New Mexico Legislature

REVENUE STABILIZATION & TAX POLICY COMMITTEE

2017 INTERIM FINAL REPORT

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INTERIM SUMMARY

Revenue Stabilization and Tax Policy Committee
2017 Interim Summary

The Revenue Stabilization and Tax Policy Committee held six meetings in 2017. Bill endorsements were completed on the third day of the December meeting, at which two bills under consideration were endorsed.

Similar to recent years, the committee spent much of its time discussing proposals to make significant changes to the Gross Receipts and Compensating Tax Act. Other issues included the identification and assessment of oil and gas equipment for property tax purposes; state and tribal gasoline taxes; auditing, compliance and collection efforts; and the significant impact of changes that the closure of coal-powered generating stations could have on the Four Corners region.

Several presentations were made discussing potential tax reform options and recent tax reform proposals. Richard Anklam made a presentation in November on the trends and challenges of attempting tax reform, and in December, Tom Clifford suggested increasing property taxes as a more stable revenue source that could be used to reduce the rate of the gross receipts tax.

Significant work was performed by the economists of the Legislative Finance Committee (LFC) and the Taxation and Revenue Department to analyze two bills that sought significant tax reform: Senate Bill 123 from the 2017 regular legislative session and House Bill 8 from the 2017 first special session. The results of that analysis were presented to the committee on September 14.

Ernst & Young LLC will be creating a tax model for use by the LFC economists to assist with future analysis of tax proposals. In a presentation made in December, Ernst & Young representatives stated that the model would be ready for use in analyzing changes to the gross receipts tax in January 2018.

In July, during a joint meeting with the LFC, the committee heard testimony on possible impacts that closing the San Juan Generating Station in 2022 could have on the Four Corners region. In November, a presentation was made for a proposal to enact the Energy Redevelopment Bond Act, which would provide a bonding source for energy companies to transition from coal-based electricity generation to other sources. In December, a report was made on House Memorial 72 (2017), which encourages economic development planning efforts related to the Escalante Generating Station.

WORK PLAN AND MEETING SCHEDULE

2017 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

Members

Sen. Carlos R. Cisneros, Chair
Rep. Jim R. Trujillo, Vice Chair
Rep. Sharon Clahchischilliage
Rep. Roberto "Bobby" J. Gonzales
Rep. Jason C. Harper
Sen. Gay G. Kernan
Rep. Tim D. Lewis
Rep. Antonio Maestas
Rep. Javier Martínez
Sen. Mark Moores
Sen. George K. Munoz
Sen. Clemente Sanchez
Sen. William E. Sharer
Sen. John Arthur Smith
Rep. James R.J. Strickler
Rep. Carl Trujillo
Sen. James P. White
Sen. Peter Wirth

Designees

Rep. David E. Adkins
Rep. Eliseo Lee Alcon
Rep. Cathrynn N. Brown
Sen. William F. Burt
Sen. Jacob R. Candelaria
Rep. Daymon Ely
Rep. Bealquin Bill Gomez
Rep. Bill McCamley
Rep. Rod Montoya
Rep. Debbie A. Rodella
Sen. Nancy Rodriguez
Rep. Patricia Roybal Caballero
Rep. Angelica Rubio
Rep. Patricio Ruiloba
Rep. Tomás E. Salazar
Rep. Larry R. Scott
Rep. Nathan P. Small
Sen. Elizabeth "Liz" Stefanics
Rep. Candie G. Sweetser
Sen. Bill Tallman
Sen. Pat Woods

Work Plan

The Revenue Stabilization and Tax Policy Committee is a statutorily created joint interim legislative committee. Pursuant to Section 2-16-3 NMSA 1978, the committee is directed to "examine the statutes, constitutional provisions, regulations and court decisions governing revenue stabilization and tax policy in New Mexico and recommend legislation or changes if any are found to be necessary . . . ". In the 2017 interim, as time permits, the committee proposes to:

1. review the state's existing taxes and discuss possible changes and improvements to those taxes, with continued emphasis on the gross receipts tax, consumption taxes and personal and corporate income taxes;

2. review the state's primary revenue sources and options for revenue stabilization;

3. examine the effectiveness and value to the state of tax incentives and the state's ability to report and track the effectiveness of tax incentives;

4. follow the progress of the tax study for which an appropriation was passed in the first special session of this legislature and that is intended to analyze and estimate the gross receipts tax base and other tax bases in the state to allow policymakers to consider various reforms to New Mexico's tax structure;

5. hear from tax experts on tax policy trends in the country, including recent tax reform efforts and developments regarding the collection and payment of sales and use taxes on internet sales;

6. evaluate recent proposals for reform of the gross receipts tax and the impact such reforms may have on state and local governments;

7. discuss taxation of the health care industry, including the impact on the health care providers being taxed and the impact taxing that industry may have on state revenues, including revenue to support the Medicaid program;

8. review possible changes to the Tax Administration Act to improve tax collections and ease administrative burdens on taxpayers;

9. discuss the outlook of the energy industry and its impact on state and local revenues; and

10. determine legislative actions necessary to implement changes identified by committee members that will improve the state's tax system and revenue stabilization.

Revenue Stabilization and Tax Policy Committee
2017 Approved Meeting Schedule

Date	Location
June 19	Santa Fe, State Capitol, Room 307
July 19	Farmington*
September 14-15	Santa Fe, State Capitol, Room 322
October 30-31	Santa Fe, State Capitol, Room 322
November 20-21	Santa Fe, State Capitol, Room 322
December 11-13	Santa Fe, State Capitol, Room 322

* Joint meeting with Legislative Finance Committee

AGENDAS AND MINUTES

TENTATIVE AGENDA
for the
FIRST MEETING
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

June 19, 2017
State Capitol, Room 307
Santa Fe

Monday, June 19

10:00 a.m.	(1)	**Post-Session Fiscal Review** —David Abbey, Director, Legislative Finance Committee (LFC) —Dawn Iglesias, Economist, LFC
11:00 a.m.	(2)	**Discussion of Work Plan and Meeting Schedule** —Pam Stokes, Staff Attorney, Legislative Council Service
12:00 noon		**Adjourn**

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

June 19, 2017
State Capitol, Room 307
Santa Fe

The first 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, June 19, 2017, at 10:09 a.m. in Room 307 of the State Capitol in Santa Fe.

Present
Sen. Carlos R. Cisneros, Chair
Rep. Jim R. Trujillo, Vice Chair
Rep. Sharon Clahchischilliage
Rep. Roberto "Bobby" J. Gonzales
Rep. Tim D. Lewis
Rep. Javier Martínez
Sen. Clemente Sanchez
Sen. William E. Sharer
Rep. James R.J. Strickler
Rep. Carl Trujillo
Sen. James P. White

Absent
Rep. Jason C. Harper
Sen. Gay G. Kernan
Rep. Antonio Maestas
Sen. Mark Moores
Sen. George K. Munoz
Sen. John Arthur Smith
Sen. Peter Wirth

Designees
Rep. Daymon Ely (attending as guest)
Rep. Rod Montoya
Sen. Nancy Rodriguez
Rep. Patricia Roybal Caballero
Sen. Elizabeth "Liz" Stefanics

Rep. David E. Adkins
Rep. Eliseo Lee Alcon
Rep. Cathrynn N. Brown
Sen. William F. Burt
Sen. Jacob R. Candelaria
Rep. Bealquin Bill Gomez
Rep. Bill McCamley
Rep. Debbie A. Rodella
Rep. Angelica Rubio
Rep. Patricio Ruiloba
Rep. Tomás E. Salazar
Rep. Larry R. Scott
Rep. Nathan P. Small
Rep. Candie G. Sweetser
Sen. Bill Tallman
Sen. Pat Woods

Staff
Pam Stokes, Staff Attorney, Legislative Council Service (LCS)
Ric Gaudet, Researcher, LCS
Tessa Ryan, Staff Attorney, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

<u>Monday, June 19</u>

Post-Session Fiscal Review

David Abbey, director, Legislative Finance Committee (LFC), and Dawn Iglesias, economist, LFC, updated the committee on key aspects of the state's finances. Mr. Abbey noted that information in the handout accompanying the presentation was updated after the special session. He continued as follows.

Post-session summary. In the past year, the legislature has, in effect, gone through three special sessions to overcome the state's challenging fiscal circumstances. In the 2017 regular session, measures passed by the legislature would have brought revenue and spending levels into balance, but subsequent action by the governor required that a special session be held to address the vetoes that upset that balance and the vetoes of higher education and legislative branch appropriations. Legislation enacted in the recent special session left the fiscal year (FY) 2017 estimated reserves balance at $166.4 million and that for FY 2018 at $23 million.

Also of note: 1) FY 2018 appropriations are all virtually flat, with the exception of those for the judicial branch, which, overall, are 2.5% higher than in the previous fiscal year; 2) the period between FY 2008 and FY 2018, despite being marked by population growth and the expansion of Medicaid, could be seen as the "lost decade" for its lack of net change in appropriation levels; and 3) the legislature's efforts at enacting measures to raise additional revenue were blocked by the governor.

All told, the estimated recurring spending for FY 2017 exceeds the estimated recurring revenue for that year by over $480 million; for FY 2018, that figure is $150.4 million. Those imbalances have been reconciled through solvency measures. The situation calls for a conversation on generating sustainable revenues.

Year-to-date revenues. Ms. Iglesias continued the presentation, first by noting that the recently released revenue tracking report distributed to the committee provides more detail on the information she would cover.

Some of the key measures influencing revenue levels are employment growth, active rig counts, oil production and the prices of oil and natural gas. In the area of employment, year-over-year growth of .46% is tracking closely with the December 2016 Consensus Revenue Estimating Group (CREG) estimate. Much of that growth is in the private sector and, specifically, in the construction industry. Meanwhile, in the area of energy extraction, the number of active rigs is increasing, and oil production is exceeding expectations. Oil and natural gas prices are on par with the December 2016 CREG forecast for FY 2017, but they are below the forecast for FY 2018. That deviation is attributed to the fact that oil inventories are not depleting as expected.

Elsewhere, there are signs of strength in General Fund revenues. For the period between February and April, those revenues were higher than in the same period last year. Much of that increase is attributed to strength in gross receipts tax (GRT) and severance tax revenues. Through April, FY 2017 revenues were tracking higher than forecasted. Ms. Iglesias noted that improving the CREG's access to data from the Taxation and Revenue Department (TRD) related to tax credits would help the group better understand the causes of that strength.

A graph on page 13 of the handout shows, for the 18-month period before April, the differences between actual revenue levels and forecasted revenue levels.

Mr. Abbey indicated that a new revenue estimate would become available in August and that he is generally confident it will reveal revenue levels higher than forecasted. He underscored the LFC's concern, as it affects revenue forecasting, about the inadequacy of data shared by the TRD. He continued the presentation as follows.

FY 2019 fiscal outlook and state government condition. It is projected that recurring revenue will not return to its FY 2015 level until FY 2019; that is, next year will most likely bring more fiscal challenges. As shown in the table on page 16 of the handout, future fiscal years show recurring revenue gaps of over $150 million.

In the area of state employment, almost 3,000 jobs have been cut since FY 2009, and there are high annual turnover and vacancy rates, particularly in occupations whose members work on the front lines of health and safety. Much of that turnover and vacancy is attributed to the state's failure to compensate at levels on par with the market.

In the area of pension funds, the Public Employees Retirement Association's (PERA's) unfunded actuarial accrued liability as of June 30, 2016 is over $4.8 billion. For the Educational Retirement Board (ERB), that figure is over $6.6 billion. For the past several years, the agencies have overestimated investment returns; that prompted the ERB to lower its investment return assumption from 7.75% to 7.25%.

Meanwhile, legal challenges to the state's state equalization guarantee, public school capital outlay, food stamps processing, developmental disabilities programs and early childhood funding policies threaten the state's fiscal soundness.

Proposed joint meeting with LFC; tax reform comparison chart. Mr. Abbey invited the committee to consider conducting a joint meeting with the LFC in Farmington in July.

Mr. Abbey and Ms. Iglesias then turned the committee's attention to a chart in the handout that compares several aspects of three key tax reform bills recently introduced. Mr. Abbey noted that the LFC scrambled to put together a fiscal impact report (FIR) for House Bill 8 from the special session once LFC staff saw it, which was not until after the bill was introduced. Since then, staff have analyzed the bill more thoroughly and produced the FIR that was distributed to the committee. Ms. Iglesias reviewed details of the chart, which highlights data in the FIR.

Questions and Discussion

On questioning, the presenters and committee members addressed the following topics.

Energy prices and production. Concerning energy prices and production, Mr. Abbey explained that domestic oil inventories have not diminished, despite OPEC's curtailing of oil production, in part because technological advancements have revolutionized extraction techniques, which, in turn, has dramatically increased production. He added that: 1) revenue estimators generally subtract $2.00 to $3.00 from the West Texas Intermediate price of oil per barrel when estimating the price of oil in New Mexico; and 2) the $48.00-per-barrel projection for FY 2018 is, in hindsight, probably a bit too high.

Responding to another member's question, a committee member described the situation in San Juan County, as it relates to energy extraction, as follows: 1) one company, which has plans to spend many millions of dollars on big projects, is waiting for the issuance of 50 permits before it can move forward on the projects; 2) impending transitions in management at the federal level will help expedite those issuances; and 3) thousands of energy sector jobs have recently been lost, which has resulted in the departure of thousands of people from the region. Another member remarked that: 1) federal and state environmental and regulatory agencies, by implementing policies adverse to nonrenewable energy production industries, play a bigger role in tax policy than realized; and 2) the policies pursued by those entities — and the state's financial needs — are at odds with each other but should be reconciled.

Revenue estimates; General Fund reserves. Mr. Abbey and Ms. Iglesias clarified points related to the General Fund financial summary as follows: 1) generally, the summary's figures are based on estimates, while the General Fund revenue tracking report's figures are based on actuals; 2) the 2.7% reserves figure presented in the summary reflects the approximately $100 million in revenue raised through solvency measures taken during the regular and special sessions; 3) the effects of having potentially overestimated the price of oil for FY 2018 could be offset by strength in gross receipts and other aspects of the economy; 4) although the growth in the health and social services sector is leveling off, the sector is nevertheless a key factor promoting growth in GRT revenues; and 5) improvement in the construction sector has also boosted those revenues.

On the subject of revenue and spending, members commented that: 1) even though the revenue picture is brightening, the state is still far from a 10% reserves level; 2) lawmakers shortchanged the state when they cut personal income tax rates and removed the GRT from food; and 3) lawmakers need to work on ensuring that revenues stabilize.

Growth and contraction in state government and in revenue and spending. A member remarked that the information presented on state government job cuts revealed only part of the picture, which includes the fact that, in the years shortly before those cuts, state government had swelled in size. The member suggested that the state grew too rapidly and requested that, in future presentations on the topic, a more complete picture of growth and contraction be provided. Mr. Abbey recognized that there were years in the past decade of extraordinary growth made possible by spikes in energy prices. In hindsight, he said, revenue estimates for those years were too high.

Tax compliance. A member stressed the need for more enforcement of taxes and cited examples of laxness in enforcing tax laws. Mr. Abbey responded that the LFC issued a lengthy report last October on tax audit and compliance, which focused on the "tax gap", or difference between tax obligations and collections. He recommended that the committee consider adding the report as an item to its agenda, and he recommended that the TRD be requested to testify on its response to the report.

Public school facilities funding. Mr. Abbey expressed hope that strides made in public school facilities funding would compel a court to dismiss any active lawsuit related to alleged deficiencies in that funding. He added that the Public School Capital Outlay Oversight Task Force would take up the topic this interim.

Reliability of data from TRD; tax expenditures. A member expressed doubt about the reliability of data from the TRD. Mr. Abbey said that the accuracy of data is not at issue, but rather the need for better reporting from the TRD on tax credits. He described the state's having had problems with unforeseen, large-scale claims and the lingering possibility of a recurrence of those problems. The member stressed the need for the state to evaluate its tax expenditures and that it, while careful to not drive business out of the state, eliminate those that do not yield their intended results.

Amazon's collection of GRT. Mr. Abbey and Ms. Iglesias clarified that: 1) Amazon has been collecting the state, not local, portion of the GRT since April 1, in spite of its technological capacity to collect both; 2) monthly revenue from that source is about $2 million to 3 million; 3)

Amazon is not collecting the tax on sales for which it serves as a platform, which constitute about one-half of all of its sales; and 4) recent legislation attempted to capture that revenue.

Pension agencies. Mr. Abbey noted that the LFC puts out quarterly investment reports that feature updates on returns of the pension agencies' funds. He highlighted some of the content of those reports, including: 1) comparisons between the PERA's and ERB's performance with comparable funds; and 2) amounts paid for active management of the funds, management which, in the PERA's case, has not in the past decade yielded above-average returns. Lastly, Mr. Abbey remarked that the agencies focus more on their investment strategies than on their fund liabilities and benefits structures.

Requests for information; topics for future discussion. LFC and committee staff agreed to: 1) send a member county-level detail on GRT growth in the construction sector; and 2) send the committee electronic links to the most recent tax expenditure report and to the LFC-produced quarterly investment report.

Members suggested the following topics for future meetings: 1) updates on federal health care legislation and its effects on state revenues; 2) updates on the health of the oil and gas industries; and 3) GRT imposition and collection for internet-based sales.

Work Plan and Meeting Schedule

Ms. Stokes reviewed the committee's 2017 proposed work plan and meeting schedule. Concerning Item 4 on the work plan, she gave an update on the LCS's efforts to select a contractor to conduct a tax study on the gross receipts and other tax bases in the state. Members commented on that topic as follows.

