MINUTES
of the
FOURTH MEETING
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

October 30-31, 2017
State Capitol, Room 322
Santa Fe

The fourth meeting of the Revenue Stabilization and Tax Policy Committee for the 2017 interim was called to order by Senator Carlos R. Cisneros, chair, on Monday, October 30, 2017, at 10:08 a.m. in Room 322 of the State Capitol in Santa Fe.

Present
Sen. Carlos R. Cisneros, Chair
Rep. Sharon Clahchischilliage
Rep. Roberto "Bobby" J. Gonzales
Rep. Jason C. Harper
Sen. Gay G. Kernan
Rep. Antonio Maestas (10/30)
Rep. Javier Martínez
Sen. George K. Munoz
Sen. William E. Sharer (10/30)
Sen. John Arthur Smith
Rep. James R.J. Strickler
Rep. Carl Trujillo
Sen. James P. White
Sen. Peter Wirth

Absent
Rep. Jim R. Trujillo, Vice Chair
Rep. Tim D. Lewis
Sen. Mark Moores
Sen. Clemente Sanchez

Designees
Sen. William F. Burt
Rep. Rod Montoya
Rep. Larry R. Scott (attending as a guest 10/30)
Sen. Bill Tallman
Rep. David E. Adkins
Rep. Eliseo Lee Alcon
Rep. Cathrynn N. Brown
Sen. Jacob R. Candelaria
Rep. Daymon Ely
Rep. Bealquin Bill Gomez
Rep. Bill McCamley
Rep. Debbie A. Rodella
Sen. Nancy Rodriguez
Rep. Patricia Roybal Caballero
Rep. Angelica Rubio
Rep. Patricio Ruiloba
Rep. Tomás E. Salazar

Rep. Nathan P. Small
Sen. Elizabeth "Liz" Stefanics
Rep. Candie G. Sweetser
Sen. Pat Woods

(Attendance dates are noted for members who did not attend the entire meeting.)

Staff
Pam Stokes, Staff Attorney, Legislative Council Service (LCS)
Ric Gaudet, Researcher, LCS
Maria Alaena Romero, Intern, LCS

Guests
The guest list is in the meeting file.

Handouts
Handouts and other written testimony are in the meeting file.

<u>Monday, October 30</u>

Auditing Oil and Gas Equipment for Tax Purposes
Jerry Wisdom, oil and gas appraisal manager, Total Assessment Solutions Corporation (TASC), gave a presentation to the committee about TASC's work in New Mexico to increase compliance in paying property taxes due on oil and gas equipment. Equipment used in the direct production of oil or gas is subject to taxation by the Oil and Gas Production Equipment Ad Valorem Tax Act and is assessed according to the value of the severed oil or gas. All other equipment used by the industry, including drilling rigs, gathering and transportation systems and compressors, is subject to the property tax on personal property provided for in the Property Tax Code. TASC specializes in locating, identifying and valuing this equipment and providing the information to county assessors. In Eddy County, TASC has identified equipment that had previously not been reported to the county assessor, resulting in $380,000 in additional tax liability that the county is in the process of collecting.

Mr. Wisdom said that TASC identified 111 drilling rigs omitted from the Eddy County tax rolls during the 10-year period from 2007 to 2016. This equated to a 35 percent non-reporting rate. Eddy County is collecting $262,000 in back taxes from this discrepancy, and Lea County is collecting $478,000. The current valuation method for drilling rigs in New Mexico is outdated and grossly underestimates the actual value of rigs. Drilling rigs are valued according to drilling depth capacity, rather than actual cost, and the valuations use decades-old figures to value the rigs. The same modern drilling rigs valued in New Mexico at $334,000 would be valued in Oklahoma and Texas at more than $14 million.

TASC inventories every piece of oil- and gas-related post-production equipment and pipeline in a county and then performs an audit, comparing tax records against the equipment. In Eddy County, TASC discovered that more than 66 percent of the pipelines and 50 percent of the natural gas compressors had not been reported to the county assessor. In addition, some companies were deducting transportation expenses from the computation of ad valorem and severance taxes due by deducting a portion of the equipment costs, but were not reporting the same equipment to the county assessor. These companies were essentially "double-dipping" by deducting equipment expenses but not reporting the existence of the equipment for valuation by the county. In Rio Arriba County, TASC performed a small test audit and discovered six miles of pipeline that had never been reported to the county assessor since 1974. After requesting more information from the companies that owned the pipelines, another 23 miles of previously unreported pipeline were discovered. Similar audits have been performed in Harding and Lea counties, with new property being added to the property tax rolls.

