice Chairman (D)	McAdams, Harry M. (D)
Conway, John E. (R)	Papen, Frank O. (D)
Gant, Joseph E. (D)	Rutherford, Tom (D)
Irick, John B. (R)	Trujillo, C. B. (D)

Source: New Mexico Legislative Council Service

TABLE III

HOUSE STANDING COMMITTEESAGRICULTURE

Martin, James L. - Chairman (R)
 Crawford, Von Rue (R)
 Foy, Thomas P. (D)
 Garcia, Silas T. (D)
 Lujan, Ben (D)

Mershon, John J. (D)
 O'Donnell, William (D)
 Pattison, Hoyt (R)
 Robbins, Gary D. (R)
 Vigil, Samuel F. (D)

APPROPRIATIONS & FINANCE

Mershon, John J. - Chairman (D)
 Autrey, I. Russell - Vice Chairman (D)
 Anderson, Phelps (R)
 Aragon, Robert J. (D)
 Bernard, H. B. (D)
 Bigbee, John F. (R)
 Catanach, Leo D. (D)
 Hill, Stuart C. (R)
 Hobson, Maurice (R)

Kerr, Vernon N. (R)
 Luna, Fred (D)
 Mondragon, Fred E. (D)
 Moran, Robert M. (R)
 Moreland, C. L. (Cliff) (D)
 Pacheco, Fermin, Sr. (D)
 Saavedra, Henry Kiki (D)
 Scott, Boyd F. (R)

BUSINESS & INDUSTRY

Otts, James K. - Chairman (D)
 Daly, John W. - Vice Chairman (R)
 Appelman, Ruby V. (R)
 Caudell, James A. (R)
 Garcia, Silas T. (D)
 Hettinga, Bud (D)
 Kloeppel, Richard J. (D)

Nunez, Felix (D)
 Pratt, Judith A. (D)
 Pomeroy, Celestino (R)
 Sabine, Randall T. (R)
 Thompson, John Lee (D)
 Trujillo, Manuel D. (D)

CONSUMER & PUBLIC AFFAIRS

Kelly, Paul, Jr. - Chairman (D)
 Brown, D. Polk (D)
 Garcia, Robert N. (D)
 Hillery, Daren R. (R)
 Lujan, Ben (D)

Pattison, Hoyt (R)
 Pena, Dennis S. (D)
 Rosales, Cecilia R. (R)
 Salazar, Nick L. (D)

TABLE III

EDUCATION

Hartman, Ralph D. - Chairman (D)
 Romero, Celestino - Vice Chairman (R)
 Appelman, Ruby V. (R)
 Banister, George R. (R)
 Gentry, Ron (D)
 Hundley, Adele Cinelli (D)

Kloeppel, Richard J. (D)
 Nunez, Felix (D)
 Otts, James K. (D)
 Rosales, Cecilia R. (R)
 Ryan, Murray (R)
 Trujillo, Manuel D. (D)

ENERGY & NATURAL RESOURCES

Skinner, Jack L. - Chairman (D)
 Bettinga, Bud - Vice Chairman (D)
 Brown, T. E. (Tom), Jr. (D)
 Hillery, Daren R. (R)
 Kerr, Vernon N. (R)
 McMullan, John J. (R)

Mora, E. Kelly (D)
 Padoven, John S. (R)
 Salazar, Nick L. (D)
 Sandel, Jerry W. (D)
 Stratton, Hal (R)

GOVERNMENT & URBAN AFFAIRS

McMullan, John J. - Chairman (R)
 Anderson, Phelps (R)
 Catanach, Leo D. (D)
 Gurule, Frank P. (D)
 Hartman, Ralph D. (D)

Horan, Frank L. (D)
 Mora, E. Kelly (D)
 Padoven, John S. (R)
 Scott, Boyd F. (R)
 Thompson, John Lee (D)

JUDICIARY

Fettinger, George E. - Chairman (D)
 Cates, Brad - Vice Chairman (R)
 Banister, George R. (R)
 Barnard, H. B. (D)
 Bond, Frank M. (R)
 Foy, Thomas P. (D)