- The study should be objective, in that it not recommend policy. Furthermore, the goal of any policy pursued in response to the study should: 1) simplify the tax system; 2) raise revenue to a level adequate for the state to meet its obligations; and 3) attract new business to the state.

- Any policy pursued in response to the study should incorporate a strategy for upholding existing bond repayment obligations tied to GRT revenue streams.

The committee adopted the proposed work plan and meeting schedule.

Adjournment

There being no further business before the committee, the committee adjourned at 11:58 a.m.

TENTATIVE AGENDA
for the
SECOND MEETING
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

July 19, 2017
Merrion Room, School of Energy, San Juan College
5301 College Boulevard
Farmington

Wednesday, July 19

JOINT MEETING WITH THE LEGISLATIVE FINANCE COMMITTEE

8:30 a.m. **Click the following link to the tentative Legislative Finance Committee agenda to view the July 19 agenda items:** **https://www.nmlegis.gov/Agendas/ALFCageJul19.17.pdf**

5:30 p.m. **Adjourn**

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

July 19, 2017
Merrion Room, School of Energy, San Juan College
5301 College Boulevard
Farmington

The second meeting of the Revenue Stabilization and Tax Policy Committee for the 2017 interim was a joint meeting with the Legislative Finance Committee at San Juan College in Farmington.

Present
Sen. Carlos R. Cisneros, Chair
Rep. Jim R. Trujillo, Vice Chair
Rep. Sharon Clahchischilliage
Rep. Roberto "Bobby" J. Gonzales
Rep. Jason C. Harper
Sen. Gay G. Kernan
Rep. Tim D. Lewis
Rep. Antonio Maestas
Rep. Javier Martínez
Sen. George K. Munoz
Sen. Clemente Sanchez
Sen. William E. Sharer
Sen. John Arthur Smith
Rep. James R.J. Strickler
Rep. Carl Trujillo
Sen. James P. White

Absent
Sen. Mark Moores
Sen. Peter Wirth

Designees
Rep. Rod Montoya
Sen. Bill Tallman
Sen. Pat Woods

Rep. David E. Adkins
Rep. Eliseo Lee Alcon
Rep. Cathrynn N. Brown
Sen. William F. Burt
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. Larry R. Scott
Rep. Nathan P. Small
Sen. Elizabeth "Liz" Stefanics
Rep. Candie G. Sweetser

Staff
Pam Stokes, Staff Attorney, Legislative Council Service

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Welcoming Remarks

The Legislative Finance Committee (LFC) and Revenue Stabilization and Tax Policy Committee (RSTP) were welcomed by Tommy Roberts, mayor of Farmington; Jack Fortner, commissioner of San Juan County; and LoRenzo Bates, speaker of the Navajo Nation Council.

Speaker Bates said the uncertain future of the Navajo Generating Station, which generates between $30 million and $40 million in revenue annually for the Navajo Nation, is impacting development of the Navajo Nation's FY18 budget. The new fiscal year begins October 1. The budget is already facing other impacts, including a weakened oil and gas industry and reduction in federal funding. The council is currently working to extend the power plant's lease agreement with the current owners to continue production.

Speaker Bates reported issues preventing many tribal members from complying with the New Mexico Real ID Act. Many tribal members do not have a birth certificate, a requirement of the new law. Also, many residences do not have a street address. On behalf of the Navajo Nation, a lobbying firm is working with the Taxation and Revenue Department (TRD) to establish solutions. TRD is considering accepting alternative forms of documentation.

Speaker Bates briefly reported other current issues and activity of the Navajo Nation.

Mayor Roberts said Farmington is facing challenging economic times largely because of a shrinking tax base stemming from increased exemptions, deductions and credits, Internet sales, and job losses. Gross receipts tax (GRT) revenue continues to be below what was collected in 2009. Mayor Roberts is supportive of tax reform that broadens the tax base and reduces the tax rate. He recommends the food and medicine gross receipts tax be reimposed. If tax on food and medicine is reimposed and local hold harmless payments for food and medicine repealed, state revenue would increase by $303.5 million. Mayor Roberts also recommends taxing Internet sales.

Commissioner Fortner said it is unclear when the oil and gas industry will bounce back. In the meantime, Farmington is working to strengthen other avenues of business, including the retail and outdoor industries.

Commissioner Fortner expressed concern for doing away with the hold harmless provision without reimposing the food and medicine tax.

In response to Vice Chairman Smith, Mayor Roberts said the underground economy is hurting both state and local government. Mayor Roberts suggested the state invest more dollars to fight noncompliance of the underground economy. Vice Chairman Smith said the Legislature in the past has provided additional dollars for TRD to hire additional compliance personnel; however, those dollars were used to hire other personnel.

Representative Harper said New Mexico's tax policy is an outlier compared with the nation; however, great progress is being made to pass meaningful tax reform. Representative Harper said, according to the New Mexico Municipal League, repeal of the food tax has hurt low-income families most, countering who it is meant to help. Representative Harper said legislators should do what is right to fix the state's issues rather than what is popular to be reelected.

Adoption of Minutes

The minutes from the June 19, 2017 RSTP meeting were adopted without changes.

Utility Regulation

Sandy Jones, chair of the Public Regulation Commission (PRC), said it is the job of PRC to balance the interests of industry and consumers, ensuring safe, reliable, and affordable utilities. However, its job has become especially challenging in the last 10 years because of policy changes impacting the industry and the intrusion of nonregulated entities and deregulated markets.

The utility industry is evolving; more and more consumers want new technologies to manage and monitor their utilities, a demand that requires significantly more investment. Renewable energy is another demand, which Commissioner Jones said costs just as much to generate. As the industry evolves, more investment will need to be made to address cyber security.

Ernest Archuleta, chief of staff of PRC, gave brief background information about PRC. Five elected officials serve on the commission. In 2005, PRC tasked utility providers with establishing an integrated resource plan (IRP) that evaluates renewable energy, energy efficiency, load management, distributed generation and conventional supply-side resources on a consistent and comparable basis and takes into consideration risk and uncertainty of fuel supply, price volatility, and costs of anticipated environmental regulations in order to identify the most cost-effective portfolio of resources to supply the energy needs of consumers.

Cydney Beadles, director of the Legal Division of PRC, said the commission is committed to ensuring transparency in the utility industry, allowing for public participation in the process. Similar to a court, cases are brought before PRC for determination of rates and applications for a new generating station or the abandonment of one. Intervenors of cases may include the attorney general, municipalities, and public interest groups. PRC's Utility Division staff participates in all cases, advocating for the public interest.

Ms. Beadles said the Public Service Company of New Mexico (PNM) recently submitted its 2017 IRP, recommending shut-down of the San Juan Generating Station after the current coal supply agreement ends in June 2022. PNM's abandonment case will be brought forth to PRC in 2018.

New Mexico's consumption of electricity is lower than the national average. John Reynolds, economics bureau chief of the Utility Division of PRC, said residential households in New Mexico average a lower monthly bill than those in other states. In 2016, almost 17 percent of U.S. electricity consumption derived from renewable resources, a source that is inconsistent because it is weather-dependent. Gas-fired generation serves as the best back-up because it can respond quickly. Mr. Reynolds said increased availability of shale gas has kept gas prices low. Also, gas-fired generation is less costly to construct.

In 2004, the Legislature enacted the Renewable Energy Act, creating a state renewable portfolio standard. By 2020, investor-owned utilities are required to generate 20 percent of total retail sales from renewable energy resources, and rural electric cooperatives are required to generate 10 percent of total retail sales from renewable energy resources. It is estimated that by 2023 only a small fraction of the energy generated will be coal-based.

Mr. Archuleta briefly talked about other issues impacting the state. For example, the entry of Uber ride-share services in New Mexico has led to several job losses in the taxi community.

Representative Montoya expressed concern for the significant job loss that would result from shutting down the San Juan Generating Station. Chairwoman Lundstrom requested a letter be sent on behalf of LFC and RSTP to PRC requesting information on the station's abandonment case, specifically what the economic impact would be if the station closed and what the plan would be and cost of returning the area to greenfield condition. The committee voted in favor of sending the letter (see attached letter).

Senator Burt commented that the renewable energy industry should be subject to the same rules and regulations as the extractive industry. Senator Burt pointed out some wind farms in

New Mexico are producing energy for other states, yet, except for the land owner, New Mexico is not receiving any incentive, such as tax revenue, on the resources being tapped.

In response to Vice Chairman Smith, Commissioner Jones said PRC has nine months from when a case is submitted to make a determination. Up to three one-month extensions may be granted. Extensions are often requested by PRC because of the limited staff it has to prepare for a case.

Public Service Company of New Mexico Integrated Resource Plan

Sayuri Yamada, director of Government Affairs of PNM, said change in the energy industry is taking place more now than has happened in the last 100 years PNM has been doing business in New Mexico. As a regulated utility, PNM is obligated to provide their service at a fair rate but still given the opportunity to recover costs of providing that service and turn a profit.

PNM's current integrated resource plan (IRP), posted on its website, includes recommendation to retire operations at the San Juan Generating Station (SJGS) after the coal supply agreements end in June 2022. Pat O'Connell, director of Planning and Resources, said the integrated resource planning incorporates a public advisory process; 17 public meetings were held this past year. PNM is planning for a coal-free resource portfolio by 2031. Mr. O'Connell said the goal is to transition to a more flexible energy supply and increase renewable energy. To create more wind energy, PNM will need to invest in new transmission.

Several factors support PNM's retirement of coal-based energy production, including load forecast and price of natural gas. By moving to a more flexible energy supply and increasing renewable energy, PNM will achieve cost-savings that will also benefit its customers.

PNM's IRP was filed June 3, 2017. Next, PNM will be issuing a request for proposals (RFP), requesting bids on energy resources and storage that meets the IRP. The SJGS retirement case will be filed with the PRC in 2018.

Ms. Yamada said she understands what the impact will be to the community should the SJGS close. Ms. Yamada said it is important to PNM to be transparent, adding that PNM and the community need to work together to find solutions.

In response to Chairwoman Lundstrom, Mr. O'Connell said it is not a requirement of the IRP to include plans and costs of returning the SJGS to green-field condition. The IRP does include decommissioning costs. In response to Senator Neville, the power lines will continue to be in operation, exporting power generated by wind farms to California and Arizona.

In response to Senator Muñoz, Mr. O'Connell said it will cost approximately $400 million to replace the energy no longer supplied by the SJGS with energy supplied by a new gas-fired power plant. Mr. O'Connell said natural gas energy emits fewer pollutants per mega watt hour than coal energy.

Environmental Regulation

Butch Tongate, secretary of the Department of Environment (NMED), said changes imposed by the new federal administration are changing the way NMED conducts its oversight.

Richard Goodyear, interim director of NMED's Environmental Protection Division, and bureau chief of the Air Quality Bureau, said construction of a new power plant requires three permits: a construction permit, operating permit, and prevention of significant deterioration permit. There are currently 21 power plants in the state.

Mr. Goodyear gave a brief overview of federal and state regulation. Federal regulation is authorized by the Clean Air Act. State regulation is authorized by the Air Quality Control Act. Additional detail was provided on the regulation of the San Juan Generating Station (SJGS). Under the Regional Haze Rule of the Clean Air Act, the SJGS is required to have best available retrofit technology (BART), used to control emissions.

In response to Representative Crowder, Mr. Goodyear said many of the standards mandated by the state are equivalent to federal standards. Representative Crowder said he is concerned the standards mandated by the state but not the federal government could be hindering economic development in New Mexico.

In response to Senator Sanchez, Secretary Tongate said NMED has improved the permit processing time significantly. Current processing times are similar to neighboring states.

Outlook for the Energy Industry

Ken McQueen, secretary of the Energy, Minerals and Natural Resources Department (EMNRD), said most wells drilled today are horizontal oil wells. There are currently 59 rigs operating in New Mexico. The number of rigs operating largely depends on the price of oil and gas. The majority of the rigs operating in the United States are in Permian Basin. New Mexico is currently the fifth largest producer of crude oil in the United States.

Natural gas production in New Mexico remains steady. Secretary McQueen said natural gas produced by the San Juan Basin is decreasing because of lack of drilling. For the first time last fall, the Permian Basin produced more natural gas than the San Juan Basin. Oil production in New Mexico has doubled since 1994, hitting a high of over 440 thousand barrels of oil produced per day on average in February 2017. Eighty-two percent of total oil production in New Mexico in 2017 will be produced by 11 publicly-traded companies, including Concho Resources Inc. and EOG Resources.

Secretary McQueen said drilling technologies and techniques are evolving. Extended reach horizontal wells are increasing. Many operators are now using multi-well pads for drilling, providing several advantages, including decreased surface disturbance and improved gas capture. Drillers are increasing their use of nonpotable water sources.

The Oil Conservation Division of EMNRD is currently working on five regulatory initiatives, addressing gas capture, horizontal rules, spill rules, stimulation reporting, and online filing. Providing an outlook for the future, Secretary McQueen said the Permian Basin will continue to be the most active basin in the United States. Natural gas prices are expected to remain depressed because of over-supply.

Ryan Flynn, executive director of the New Mexico Oil and Gas Association, said, in 2016, the oil and gas industry provided the state $1.6 billion in revenue and 100 thousand jobs. Oil and gas prices are extremely volatile and hard to predict. In September of 2013, the price of oil was $110 per barrel (bbl); the price of oil is currently averaging $46/bbl.

According to Director Flynn, the U.S. Bureau of Land Management (BLM) permitting process is constraining the oil and gas industry in New Mexico. Director Flynn estimates that BLM permitting wait time is costing the state approximately $2.3 million in potential revenue per day. The Department of the Interior recently submitted an order to address the wait time, which Director Flynn said should result in quicker action.

Director Flynn said greenhouse gas emissions are decreasing even as production is increasing. According to NMED data, greenhouse gas emissions are on track to fall 33 percent from 2012 levels by the end of this year. According to Environmental Protection Agency data, methane emissions from petroleum systems have decreased by almost 29 percent since 1990. Director Flynn attributed the decrease to new innovations and the transition of more gas-fired energy generation and less coal-fired energy generation. New innovations are also helping decrease water consumption of the industry.

Director Flynn said hydraulic fracturing, also known as fracking, has proven to be a safe technology. Director Flynn said studies have found no credible threat to groundwater resulting from fracking and, in the 50 years of using the technology, New Mexico has not had one incident of ground water contamination.

Concluding, Director Flynn said the industry will continue to work hard to generate revenue for the state while operating in a responsible manner.

Tom Mullins, president of the Independent Petroleum Association of New Mexico, reported on the San Juan Basin and briefly addressed issues affecting the industry. The San Juan Basin primarily produces natural gas. Approximately 75 percent of oil and gas wells in New Mexico have a production rate that is marginal, an issue that Mr. Mullins said needs to be considered when imposing regulation.

Clark Mosely, chief executive officer of the Navajo Transitional Energy Company, said the Navajo Generating Station is expected to remain in operation until 2031. Mr. Mosely invited legislators to visit the Navajo mine and observe operations. The mine currently employs 340 people.

Mr. Mosely briefly talked about regulatory issues. Some changes have positively impacted the industry. For example, the Office of Surface Mining Reclamation and Enforcement recently rescinded the stream protection rule.

In response to Representative Garcia, Director Flynn said the state's permitting process is much more efficient than BLM's. The long wait time for obtaining a permit from BLM makes it difficult to plan large scale projects, discouraging oil and gas companies from doing business in New Mexico.

Senator Muñoz asked how the Legislature can help the oil and gas industry. Director Flynn said reporting issues between the State Land Office and the Taxation and Revenue Department is a major issue for the industry. Director Flynn said a central reporting system needs to be established. Secretary McQueen said the oil and gas industry needs reliable, consistent regulatory framework. Mr. Mullins recommended reducing severance tax on natural gas wells operating at a marginal rate.

Promoting Economic Development Department in Northwest New Mexico

Matthew Geisel, secretary of the Economic Development Department (EDD), said, since January 2011, EDD has helped create over 16 thousand jobs. In recent months, the private sector has experienced significant job growth, particularly in the construction industry. Secretary Geisel said increased investment made by the state has helped New Mexico become more competitive with surrounding states. The increased investment has also helped support homegrown businesses, including Skorpios Technologies, Meow Wolf, SolAero Technologies and PESCO. PESCO, a manufacturer of process and production equipment in Farmington, will soon be expanding its business, adding an additional 170 jobs over a five-year period. PESCO is receiving $100 million from the Local Economic Development Act (LEDA) fund for the expansion. The company is also approved to receive Job Training Incentive Program (JTIP) funds.

Barbara Brazil, deputy director of EDD, updated the committee on the status of LEDA and JTIP funding and projects. LEDA funded 14 projects in 2017, resulting in the creation of 543 jobs. JTIP investments resulted in over 2,000 workers trained. JTIP board members increased the minimum wage requirements for JTIP reimbursements. The minimum wage requirement is now $11 in urban areas and $9.50 in rural areas. JTIP is funding an internship program to encourage hiring college students. Ms. Brazil said EDD is putting actions in place to ensure accountability of LEDA and JTIP dollars.

Ms. Brazil then shared with the committee some success stories of LEDA and JTIP investments. JTIP dollars have helped the Plenish and Vapour Organic Beauty Company in Taos grow. Raytheon, a defense contractor company, received $200 thousand from the LEDA fund in 2014 to expand its business of manufacturing sub assembly components. The expansion resulted in 150 new jobs. Secretary Geisel said Facebook is bringing to New Mexico high paying jobs.