Questions and comments from committee members included the following.

- How is depreciation calculated for oil and gas equipment in assessing its value? Mr. Wisdom said that depreciation is calculated differently for property tax purposes than for income tax purposes. Most equipment is depreciated using a 25-year straight-line method.

- Many natural gas compressors are actually part of the severance process and should not be subject to property taxation. Mr. Wisdom said that after the gas has been severed, any equipment used to gather or transport it is subject to property taxation.

- Some drilling rigs are in the state for just a few days during a year, but they are still subject to taxation. This could explain why New Mexico values rigs lower than other states. Mr. Wisdom said that the valuation tables for drilling rigs might have been accurate in 1978, but today they do not come close to correctly measuring value.

- What certification or licensing processes are oil and gas equipment auditors required to complete? Mr. Wisdom said that there is nothing that New Mexico requires regarding his certification; however, he is certified to do such work in Oklahoma and Texas.

- How does a company challenge a valuation determination? Mr. Wisdom said that valuation challenges are first handled informally with the county assessor and then can be brought to a county board of equalization, followed by an appeal to a district court. Out of 4,000 valuations TASC has done nationally in 2017, there has been only one challenge to the determinations.

- The entire tax structure for the oil and gas industry needs to be examined before pinpointing one area, such as the valuation method for drilling rigs, for change because New Mexico has the third-highest tax burden in the nation for the extractive industries.

- New Mexico is only a partial disclosure state regarding property values. Do other states have full disclosure of property values for oil and gas equipment? Mr. Wisdom said that all other states require companies to self-disclose equipment and its value. This information is generally confidential.

- It is not fair to other taxpayers in the county for some companies to not report their equipment valuations to the county assessor. In response, Mr. Wisdom said that the 25 percent penalty for not reporting is an incentive for companies to start reporting their equipment. He said that there are many reasons why equipment is not reported, and he was not trying to suggest that these companies are cheating.

- Companies, such as TASC, that provide equipment valuation auditing need to have training and be certified. The lack of a national standard for valuing equipment is a concern, and third-party contractors should not have the ability to assign values to equipment. Mr. Wisdom responded, saying that TASC is one of two companies that perform equipment audits in the field. Employees have significant training and typically have several years of experience in the oil and gas sector. County assessors usually do not have the staff or expertise to correctly value equipment.

County Government Property Tax Issues

Steve Kopelman, executive director, New Mexico Association of Counties (NMAC); Ron Lethgo, deputy assessor, Chaves County; Christie Humphrey, assessor, Sandoval County; and Susan Griffin, assessor, Catron County, discussed with the committee state-assessed properties and how that process affects counties. The Property Tax Division (PTD) of the Taxation and Revenue Department (TRD) is responsible for valuing certain kinds of properties, such as railroads, communications systems, pipelines, public utilities and airlines. State-assessed properties comprise 13 percent of the total statewide valuation and make up a large portion of several counties' total valuations. Counties have been raising concerns for years with the TRD about serious shortcomings in the accuracy and transparency of state-assessed valuations. The amount of property tax dollars statewide that are not collected from state-assessed properties is in the tens of millions of dollars annually. Many properties, including some oil and gas pipelines, are not even on the tax rolls. The PTD has been severely understaffed for several years and has for many years been antagonistic toward county assessors. Counties are also not informed when a taxpayer protests a state-assessed property, which has resulted in unforseen reduced tax collections.

Mr. Lethgo said that the newly appointed PTD director, Bryson Frazier, is proposing the reclassification of two Delinquent Property Tax Bureau positions into field auditor positions at the State Assessed Property Bureau. At the NMAC Assessors' Affiliate meeting in Silver City recently, the group supported the proposal to create two new field auditor positions but not at the expense of the Delinquent Property Tax Bureau. Since the PTD is self-funded through delinquent property tax sales, the affiliate suggests that the PTD create two new positions. This would have no net impact on the General Fund.

