MINUTES
of the
SECOND MEETING
of the
TRANSPORTATION INFRASTRUCTURE REVENUE SUBCOMMITTEE

August 22, 2017
State Capitol, Room 322
Santa Fe

The second meeting of the Transportation Infrastructure Revenue Subcommittee was called to order by Representative Roberto "Bobby" J. Gonzales, chair, on August 22, 2017 at 9:25 a.m. in Room 322 of the State Capitol.

Present	**Absent**
Rep. Roberto "Bobby" J. Gonzales, Chair	Sen. John Arthur Smith, Vice Chair
Rep. David M. Gallegos	Sen. Ron Griggs
Rep. Patricio Ruiloba	Rep. Jane E. Powdrell-Culbert
Sen. Clemente Sanchez	
Sen. Pat Woods	

Advisory Members

Rep. Sharon Clahchischilliage	Sen. Carlos R. Cisneros
Rep. Harry Garcia	Sen. Stuart Ingle
Rep. Bealquin Bill Gomez	Sen. Carroll H. Leavell
Rep. Rick Little	Rep. Antonio Maestas
	Sen. William H. Payne

Staff
Mark Edwards, Drafter, Legislative Council Service (LCS)
Pam Stokes, Staff Attorney, LCS
Jon Boller, LCS

Guests
The guest list is in the meeting file.

Handouts
Handouts and other written testimony are in the meeting file or posted on the subcommittee's web page.

Tuesday, August 22

Gas Tax at the Rack Collection Proposals
Representative Carl Trujillo presented the subcommittee with a spreadsheet on State Road Fund revenue, along with a spreadsheet on revenue from the state's gasoline tax, noting that

although total revenue from the gasoline tax in fiscal year 2016 was approximately $152 million, only $111 million was distributed to the State Road Fund. He questioned why there was a $41 million difference between what was collected and what was deposited in the State Road Fund.

Representative Trujillo also explained that both he and Representative James G. Townsend had sponsored bills in the 2017 legislative session that would have imposed the gasoline tax on the seller, rather than the buyer, at the rack. Along with other provisions in those bills, he said, taxing the buyer rather than the seller would result in increased gasoline tax revenue, in part due to better compliance with the tax provisions.

Addressing the difference between gasoline tax revenue and deposits in the State Road Fund, James Girard, economist, Taxation and Revenue Department, explained that gasoline tax revenues are distributed to five or six other transportation-related funds in addition to the State Road Fund, which accounts for the $41 million difference.

In response to a question about compliance issues, and the implication that tribes are not complying with the law, Representative Townsend said that he was not implying that anyone was doing anything illegal. Rather, he explained, the system is very complicated and simplifying the process would make it easier to collect the tax. He and Representative Trujillo proposed to change the law so that the tribes would pay the tax on gasoline to the state.

Other questions and comments included the following:

- House Bills 487 and 509, both from the 2017 regular session, are the same, except that House Bill 509 increased the gasoline tax and the special fuel excise tax by five cents per gallon;
- revenue-sharing agreements with the Pueblo of Nambe and the Pueblo of Santo Domingo will not expire until 2024, so neither bill would have changed the terms of that agreement in the interim;
- the tribes and pueblos are allowed a deduction equivalent to the amount of tax they impose on gasoline, up to 17 cents per gallon, thus avoiding multi-jurisdictional double taxation of gasoline; and
- in 1995, the legislature repealed all but one cent of the 1993 increase in the gasoline tax.

Overview of Current Collection System Versus Proposed System

Jim O'Neill, O'Neill Consulting, LLC, outlined various fuel taxes imposed by the state, including the alternative fuel excise tax, the special fuel excise tax, the gasoline tax and the petroleum products loading fee, and he discussed how and on whom these taxes are imposed. There are different tax rates for gasoline and special fuels (diesel), and there are different terms for the persons who pick up fuel at refineries' or terminals' racks — "distributors" for gasoline and "suppliers" for diesel — he explained. Mr. O'Neill described the structure of the fuel delivery system, noting that New Mexico has a variation of "tax at the rack", in which the taxable event occurs at the terminal rack, with the obligation to report and pay the tax on the distributor/supplier that receives the fuel at the rack. The distributors/suppliers may then deduct receipts from the sale to various entities by documenting those transactions (such as sales to the state, the federal government or to Indian nations, tribes or pueblos) and then claiming the deduction. Mr. O'Neill also explained how tribal sovereignty limits the ability of the state to impose taxes on tribal territory, and how the state and tribal governments have addressed the problem of dual taxation by allowing gasoline sold at retail on tribal territory to be deducted if the tribe or pueblo imposes a similar tax on the fuel.