Facebook will be employing 104 people at the Los Lunas facility, set for construction in 2017. The construction will likely employ over 1000 people.

The New Mexico Partnership is under contract with EDD to assist businesses with relocation and site selection. Tim Nitti, president and chief executive office of the New Mexico Partnership, said it's the Partnership's belief that the pipelines, across the board among economic development organizations in the state, are not deep enough. The inadequacy of pipelines is attributed to three main issues: lack of awareness about New Mexico, lack of state promotion, and resource constraints. To address these issues, Mr. Nitti said the state needs to maximize effectiveness of existing sales activities, increase pipeline quantity, diversity, and quality by marketing the state and its communities to a much larger audience of decision-makers and influencers, evolve New Mexico's messaging by highlighting the state's unique differentiators and competitive advantages, and maximize cost and resource efficiency to partially mitigate lower available resourcing for economic development statewide.

Reporting on economic development in northwestern New Mexico, Warren Unsicker, chief executive officer of Four Corners Economic Development (4CED), said the struggling oil and gas industry is forcing the economy to become more diversified. Mr. Unsicker said northwest New Mexico has key advantages for economic development. Besides having low energy costs and infrastructure in place to transmit energy, Farmington is centrally located for outdoor business, has certification from the ACT Work Ready Communities, has a college offering over 119 certificates and degrees, and has a dedicated airport.

4CED is recruiting for business similar to the New Mexico Partnership, engaging in trade shows, sales missions, and events. 4CED is also partnering with several entities for economic development opportunities.

Mr. Unsicker talked about the state doing all it can to protect its base jobs. Mr. Unsicker included in his presentation a letter signed by over 250 residents of San Juan County expressing concern for PNM's recommendation to shut down the San Juan Generating Station in 2022. The letter asserted that PRC's evaluation process for decision-making does not take into account full economic impacts. The letter conveyed that while there is an understanding about the uncertainty for long-term viability of coal power, the closure would be premature and detrimental to the economy.

Mr. Unsicker concluded with brief overview of current economic development initiatives in the area.

In response to Representative Crowder, Secretary Geisel said EDD is collaborating with the Tourism Department to leverage the New Mexico True brand for new economic development opportunities.

In response to Representative Garcia, Ms. Brazil said Solo Works, a job training program in Grants, has received strong support from the community. The program has so far graduated 7 individuals; another 7 are nearing completion.

In response to Senator Muñoz, Mr. Nitti said the current success rate of projects in the pipeline is extremely volatile. New Mexico needs to add more relevant projects to the pipeline. Senator Muñoz commented that LEDA investments need to be focused on large scale projects.

Profiles of Aztec, Farmington, and Central Consolidated School Districts

Committee members were given profiles of the Aztec, Farmington, and Central Consolidated school districts. Sunny Liu, analyst for LFC, said the profiles provide information on school district performance. Representatives from the school districts briefly addressed the committee. Colleen Bowman, superintendent of the Central Consolidated School District (CCSD), said closure of the San Juan Generating Station would severely impact the school district. Christina Aspaas, school board secretary of CCSD, said there is great concern about future funding for the school district. Gene Schmidt, superintendent of Farmington Municipal Schools, said the school district is working hard to achieve excellence. Superintendent Schmidt said tax reform is needed to address the many challenges New Mexico is facing, including educational issues. Representative Clahchischilliage said concerns will continue to be voiced and considered while the Legislature does its work.

Adjournment

There being no further business before the RSTP, the committee adjourned at 5:34 p.m.

TENTATIVE AGENDA
for the
THIRD MEETING
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

September 14-15, 2017
State Capitol, Room 322
Santa Fe

Thursday, September 14

10:00 a.m. (1) **Revenue Forecast**
—Jon Clark, Economist, Legislative Finance Committee (LFC)
—Clinton Turner, Chief Economist, Department of Finance and Administration
—Elisa Walker-Moran, Chief Economist, Taxation and Revenue Department (TRD)

12:00 noon **Lunch**

1:00 p.m. (2) **Agency Analysis of Recent Tax Reform Proposals**
—Jon Clark, Economist, LFC
—Dawn Iglesias, Economist, LFC
—Elisa Walker-Moran, Chief Economist, TRD

4:00 p.m. **Recess**

Friday, September 15

9:00 a.m. (3) **Review of TRD's 2016 Tax Expenditure Report**
—Elisa Walker-Moran, Chief Economist, TRD

10:30 a.m. (4) **State Auditor Review of Certain Tax Programs**
—Timothy Keller, State Auditor
—Sarita Nair, Chief Government Accountability Officer and General Counsel, Office of the State Auditor

12:00 noon **Adjourn**

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

September 14-15, 2017
State Capitol, Room 322
Santa Fe

The third meeting of the Revenue Stabilization and Tax Policy Committee for the 2017 interim was called to order by Senator Carlos R. Cisneros, chair, on Thursday, September 14, 2017, at 9:59 a.m. in Room 322 of the State Capitol in Santa Fe.

Present
Sen. Carlos R. Cisneros, Chair
Rep. Jim R. Trujillo, Vice Chair
Rep. Sharon Clahchischilliage
Rep. Roberto "Bobby" J. Gonzales
Rep. Jason C. Harper
Sen. Gay G. Kernan
Rep. Antonio Maestas (9/14)
Sen. George K. Munoz
Sen. Clemente Sanchez
Sen. William E. Sharer (9/14)
Sen. John Arthur Smith
Rep. James R.J. Strickler (9/14)
Rep. Carl Trujillo
Sen. James P. White
Sen. Peter Wirth

Absent
Rep. Tim D. Lewis
Rep. Javier Martínez
Sen. Mark Moores

Designees
Sen. William F. Burt
Rep. Bill McCamley
Rep. Rod Montoya
Sen. Pat Woods (attending as guest 9/14)

Rep. David E. Adkins
Rep. Eliseo Lee Alcon
Rep. Cathrynn N. Brown
Sen. Jacob R. Candelaria
Rep. Daymon Ely
Rep. Bealquin Bill Gomez
Rep. Debbie A. Rodella
Sen. Nancy Rodriguez
Rep. Patricia Roybal Caballero
Rep. Angelica Rubio
Rep. Patricio Ruiloba
Rep. Tomás E. Salazar
Rep. Larry R. Scott

Rep. Nathan P. Small
Sen. Elizabeth "Liz" Stefanics
Rep. Candie G. Sweetser
Sen. Bill Tallman

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

Staff
Pam Stokes, Staff Attorney, Legislative Council Service (LCS)
Jeff Eaton, Research and Fiscal Policy Analyst, LCS
Ric Gaudet, Researcher, LCS
Tessa Ryan, Staff Attorney, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

<u>Thursday, September 14</u>

Revenue Forecast

Jon Clark, chief economist, Legislative Finance Committee (LFC), Clinton Turner, chief economist, Department of Finance and Administration (DFA), and Elisa Walker-Moran, chief economist, Taxation and Revenue Department (TRD), presented the Consensus Revenue Estimating Group's (CREG's) August 2017 update to the state's revenue estimate to the committee. The CREG is composed of the professional economists from the DFA, TRD, LFC and Department of Transportation. The group periodically provides revenue estimates for the state as a basis for annual budgeting. Mr. Turner began by discussing the economic outlook for New Mexico and the nation. The United States' gross domestic product is expected to continue to grow at a rate between two and three percent for the next few years. Inflation is expected to return to long-term averages, climbing above two percent in fiscal years 2019 and 2020. Interest rates are also finally beginning to rise above the historically low rates in effect for the past eight years.

In New Mexico, employment growth has slightly outpaced recent forecast levels, and the CREG predicts a one percent increase in the number of jobs held in the next year. Most of the growth has occurred in the Rio Grande corridor, with southeast New Mexico job levels remaining flat in fiscal year 2017. However, there has been a recent surge in economic activity in that region due to oil and gas activity. The northwest quadrant of the state continues to decline economically, with San Juan and Rio Arriba counties experiencing their lowest taxable gross receipts levels in 13 years. San Juan County has lost 14 percent of its jobs in the past eight years.

Gross receipts tax (GRT) revenue has been increasing slightly in the past two fiscal years, but the growth has been imbalanced across the state. In fiscal year 2016, Lea and Eddy counties saw a combined GRT revenue decrease of $180 million, followed by smaller decreases in fiscal year 2017. These large decreases outweighed the modest growth seen in the Rio Grande corridor. The oil sector has seen recent growth, and southeastern New Mexico is poised to see substantial economic growth this year. After a two-year plummet in the number of drilling rigs operating in the state, New Mexico currently has 68 active rigs, the vast majority located in Lea and Eddy counties. Oil prices have also been relatively stable, hovering around $50.00 per barrel the past two years. Oil volumes have also begun to increase since November 2016 and show signs of future growth.

The General Fund revenue forecast projects moderate growth over the next two fiscal years. The largest revenue increases are expected from a nearly three percent increase in GRT revenue and a nine percent increase in investment income. Oil and gas revenues are expected to decrease slightly, due to income from lease bonuses decreasing but with increasing volumes. GRT revenue is expected to have an average 3.5 percent growth over the next five fiscal years.

Ms. Walker-Moran discussed the TRD's revenue reports and projections. Fiscal year 2017 General Fund revenues are expected to be $140 million more than was projected in the December 2016 estimate, and fiscal year 2018 revenues are expected to increase $12 million from that estimate. However, fiscal year 2019 through fiscal year 2021 revenues are expected to be lower than originally estimated. Personal income tax (PIT) and corporate income tax (CIT) revenue projections have decreased, while GRT revenue projections have increased.

The CREG does not anticipate an economic recession during fiscal year 2018 but predicts continued moderate growth. The economic downturn of 2008 put negative pressure on consumer spending in New Mexico, which is now showing signs of growth. The recent start of GRT collection by Amazon will contribute to revenue growth. Health care spending will continue to increase, and since most health care purchases are not subject to the GRT, this will put downward pressure on GRT revenue.

One reason why GRT revenue is reported as stronger than predicted and PIT revenue weaker than predicted is because some tax payments were not matched to the correct tax returns. The TRD has identified $91 million in tax payments that have been made by taxpayers without submitting a matched tax return. The TRD's GenTax system temporarily assigns unmatched tax collections as GRT revenue until the correct tax program can be associated with the payments. For some reason, a large number of unmatched tax payments have been made in the past year, resulting in higher than expected GRT revenue and sluggish PIT revenue. TRD staff has been investigating the spike in unmatched tax payments. Much of the unmatched payments belong in the PIT program, which means that the revenue will end up in the General Fund rather than part of it being distributed to local governments if it were GRT revenue. TRD staff has also been investigating the sudden decline in CIT revenues. It appears that some corporate taxpayers have previously made overpayments on their estimated CIT returns, and many have been recently requesting refunds of those payments. These overpayments pose a risk to the revenue estimate potentially in the tens of millions of dollars and are one reason why CIT revenue is so volatile.

Mr. Clark discussed with the committee concerns the LFC has about anomalies in reported revenue data. A significant portion of the $140 million in increased forecast GRT revenue was not correctly attributed to a tax source. Accounting, reporting and taxpayer behavior uncertainties overshadowed much of the modeling used to forecast revenues, leading to significant risks to the forecast. Other data anomalies included a June 2017 TRD GRT revenue report of $33 trillion, a figure several decimal places incorrect; and an apparently wildly divergent effective GRT rate in 2017, ranging from more than six percent to 2.5 percent. Mr. Clark suggested that making changes to the TRD's tax administration system could alleviate some of these problems with data. Currently, each taxpayer uses the same combined reporting system (CRS) number for several tax programs. This system might be outdated, and a new method of reporting taxes could significantly reduce reporting problems.

GRT revenues have also been declining due to internet sales. Although Amazon started collecting the state GRT for its transactions with customers in the state, it does not collect the local option GRTs, nor does it collect tax from sales made by third-party vendors. Third-party vendor sales account for about 50 percent of Amazon's sales, which represents millions of dollars in foregone revenue to the state.

Most local governments in New Mexico charge for or tax the privilege of providing internet service within their jurisdiction. However, legislation recently enacted by Congress will prohibit such taxation beginning in 2021, which could result in significant revenue losses for local governments.

The Pueblo of Pojoaque will soon begin casino revenue-sharing payments to the state after a two-year hiatus, resulting in a net increase of $5 million to the state annually. However, it is unclear whether the pueblo will be required by a federal court to pay the estimated $12 million in unpaid revenue-sharing payments since 2015. Mr. Clark said that if the state does not receive this money, the pueblo will have effectively been granted a two-year tax holiday, which event should be gravely concerning to policymakers.

Questions and comments from committee members included the following.

- How can the TRD data errors be eliminated in the future? John Monforte, acting secretary of taxation of revenue, said that the TRD has confidence in the current tax reporting system. He distributed a handout that explained the divergent effective tax rates noted by the LFC, stating that LFC staff used an incorrect column in the spreadsheet data. He said that there has to be a balance in the tax reporting system between taxpayer-friendliness and system control. The system is very taxpayer-friendly, which means that taxpayers can enter data incorrectly, even after being prompted by the system to verify the entry. He agreed that data needs to be reviewed before final reports are distributed. However, he said that the TRD is not allowed to fix erroneous claims; only taxpayers can. Ms. Walker-Moran said that a recent update to the GenTax system made it less likely that taxpayers could inadvertently click on the wrong button when entering data.

- The TRD has reconciled some of the $140 million discrepancy in the 60-day GRT line item, but when will the remaining $70 million be reconciled? Ms. Walker-Moran said that the TRD is still examining returns to find the remaining discrepancies. One possible explanation is that some income tax credits requested by taxpayers showed up in the 60-day GRT report. She said that the money in that line item will remain in the General Fund and not be distributed to local governments.

- The TRD should not publish reports before they are verified for accuracy. There are too many data anomalies to have much faith in the numbers that the TRD is reporting. Municipalities and counties are also very concerned that they are not getting correct distributions. Ms. Walker-Moran said that the TRD does not publish interim reports and is required to publish the data it has, whether that data is accurate or not. However, the TRD is investigating how it can identify errors prior to publication.

- As food prices increase due to the impact of recent hurricanes, hold harmless GRT payments to local governments will also increase. This is because of the fact that local governments get paid a portion of all deductions claimed against the GRT for the purchase of food. This will hurt the state General Fund.

- What is the forecast for construction in New Mexico? Mr. Turner said that residential housing permits are still not growing but that property sales prices are increasing. This could lead to more demand for housing. Currently, the Facebook data center project and oil and gas development account for most of the increase in construction-related GRT revenue.

- TRD data shows that Rio Arriba County has a negative GRT revenue growth rate, yet several large businesses have located in the county recently. Mr. Turner said that taxable gross receipts in Rio Arriba County have declined by more than five percent in recent years. New businesses in the county may not have offset those losses.

- The LFC notified the TRD of a large discrepancy in the 60-day GRT report more than a year ago, and the TRD still has not been able to explain much of the discrepancy. Acting Secretary Monforte said that the technology the TRD is using will take some time to fix. The department needs some data analytics tools and internal controls. However, he said that data anomalies are always happening because taxpayers make mistakes in entering data.

- How is the TRD handling recent litigation over a claimed $90 million CIT credit involving chemical reagents and municipalities concerning incorrect GRT distributions? Acting Secretary Monforte said that the state's position on the chemical reagents issue is that the payments being claimed as overpayments were actually due the state and should not be refunded. Ms. Walker-Moran said that the CREG does not forecast the outcome of any litigation, but it does attempt to identify any potential liabilities.

- All of the tax reporting discrepancies and sudden increases in taxpayer errors are troubling. The TRD budget should not have been cut, because it is the primary revenue-collecting state agency.

- Health care spending is constantly increasing, but most of that activity is not taxed. Hold harmless payments to local governments for food and medical GRT deductions hurt the state's financial situation even more.

- Has the TRD quantified the CIT overpayments in recent years? That money does not belong to the state, so it should not be included in the budget. Ms. Walker-Moran said that the TRD is trying to estimate the amount of overpayments made by corporate taxpayers. Mr. Turner said that if the DFA is able to identify a tax overpayment, that money does not get deposited into the General Fund.

Agency Analysis of Recent Tax Reform Proposals

Mr. Clark, Ms. Walker-Moran and Dawn Iglesias, economist, LFC, discussed with the committee the fiscal impacts of recent proposed tax reform legislation.

<u>Senate Bill 123 (2017 Regular Session)</u>

Mr. Clark and Ms. Iglesias discussed Senate Bill 123 from the 2017 regular legislative session, which would eliminate most tax expenditures and many tax programs but would tax nearly all economic activity at a much lower GRT rate. This comprehensive tax reform proposal was so broad in scope that the TRD and LFC were unable to estimate its fiscal impact. However, this tax reform proposal, along with another tax reform bill proposed by Representative Harper, was the impetus for a special appropriation enacted in 2017 to contract with an independent company to perform an expert tax analysis study. The study, when completed, will be able to better estimate the impacts of these and other tax reform proposals.