Ms. Humphrey said that county assessors are primarily concerned that the PTD provide fair and equitable valuations. A gravel pit in Sandoval County that had been valued at $1.2 million was reassessed by the PTD at $400,000 because the PTD allowed for depreciation of the real property. She said that real property must be valued at its market value. She also said that county assessors do not receive protest information from the PTD.

Ms. Griffin said that county assessors are encouraged by the recent appointment of the PTD director, a position that had been vacant for more than 18 months. County assessors have previously had a very difficult relationship with the PTD, and she hopes that the difficulties have now ended.

Questions and comments from committee members included the following.

- The PTD is responsible for valuing pipelines, but apparently that task is being performed by TASC on behalf of the PTD and paid for by counties.

- The administration has never asked for additional resources for the PTD. PTD salaries should not be funded through penalties and interest because that creates a perverse incentive to foreclose on delinquent properties.

- What will happen to the functionality of the Delinquent Property Tax Bureau if two positions are transferred to the State Assessed Property Bureau? Mr. Frazier said that he is not opposed to creating new positions as part of the fiscal year (FY) 2019 budget request. However, reclassifying positions can be done quickly, while a budget request will take much longer to accomplish. He also said that the PTD wants to work in collaboration with the counties in the future.

Legislative Finance Committee (LFC) Progress Report: Tax Gap, Audit and Compliance and Fraud

Charles Sallee, deputy director for program evaluation, LFC, and Maria Griego, program evaluator, LFC, presented a progress report on a 2016 LFC evaluation of the TRD's tax collection efforts entitled "Tax Gap, Audit & Compliance, and Fraud". The progress report highlights ongoing concerns flagged in the 2016 evaluation that persist in 2017, including staff resource allocation, turnover, management of protests, monitoring tax code loopholes and proper reporting. The TRD is hindered in its ability to effectively collect unpaid taxes, and its reporting on risks to the General Fund of large tax protests could be improved. The LFC evaluation identified 17 key issues that the TRD needs to address. So far, the TRD has completed two of those remedies and is currently working on 11 more.

In 2013, the TRD estimated that the state's tax gap, or the amount of taxes that should have been collected but was not paid, was more than $500 million. In October 2017, the TRD has identified $500 million that is under tax protest. Even if only one-third of the protests are resolved in favor of the taxpayers, that represents approximately a $147 million loss to the General Fund. Additionally, the Administrative Hearings Office, which hears appeals on tax protests after the TRD has ruled, has seen a large increase in its caseload. The LFC is concerned that the office is unable to hear cases within the statutory 90-day limitation.

Another area of concern in the evaluation is anomalies in the TRD's so-called "60 day suspense fund", into which unmatched tax revenues are deposited until they can be matched to the correct tax program and then distributed. If the revenue is not matched after 60 days, the money is deposited into the General Fund until it is eventually correctly matched. In February 2016, activity in the fund became more volatile, with more than $74 million not being matched correctly. By August 2017, 17 months later, $70 million of the money had been correctly matched, but another $97 million was mismatched. These large unmatched balances are a concern to the LFC and policymakers.

The TRD is the primary revenue collector for the state, and it needs to prioritize tax collection efforts that have a high rate of return. An ongoing lack of staffing at the TRD keeps tax revenues from being deposited into the General Fund, which in turn affects the entire state budget. The Audit and Compliance Division (ACD) of the TRD has faced staffing problems recently, especially at the ACD's call center. The call center was responsible for 54 percent of the ACD's total FY 2016 collections, but the amount collected in FY 2017 declined. In addition, the TRD reallocated several staff positions from ACD collection efforts to the Questionable Refund Unit (QRU) in an attempt to thwart tax refund fraud. Although this effort is important, the LFC evaluation questioned whether that transfer of resources provided the best return on investment. Finally, the evaluation noted that several key leadership positions at the TRD continue to remain vacant, including the office of the secretary, chief economist, director of tax policy, chief legal counsel and, until recently, director of the PTD.