Alternatives to the present tax structure were described by Mr. O'Neill, including taxing fuel at the retail level, having refineries and pipeline terminals pay the fuel tax or imposing a highway use tax on all vehicles to replace or supplement fuel taxes.

Tribal Government Perspective on Behalf of the All Pueblo Council of Governors and the New Mexico Native American Petroleum Coalition

Teresa Leger, Leger Law & Strategies, LLC, introduced several tribal and pueblo officials from the Pueblos of Taos, San Felipe, Santo Domingo and Pojoaque, the Jicarilla Apache Nation and the Navajo Nation, among others. Ms. Leger noted that both House Bills 487 and 509 eliminated the tribal gasoline tax deduction, and she questioned whether New Mexico is really an "us versus them" kind of place or a place where residents actually work things out. The answer to that question, she said, is that residents actually work things out in New Mexico and that since 1995, New Mexicans have not been fighting in court over the gasoline tax, unlike other states such as Arizona, Oklahoma, Washington, New York and North Dakota. Rather, she said, New Mexicans have addressed the dual taxation problem by achieving what the U.S. Department of Transportation describes as "tax peace".

The tribal gasoline tax deduction represents a small percentage of gasoline tax revenue, she said. The tribes do impose and collect the same 17 cents per gallon as the state, she explained, which is sent back to the tribal governments and used to provide essential government services and leverage federal funds. Ms. Leger stated that the tribes do not care about tax at the rack, as long as the tribal gasoline tax deduction is preserved.

Carolyn Abeita, VanAmberg, Rogers, Yepa, Abeita & Gomez, LLP, stressed that New Mexico is far ahead of other states when it comes to how it handles the dual taxation issue. Ms. Abeita explained that the incidence of the gasoline tax is already "at the rack", but distributors are responsible for paying the tax. She said that 20 tribes have a tribal tax of 17 cents per gallon, and several tribes have entered into joint powers agreements with the Taxation and Revenue Department to share information on distributors. In addition, she described the revenue-sharing agreement that the Pueblos of Nambe and Santo Domingo have with the state, whereby the state receives about $3 million, or 60 percent of the revenue, and the pueblos receive $2 million, or 40 percent of the revenue. She cautioned that combining the gasoline tax with the special fuel excise tax on diesel would be problematic because diesel is already fully taxed by suppliers and is paid by the tribes.

Regis Pecos, former governor of the Pueblo of Cochiti, described the evolution of federal-tribal relations, beginning with President John F. Kennedy's administration through President Ronald Reagan's administration, and the state-tribal government-to-government relations recognized by Governor Toney Anaya's and Governor Garrey Carruthers' administrations on the state level. These federal- and state-tribal government agreements and relationships were built over 30 years by both Republicans and Democrats on the federal and state level, he explained, and the agreements created a foundation and framework of cooperation and mutual respect. Of all of the states in the country, he stressed, New Mexico stands alone in its tax parity and its agreements between the state and tribes, noting that not a single state has done as well with state-tribal relations over the past 30 years. Repealing one part of the agreement would be like pulling a thread that results in the unraveling of the whole, he explained.

Potential Revenue Effects of a Tax at the Rack System

Mr. Girard provided an overview of House Bill 487, describing its main features. He noted that shifting the payment of the gasoline tax to the rack operators, of which there are 10 or 12 in the state, from the distributors would still require the 200 or so distributors to report any deductions taken by end users to the rack operators. Also, he explained, the state would likely have to honor the gasoline tax revenue-sharing agreements it has already entered into, thus resulting in a $3 million annual loss in gasoline tax revenue to the state until at least 2024 if House Bill 487 had been enacted into law.

Dawn Iglesias, economist, Legislative Finance Committee, summarized a survey of other states that tax gasoline at the rack. She said that 19 states tax gasoline at the rack, with 12 of those states having some sort of revenue-sharing agreement with tribes. Seven, she said, have no such agreements due to there not being a tribal presence in those states. Explaining the overall revenue impact of House Bill 487, she said that, eventually, the state might gain $3 million to $5 million per year at most, not $20 million, as some have claimed. Asked how much the total tribal gasoline tax deduction is per year, Ms. Iglesias stated that it is about $12.8 million. However, $10 million of that amount is from gasoline sold to tribal members, which the state cannot tax. Therefore, eliminating the deduction would result in about $2.8 million per year. Asked if there would only be 10 rack operators that would need to report to the state if New Mexico switched to a tax at the rack system, Ms. Iglesias replied that no, all importers and exporters would still need to report on the 6,500 truckloads per month that enter and leave the state.

Adjournment

There being no further business, the subcommittee adjourned at 3:50 p.m.