Senate Bill 123 would have reduced the state GRT rate from the current 5.125 percent rate to one percent and would reduce the maximum county and municipal GRT rates to .5 percent each, which would result in a combined state and local maximum rate of two percent. Food and medical hold harmless deductions from the GRT base would be repealed, as would most other GRT deductions, exemptions and credits. Most transactions would be taxed at the new lower rate, including all internet sales, employee wages and property sales. The compensating tax rate and the governmental GRT rate would also be reduced to match the new GRT rate. The

Corporate Income and Franchise Tax Act would be repealed, and the PIT rate would be lowered to a flat 2.5 percent rate, but only for individuals and entities with incomes above certain higher levels. To offset some of the regressivity of the new GRT structure, a tiered refundable GRT credit would be implemented for those individuals with incomes below 210 percent of federal poverty guidelines. The motor vehicle excise tax would be repealed, but sales of motor vehicles would be subject to the GRT. Finally, county obligations to provide for health care funding would shift to the state; the time frame for claiming a credit or refund from a tax program would be reduced; and a temporary amnesty for tax penalties and interest would be implemented.

Senator Sharer said that he wants to simplify New Mexico's tax system and to tax nearly all economic activity at a very low rate. Initially, he came up with a two percent tax rate, but the actual rate to be enacted should be determined by using the tax tool currently being developed by Ernst & Young. The negative impacts of business-to-business pyramiding should no longer be a problem, because the tax rate would be so low.

<u>House Bill 8 (2017 First Special Session)</u>

Ms. Iglesias discussed House Bill 8 from the 2017 first special legislative session, which was similar to House Bill 412 from the 2017 regular legislative session. Both bills were sponsored by Representative Harper in an attempt to reform the GRT and other tax programs. The bill would broaden the GRT base by eliminating most GRT expenditures but would create a limited set of anti-pyramiding provisions for select business-to-business services. The name of the tax would change to the "sales tax" and would be imposed at a lower state rate of 3.6 percent initially, with the TRD recalculating the rate the following year. The current effective state GRT rate is 4.16 percent, after subtracting the municipal 1.225 percent rate and adjusting for sales made outside of municipalities. The 1.225 percent share of the state GRT that is currently distributed to municipalities would be reconfigured as a local sales tax to be transferred to municipalities in the same manner that other local option GRT impositions are currently being made. The 1.225 percent tax rate would be lowered to a rate of .965 percent in an attempt to make the provisions revenue neutral for municipalities.

Medical services would be subject to the sales tax, but the deduction from gross receipts from the sale of food would remain in statute. Most nonprofit organizations, including hospitals, would be subject to the sales tax. The bill was intended to repeal the exemption from sales tax for nonprofit organizations, but that section was inadvertently left intact. The changes being made to the GRT system are intended to be revenue neutral, and any excess revenue generated, after accounting for an assumed annual growth rate, would be distributed to the tax stabilization reserve.

The tax reform bill also renames the compensating tax as the "use tax" and lowers the rate to match the sales tax rate. In addition, local governments would impose a local option use tax at the same rate that their sales taxes are imposed. The health insurance premium surtax would increase to two percent, and insurance companies would lose their "in lieu of all other taxation" exemption from remitting sales tax for goods and services they sell in addition to insurance policies. The bill also increases the motor vehicle excise tax to six percent, up from the current three percent rate, and distributes the new revenue to the General Fund, the State Road Fund and the Local Governments Road Fund.

It was difficult to come up with a fiscal impact report (FIR) for the bill because there are so many interacting variables involved. The TRD did not release an FIR for the bill, but did provide the LFC with many of the figures used in the LFC's FIR. The LFC's FIR for the bill, as introduced with the nonprofit exemption error, shows a cost to the General Fund of more than $100 million each fiscal year. However, there are many assumptions made in the FIR that make the estimate risky, including incorrect assumptions in the bill underlying the fiscal years 2018 and 2019 General Fund revenue caps, errors in the assumed tax base behind the new 3.6 percent sales tax rate, the key technical error in which the nonprofit organization exemption is not repealed and the large estimated range for the cost of the new anti-pyramiding provisions.

Mr. Clark said that the initial 3.6 percent sales tax rate is likely too low to ensure revenue neutrality. The bill also delegates tax rate-setting to the TRD, which raises constitutional concerns. The rate recalculation provisions in the bill also provide for a maximum General Fund growth of three percent annually. However, the fiscal year 2019 CREG estimate, without the bill taking effect, predicts a growth to the General Fund of 4.5 percent. This discrepancy in assumptions would mean that the sales tax rate for fiscal year 2020 would drop to between 3.35 and 3.4 percent. This is a primary driver in the negative fiscal impact of the bill each year.

The impact on local governments was studied in preparing the FIR, but calculating the impact on each municipality and county will be difficult because the impact of each of the changes will be different, depending on each locality's economic base. However, in general, the fiscal impact on municipalities is likely to be negative, and the impact to counties is likely to be positive.

The anti-pyramiding provisions in the bill are also difficult to estimate because the actual size of the gross receipts base for those deductions is not fully known, and the percentage of that base that will be impacted by the new deductions is also not known. The FIR estimated an impact on the base between $1.1 billion and $2 billion. That wide range of gross receipts base highlights that the actual revenue impact is difficult to determine.

The repeal of various GRT deductions, credits and exemptions should increase the tax base, allowing for a decrease in the sales tax rate. However, it is difficult to calculate the actual size of the new tax base because the impact of some existing tax expenditures is not known and some tax expenditures overlap, leading to incorrect estimates. Anomalies in GRT data need to be fixed so that future tax reform efforts can be correctly estimated.

Representative Harper thanked the panel for its hard work in analyzing the bill and thanked the committee and LCS staff for its work in drafting the bill. He said that he received much feedback about House Bill 412 from the 2017 regular legislative session, which was used to produce House Bill 8 during the special session.

Questions and comments from committee members included the following.

- LFC staff was asked to give an update on the progress of the tax study Ernst & Young is performing for New Mexico. Mr. Clark said that the company is in the early stages of gathering data and is discussing data needs with the TRD. The study will provide tools to analyze future legislation, and it will be built so that as additional data sources become available, they can be incorporated into the model. There have been discussions about studying the CIT and PIT programs, but there might be too many confidentiality issues to make those studies possible.

- The proposed changes to the taxation of health care services would mean that the state will be taxing services that providers and hospitals are unable to pass along to their customers. There is only one other state that allows for taxation of medical services. This will exacerbate the shortage of medical providers in the state.

- The bill sets a tax rate in order to achieve a certain revenue goal, which does not allow for much growth. If the estimated total business-to-business gross receipts totals $2 billion annually, and the state's gross domestic product is about $80 billion, perhaps business-to-business pyramiding is not such a big problem after all.

- The CIT should be repealed because it causes economic distortions and it does not have much impact on the state's budget. If Senate Bill 123 were to pass, everything would be taxed but at a much lower rate. Business-to-business pyramiding would exist but would not matter anymore because businesses would be paying a very low tax rate.

- The $100 million cost in foregone revenues estimated in the FIR for House Bill 8 is based on the CREG's estimate of 4.5 percent growth in the next few fiscal years.

- Would House Bill 8 impose a tax on the sale of property? Mr. Clark said that the bill would not tax property sales but would impose the sales tax on the commissions that Realtors earn from the sale of a property.

- Reimposing the GRT on food would also mean that tourists visiting the state would share some of the state's tax burden.

- The TRD does not have sufficient personnel to do the job with which it is tasked.

- Tax policy does not drive economic growth; consumer spending does.

Recess

The committee recessed at 4:42 p.m.

<u>Friday, September 15</u>

The committee reconvened on Friday, September 15, at 9:00 a.m.

Review of the TRD's 2016 Tax Expenditure Report (TER)

Ms. Walker-Moran reviewed for the committee the TER for 2016 prepared by the TRD. The TER attempts to list all of the exclusions, exemptions, deductions and credits available in statute and whether they are classified as tax expenditures. An exclusion is defined as an amount that is removed in order to define a tax base. For example, taxpayers exclude certain amounts from their base income to derive their net income upon which the PIT is imposed. Exemptions eliminate a legal obligation to report or pay taxes on transactions. Examples of exemptions include the exemption for insurance companies from paying the CIT or the GRT, the exemption from paying the GRT on sales of agricultural products and the exemption for nonprofit organizations from paying the GRT. Generally, if a taxpayer solely engages in exempt transactions, there is no registration or filing obligation. If a taxpayer has some transactions that are taxable and some that are exempt, only the exempt transactions are not reported.

Deductions reduce tax liability by eliminating certain transactions or income from amounts taxpayers are required to report on tax returns. Deductions reduce the tax base for taxpayers before calculating tax due. In the GRT program, taxpayers report their gross amount on the return and then also show the amount of the deduction. Some GRT deductions are combined on a single line of the CRS return, which makes it difficult for the TRD to calculate the amount of specific deductions. Credits are amounts subtracted from the calculated tax liability. Most tax credits are business activity credits that require an application for approval by either the TRD or another certification agency.

A tax expenditure is a deviation from the baseline system of taxation that provides special or preferential treatment to a taxpayer or group of taxpayers. Exclusions to derive the tax base are not tax expenditures. The nature of the statute governs whether a deviation should be classified by the TRD as a tax expenditure. Deviations occur for many reasons, including constitutional or federal preemption, government-to-government comity, to correct an aberration in the tax base or to provide preferential treatment to achieve a policy objective — a tax expenditure. Tax expenditures are usually specific to a subset of the tax base or population to achieve a specific policy objective. The TRD categorized the types of tax expenditure into groups, such as citizen benefit; economic development; environment, conservation and renewable energy; health care; and highly specialized industries.

By far the largest tax expenditure in New Mexico in fiscal year 2016 is the deduction from gross receipts for the purchase of food, costing the state $243 million. The exemption from the GRT for nonprofit organizations costs the state an estimated $90 million. Other high-cost tax expenditures include the health care practitioner services and prescription drugs and oxygen GRT deductions, the working families tax credit, the high-wage jobs tax credit, the film and television tax credit, the capital gains PIT deduction and the medical and health care services GRT deduction. Ms. Walker-Moran pointed out three tax expenditures that have expired or will soon expire, and 16 other tax expenditures that are unused either because the tax expenditure has expired or is not currently being claimed by taxpayers. Several exclusions from the tax base have been eliminated from the 2016 TER, mostly involving natural resource extraction valuation issues. Some exemptions and deductions related to the sale of fuel to other governments have also been removed from the TER. A credit, deduction and exemption related to uncompensated medical care expenses have been added to the 2016 TER. Finally, the TER identifies eight tax expenditures that the legislature should clarify.

Questions and comments from committee members included the following.

- TRD staff was asked to present a report to the committee listing which tax expenditures should be modified or repealed. Ms. Walker-Moran said that some tax expenditures need to be revised in order to be effective. Others may need to be repealed because they are no longer needed. The effectiveness of many tax expenditures also needs to be better studied.

- Many tax expenditures that are tax exemptions should be converted into deductions or credits so that their cost and effectiveness can be measured. Sunsetting tax expenditures is also needed so that the legislature and executive branch can evaluate them periodically.

- The TER should include all tax deviations, regardless of whether the deviations are classified as tax expenditures.

- The legislature needs to close loopholes in tax expenditure statutes and tighten up requirements for receiving an expenditure. Tax expenditure recipients should be required to provide justification for the expenditure, and the TRD and LFC should regularly evaluate their effectiveness.

- How will Ernst & Young get accurate data regarding the impact of the GRT exemptions, for which the TRD has no data available? Mr. Clark said that the contract left open the sourcing for that data. He said that he is concerned that there is no reliable data on those exemptions.

- The TER should indicate some kind of return on investment for each tax expenditure. Ms. Walker-Moran said that when that information is available, the TER reflects the benefits to the state provided by the tax expenditure. However, most tax expenditures do not require detailed reporting by the recipients.

- The governor has vetoed legislation repeatedly requiring the CREG and LFC to evaluate the effectiveness of tax expenditures.

- TRD staff was requested to work with LFC and LCS staff in preparing suggestions for cleaning up or repealing unused and expired tax expenditures.

State Auditor Review of Certain Tax Programs

Timothy Keller, state auditor, and Sarita Nair, chief government accountability officer and general counsel, Office of the State Auditor (OSA), gave a presentation to the committee about the transparency and effectiveness of tax programs. Auditor Keller began by saying that he preferred to call all tax deviations a tax expenditure. Since he was a state senator, he has been trying to get the data needed to analyze the effectiveness of tax expenditures but was constantly running into transparency and confidentiality issues. A thoughtful examination of tax programs and their relative returns on investment is the best practice followed by most states. The OSA is aware that there is insufficient data to develop detailed economic models for all 180 tax breaks identified by the office, 23 of which have no data available at all. The TRD's TER provides information on most tax expenditures but does not discuss many rate differentials, adjustments to value and other types of tax breaks. The OSA's report attempts to examine every tax deviation in order to get a complete picture of New Mexico's tax policy.

Of the nearly $1.5 billion in annual tax expenditures granted by the state, about 50 percent are given to nonprofit organizations, to the extractive industry and to all New Mexicans as broad-based expenditures. The remaining tax expenditures span multiple industries and purposes. The largest tax programs identified by the OSA differed somewhat from the TER's list. Most notable were the inclusion of rate differentials and valuation methodologies for extractive industries, totaling $396 million. The TRD generally does not classify those deviations as tax expenditures because they are considered deviations essential to the functioning of the industry. The rate differential between the motor vehicle excise tax and the average GRT rate was also listed, totaling $67 million annually. The OSA strongly supports requiring broader disclosure for tax expenditures, especially from those expenditures certified by the Economic Development Department and the Energy, Minerals and Natural Resources Department. In addition, many exemptions, which have no reporting requirement, should be converted to deductions with required disclosure. That would allow the state to properly analyze the effectiveness of the tax deviation.

Auditor Keller discussed General Accounting Standards Board (GASB) Statement 77, which will require local governments to disclose the full cost of tax abatement agreements in their fiscal year audits. Local governments will specify all of the tax abatements that affect the revenue stream of the local government, including any overlapping jurisdictions within the local government. For example, industrial revenue bonds will be reported, including the amount of property tax abatement, the amount of GRT revenue affected, any payments in lieu of taxes, the purpose of the abatement, requirements of the tax abatement recipient, clawback provisions and evaluation of the effectiveness of the abatement.

Questions and comments from committee members included the following.

- Some states work out disclosure agreements with taxpayers receiving a tax expenditure in order to study the effectiveness of the expenditure. Can New Mexico do something similar to avoid tax confidentiality provisions? Auditor Keller said that current statutes allow for interagency sharing of certain taxpayer information, but there is much information that cannot be released. He suggested that any proposed tax expenditure legislation include taxpayer disclosure language requiring certain information be released as a condition of receiving the expenditure. The legislature could also enact legislation requiring the TRD to disclose to the LFC and OSA certain kinds of tax expenditure data. The biggest challenge in evaluating tax expenditures is knowing what they actually cost. Transparency in tax programs is crucial, and every tax program should have accountability.

- Will the state be required to comply with GASB Statement 77? Auditor Keller said that the rule will apply to all governments, but it only applies to tax abatements, like industrial revenue bonds. He said that there are very few state-run tax abatements.

- Calling all extractive industry tax deviations "tax expenditures" and using language like "lost revenue" are misleading. There are many economic and governmental constraints imposed on the energy sector, and not all tax deviations were written to give the industry a break. Auditor Keller agreed and said that he is not really concerned about what to call these tax deviations, but he wants to know how much they cost.

- How does GASB Statement 77 define what is a tax abatement? Ms. Nair said that a tax abatement is an agreement with a taxpayer to reduce the tax revenue a government will receive. This could be in the form of an exemption, deduction or reduction in assessed value. A generally available tax deviation is not a tax abatement, however. There needs to exist an agreement between the government and the recipient. Auditor Keller said that the OSA will publish a rule soon stipulating how local governments should identify tax abatements. However, he said that tax abatements in New Mexico are mostly industrial revenue bonds and tax increment development districts. Acting Secretary Monforte said that the TRD has identified 19 possible state-administered tax abatements, but TRD staff is still working on that issue.

Adjournment

There being no further business, the committee adjourned at 11:40 a.m.

Revised: October 27, 2017

TENTATIVE AGENDA
for the
FOURTH MEETING
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

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

Monday, October 30

10:00 a.m. (1) **Auditing Oil and Gas Equipment for Tax Purposes**
—Jerry Wisdom, Oil and Gas Appraisal Manager, Total Assessment Solutions Corporation

11:00 a.m. (2) **County Government Property Tax Issues**
—Steve Kopelman, Executive Director, New Mexico Association of Counties (NMAC)
—Ron Lethgo, Chaves County Deputy Assessor
—Christie Humphrey, Sandoval County Assessor
—Susan Griffin, Catron County Assessor

12:00 noon **Lunch**

1:00 p.m. (3) **Legislative Finance Committee (LFC) Progress Report: Tax Gap, Audit and Compliance and Fraud**
—Charles Sallee, Deputy Director for Program Evaluation, LFC
—Maria Griego, Program Evaluator, LFC

2:00 p.m. (4) **Tax Collection Efforts**
—John Monforte, Acting Secretary, Taxation and Revenue Department (TRD)

3:00 p.m. (5) **State and Tribal Gasoline Taxes and Implications of Dual Taxation**
—Teresa Leger, Leger Law & Strategy, LLC
—Carolyn Abeita, VanAmberg, Rogers, Yepa, Abeita & Gomez, LLP
—Regis Pecos, Co-Director, Sante Fe Indian School Leadership Institute

4:30 p.m. **Recess**

Tuesday, October 31

9:00 a.m.	(6)	**Annual Report: Locomotive Fuel Tax Deduction** —Hector Dorbecker, Senior Economist, TRD —Ryan Eustice, Economist, Economic Development Department
9:30 a.m.	(7)	**Connect America Fund Update and Proposal to Promote the Deployment of Broadband Telecommunications Services in New Mexico** —Katherine Martinez, Director, Legislative Affairs, CenturyLink —Robert Shannon, Director, Tax Policy, CenturyLink
10:30 a.m.	(8)	**Proposal for a New Property Tax Valuation Method for the Conservation of Unimproved Land** —Lesli Allison, Executive Director, Western Landowners Alliance
11:15 a.m.	(9)	**Proposal for a Deduction from Gross Receipts for Construction of Non-Residential Solar Projects** —Rocky Ray, Daisy Renewables, LLC —Luigi Resta, Onyx Renewable Partners, LP
12:00 noon		**Adjourn**

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.