Tax Collection Efforts

John Monforte, acting secretary, TRD, and Ron Scott, director, ACD, discussed with the committee recent efforts by the TRD to improve its tax collection efforts. Acting Secretary Monforte said that the TRD did not receive the LFC's progress report on the evaluation in time to provide thorough responses to the issues raised. However, he did discuss the TRD's decision to temporarily move ACD staff to the QRU. He said that tax refund fraud needs to be stopped. Once that money is disbursed, it is usually gone forever, compared to outstanding tax liabilities, which can still be collected at a later date. Moving staff resources to the QRU for several weeks each year has had a positive impact in the rejection of fraudulent refund claims. Acting Secretary Monforte also said that the TRD will be requesting money from the legislature to purchase more data analytic tools. These tools will enable the department to collect more revenue from taxpayers without the need for additional employees.

The TRD administers 40 tax programs under the Tax Administration Act. The ACD is responsible for auditing taxpayers, which generates tax assessments, and for compliance efforts, which result in the collection of assessments. The Compliance Bureau of the ACD has 159.5 authorized positions, with 21.5 current vacancies. Over the past seven years, the bureau has collected an average of $223 million annually. However, taxable accounts receivable have been steadily increasing during that time, from $537 million to $789 million today. In FY 2018, to date, collections have increased 42 percent from the previous fiscal year.

The bureau has increased collection from levy enforcement from the previous fiscal year by five percent. Levy enforcement is the seizure of a taxpayer's property to collect outstanding taxes. Levy enforcement is usually the last resort in tax collection efforts, and often just the threat of a levy or a lien on property is enough to get taxpayers to pay. The TRD has implemented new technology that automatically identifies delinquent accounts and issues letters to taxpayers of an upcoming levy or lien.

The Call Center Bureau of the ACD has a newly hired manager, who is highly experienced in the field. Staff vacancies in the bureau have been reduced from 24 percent to 14 percent, and the center's outbound dialing system has been repaired and is operational. The call center generates most of the division's annual collections, and the recent improvements should increase collections. Finally, the division is in the process of outsourcing some collection efforts to collection agencies, including delinquent combined reporting system and personal income tax accounts.

Mr. Scott said that the ACD previously focused on improving technology in the auditing process and that investment has paid off. Now the division is concentrating on technology to improve collection efforts. The ACD can now pinpoint delinquent taxpayers quickly and contact them. The department can also warn taxpayers of the possibility of losing the ability to do business in New Mexico if liabilities are not paid.

Questions and comments from committee members included the following.

- Much of the technology the TRD is implementing to collect back taxes is not new to the collection agency universe. Acting Secretary Monforte agreed, and he said that many of the assessment and collection processes were previously performed manually.

- The TRD has had performance issues for decades. There has not been much improvement in the department in 15 years. The department needs adequate resources, and staff salaries need to be commensurate with the private sector.

- What is the status of the protest and lawsuit about some companies taking a deduction from gross receipts for chemical reagents? Mr. Scott said that the Administrative Hearings Office will hold a hearing on the issue in January.

- Why is there such a large vacancy rate at the TRD? Acting Secretary Monforte said that the department is trying to reduce the vacancy rate, which is currently at 21 percent. However, he said, state employees tend not to stay in the same job for an entire 25-year career anymore. The department needs to hire employees who have a good public service mentality.

Approval of Minutes

The minutes from the September 14-15, 2017 meeting of the committee were approved without changes.

State and Tribal Gasoline Taxes and Implications of Dual Taxation

Teresa Leger, Leger Law Strategy, LLC; Carolyn Abeita, VanAmberg, Rogers, Yepa, Abeita & Gomez, LLP; and Regis Pecos, co-director, Santa Fe Indian School Leadership Institute, discussed with the committee the history and benefits of state-tribal cooperative relationships. Ms. Leger said that, since 1995, the state and tribes have cooperated, rather than litigated, on several issues. New Mexico's tribes rely on tax revenues to provide essential government services, and the state benefits from having strong tribal economies and strong tribal governments. However, a system that imposes taxation at both the state and tribal levels depresses economic activity. The state and tribes have embarked on a cooperative approach to taxation and many other issues, which has become a model for other states to follow, she said. Many other states have pursued a more antagonistic approach to their tribes, resulting in much more litigation over issues and legalistic parsing of federal preemptions. Some states require individual Native Americans to apply for a credit against state taxes paid on tribal lands, which is a very cumbersome and expensive system to administer.