Horan, Frank L. (D)
 Kelly, Paul, Jr. (R)
 Pena, Dennis S. (D)
 Sanchez, Raymond G. (D)
 Stratton, Hal (R)
 Begaye, Reginald (D)

LABOR

Caudell, James A. - Chairman (R)
 Aragon, Robert J. (D)
 Bigbee, John F. (R)
 Brown, D. Polk (D)
 Brown, T. E. (Tom) Jr. (D)

Buffett, George D. (R)
 Gentry, Ron (D)
 Hobson, Maurice (R)
 Pratt, Judith A. (D)

TABLE III

TAXATION & REVENUE

McMillan, Colin R. - Chairman (R)
 Berry, Dan C. (D)
 Buffett, George D. (R)
 Crawford, Von Rue (R)
 Garcia, Robert N. (D)
 Gurule, Frank P. (D)
 Hundley, Adele Cinelli (D)
 Kennedy, Stephen W. (R)

Martin, James L. (R)
 Martinez, Walter K. (D)
 O'Donnell, William (D)
 Robbins, Gary D. (R)
 Ryan, Murray (R)
 Sandel, Jerry W. (D)
 Skinner, Jack L. (D)
 Vigil, Samuel F. (D)

TRANSPORTATION

Berry, Dan C. - Chairman (D)
 Sabine, Randall T. - Vice Chairman (R)
 Bond, Frank M. (R)
 Cates, Brad (R)
 Daly, John W. (R)

Luna, Fred (D)
 Moreland, C. L. (Cliff) (D)
 Pacheco, Fermin, Sr. (D)
 Sanchez, Raymond G. (D)

VOTERS & ELECTIONS

- Chairman
 Kennedy, Stephen W. - Vice Chairman (R)
 Autrey, I. Russell (D)
 Fettinger, George E. (D)
 Hill, Stuart C. (R)
 Martinez, Walter K. (D)

McMillan, Colin R. (R)
 Mondragon, Fred E. (D)
 Moran, Robert M. (R)
 Saavedra, Henry Kiki (D)
 Begaye, Reginald (D)

PRINTING & SUPPLIES

Bigbee, John F. - Chairman (R)
 Moreland, C. L. - Vice Chairman (D)
 Autrey, I. Russell (D)
 Buffett, George D. (R)
 Catanach, Leo D. (D)
 Caudell, James A. (R)
 Kennedy, Stephen W. (R)

Kerr, Vernon N. (R)
 Kloeppel, Richard J. (D)
 Lujan, Ben (D)
 Salazar, Nick L. (D)
 Thompson, John Lee (D)
 Vigil, Samuel F. (D)

RULES & ORDER OF BUSINESS

Samberson, C. Gene - Chairman (D)
 Pattison, Hoyt - Vice Chairman (R)
 Barnard, H. B. (D)
 Bond, Frank M. (R)
 Fettinger, George E. (D)

Hill, Stuart C. (R)
 Kelly, Paul, Jr. (R)
 Martinez, Walter K. (D)
 Sanchez, Raymond G. (D)
 Sandel, Jerry W. (D)

Source: New Mexico Legislative Council Service

APPENDIX B: PROPOSED CONCURRENCE BILLS

As a result of Senator Domenici's encouragement, six legislative proposals for state involvement in the development of the Waste Isolation Pilot Plant or other radioactive waste disposal projects were introduced. Although none of these bills survived, some concepts within them were incorporated into the Radioactive Waste Consultation Act. The bills are discussed here to provide insight into the approaches of those legislators who advocated state participation.

The House measures included three concurrence mechanism proposals (HB 360, 500, 527) and one for lost resource compensation. This last bill, HB 437, was quickly given an unfavorable committee report at the request of its sponsor, who decided it had been poorly conceived. However, the remaining three bills were proposals that were given serious consideration by the House Energy and Natural Resources Committee.