Monday, October 30

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.

<u>Tuesday, October 31</u>

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.

Revised: November 20, 2017

TENTATIVE AGENDA
for the
FIFTH MEETING
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

November 20-21, 2017
State Capitol, Room 322
Santa Fe

Monday, November 20

10:00 a.m. (1) **Revenue Tracking Update**
—Jon Clark, Chief Economist, Legislative Finance Committee

11:00 a.m. (2) **State Taxes, Tax Reform, Trends and Traps for the Unwary**
—Richard Anklam, President and Executive Director, New Mexico Tax Research Institute

12:00 noon **Lunch**

1:00 p.m. (3) **Revenue Outlook**
—Jeffrey Mitchell, Ph.D., Director, Bureau of Business and Economic Research, University of New Mexico

2:00 p.m. (4) **Proposal for Enacting the Energy Redevelopment Bonding Act**
—Gerard Ortiz, Vice President, Regulatory Affairs and Economic Development, Public Service Company of New Mexico (PNM)
—Sayuri Yamada, Director, Government Affairs, PNM
—Noah Long, Director, Western Energy Project, Natural Resources Defense Council

3:00 p.m. (5) **Update on Methane Waste Rules and Revenue Implications for New Mexico**
—Jon Goldstein, Director, Regulatory and Legislative Affairs, Environmental Defense Fund
—Bill Jordan, Senior Policy Advisor and Government Relations Officer, New Mexico Voices for Children
—Matthias Sayer, Deputy Cabinet Secretary, Energy, Minerals and Natural Resources Department
—Patrick Padilla, Deputy Director, New Mexico Oil and Gas Association

4:00 p.m. **Recess**

Tuesday, November 21

9:00 a.m.	(6)	**New Mexico Association of Counties (NMAC) Legislative Priorities** —Steven Kopelman, Executive Director, NMAC —Tasia Young, Lobbyist, NMAC —Kelly Ford, Member, DWI Grant Council; Director, Lea County DWI Program
10:00 a.m.	(7)	**New Mexico Municipal League Legislative Priorities** —Bill Fulginiti, Executive Director, New Mexico Municipal League
11:00 a.m.	(8)	**Proposal for Enacting the Quality Assurance Assessment Act** —Linda Sechovec, Executive Director, New Mexico Health Care Association (NMHCA) —Charlie Marquez, Lobbyist, NMHCA
11:30 a.m.	(9)	**Proposal to Exclude Prime Contractors That Operate National Laboratories from a Gross Receipts Tax Exemption for Nonprofit Entities** —Javier Gonzales, Mayor, City of Santa Fe; Chair, Regional Coalition of Los Alamos National Laboratory (LANL) Communities —Andrea Romero, Executive Director, Regional Coalition of LANL Communities
12:00 noon		**Adjourn**

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

November 20-21, 2017
State Capitol, Room 322
Santa Fe

The fifth 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, November 20, 2017, at 10:00 a.m. in Room 322 of the State Capitol in Santa Fe.

Present
Sen. Carlos R. Cisneros, Chair
Rep. Jim R. Trujillo, Vice Chair
Rep. Sharon Clahchischilliage
Rep. Roberto "Bobby" J. Gonzales
Rep. Jason C. Harper
Sen. Gay G. Kernan
Rep. Antonio Maestas
Rep. Javier Martínez (11/20)
Sen. Mark Moores
Sen. George K. Munoz (11/21)
Sen. Clemente Sanchez
Sen. William E. Sharer
Sen. John Arthur Smith
Rep. James R.J. Strickler
Rep. Carl Trujillo
Sen. James P. White (11/21)
Sen. Peter Wirth

Absent
Rep. Tim D. Lewis

Designees
Rep. Bealquin Bill Gomez (attending as a guest)
Rep. Bill McCamley (attending as a guest 11/20 and as a designee 11/21)
Rep. Rod Montoya
Sen. Bill Tallman (attending as a guest 11/21)
Sen. Pat Woods (attending as a designee 11/20 and as a guest 11/21)

Rep. David E. Adkins
Rep. Eliseo Lee Alcon
Rep. Cathrynn N. Brown
Sen. William F. Burt
Sen. Jacob R. Candelaria
Rep. Daymon Ely
Rep. Debbie A. Rodella
Sen. Nancy Rodriguez
Rep. Patricia Roybal Caballero
Rep. Angelica Rubio
Rep. Patricio Ruiloba

Rep. Tomás E. Salazar
Rep. Larry R. Scott
Rep. Nathan P. Small
Sen. Elizabeth "Liz" Stefanics
Rep. Candie G. Sweetser

Guest Legislator
Rep. Alonzo Baldonado

(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
Sara Wiedmaier, Intern, LCS

Guests
The guest list is in the meeting file.

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

Monday, November 20

Revenue Tracking Update
Jon Clark, chief economist, Legislative Finance Committee (LFC), provided an update to the committee about fiscal year 2018 General Fund revenues. Revenues to the fund in fiscal year 2018 have increased significantly from fiscal year 2017 levels but still have not reached fiscal year 2015 revenues. This increase has occurred across multiple tax programs and industry sectors, including construction, mining, wholesale and transportation. Rents and royalties have increased by $56 million from previous estimates, mostly due to record oil and gas lease bonus payments in the Permian Basin. Gross receipts tax (GRT) revenues have increased, as have income withholding tax receipts.

Mr. Clark said that the current revenue growth is the first good news for New Mexico's revenue picture in many years. If these trends continue, the state could finish fiscal year 2018 with an eight percent recurring appropriation reserve level. Employment levels have also increased, especially in Eddy and Lea counties. New Mexico employment levels have trended much lower than national averages until the past few months.

Questions and comments from committee members included the following.

- What explains the recent corporate income tax (CIT) growth? Mr. Clark said that it is difficult for the LFC to pinpoint CIT revenue fluctuations because it does not get granular data from the Taxation and Revenue Department (TRD). He said that TRD economists are concerned that previous CIT overpayments are declining, which means that CIT revenue may decrease in the future.
- What are the main drivers in the recent employment growth? Mr. Clark said that the education, health services and leisure and hospitality sectors have seen the strongest increases in growth. Since the state expanded Medicaid coverage, there have been more than 12,000 new jobs created in the health care industry. The state also employs many workers in the agriculture sector, but those numbers tend to be excluded from employment statistics because they are often unreliable. He said that the Workforce Solutions Department (WSD) has a very robust employment tracking system, which uses similar codes to the revenue tracking system the TRD uses. He suggested that the WSD periodically share its employer sector information with the TRD so that revenue tracking can be improved.
- Mining sector employment data continue to show declines in that industry. What are the drivers of the decline? Mike Bowen, executive director, New Mexico Mining Association, said that the closing of molybdenum, coal and potash mines have been the primary cause of the decline in mining employment. Copper mining employment is holding steady, and oil and gas employment is increasing.
- Will the state see a one-time revenue increase from the litigation involving underpayment of the premium tax? Mr. Clark said that Presbyterian Healthcare Services settled its case with the state for $12.5 million. Premium tax liabilities totaling $65 million have been assessed to other insurance companies, but it is unclear how much will actually be paid.
- Will the Pueblo of Pojoaque be required to pay previously unpaid revenue-sharing payments to the state for the operation of its gaming facilities? Mr. Clark said that the pueblo originally refused to sign the 2015 gaming compact, and when the 2002 compact expired, the pueblo stopped making payments to the state and put that money into escrow. A recent court decision led to the subsequent signing of the compact by the pueblo and the restarting of revenue-sharing payments. However, the court was silent on whether the pueblo should pay the withheld payments to the state. Mr. Clark said that if the pueblo is not required to pay the approximately $12 million in revenue sharing, other tribes will be incentivized to challenge their gaming compacts, purely on the basis of being relieved of those obligations during a legal challenge.
- Has the Facebook data center project in Valencia County been a factor in GRT revenue increases? Mr. Clark said that construction related to the data center will continue through 2023, which means increased GRT revenue from construction-related activities. However, that project is part of an industrial revenue bond, which means the property will not be subject to property tax and the purchase of equipment for the facilities will not be subject to the GRT or the compensating tax.

State Taxes, Tax Reform, Trends and Traps for the Unwary

Richard Anklam, president and executive director, New Mexico Tax Research Institute, discussed with the committee national taxation trends and the prospect of the reform of federal tax law by Congress. He began by discussing the CIT, which is imposed by 44 states and accounts on average for 2.7 percent of state general revenue. Since 2008, 15 states have reduced CIT rates, including New Mexico. Personal income tax (PIT) revenues account for an average of 36 percent of state general revenue. Eighteen states have reduced PIT rates in the past 10 years, but Kansas, Louisiana and South Dakota have raised rates in the past two years. General sales taxes, which account for an average of 31 percent of state general revenue, have faced erosion of their base over time. Services, which are generally untaxed in most states, have assumed a greater share of total transactions, as have online transactions. The legalization and taxation of marijuana in several states have led to a promising new revenue stream that has thus far exceeded initial expectations. If marijuana were legalized nationwide, states could raise billions of dollars annually. Gasoline taxes have been raised in seven states in the past year. Increased fuel efficiency and more alternative fuel vehicles on the roads have resulted in less revenue to fund road construction and maintenance. Some states have proposed a vehicle miles tax as an alternative to gasoline taxes, while other states have experimented with public-private partnerships to fund highway construction.

Mr. Anklam discussed developments in states' attempts to collect sales taxes from online retailers. E-commerce now accounts for 11 percent of all retail sales, which represents an enormous amount of foregone tax revenue. Since 2015, 20 states have enacted legislation to require sales tax collection from remote sellers. South Dakota enacted legislation that directly challenges the 1992 U.S. Supreme Court decision in *Quill Corp. v. North Dakota*, which required a business to have nexus in a state in order for its sales to be taxable. That law has been challenged, and the case is now before the Supreme Court.

Mr. Anklam discussed the potential impact on New Mexico of congressional tax reform legislation. The details of the legislation have been constantly changing, but the current plan would be revenue positive to New Mexico. Although the tax reform plan would generally cut federal income taxes for most individuals, many New Mexico residents would pay higher state income taxes. This is due in large part to the elimination of personal exemptions and the increase in the standard deduction, which will negatively affect taxpayers with more than two claimed exemptions. Another big change will come from the elimination for the federal deduction for the payment of state and local taxes, which will increase taxpayers' taxable income for both federal and state purposes. If policymakers do not wish to see New Mexicans paying more state income tax, the legislature could enact legislation to decouple parts of the PIT from federal rules. Other possible consequences of the legislation include cuts to Medicare and Medicaid from mandatory sequestration if the deficit from the legislation is increased by more than $1.5 trillion over 10 years.

Questions and comments from committee members included the following.

- What will be the impact on New Mexico businesses if the Section 179 deduction limit, which allows for immediate expensing of depreciable assets, is increased from $500,000 to $5 million? Mr. Anklam said that the change to that deduction could positively affect nearly all businesses in New Mexico.
- The federal government is currently subsidizing high-tax states by allowing for taxpayers to deduct their state and local taxes paid from their federal taxable income. However, that deduction does currently eliminate the double taxation of income.
- The proposed congressional tax package is mostly a giveaway to the super-rich. Mr. Anklam said that the current federal tax code is in need of many fixes. However, the package is being acted on hurriedly, which will probably result in even more poor tax policy.

Revenue Outlook

Jeffrey Mitchell, Ph.D., director, Bureau of Business and Economic Research (BBER), University of New Mexico, presented the BBER's economic forecast for New Mexico. Since the 2016 election, the nation's economy is predicted to have strong growth in the short term but slower growth for the next several years. In New Mexico, the state lost jobs for two consecutive quarters and is predicted to have slight job growth in the second and third quarters of 2017. The mining sector lost 5,600 jobs in 2016, while the health care sector gained more than 4,600 jobs. Personal income continues to grow slowly but is still only at two percent annually. Increased drilling rig activity and stable oil prices are predicted to continue for the next few years, which will be a benefit to the economy. However, federal reimbursements to Medicaid are beginning to decline, which means the state will be losing a significant income source over the next several years.

The state government financial picture is improving, after several years of declining revenues. Recurring revenues are projected to be $36 million higher than in fiscal year 2017, and thanks to unexpected strong revenue growth at the end of fiscal year 2017, reserve levels are expected to be above six percent. Every major revenue source except CIT revenue and investment income increased between fiscal year 2016 and fiscal year 2017. Gross receipts in nearly every industry sector also increased. Another positive development came from the enactment of legislation during the 2017 special legislative session to transfer a portion of excess oil- and gas-related revenue to the Tax Stabilization Reserve, instead of to the General Fund, in order to smooth out that revenue volatility.

New Mexico's economic outlook for the next five years includes stable job growth, slightly outpacing labor force growth. Total jobs are expected to reach pre-recession levels by 2019 and should grow by more than one percent annually. The largest job growth will occur in the health care, hospitality, construction and professional services sectors, and the largest growth will occur in the Albuquerque metropolitan area. Personal income is projected to continue to rise, from two percent growth in 2017 to four percent in 2021.

Questions and comments from committee members included the following.

- All of the states surrounding New Mexico have seen large population increases in the past decade, but New Mexico's population is stagnant. Dr. Mitchell said that the number of people leaving New Mexico has not changed very much but that the number of people moving to the state has dropped.
- The economy in El Paso, Texas, is on fire, but right across the border in New Mexico, growth is not happening at the same level. The state needs to make investments to attract business. Dr. Mitchell said that new businesses are creating new jobs at a rate comparable to surrounding states; the problem, however, is that existing businesses are losing jobs. He also said that states that have booming economies have focused a significant amount of money and energy on improving their educational systems for decades.

Proposal for Enacting the Energy Redevelopment Bonding Act

Gerard Ortiz, vice president, regulatory affairs and economic development, Public Service Company of New Mexico (PNM); Sayuri Yamada, director, government affairs, PNM; and Noah Long, director, Western Energy Project, Natural Resources Defense Council (NRDC), discussed with the committee proposed legislation that would provide a bonding source for PNM and other energy companies to transition from coal-based electricity generation to other sources. The coal-fired San Juan Generating Station is scheduled to be completely closed in 2022, more than 30 years ahead of its depreciable life. PNM is currently able to get traditional financing to cover the costs associated with closing the station, but high financing costs would result in higher customer charges. The bill would provide for a financing mechanism that would allow for a AAA rating for bonds. The legislation would guarantee that energy redevelopment bonds would be paid by a separate, dedicated charge on customer bills. This dedicated revenue stream would make financing costs for bonds issued to pay for energy redevelopment costs associated with the closing of the generating station much cheaper. The issuance of these higher-rated bonds would result in customer savings of more than $230 million.

Mr. Long said that the NRDC is not opposed to the legislation allowing for the issuance of bonds but wants to ensure that money is invested wisely. The NRDC wants PNM to invest much more in renewable energy sources than is proposed. Additionally, Mr. Long suggested that 50 percent of the cost savings from the financing of the bonds be used to reinvest in San Juan County to partially offset the loss of the coal industry to the economy.

Questions and comments from committee members included the following.

- Reliability of electric service is just as important as cost, and renewable energy is not as reliable as coal or natural gas in producing electricity. With the closing of the coal mine and the generating station, San Juan County will lose an additional 1,000 jobs. School districts and the county will also lose a significant portion of their property tax base from the closings. Currently, the goals of having full employment and renewable energy are not compatible.

- Governments in San Juan County will see a huge fiscal impact resulting from the closings of the coal mine and generating station. The generating station still has more than 30 years of usable life, and there is plenty of coal still in the ground. The proposed legislation, along with other proposals, are intended to provide a bit of a soft landing for the economy.
- Will PNM shareholders benefit from enactment of the legislation? Ms. Yamada said that all cost savings from issuance of the bonds would be passed on to customers.
- What will the impact on electricity rates be once the transition from coal-based electricity is completed? Mr. Ortiz said that he is not sure what the actual rates will be. However, PNM determined that it would not be cost-effective to continue operating the generating station beyond 2022, and converting to natural gas sources will be cheaper.

Update on Methane Waste Rules and Revenue Implications for New Mexico

Jon Goldstein, director, regulatory and legislative affairs, Environmental Defense Fund (EDF); Bill Jordan, senior policy advisor and government relations officer, New Mexico Voices for Children; Matthias Sayer, deputy secretary, Energy, Minerals and Natural Resources Department (EMNRD); and Patrick Padilla, deputy director, New Mexico Oil and Gas Association, discussed with the committee implications of a methane waste rule adopted, but subsequently suspended, by the federal Bureau of Land Management (BLM) and the environmental and fiscal impacts of flared and vented methane. Mr. Goldstein said that New Mexico's oil and gas companies emit 570,000 tons of methane each year, which is enough gas to meet the annual heating and cooking needs of every home in the state. This leaked gas is worth approximately $200 million and about $27 million in lost state tax and royalty payments. The nation's largest methane hotspot is located above San Juan County, and, according to a 2017 study, natural emissions of methane account for only a small fraction of total emissions in the area. Many states that have implemented tougher methane capture regulations have experienced increased growth in oil and gas operations. In Colorado, the EDF and the Colorado Oil and Gas Association collaborated in the development of a recently adopted methane waste rule. Mr. Goldstein recommended that the BLM methane waste rule be fully implemented and that the EMNRD adopt stricter rules governing methane flaring and venting.