Many court cases have shaped how taxation can be imposed by states on tribal lands. One of the most important cases to spur New Mexico's cooperative approach to taxation was *Cotton Petroleum Corporation v. New Mexico* (1989), in which the United States Supreme Court ruled that severance taxes imposed by the state can be collected on tribal lands. This decision led to a steep decline in oil and gas production on the Jicarilla Apache tribal lands, because the tribe also imposed its own version of severance taxation. Around the same time, the court decided another case in Arizona related to taxation of lumber extraction on tribal lands and came to the opposite conclusion. Instead of attempting to relitigate the case in light of the Arizona case, the Jicarilla Apache Tribe instead sought a cooperative solution with the state. In 1995, the state enacted the intergovernmental production tax credit, which divides severance taxes between the state and the tribe. This agreement allows for a single severance tax to be imposed by the state, with the tribe still receiving critical funding for governmental services, and without the economic disincentive of dual taxation being imposed. The intergovernmental production tax credit became the building block for future tribal-state tax agreements, including the imposition of fuel taxes.

Ms. Abeita discussed the history and current structure of state-tribal gasoline tax agreements. The state and tribal governments have cooperated in developing various fuel tax structures that benefit both since 1999. A historic agreement was made in that year to share fuel tax revenue, an agreement that has lasted for 18 years. For gasoline sold within tribal lands, companies can claim a 100 percent deduction on the gasoline tax imposed by the state. Tribes impose their own gasoline tax at the same rate as the state, thus ensuring a level playing field between tribal and nontribal gas stations. To offset the loss of revenue to the state from losing gasoline tax revenue, tribes do not receive any deduction from the imposition of the special fuel excise tax from the sale of diesel fuel. A separate agreement between the state and the Pueblo of Nambe and the Pueblo of Santo Domingo remedied a situation in which the state was not receiving any gasoline tax revenues from tribal wholesalers. In exchange for closing their wholesale gasoline operations, the pueblos currently receive 40 percent of gasoline tax revenues from 30 million gallons of gas annually. This allows the funding stream the tribes had been receiving to remain intact, while allowing the state to collect additional tax revenue it previously was unable to collect.

Mr. Pecos discussed some of the struggles that tribes have engaged in over the last century to achieve self-determination and economic independence. Until the 1980s, federal money for programs flowed directly to the federal Indian Health Service or to tribes. Beginning with welfare reform in the Reagan era, federal money was instead distributed to states, often with no explicit provisions for tribes to receive funding. To remedy this disparity, New Mexico Governor Garrey Carruthers convened a state-tribal symposium, which led to many state-tribal agreements, including the gasoline tax agreements. Mr. Pecos said that building and maintaining trust between the state and tribal governments is of paramount importance for both. By cooperating, the entire state can prosper, as well as tribes.

Brian Coriz, governor, Pueblo of Santo Domingo, addressed the committee and spoke in opposition to any legislation that would change or repeal tribal deductions from the gasoline tax. He said that gasoline tax revenues are used to provide funding for emergency services and a Head Start program, both of which benefit nontribal residents. He stressed the need for cooperative state-tribal relationships.

Mark Freeland, executive staff assistant, Office of the President and Vice President, Navajo Nation, read a letter from President Russell Begaye opposing changes to gasoline tax revenue-sharing statutes. Mr. Freeland said that gasoline tax revenues are used to maintain more than 5,000 miles of roads in the New Mexico portion of the Navajo Nation. Removing the tribal deduction would raise gas prices within the nation, would harm already impoverished residents and would reduce needed revenues to the nation.

Questions and comments from committee members included the following.

- Representative Carl Trujillo said that he sponsored House Bill 509 in the 2017 regular legislative session as one of several revenue-generating measures for the state. That bill would impose tax on gasoline and special fuel at the fuel terminal or refinery, commonly referred to as "the rack". The legislation was intended to improve compliance with collection of fuel taxes and would generate some money from the improved compliance. Representative Trujillo said that he is not opposed to keeping the tribal fuel tax deductions intact in any future legislation.