House Bill 360 was given the short title "Legislative Nuclear Concurrence Commission Act". It was introduced by Rep. Vernon Kerr (R - Los Alamos) with the co-sponsorship of thirteen other House members. (Rep. Kerr had also introduced the HB 39 empowering the N. M. Environmental Improvement Board to promulgate waste transportation regulations.) This bill would have created a legislative nuclear-waste-repository advisory commission, comprised of three Senate members and three House members appointed for four-year terms. Its duties would have been to: 1) negotiate for the state with the federal government

on all aspects of the WIPP project, but not interfere with any state agency powers in so doing, 2) develop legislation to implement state policies regarding federal waste repositories, 3) identify state impacts of the project and disseminate information, 4) report its actions to the legislature, and 5) coordinate relevant work being done by other state agencies and report their progress to the legislature. The commission would have been empowered to solicit and accept grants, make contracts, establish roles and appoint representatives on federal or state task forces deemed necessary to carry out the Act's provisions. It was to have received a \$100,000 appropriation and terminated on July 1, 1986.

House Bill 500 was introduced by House Energy and Natural Resources Committee chairmen, Rep. Jack Skinner. It sought to create a joint interim legislative committee to be called the "WIPP Concurrence Committee", which would have functioned throughout the two-year duration of the thirty-fourth Legislature. Having five Senate and five House members, the committee would have been responsible for developing a plan to examine the following aspects of WIPP: 1) statutes, constitutional provision, regulations, and court decisions relevant to the project; 2) applicability of the Price-Anderson Act, 3) waste transportation, 4) compliance with the National Environmental Policy Act, and 5) the findings of the State Environmental Evaluation Group. It also could have developed legislation and would have submitted a report to the thirty-fifth Legislature outlining its findings, recommendations,

expenditures and proposed concurrence methods and procedures. It carried an appropriation of \$125,000 for committee expenses.

House Bill 527 was sponsored by Rep. Fred E. Mondragon, who had previously introduced three of the first wave bills. The bill had three co-sponsors and was given the short title the "Nuclear Waste Advisory Board Act". The board proposed in this bill would have been composed of an executive secretary; the Secretaries of the Departments of Health and Environment, Commerce and Industry, Energy and Minerals, and Natural Resources; the chairman of the Governor's Technical Excellence Committee's Subcommittee on WIPP and two public representatives--one at-large and one from the Carlsbad area. The responsibility of the board would have been to develop a concurrence process and present the plan to the next session of the legislature and to the governor. It would have represented New Mexico in negotiations with the federal government, developed state policies regarding federal nuclear waste facilities, held at least three public hearings per year on the subject, identified project impacts, developed taxation proposals to offset project costs to the state, coordinated other related investigations and studies in the state, and ensured that the best interests of the state were being protected. A legislative committee would have been created to oversee the board. The bill would have empowered this advisory board to be the authoritative state body addressing WIPP and the state concurrence process. It carried a \$250,000 appropriation.

Only one of the two Senate bills proposed a concurrence mechanism. Senate Bill 388, proposed as the "Nuclear Waste Repository Advisory Board Act," sought creation of an eight-member panel to serve at the pleasure of the governor. Its eight members would have included an executive secretary, appointed for a four-year term by the Governor with Senate consent; the Secretaries (or designated representatives) of the Departments of Health and Environment, Commerce and Industry, Energy and Minerals, and Natural Resources; the chairman (or designated representative) of the Governor's Technical Excellence Committee's Subcommittee on WIPP; a public representative from the WIPP area, and an at-large public representative. The executive branch panel would have worked with a legislative waste-oversight committee to develop a state concurrence process. The bill would have authorized the Legislative Council to create such a legislative committee and carried an appropriation of \$250,000.

The second Senate measure, Senate Bill 301, proposed a completely different approach from the other second-wave bills. Proposed as the "Nuclear Waste Material Plebiscite Act," this bill sought a statewide election to decide approval or prohibition of the disposal of imported radioactive waste within New Mexico. The ballot form would have stated "To permit the disposal of radioactive waste material in this state: For, Against." The election would have been held in November 1979 and \$300,000 would have been appropriated to cover the expenses of a special election.

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