Mr. Jordan said that families in New Mexico deserve the best standards for air quality. Methane capture rules would also maximize revenues to the state. He said that the foregone revenue from vented and flared gas could pay for the expansion of pre-kindergarten programs by 50 percent. Surrounding states have already adopted sensible methane capture rules, and New Mexico should do the same.

Deputy Secretary Sayer said that the EMNRD has already acted to reduce the volume of vented and flared methane in the state. The governor appointed a task force to study the problem in 2015, and since then, methane emissions have been greatly reduced. Alaska has traditionally been the highest emitter of methane, with many times the amount emitted by New Mexico. In New Mexico, the percentage of vented and flared gas has always been a small proportion of the total amount of non-transported gas, and that percentage has declined even more since 2015. Recent technological advances in the oil and gas industry have allowed for the economical capture of much more gas. The total amount of vented and flared gas in New Mexico has decreased by 52 percent since 2015, and as a percentage of total production, it has decreased from more than two percent to one percent in July 2017. He disputed Mr. Goldstein's claim that most of the San Juan methane hotspot can be traced to vented gas, citing a study that showed that the Fruitland Coal outcrop in nearby Colorado is responsible for most of the methane emissions in the area.

Mr. Padilla said that if the BLM methane capture rule is fully implemented, more than 50 percent of marginal wells in the state will cease operating, resulting in a 10 percent to 20 percent reduction in gas production. In southeastern New Mexico, processing the naturally sour natural gas into a usable commodity costs more than its final value. The oil and gas industry has been proactive in attempting to reduce gas emissions because that gas is worth money. Even with a significant increase in gas production, methane emissions have drastically decreased. However, there are still many impediments to gas capture, including lack of pipelines and pipeline capacity, gas that does not meet minimum pipeline requirements and disruptions in the gas-processing chain. Mr. Padilla said the state does not need additional regulations related to methane emissions.

Questions and comments from committee members included the following.

- If methane capture rules are implemented, existing marginal wells should be exempted. Most marginal wells cannot incur additional costs. Twenty-seven million dollars in lost revenue due to venting and flaring is minuscule compared to the approximately $800 million in revenue the state would earn if the BLM would act on drilling permits within 30 days, as it is required to do.

Recess

The committee recessed at 4:48 p.m.

Tuesday, November 21

The committee was reconvened on Tuesday, November 21, 2017, at 8:59 a.m. by Senator Cisneros.

New Mexico Association of Counties (NMAC) Legislative Priorities

Steve Kopelman, executive director, NMAC; Tasia Young, lobbyist, NMAC; and Kelly Ford, member, DWI Grant Council, and director, Lea County DWI program, discussed with the committee the NMAC's legislative priorities for the upcoming legislative session. Mr. Kopelman discussed the top priorities, including the following.

- Tax Reform. The NMAC supports tax reform efforts that protect county revenue. Counties and municipalities must be at the negotiating table during any tax reform effort. Tax policies should be developed that minimize conflicts between local governments in a county. The NMAC would oppose any legislation that reduces hold harmless distributions to compensate for food and medical services deductions or that would reduce county GRT authority.

- Protecting County Funding of Health Care. Counties need to be involved in any policy discussions that involve health care funding and planning. The NMAC would oppose any efforts to shift additional health care costs to counties.

- Extend Liquor Excise Tax Distribution to the Local DWI Grant Fund. The increased distribution to the Local DWI Grant Fund should be extended indefinitely to support ongoing DWI prevention efforts.

- Local Election Act. The NMAC supports legislation that would enact the Local Election Act, which would align local elections to occur on the same day.

- Forfeiture Act Reform. The NMAC supports legislation that would make changes to the 2015 amendments to the Forfeiture Act. Needed changes include equitable sharing of federally seized assets, provisions for storage of abandoned property and the ability for local authorities to seize and dispose of forfeited property while preserving due process provisions.

Ms. Young discussed the county GRT increment possibilities, most of which remain unused and unusable. Most GRT increments were authorized for specific purposes or for specific counties. It would be better to allow counties more general purpose increments, which can be dedicated to a specific purpose if needed. She said that GRT revenue accounts for more than 50 percent of county revenues in most counties.

Ms. Ford said that the DWI Grant Council supports the permanent increase in distributions of liquor excise tax revenues from 41.5 percent to 46 percent to the Local DWI Grant Fund. That increase is scheduled to return to 41.5 percent in 2018. However, because of recent legislative sweeps from the fund, very little extra money has been used for DWI programs. Funding for DWI programs has actually been cut in recent years. There is a huge unmet need across the state for providing services to DWI offenders and for educational DWI awareness programs.

Questions and comments from committee members included the following.

- Local governments need a broader tax base than just GRT and property tax revenues.
- Liquor excise tax revenues should also be used to support drug court programs, but not at the expense of existing DWI programs.

- Why is McKinley County the only county that is allowed to impose a local liquor excise tax? Ms. Young said that there have been attempts to allow all counties to impose that tax, but previous administrations have opposed the idea.
- Why is the DWI dismissal rate higher than 50 percent in some counties? Perhaps some liquor excise tax revenue should be distributed to the courts and district attorneys in order to prosecute more cases. Ms. Ford said that the council is currently studying that issue. There are many factors involved in why a DWI case may be dismissed.
- Is Bernalillo County spending any money received from the recently imposed GRT increment dedicated to behavioral health services? Ms. Young said that the county spent some time planning programs, which are now being implemented. The GRT increment is expected to raise $18 million annually for behavioral health programs.

New Mexico Municipal League (NMML) Legislative Priorities

Bill Fulginiti, executive director, NMML, discussed with the committee the NMML's top priorities for the upcoming legislative session. The NMML opposes any federal or state mandate that imposes additional unfunded mandates or preempts municipal authority. The NMML is concerned about ongoing attempts to limit municipal revenues and taxing authority. The NMML would prefer to have a wide variety of tax revenue sources instead of relying solely on gross receipts and property taxes. The NMML has proposed in the past to give up a portion of GRT revenues in exchange for a portion of income tax revenue. It would also like to be able to impose compensating tax at the same rate that the GRT is imposed. Any changes made to the GRT base should not reduce municipal revenue. The NMML also favors either allowing municipalities to impose local option gasoline taxes or increasing the municipal share of the state gasoline tax.

The NMML adopted two priority resolutions for the upcoming legislative session. The NMML continues to support general obligation bond funding for libraries statewide and recommends that the legislature allot $18 million for that purpose. The NMML would also like to change dated statutory distribution provisions of the Law Enforcement Protection Fund. The distribution formula should be modified to distribute all of the balances in the fund to municipal, county, tribal and university law enforcement agencies, rather than the small percentage that is currently distributed. Money in the fund should also be distributed to the three regional law enforcement training academies instead of only to the state-run academy.

Mr. Fulginiti said that the TRD's recent agreement with Amazon to collect and remit the state GRT did not include the collection of local option GRT increments. Attempts by the NMML to review the agreement have been refused by the TRD, citing confidentiality provisions. The NMML is currently working with Amazon to agree to collect local option GRT revenues. The current agreement does not distribute any portion of the 1.225 percent municipal share to any municipality. The NMML is considering suing the administration to force it to distribute that portion of GRT revenues to municipalities, based on the location of the customer.

Questions and comments from committee members included the following.

- Although municipalities are able to impose a tax of 7.65 mills on property, very few municipalities have fully imposed their maximum mill levy. In addition, property tax and correctional issues need to be coordinated with county governments.
- The TRD has had trouble correctly distributing tax revenue for a very long time. This is especially true in the distribution of gasoline tax revenue. Mr. Fulginiti agreed and said that municipalities and counties have not received tens of millions of dollars that they are owed.
- Have there been problems with distributions of the Fire Protection Fund? Mr. Fulginiti said that the legislature changed the timing for distribution of that fund in order to reduce fiscal year 2017 budget shortfalls. Counties and municipalities still receive the same amount of money as in previous years, but it is distributed according to that month's receipts. This means that distributions change monthly, which has caused problems for many smaller fire districts.
- If the gasoline tax were to be raised to cover state and local road needs, how much of an increase is needed? Mr. Fulginiti said that if an additional five cents per gallon were distributed to municipalities and counties, road infrastructure needs of local governments could be addressed.

Proposal for Enacting the Quality Assurance Assessment Act

Linda Sechovec, executive director, New Mexico Health Care Association (NMHCA), and Charlie Marquez, lobbyist, NMHCA, presented potential legislation for the committee's consideration that would leverage additional federal Medicaid funding for the state to pay for long-term care of disabled and elderly residents. New Mexico currently has four times the national average for nursing facility citations for inadequate care of residents. The primary reason for the high rate of citations is inadequate nursing facility staffing levels, which are driven primarily by Medicaid and Medicare reimbursements. Inadequate Medicaid reimbursements, coupled with lengthy coverage approval periods, have meant that many nursing facilities are unable to continue operating. A solution to this problem, which has been implemented in several other states, would be to impose a quality assurance fee on nursing homes and intermediate care facilities, based on the number of patients cared for and net revenue received during the previous two calendar quarters. This fee would be collected by the Human Services Department (HSD) and be used to leverage more Medicaid funding from the federal government. Twenty percent of the fee could be used by the HSD for general Medicaid purposes, and the remainder would be used to increase Medicaid reimbursement rates for nursing and intermediate care facilities.

Questions and comments from committee members included the following.

- The Department of Health's designation of "immediate jeopardy" of a nursing home needs to be reformed. The department can close down a facility almost immediately, but it can take a very long time for the designation to be removed.
- Will the quality assurance fee be assessed based on Medicare receipts? Ms. Sechovec said that federal law preempts the taxation of Medicare services. The fee will be assessed based on Medicaid and all other reimbursements.

- How did Medicaid reimbursement rates fall so far below actual costs? Ms. Sechovec said that in 2014, the HSD made drastic changes to nursing facility reimbursement rates, on the erroneous assumption that the previously higher rates encouraged too many providers to enter into the industry. Many patients were disqualified from receiving the higher level of services they require and had previously been receiving.

Proposal to Exclude Prime Contractors That Operate National Laboratories from a GRT Exemption for Nonprofit Entities

Javier Gonzales, mayor, City of Santa Fe, and chair, Regional Coalition of Los Alamos National Laboratory (LANL) Communities; and Andrea Romero, executive director, Regional Coalition of LANL Communities, presented proposed legislation for the committee's consideration that would require an entity operating a national laboratory in the state to pay the GRT for services performed for the federal government. Mayor Gonzales said that LANL and Sandia National Laboratories have together paid more than $250 million in GRT to the state and local governments. Both laboratories are currently operated by for-profit entities, but a new contractor to operate LANL will be chosen next year. If the new entity is organized as a nonprofit entity, it will be exempt from paying the GRT, which could have a devastating impact on many local governments in the region.

Ms. Romero said that the federal Department of Energy (DOE) considers the New Mexico GRT to be an allowable cost and does not factor taxes into the bidding process of selecting a contractor. The legislation would add an exception to the exemption for paying the GRT for contractors operating a national laboratory. If the legislation is not enacted, many local governments could be financially destabilized.

Questions and comments from committee members included the following.

- The proposed legislation is bad tax policy and potentially dangerous. The legislation essentially is an exemption to an exemption. There is a possibility that the DOE will cut programming to LANL in an amount to offset the taxes it is paying. Mayor Gonzales said that if a nonprofit entity begins operating LANL, there will be a huge revenue impact to the local governments in the region. He said that other states with national laboratories have enacted legislation to ensure that local governments' tax bases remain intact. The instability of the GRT revenue also makes it difficult for entities to use the GRT as a bonding source.
- Anthony Mortillaro, executive director, North Central Regional Transit District (NCRTD), said that GRT collections in Los Alamos County provide about 20 percent of the district's GRT revenue. If the operator of LANL were no longer required to pay the GRT, the NCRTD would lose about $1.1 million annually and would be forced to reduce services.

Adjournment

There being no further business, the committee adjourned at 12:15 p.m.

Revised: December 8, 2017

TENTATIVE AGENDA
for the
SIXTH MEETING
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

December 11-13, 2017
State Capitol, Room 322
Santa Fe

Monday, December 11

10:00 a.m. (1) **Transferring the Collection of the Premium Tax from the Office of Superintendent of Insurance (OSI) to the Taxation and Revenue Department (TRD)**
—Vicente Vargas, General Counsel, OSI
—Ron Scott, Director, Audit and Compliance Division, TRD

11:00 a.m. (2) **Observations on Tax Reform in New Mexico**
—Tom Clifford, Ph.D.

12:00 noon **Lunch**

1:00 p.m. (3) **Annual Report: Laboratory Partnership with Small Business Tax Credit**
—Micheline Devaurs, Manager, Market Transition Program, Los Alamos National Laboratory
—Genaro Montoya, Program Leader, New Mexico Small Business Assistance Program, Sandia National Laboratories

2:00 p.m. (4) **Report: Public Employees Pension Fund Solvency**
—Wayne Propst, Executive Director, Public Employees Retirement Association

3:00 p.m. (5) **Oil and Gas Equipment Taxes Explained**
—Ryan Flynn, Executive Director, New Mexico Oil and Gas Association
—Florence Livingston, Mack Energy Corporation

4:00 p.m. **Recess**

Tuesday, December 12

9:00 a.m.	(6)	**Update on Federal Tax Reform** —Richard Anklam, President and Executive Director, New Mexico Tax Research Institute
10:00 a.m.	(7)	**Revenue Forecast** —Clinton Turner, Chief Economist, Department of Finance and Administration —Jon Clark, Chief Economist, Legislative Finance Committee —John Monforte, Acting Secretary, TRD
12:00 noon		**Lunch**
1:00 p.m.	(8)	**Report on Tax Study** —Andrew Phillips, Principal, Quantitative Economics and Statistics Group (QUEST), Ernst & Young LLP (EY) —Caroline Sallee, Senior Manager, QUEST, EY
4:00 p.m.		**Recess**

Wednesday, December 13

9:00 a.m.	(9)	**House Memorial 72 (2017) Report: Recognizing an Opportunity for Growth Presented by the Escalante Generating Station in Prewitt, New Mexico** —Jeff Kiely, Executive Director, Northwest New Mexico Council of Governments —Michael Sage, Deputy Director, Greater Gallup Economic Development Corporation —Eileen Yarborough, Executive Director, Cibola Communities Economic Development Foundation
10:00 a.m.	(10)	**Proposals for Committee Endorsement**
12:00 noon		**Adjourn**

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

December 11-13, 2017
State Capitol, Room 322
Santa Fe

The sixth 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, December 11, 2017, at 9:59 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
Rep. Javier Martínez
Sen. Mark Moores
Sen. George K. Munoz (12/11, 12/12)
Sen. Clemente Sanchez
Sen. William E. Sharer
Sen. John Arthur Smith
Rep. James R.J. Strickler
Rep. Carl Trujillo (12/11, 12/12)
Sen. Peter Wirth

Absent
Rep. Jim R. Trujillo, Vice Chair
Rep. Tim D. Lewis
Sen. James P. White

Designees
Rep. Eliseo Lee Alcon (attending as a guest 12/11, 12/12)
Rep. Cathrynn N. Brown (attending as a guest 12/13)
Sen. William F. Burt
Rep. Bill McCamley (attending as a guest 12/12)
Rep. Rod Montoya
Rep. Patricio Ruiloba (attending as a guest)
Rep. Larry R. Scott (attending as a guest 12/11)
Sen. Bill Tallman (attending as a guest 12/11, 12/12)

Rep. David E. Adkins
Sen. Jacob R. Candelaria
Rep. Daymon Ely
Rep. Bealquin Bill Gomez
Rep. Debbie A. Rodella
Sen. Nancy Rodriguez
Rep. Patricia Roybal Caballero
Rep. Angelica Rubio
Rep. Tomás E. Salazar
Rep. Nathan P. Small
Sen. Elizabeth "Liz" Stefanics
Rep. Candie G. Sweetser
Sen. Pat Woods

Guest Legislators
Sen. Pete Campos
Rep. D. Wonda Johnson (12/12, 12/13)
Rep. Patricia A. Lundstrom (12/13)
Sen. Richard C. Martinez
Rep. Jane E. Powdrell-Culbert (12/11)
Rep. Linda M. Trujillo (12/12, 12/13)

(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
Sara Wiedmaier, Intern, LCS

Minutes Approval
Because the committee will not meet again this year, the minutes for this meeting have not been officially approved by the committee.

Guests
The guest list is in the meeting file.

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

<u>**Monday, December 11**</u>

Transferring the Collection of the Premium Tax from the Office of Superintendent of Insurance (OSI) to the Taxation and Revenue Department (TRD)
Vicente Vargas, general counsel, OSI, and Ron Scott, director, Audit and Compliance Division, TRD, gave a progress report to the committee about proposed legislation and planning for the transfer of responsibilities of administering the premium tax from the OSI to the TRD. In 2016, the Legislative Finance Committee (LFC) recommended that administration of the premium tax be transferred to the TRD. Legislation during the 2017 regular legislative session failed to pass, but a provision in the General Appropriation Act of 2017 directed the agencies to develop a plan to implement the transfer. The OSI and TRD recently met and are developing legislation to effect the transfer. The TRD would collect and distribute the revenues and administer the audit, protest and penalty process through the Tax Administration Act. In addition, the TRD would administer the collection of taxes paid by out-of-state insurers, also called surplus lines insurers.