- The United States' entire transportation structure is transitioning to electric vehicles, which currently are not subject to any kind of use taxation. This issue will need to be resolved in order to provide for highway projects, as well as tribal revenues.

- Other states tax fuel at the rack, mostly for better compliance in paying the taxes. New Mexico does not have the power to control tribal taxation. The practical effect of the tribal wholesale agreement is that the state is writing a $2 million check to tribes to not open a gas station. Ms. Leger said that the agreement actually meant that the tribes closed down existing wholesale gasoline businesses, allowing the state to collect tax on gasoline sold by those businesses. If those businesses were reopened, the state would lose a significant amount of revenue from the gasoline tax.

Recess

The committee recessed at 4:35 p.m.

Tuesday, October 31

The committee reconvened at 9:00 a.m. on Tuesday, October 31.

Annual Report: Locomotive Fuel Tax Deduction

Hector Dorbecker, senior economist, TRD, and Ryan Eustice, economist, Economic Development Department (EDD), presented a report on the locomotive fuel tax deductions provided to the BNSF and Union Pacific railroad companies. Those companies are granted a deduction from the gross receipts tax (GRT) or compensating tax from the purchase or use of locomotive fuel in their New Mexico facilities. The deductions were enacted to spur major capital investments by the railroads as an economic development tool. In FY 2017, the railroads received a total of $17.9 million in tax relief. BNSF received $2.9 million in compensating tax relief and $6.1 million in GRT relief. Union Pacific, which purchases all of its fuel from nearby El Paso, received $7.9 million in compensating tax relief.

Union Pacific has a 2,200-acre intermodal facility and has invested more than $550 million in the facility and railroads in the state. The company has 433 permanent jobs in New Mexico, with an average annual salary of $93,000. There are 303 Union Pacific employees and 130 contractors. Due to federal law restricting income for certain railway employees to be allocated to only one state, Union Pacific has 75 employees who are subject to the personal income tax in New Mexico. There are now 719,000 square feet of industrial space in Santa

Teresa, with an increase in employee compensation from last year of more than $5 million. The Union Pacific facility has become the economic hub for the entire region.

BNSF has annual operating revenue in New Mexico of $1.4 billion, and it is one of the largest private sector employers in Gallup, Clovis and Belen. In Clovis and Belen, the industrial sector, closely related to the company, has paid total annual salaries of near $100 million, and in Gallup, the sector has paid total annual salaries of more than $30 million. BNSF has paid an average of $90 million in salaries statewide, resulting in about $2.6 million in personal income tax revenue annually. BNSF employs 1,032 employees in New Mexico, with an average annual salary of $87,000.

Phillip Christensen, assistant vice president, state and local taxes, Union Pacific, said that the Santa Teresa facility is very important to Union Pacific. The facility also provides very important economic benefits to southern New Mexico.

Questions and comments from committee members included the following.

- The TRD and EDD economists were asked to provide information to the committee about any federal funding that benefits the Santa Teresa facility and also information on the service companies providing support to Union Pacific functions.

- New Mexico is relinquishing $17 million in tax revenue annually, but its return on investment is still unknown.

Connect America Fund Update and Proposal to Promote the Deployment of Broadband Telecommunications Services in New Mexico

Katherine Martinez, director, legislative affairs, CenturyLink, and Robert Shannon, director, tax policy, CenturyLink, discussed with the committee the progress of the Connect America Fund and a proposal to allow for the deduction from gross receipts for certain telecommunications equipment purchases. Ms. Martinez said that the Connect America Fund will provide New Mexico with $11 million annually for seven years to assist with broadband infrastructure in underserved areas. Thus far, CenturyLink has enabled 10,340 homes to receive broadband service, and many more households will become enabled in the next several years. New Mexico has many complicated right-of-way issues that need to be resolved before broadband can be easily delivered to all households in the state. Most economic development groups in the state have identified broadband access and speed as the most important need for rural areas. Everyone in New Mexico benefits from robust broadband service, and providing a GRT deduction for communications equipment would speed up the deployment of that service across the state.