The TRD has estimated the initial transition costs as well as recurring operating costs of administration of the premium tax. The department will need an additional 30 staff to administer the tax program, with an annual operating expense of approximately $2.2 million. Some staff at the OSI would be transferred to the TRD. Initial implementation costs are estimated, at the high end, to be $3.9 million. That cost estimate includes approximately $3 million for new software that would incorporate the premium tax system into the TRD's GenTax system. Another lower estimate of approximately $1.2 million was given in case the current OSI system of premium tax administration could be modified to fit within the GenTax system. However, it is still not clear whether that is possible.

Questions and comments from committee members included the following.

- Does the OSI have any entity that oversees its operations? Mr. Vargas said that there is no direct oversight of the OSI. However, the Insurance Nominating Committee has the power to hire and fire the superintendent of insurance.

- Insurance companies should understand all of the implications from transferring administration of the premium tax to the TRD. There might be some unintended consequences from the transfer.

- The same people who missed out on millions of dollars of premium tax underpayments should not be transferred to the TRD to oversee the same tax program. Mr. Vargas said that staff at the OSI were not at fault. The problem was that the process was not fully defined, which meant that taxes were not fully assessed.

- Is there really a need to transfer the administration of the premium tax to the TRD, especially in light of the improvements made to the system recently by the OSI?

Observations on Tax Reform in New Mexico

Tom Clifford, Ph.D., discussed with the committee one possible approach to tax reform in New Mexico. States periodically need to restructure their tax systems, due to piecemeal enactment of overlapping and sometimes contradictory tax policies and due to economic, demographic and technological changes. The rise of e-commerce, the state's decreased reliance on manufacturing, the aging of the population, interstate competition for economic development and fluctuations in the oil and gas industry have all contributed to the need to revise New Mexico's tax system. Dr. Clifford cautioned that if policymakers insist that tax reform be revenue neutral, they may be limiting the potential for positive change in the economy. However, any tax reform effort will create winners and losers, making it more difficult politically to accomplish.

Revenue adequacy for budget purposes is the main, but not the only, purpose of tax policy. Taxes also are used as incentives to behavior, which sometimes competes with the goal of adequacy. The governmental share of the United States economy has remained around 35 percent for the past few decades. However, as social insurance programs, such as health care, grow more expensive, other programs, such as education, face pressure to be reduced. In New Mexico, the state has lower than average capacity to produce adequate revenues, yet it has spent more money than average, mostly due to federal transfers for health care and education. General

Fund revenue as a percentage of New Mexico's gross state product has tended to remain stable at between six percent and seven percent.

New Mexico relies more heavily on sales taxes than other states and has much lower property tax rates than most states. The state does not receive any General Fund property tax revenue, and local property tax rates are limited constitutionally. This imbalance costs New Mexico businesses an average of $1.4 billion extra annually, compared to the national average. Although economists tend to agree that taxing consumption is better for the economy than taxing income because it encourages saving, this effect is much weaker in a small open economy like New Mexico. In addition, New Mexico's gross receipts tax (GRT) imposes a higher level of business-to-business taxation, which results in economic distortions.

Dr. Clifford suggested that policymakers consider allowing for higher property taxes and lowering GRT rates as a long-term approach to maintaining revenue adequacy. Property taxes tend to be used by local governments in providing services to residents and thus resemble user fees. The supply of real property is also relatively insensitive to the rate of taxation and is less regressive than other forms of taxation. Property tax revenue is also more stable than revenue from General Fund taxes, meaning it could provide a hedge against recession. The current heavy reliance on GRT revenue is difficult to fix without a different revenue source, and there is still plenty of room for property tax rates to grow. This change would reduce the overall regressivity of New Mexico's tax structure while contributing to a more sustainable revenue stream to fund state and local governments.

Questions and comments from committee members included the following.

- Deeded property in New Mexico only accounts for one-third of the total land in the state. Residential property values have declined by more than 30 percent in the past decade and are only beginning to increase. Industrial revenue bonds have also severely reduced the property tax base. There may not be enough deeded property and value to rely more heavily on a property tax. Finally, getting voters to pass a constitutional amendment to allow for more than a 20-mill property tax rate would be nothing short of miraculous.

- In San Juan County, only six percent of the land is deeded. Counties rely on the GRT to provide operating revenues, and many counties could not switch to a property-tax-based revenue stream. If the GRT deduction for food purchases were repealed, while still providing for some relief for low-income consumers, much of the revenue stability problem would be solved.

Annual Report: Laboratory Partnership with Small Business Tax Credit

Micheline Devaurs, manager, Market Transition Program, Los Alamos National Laboratory; Genaro Montoya, program leader, New Mexico Small Business Assistance Program, Sandia National Laboratories; and David Old, president, Old Wood, reported to the committee on the activities of the laboratories in assisting small businesses across the state. The GRT credit is granted in an amount up to $2.4 million annually for each laboratory for technical assistance it provides to small businesses during the year. Up to $20,000 annually in technical assistance may be provided to a company located in a rural area. Since its inception in 2000, the program has provided more than $53 million in technical assistance to more than 2,600 businesses in every county. In 2017, about 345 businesses were expected to receive assistance.

Mr. Old described his company and the assistance it received. Old Wood, located in Las Vegas, manufactures wood flooring from sustainably harvested trees in New Mexico. The company recently began selling pinon firewood around the world, and it received assistance from the New Mexico Manufacturing Extension Partnership (MEP) to streamline production. The MEP used "lean" manufacturing principles to completely redesign the firewood portion of the business, including purchasing, wood preparation, packaging, storage and shipping. The company has also received assistance on various aspects of its flooring manufacturing business. Mr. Old said that the company is currently working on a new product that turns wood into carpeting replacement.

Questions and comments from committee members included the following.

- Old Wood has been a tremendous benefit to San Miguel County's economy. It is difficult to quantify the return on investment of the tax credit and assistance program, but many thousands of new jobs have been created.

Report: Public Employees Pension Fund Solvency

Wayne Propst, executive director, Public Employees Retirement Association (PERA); Dominic Garcia, chief investment officer, PERA; and John Garrett, principal and consulting actuary, Cavanaugh Macdonald Consulting, LLC, gave an update to the committee about the solvency of the PERA's pension funds. In the past 20 years, the ability of pension funds nationwide to achieve targeted investment returns has been much more difficult. Investing a large portion of a fund in bonds and cash instruments used to provide sufficient income to provide for pension fund solvency, but that situation is no longer true. Bonds and cash have performed much lower than the PERA's target of 7.5 percent, making stocks and other types of investment necessary.

The PERA fund balance was $15.3 billion at the end of September and returned 11.1 percent in fiscal year 2017. Slightly more than $1 billion in pensions was paid during that year. At the end of fiscal year 2017, the funded ratio of the PERA pension program was 74.9 percent, and it was projected to have a funded ratio of 87.6 percent by 2043. This is a slight increase from the previous year but much lower than the projected ratios from 2013-2015. Separated into pension categories, the state general plans and municipal fire plans will be severely underfunded by 2043, while the state police, municipal general and municipal police plans will be more than 100 percent funded. Of the $20.2 billion of actuarial accrued liability the plans have, about two-thirds is allocated to retirees and one-third is allocated to active members.

The PERA performed analyses of the funded ratio of the pension plans based on various potential scenarios to demonstrate the impact of investment volatility. The PERA fund achieved better-than-expected investment returns in 2017, which resulted in the projected funded ratio for 2043 increasing from 2016's estimate of 76.7 percent to 87.6 percent. That one good year of investment returns had a significant impact on future funded ratios. Similarly, if the funds only returned an investment of 3.75 percent in 2019, the 2043 funded ratio would drop to 58.6 percent. The PERA also modeled the pension solvency if a new third pension tier were added that reduced benefit accruals by future public employees with only average investment returns. That model showed the fund solvency at a ratio of more than 100 percent funded. However, that same model would yield a funded ratio of 45.8 percent if investment returns were less than expected. Other theoretical models included suspending annual cost-of-living allowances (COLAs) and replacing COLAs with an annual extra pension payment, each of which showed dramatic changes to the 2043 funded ratio. The modeling was not an endorsement by the PERA board of any changes to retirement plans; it was merely an exercise in demonstrating the impacts on the future funded ratio from potential changes to plans.

Questions and comments from committee members included the following.

- PERA staff were requested to provide the committee with the amount of investments made by the PERA fund in the fossil fuel industry.

- Can plans that are overfunded be used to help fund underfunded plans? Mr. Propst said that the PERA board is currently looking at that possibility.

- Reducing retiree COLAs would have an enormous impact on the solvency of the PERA fund. Mr. Propst said that many pension plans across the country have modified COLA provisions to improve pension plan solvency. He said that the PERA plans cannot become solvent merely by investment returns.

- Why is the municipal fire pension plan so underfunded? Mr. Propst said that the rates and benefits for that plan were set many years ago. Firefighters tend to stay in the same plan their entire careers, and benefits accrue very rapidly under that plan.

Oil and Gas Equipment Taxes Explained

Patrick Padilla, deputy director, New Mexico Oil and Gas Association, discussed with the committee the role that the oil and gas industry plays in the state's economy and discussed a recent presentation to the committee about the assessment of oil and gas equipment. The oil and gas industry provides nearly one-third of the state's General Fund revenues and contributes more than $12.8 billion annually to the state's economy. The industry is responsible for creating 105,000 jobs in the state, making it the state's largest driver of private sector employment. Besides producing significant General Fund revenues, the industry also contributes more than $400 million to the Land Grant Permanent Funds and more than $800 million to the Severance Tax Bonding Fund.

The oil and gas industry also pays a significant amount of property taxes and ad valorem taxes in lieu of property taxes, the revenue from which gets distributed to counties. The oil and gas ad valorem production tax and the oil and gas production equipment ad valorem tax are assessed on the value of the oil or gas produced by a well in lieu of regular property taxes used in the production of the oil or gas. These taxes are paid to the TRD. Companies are also subject to the regular property tax imposed by counties and other taxing entities on any other equipment not directly related to the production of oil or gas, such as pipelines and drilling rigs. County assessors and the TRD have special valuation processes to value this equipment.

Mr. Padilla said that Total Assessment Solutions Corporation (TASC) began performing equipment valuations for Eddy County recently, using generally unaccepted methodologies, unreliable data and suspect definitions in order to generate more property tax revenue for the county. He said that the credibility of TASC's audits has been questioned by courts in several states, including Oklahoma, Colorado, Kansas and New Mexico. Eddy County spent $850,000 on a contract with TASC, yet has only received $300,000 in additional tax revenue. Mr. Padilla suggested that the industry work directly with county and TRD assessors and that assessors provide the industry with specific reporting directives to ensure correct reporting of equipment values. Using third-party companies is fiscally imprudent and results in incorrect valuations.

Questions and comments from committee members included the following.

- Some companies are correctly paying property taxes on equipment, but many are not. There is not enough funding at the state and local levels to properly assess property. Mr. Padilla said that equipment used in the production of oil and gas, typically before the meter, is subject to the ad valorem taxes and not to the property tax. Now, a new player is attempting to change the norms that have been used for decades. The industry is willing to work with the state and county assessors to clarify some issues. However, it is usually clear which property is subject to property taxation.

- Did the auditor for TASC use proper methodology and have sufficient information to determine when ad valorem taxation ends and property taxation begins? Mr. Padilla said that information would be very difficult to obtain as an outside entity. He said that some companies that are not involved in transportation of natural gas received a tax bill from Eddy County for equipment used in transportation.

Recess

The committee recessed at 3:45 p.m.

<u>Tuesday, December 12</u>

The committee was reconvened by Senator Cisneros on Tuesday, December 12, 2017, at 9:04 a.m.

Update on Federal Tax Reform

Richard Anklam, president and executive director, New Mexico Tax Research Institute, provided an update to the committee on pending federal legislation to reform the federal tax code. He said that he had hoped to be able to present the final tax reform package to the committee; however, the legislation was still in conference, and no final package had been announced. He predicted that most of the senate version would end up in the final legislation. He said that due to the elimination of personal exemptions found in both versions, many New Mexicans with more than one dependent will pay higher state personal income taxes (PIT). Changes to business taxes, including for pass-through entities and corporations, will likely reduce those entities' state taxes. The TRD will need to perform an analysis of the final tax legislation to determine exactly how the legislation will affect state revenues.

Questions and comments from committee members included the following.

- What would the impacts on New Mexico be if the federal "PAYGO" sequestration rules are triggered? Jon Clark, chief economist, LFC, said that Medicare and Medicaid funding could be cut, as well as the $470 million the state currently receives from federal mineral leasing receipts, if the sequestration rules are triggered.

- What will happen to the alternative minimum tax under the proposed legislation? Mr. Anklam said that both the house and senate versions eliminate that tax for individuals.

- The legislature may need to make changes to New Mexico tax statutes during the upcoming legislative session in order to avoid unintentional tax increases. There will be winners and losers in New Mexico from the federal legislation.

- What provisions are in the tax legislation that affect small businesses? Mr. Anklam said that besides the cuts to tax rates, small businesses will also be able to take advantage of the immediate expensing of equipment, rather than being required to depreciate it.

Revenue Forecast

Clinton Turner, chief economist, Department of Finance and Administration, Mr. Clark and John Monforte, acting secretary, TRD, presented the Consensus Revenue Estimating Group's (CREG's) revenue forecast. Mr. Turner said that fiscal year 2018 and 2019 revenues are expected to grow by more than three percent, resulting in $199 million in "new money" available for fiscal year 2019 budgeting. Despite the good revenue news, New Mexico's economy is expected to continue to grow slowly, and there remains a modest chance of the nation entering a recession. Due to the volatility of the state's revenue sources, New Mexico should target a minimum of 10 percent reserves annually. If current trends for fiscal year 2018 continue, the state reserve levels are projected to be nine percent at the end of the fiscal year.

The United States' gross domestic product is expected to continue growing at a rate of between two and three percent for the next few years, and inflation is expected to return to long-term averages above two percent. The Board of Governors of the Federal Reserve System is expected to continue increasing lending rates in 2018 at a measured pace. New Mexico employment levels are growing slowly and are expected to increase by one percent annually for the next few years. Southeastern New Mexico has seen rapid employment growth recently, due to the booming oil and gas industry. New Mexico's rig count reached 73, the highest level in several years. Mr. Turner said that the rig count is a good predictor of revenues two months in the future.

Acting Secretary Monforte discussed major revenue streams for the state and also discussed risks to those revenue streams. New Mexico's economy has been subject to outside forces beyond the control of state policymakers. The recent upswing in the oil and gas sector and the recent federal Medicaid expansion have kept the state's economy afloat for the past several years. Increased revenues from selective sales taxes and royalty payments have contributed to the short-term strength of the state's revenues. Some of the increased oil and gas revenue will be diverted to the Tax Stabilization Reserve beginning in 2020, in an attempt to offset the volatile nature of that industry. There is still substantial risk to state revenues from ongoing tax protests and unknown impacts on corporate income tax and PIT revenues from federal tax reform.

Mr. Clark discussed recent revenue gains the state has seen. Although the General Fund is expected to have $199 million more in fiscal year 2019, the recent fiscal crisis the state experienced meant that agency budgets were cut, and many agency funds were depleted to help shore up the state's fiscal situation. Many state agencies have requested budget increases for fiscal year 2019 to close many operational funding gaps. The added spending needs, coupled with the various revenue risks the state is facing, mean that the CREG is only cautiously optimistic about the state's future outlook.

Questions and comments from committee members included the following.

- The credit rating agency Moody's recommended that New Mexico's reserve level be set at 17 percent to guard against a recession because the state is so reliant on the oil and gas industry. Mr. Turner said that the state could lose hundreds of millions of dollars just from current tax protests. There does not need to be a recession for the state to use up all of its reserves.

- What is the status of the tax payment identification problems associated with the 60-day suspense fund? Acting Secretary Monforte said that most of the mystery payments from the previous fiscal year have been resolved. The TRD is establishing protocols to resolve misreported tax payments more quickly.

- Proposed federal tax changes mean that New Mexico may see major declines in health care revenues from the federal government.

- What accounts for the expected slower growth in fiscal years 2020 and 2021? Acting Secretary Monforte said that the Tax Stabilization Reserve will be getting excess oil and gas revenue as a result of legislation enacted in 2017. In addition, federal law will preempt the taxation of internet service, which will impact state and local revenues.

Report on Tax Study

Andrew Phillips, principal, Quantitative Economics and Statistics Group (QUEST), Ernst & Young LLP (EY); and Caroline Sallee, senior manager, QUEST, EY, presented a preliminary report on tax modeling software that EY is developing for the legislature. EY was commissioned by the LCS to develop modeling software that would undertake an analysis of the degree of pyramiding in the GRT, analyze the distributional impacts of various tax changes on households and businesses and assess the strengths and weaknesses of the state's tax system. The project models the GRT and PIT systems; however, the PIT model is still being developed. The completed project is expected to be delivered to the state in January 2018.

The GRT model is based on the TRD's RP-80 data from fiscal year 2016. That data was standardized to align with the North American Industry Classification System, in order to compare the state's data with other national data. As more state data becomes available, the model can be easily updated. The model is able to track gross receipts, amount of deductions, GRT imposed, deductions as a percentage of gross receipts and exemptions for each industry and then calculate the impact on changes to any aspect of the GRT system. The program can then model situations in which various components of the GRT system are being modified, showing the impacts on the tax base, tax revenue and a new tax rate to make the policy change revenue neutral. The presenters discussed a few hypothetical scenarios and the industry-by-industry impact those changes would have.

The tax program being developed by EY also models the extent of GRT pyramiding. Using national data, the model estimated industry output of various sectors, without any tax in the system, and then used effective tax rates for each industry in New Mexico to model the resulting output. The model estimated that nearly 61 percent of the entire GRT revenue was a result of business-to-business pyramiding. Some industries had much higher levels of pyramiding, such as information, public administration, finance and insurance and management of companies.

The final part of the tax modeling software is a tool to model the PIT system and how changes would impact revenues. This model was not yet finished to be able to provide a demonstration to the committee. The model will be able to simulate effects of bracket and rate changes, exemptions, deductions and credits.

Questions and comments from committee members included the following.

- Will EY be providing policy recommendations with the tax tool? Mr. Phillips said that the tool will be able to analyze proposed changes, along with strengths and weaknesses of the proposals. However, policy decisions are for the legislature to contemplate.

- Does the tax model have a local modeling component? Mr. Phillips said that the model is only able to provide information at the state level. Modeling impacts of tax changes on local governments would be a much bigger project.

- Tax reform in New Mexico needs to happen all at once. Otherwise, it will never happen. The GRT rate could be greatly reduced and the base vastly expanded by repealing most deductions and exemptions, including the exemption for wages. This kind of reform would benefit most New Mexicans.

- The health care deductions allowed in the GRT system were enacted because most insurance companies and the Medicare system do not allow for taxes on health care services to be reimbursable.

- Nonprofit organizations strongly opposed legislation in 2017 that would eliminate the exemption from the GRT for sales made by those organizations. No other state imposes a sales tax on nonprofit organizations.

Recess

The committee recessed at 3:20 p.m.

Wednesday, December 13

The committee was reconvened by Senator Cisneros on Wednesday, December 13, 2017, at 9:00 a.m.

House Memorial 72 (2017) Report: Recognizing an Opportunity for Growth Presented by the Escalante Generating Station in Prewitt, New Mexico

Jeff Kiely, executive director, Northwest New Mexico Council of Governments; Michael Sage, deputy director, Greater Gallup Economic Development Corporation; Eileen Yarborough, executive director, Cibola Communities Economic Development Foundation; and Rhonda Mitchell, Tri-State Generation and Transmission Association, discussed with the committee ongoing economic development planning efforts related to the coal-fired Escalante Generating Station in Prewitt. The generating station is an economic hub for the area, providing more than 500 direct and indirect jobs with an annual payroll of $133 million. House Memorial 72 in 2017 encouraged economic development organizations in the region to develop a plan to maximize economic benefits from the plant by encouraging other industries to co-locate at the facility and by providing workforce development opportunities. Currently, the generating station has 119 employees and pays $1.4 million in property taxes. The plant also sells steam, water and electricity to the McKinley Paper Company located on the campus. The plant uses coal currently being mined from El Segundo Mine, which has 240 employees. Lee Ranch Mine has been closed for several years, and El Segundo Mine laid off more than 100 workers in 2016.

The coalition of economic development groups has cooperated in developing initial plans to mitigate the eventual loss of the coal industry by performing a supply chain analysis, workforce skills assessment and target industry report, which will be brought together into a site master plan. The coalition has been working on the plan since October 2015 and anticipates having a final plan in July 2018. The plan will recognize the Escalante Generating Station as an economic base employer for Cibola and McKinley counties and as an anchor tenant for the Prewitt industrial center; recognize the industrial center as a key pillar for the economies of the counties; provide for proactive local, regional and state leadership based on the public-private partnership model; integrate federal and state efforts for maximum efficiency; and incorporate best practices by drawing on economic development and community planning principles.

Questions and comments from committee members included the following.

- It is important to get ahead of the eventual closure of the Escalante Generating Station to provide for other businesses and employment opportunities.

- San Juan County is facing a similar situation with the closing of its coal-fired generating stations, except the economic impact will be enormous. The county has already lost 7,000 jobs due to changes in the oil and gas sector, and the loss of another 1,300 jobs will be devastating.

- The Raton area was devastated 70 years ago when coal mines in that region closed. It is important that communities plan for the transition away from coal. The entire state will eventually be impacted by the loss of coal-related jobs.

- A large segment of the population has an irrational hatred of coal. When the Desert Rock coal-fired power plant was proposed, which included the ability to capture 96 percent of the carbon used to produce electricity, the proposal was fought and defeated by environmental groups.

- The coal industry fueled the Industrial Revolution. Coal is heavily taxed, but most renewable energy pays no taxes at all.

Proposals for Committee Endorsement

The committee discussed four bills for possible endorsement by the committee.

1) <u>Nontaxable Transaction Certificate (NTTC) Alternative Evidence (.208748.3).</u> The legislation would allow GRT taxpayers to present evidence other than an NTTC to prove that the taxpayer is eligible to receive a deduction from gross receipts. This would allow taxpayers to provide evidence to the TRD to allow for a deduction, which, under current law, does not allow for the deduction unless the taxpayer has in its possession an NTTC from the purchaser. The committee endorsed the proposal, with Representatives Jason C. Harper and Carl Trujillo to sponsor.

2) Liquor Excise Tax Distribution Increase to the Local DWI Grant Fund (.209011.1). The legislation would make permanent a 2015 increase of liquor excise tax revenue distributions to the Local DWI Grant Fund from 41 percent to 46 percent. The bill would also distribute five percent of tax revenue to the newly created Drug Court Fund. The committee endorsed the bill, with Representative Carl Trujillo to sponsor.

3) Tax Cleanup and Reporting Requirements (.209172.2). The bill, which Senator Cisneros said that he was not seeking committee endorsement of, would require certain tax expenditure recipients to file separately when claiming the expenditure; would allow the disclosure of certain taxpayer information relating to tax expenditures; would allow LFC economists to receive confidential taxpayer information from the TRD; would exclude certain nonprofit entities from receiving a GRT exemption; and would narrow the premium tax in lieu provision.

4) Compensating Tax Changes and Tax Code Cleanup (.209099.3). The bill, which Representative Harper said that he was not seeking committee endorsement of, would impose the compensating tax at the same rate as the GRT; would impose local compensating taxes; and would repeal certain tax credits and deductions that have expired or are seldom used.

Adjournment

There being no further business, the committee adjourned at 10:50 a.m.

ENDORSED LEGISLATION

HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; PROVIDING FOR ALTERNATIVE EVIDENCE OTHER THAN A NONTAXABLE TRANSACTION CERTIFICATE TO ENTITLE PERSONS TO A DEDUCTION FROM GROSS RECEIPTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 7-9-43 NMSA 1978 (being Laws 1966, Chapter 47, Section 13, as amended) is amended to read:

"7-9-43. NONTAXABLE TRANSACTION CERTIFICATES AND OTHER EVIDENCE REQUIRED TO ENTITLE PERSONS TO DEDUCTIONS.--

[~~A. All nontaxable transaction certificates of the appropriate series executed by buyers or lessees should be in the possession of the seller or lessor for nontaxable transactions at the time the return is due for receipts from the transactions. If the seller or lessor is not in possession of the required nontaxable transaction certificates within~~

~~sixty days from the date that the notice requiring possession of these nontaxable transaction certificates is given the seller or lessor by the department, deductions claimed by the seller or lessor that require delivery of these nontaxable transaction certificates shall be disallowed except as provided in Subsection E of this section. The nontaxable transaction certificates shall contain the information and be in a form prescribed by the department. The department by regulation may deem to be nontaxable transaction certificates documents issued by other states or the multistate tax commission to taxpayers not required to be registered in New Mexico. Only buyers or lessees who have a registration number or have applied for a registration number and have not been refused one under Subsection C of Section 7-1-12 NMSA 1978 shall execute nontaxable transaction certificates issued by the department. If the seller or lessor has been given an identification number for tax purposes by the department, the seller or lessor shall disclose that identification number to the buyer or lessee prior to or upon acceptance of a nontaxable transaction certificate.~~]

A. Except as provided in Subsection B of this section, a person may establish entitlement to a deduction from gross receipts allowed pursuant to the Gross Receipts and Compensating Tax Act by obtaining a properly executed nontaxable transaction certificate from the purchaser.

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B. Except as provided in Subsection C of this section, a person who does not comply with Subsection A of this section may establish entitlement to a deduction from gross receipts by presenting alternative evidence that demonstrates the facts necessary to support entitlement to the deduction, but the burden of proof is on that person. Alternative evidence includes:

(1) invoices or contracts that identify the nature of the transaction;

(2) documentation as to the purchaser's use or disposition of the property or service;

(3) a statement from the purchaser indicating that the purchaser sold or intends to resell the property or service purchased from the seller, either by itself or in combination with other property or services, in the ordinary course of business. The statement from the purchaser shall include:

(a) the seller's name;

(b) the date of the invoice or date of the transaction;

(c) the invoice number or a copy of the invoice;

(d) a copy of the purchase order, if available;

(e) the amount of purchase; and

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(f) a description of the property or service purchased or leased; or

(4) other evidence that demonstrates the facts necessary to establish entitlement to the deduction or specified by department rule or instruction.

C. Subsection B of this section does not apply to sellers of electricity or fuels that are parties to an agreement with the department pursuant to Section 7-1-21.1 NMSA 1978 regarding the deduction pursuant to Subsection B of Section 7-9-46 NMSA 1978.

D. When [~~the seller or lessor~~] a person accepts in good faith a properly executed nontaxable transaction certificate [~~within the required time and in good faith that the buyer or lessee will employ the property or service transferred in a nontaxable manner~~] from the purchaser, the properly executed nontaxable transaction certificate shall be conclusive evidence [~~and the only material evidence~~] that the proceeds from the transaction are deductible from the [~~seller's or lessor's~~] person's gross receipts.

[~~B. Properly executed documents required to support the deductions provided in Sections 7-9-57, 7-9-58 and 7-9-74 NMSA 1978 should be in the possession of the seller at the time the return is due for receipts from the transactions. If the seller is not in possession of these documents within sixty days from the date that the notice requiring possession of~~

.208748.3

~~these documents is given to the seller by the department, deductions claimed by the seller or lessor that require delivery of these documents shall be disallowed. These documents shall contain the information and be in a form prescribed by the department. When the seller accepts these documents within the required time and in good faith that the buyer will employ the property or service transferred in a nontaxable manner, the properly executed documents shall be conclusive evidence, and the only material evidence, that the proceeds from the transaction are deductible from the seller's gross receipts.~~

~~C. Notice, as used in this section, is sufficient if the notice is mailed or served as provided in Subsection A of Section 7-1-9 NMSA 1978. Notice by the department under this section shall not be given prior to the commencement of an audit of the seller required to be in possession of the documents.~~

~~D. To exercise the privilege of executing appropriate nontaxable transaction certificates, a buyer or lessee shall apply to the department for permission to execute nontaxable transaction certificates, except with respect to documents issued by other states or the multistate tax commission that the department has deemed to be nontaxable transaction certificates. If a person is shown on the department's records to be a delinquent taxpayer or to have a~~

~~non-filed period, the department may refuse to approve the application of the person until the person has filed returns for all non-filed periods and is no longer shown to be a delinquent taxpayer, and the taxpayer may protest that refusal pursuant to Section 7-1-24 NMSA 1978. Upon the department's approval of the application, the buyer or lessee may request appropriate nontaxable transaction certificates for execution by the buyer or lessee; provided that if a person is shown on the department's records to be a delinquent taxpayer or to have a non-filed period, the department may refuse to issue nontaxable transaction certificates to the person until the person has filed returns for all non-filed periods and is no longer shown to be a delinquent taxpayer. The taxpayer may protest that refusal pursuant to Section 7-1-24 NMSA 1978. The department may require a buyer or lessee requesting and receiving nontaxable transaction certificates for execution by that buyer or lessee to report to the department the names, addresses and identification numbers assigned by the department of the sellers and lessors to whom they have delivered nontaxable transaction certificates. The department may require a seller or lessor engaged in business in New Mexico to report to the department the names, addresses and federal employer identification numbers or state identification numbers for tax purposes issued by the department of the buyers or lessees from whom the seller or lessor has accepted nontaxable~~

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~~transaction certificates.~~

~~E. The secretary or secretary's delegate may accept other evidence, as specified by rule, to support the deduction provided pursuant to Section 7-9-47 NMSA 1978 for the sale of tangible personal property if a taxpayer is unable to provide a nontaxable transaction certificate within the sixty-day period specified in Subsection A of this section:~~

~~(1) prior to the issuance of an audit assessment; or~~

~~(2) if the audit assessment is protested, prior to either the taxpayer's withdrawal of the protest or the formal hearing of the protest; provided, however, that the protest in this paragraph is acknowledged by the department prior to December 31, 2011.~~]

E. If a person has accepted in good faith a properly executed nontaxable transaction certificate, but the purchaser has not employed the property or service purchased in the nontaxable manner or has provided false or inaccurate information on the nontaxable transaction certificate, the purchaser shall be liable for an amount equal to any tax, penalty and interest that the seller would have been required to pay if the seller had not complied with Subsection A of this section.

F. Any person who knowingly or willfully provides false or inaccurate information on a nontaxable transaction

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certificate may be subject to prosecution under Sections 7-1-72 and 7-1-73 NMSA 1978."

SECTION 2. Section 7-9-44 NMSA 1978 (being Laws 1969, Chapter 144, Section 34, as amended) is amended to read:

"7-9-44. SUSPENSION OF THE RIGHT TO USE A NONTAXABLE TRANSACTION CERTIFICATE.--

A. The secretary may suspend for not more than one year the privilege of a person to execute nontaxable transaction certificates if that person [~~(1)~~] fails to pay, within one year of the date [~~the tax is due, the compensating tax on the~~] on which the transaction subject to the nontaxable transaction certificate occurred, the amount required to be paid pursuant to Subsection E of Section 7-9-43 NMSA 1978 with respect to the person's subsequent use of property or services purchased through the execution of a nontaxable transaction certificate. [~~or~~

~~(2) executes with the seller or lessor a nontaxable transaction certificate inapplicable to the transaction when no compensating tax is due on that buyer's or lessee's use of the property or service.~~

~~B. The secretary may suspend for not more than six months the privilege of a person to execute nontaxable transaction certificates to claim deductions on the basis of nontaxable transaction certificates accepted by that person, or both, if that person fails to account in the manner and time~~

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~~required by the department, in accordance with Subsection E of Section 7-9-43 NMSA 1978, for the certificates executed or accepted by that person.~~

~~C.~~] B. A suspension under this section voids the department's approval of the person's application for the privilege of executing nontaxable transaction certificates and, prior to resumption of the privilege, the person whose privilege to execute nontaxable transaction certificates has been suspended shall reapply for the privilege of executing such certificates in accordance with Section 7-9-43 NMSA 1978.

[~~D.~~] C. Notwithstanding the provisions of Section 7-1-8 NMSA 1978, the department may notify the public or provide for notice to the public of the suspension of a person's privilege to execute nontaxable transaction certificates."

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2018.

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HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE AND THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; INCREASING THE DISTRIBUTION OF THE LIQUOR EXCISE TAX TO THE LOCAL DWI GRANT FUND; DISTRIBUTING A PORTION OF THAT TAX TO THE DRUG COURT FUND; CREATING THE DRUG COURT FUND; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 7-1-6.40 NMSA 1978 (being Laws 1997, Chapter 182, Section 1, as amended) is amended to read:

"7-1-6.40. DISTRIBUTION OF LIQUOR EXCISE TAX--LOCAL DWI GRANT FUND--CERTAIN MUNICIPALITIES--[~~LOTTERY TUITION~~] DRUG COURT FUND.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 [~~shall be made to the local DWI grant fund~~] in an amount equal to [~~the following percentages~~] forty-five percent of the net receipts attributable to the liquor excise tax

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[~~(1) prior to July 1, 2015, forty-one and one-half percent;~~

~~(2) from July 1, 2015 through June 30, 2018, forty-six percent; and~~

~~(3) on and after July 1, 2018, forty-one and one-half percent~~] shall be made to the local DWI grant fund.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 of twenty thousand seven hundred fifty dollars ($20,750) monthly from the net receipts attributable to the liquor excise tax shall be made to a municipality that is located in a class A county and that has a population according to the most recent federal decennial census of more than thirty thousand but less than sixty thousand [~~The distribution pursuant to this subsection~~] and shall be used by the municipality only for the provision of alcohol treatment and rehabilitation services for street inebriates.

C. [~~From July 1, 2015 through June 30, 2017~~] A distribution pursuant to Section 7-1-6.1 NMSA 1978 [~~of thirty-nine~~] in an amount equal to five percent of the net receipts attributable to the liquor excise tax shall be made to the [~~lottery tuition~~] drug court fund."

SECTION 2. [NEW MATERIAL] DRUG COURT FUND--CREATED.--The "drug court fund" is created in the state treasury. The fund consists of appropriations, distributions, gifts, grants, donations and bequests made to the fund and income from investment of the fund. The administrative office of the courts shall administer money in the fund to offset client service costs of drug court programs, consistent with standards approved by the supreme court. Money in the fund shall be expended on warrants of the secretary of finance and administration pursuant to vouchers signed by the director of the administrative office of the courts. Balances in the fund shall not revert to the general fund at the end of a fiscal year.

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2018.

Legislative Council Service
Santa Fe, New Mexico