Mr. Shannon discussed the benefits of providing a GRT deduction from the purchase of communications equipment. In general, taxing business-to-business inputs is bad tax policy because it creates tax pyramiding. Tax pyramiding results in an effective GRT rate much higher than the statutory rate. This additional cost of doing business leads to a reduction of economic activity in the state. In the telecommunications industry, which is very capital intensive, New Mexico imposes the GRT on equipment purchased in developing broadband service. This means it is more costly to install broadband infrastructure in New Mexico, compared to states that do not impose sales tax on such equipment.

Mr. Shannon referred to a study performed at Columbia University that found that as sales taxes decrease on the purchase of telecommunications equipment, investment in broadband infrastructure increases. The study also found that as taxes increase on equipment, investment decreases. Mr. Shannon said that if New Mexico provided a GRT deduction from the sale of telecommunications equipment, broadband investment by CenturyLink and other companies would increase, leading to new job creation, the improvement of the state's economy by having a strong broadband system and increased state and local tax revenues.

Questions and comments from committee members included the following.

- There has been a recent push by Apple Inc. to free up unused television bandwidth to allow for high-speed broadband. How could this affect broadband development in the state? Ms. Martinez said that this technology could work, but only if there is enough telecommunications fiber in the ground.

- Many tribal areas have no broadband infrastructure. What is CenturyLink doing to remedy this situation? Ms. Martinez said that CenturyLink accepted funding from the Connect America Fund, but where that money must be spent is determined by the Federal Communications Commission (FCC). The FCC determines which census blocks are underserved or unserved. She said that some telecommunications companies did not accept funding. If an area is not served by CenturyLink, the company is not able to provide broadband infrastructure.

- Although taxing business-to-business inputs is bad tax policy, the legislature needs to focus on the most egregious examples of tax pyramiding, such as professional services. Providing targeted deductions for a particular industry will only exacerbate the bigger tax pyramiding problem for other industries.

- Using Massachusetts as evidence of broadband investment declining after an increase in the sales tax rate is not accurate. That state already had a large percentage of broadband service before the tax increase, and attributing the decline of investment solely to the tax rate is misleading.

- Some areas of the state used to have good wireless phone service, but service has declined in the past few years. Is this due to increased usage of existing telecommunication fiber? Ms. Martinez said that wireless phone companies purchase broadband capacity from CenturyLink and other companies. Wireless service does not work without fiber connected to the cell phone tower. However, an even bigger problem than fiber capacity is right-of-way access.

- Many states are adopting a new industry standard, called "5G", or fifth generation. This technology provides service 100 times faster than the current 4G standard. However, most of New Mexico is still struggling to get adequate 3G service.

Proposal for a New Property Tax Valuation Method for the Conservation of Land

Lesli Allison, executive director, Western Landowners Alliance, and former Senator John C. Ryan presented a proposal for the committee's consideration that would provide for an alternative valuation method for landowners participating in a sanctioned conservation program. There has been concern for some time that many landowners who want to conserve their land, but are unable to qualify for an agricultural valuation, will be forced to develop or sell their land because of high property taxes. There are many reasons why landowners are unable to keep land in agricultural production; however, many landowners are interested in keeping the land undeveloped. Properties that are valued at their fair-market value have much higher property taxes than land in agricultural production.

The Western Landowners Alliance is proposing a third valuation method that landowners can choose. Enrollment would be voluntary for parcels bigger than 10 acres or with a valid water right attached to the property, and the land must be managed under a qualified 10-year management plan with third-party certification. The property would be taxed at five percent of the fair-market value, which is much lower than the developable land rate, but still higher than the rate for agricultural land. If the land is subsequently developed, the landowner is responsible for paying full property taxes for up to five years. In addition, the land can be returned to agricultural production and valuation at any time with no penalty.

Senator Wirth sponsored Senate Bill 350 from the 2017 regular legislative session, which would provide for the special method of property valuation for conservation land. It passed the Senate by a wide margin, but did not have time to make it through the House of Representatives.

Senator Wirth said that Senate Bill 350 was co-sponsored by Senator Steven P. Neville and was the result of many months of negotiations among interested parties. Its aim is to provide collaborative solutions that a landowner can choose.

Questions and comments from committee members included the following.

- Will counties and school districts receive less property tax revenue from the new valuation method? Ms. Allison said that in order to qualify for the special valuation, a landowner will need to have an approved management plan and probably spend resources in performing the plan. She said that more people who have land currently valued as agricultural will choose to value the land as conservation than those who have full-market-price valued land. She does not expect local governments to suffer revenue losses from passage of the legislation.

- There should be a maximum dollar value benefit a landowner can receive from the new valuation method.

- Do county assessors support the proposal? Ms. Allison said that there will be a meeting in November for county assessors to evaluate the proposal. Mr. Ryan said that, last year, the Assessors' Affiliate of the NMAC was very close to supporting the legislation.

- Did the New Mexico Cattlegrowers' Association support the legislation? Ms. Allison said that the association opposed the bill last year. The bill sponsors tried to address the association's concerns of the elimination of grazing land by setting a higher valuation percentage than for agricultural production and by requiring landowners to actively improve the land. Landowners of land that is currently suitable for grazing will not have much of an incentive to seek the new valuation method. A representative from the association said that the association did not endorse the 2017 legislation and there have been no conversations with the Western Landowners Alliance since the end of the legislative session.

Proposal for a Deduction from Gross Receipts for Construction of Non-Residential Solar Projects

Rocky Ray, managing partner, Daisy Renewables, LLC, and Luigi Resta, executive vice president, Onyx Renewable Partners, LP, discussed with the committee their recent experience in attempting to claim a deduction from gross receipts for a solar photovoltaic project in Lea County. Prior to funding a utility-scale solar electric project that would provide electricity to a rural electric cooperative, Mr. Ray inquired informally with the TRD whether the GRT deduction found in Section 7-9-112 NMSA 1978 would apply to the project. In May 2017, an employee of the ACD informed Mr. Ray that the project would be eligible for the deduction. However, soon thereafter, and after having already committed money to the $10 million project, the companies were informed by the TRD that the project was not eligible for the deduction. The companies have not yet filed a formal protest with the TRD.

Mr. Ray also discussed with the committee the prospects for solar energy development in New Mexico. Solar electric generation is expected to produce five percent of the nation's total electric generation by 2022, up from the current two percent. New Mexico and Arizona are the best states in which electricity can be generated, based on the amount of annual sunshine available. However, New Mexico ranks only fifteenth in the nation in installed solar electricity capacity. New Mexico is primarily poised as a solar electricity exporter, and it is able to deliver to two separate electrical grids. However, Utah, Arizona and Colorado are all competing with New Mexico to delivery solar electricity to those markets. Those other states have a much more favorable tax climate for renewable energy than does New Mexico. New Mexico's renewable energy production tax credit has a nearly five-year waiting period for new projects. That credit will also expire in 2018. The advanced energy deduction, which expired in January 2017, was a deduction from gross receipts that could be used by solar energy companies for the construction of facilities. The only remaining deduction available seems to be that found in Section 7-9-112 NMSA 1978, which only has limited availability under the current TRD interpretation of the statute. Mr. Ray said that the solar energy industry in New Mexico is requesting that the advanced energy deduction and the renewable energy production tax credit be reinstated and that the deduction in Section 7-9-112 NMSA 1978 be interpreted more favorably.

Questions and comments from committee members included the following.

- Many committee members expressed frustration that the TRD apparently gave conflicting opinions to Daisy Renewables about whether the deduction in Section 7-9-112 NMSA 1978 could be claimed for the project.

- New Mexico has been drilling too many holes into its tax base. The tax incentives for renewable energy have served their purpose in developing the industry, but now it is time to phase them out. The industry no longer needs help from the government. Mr. Ray said that rooftop solar installations have a deduction and very large installations can make use of industrial revenue bonds to eliminate the GRT and compensating tax from construction-related expenses, but mid-scale installations have no tax relief.

- How much did the rejection of the deduction cost the company? Mr. Resta said that the rejection of the deduction will cost about $450,000, which means that the project will no longer be profitable. The project was initiated based on the understanding that the deduction would be allowed.

Adjournment

There being no further business, the committee adjourned at 12:37 p.m.