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

December 12-13, 2007
Room 322, State Capitol
Santa Fe

The seventh meeting of the Revenue Stabilization and Tax Policy Committee was called to order by Representative Edward C. Sandoval, vice chair, at 9:30 a.m. in Room 322 of the State Capitol in Santa Fe.

Present
Rep. Edward C. Sandoval, Vice Chair
Sen. Mark Boitano
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Sen. Dianna J. Duran
Rep. Keith J. Gardner
Rep. Roberto "Bobby" J. Gonzales
Rep. Ben Lujan, Speaker of the House
Sen. Bernadette M. Sanchez
Sen. John Arthur Smith
Sen. H. Diane Snyder
Rep. Thomas C. Taylor

Absent
Sen. Timothy Z. Jennings, Chair
Sen. Kent L. Cravens
Rep. William J. Gray
Rep. George J. Hanosh
Rep. Daniel P. Silva
Sen. James G. Taylor

Advisory Members
Sen. Ben. D. Altamirano*
Rep. Janice E. Arnold-Jones
Sen. Sue Wilson Beffort
Rep. John Pena
Rep. Debbie A. Rodella
Sen. Nancy Rodriguez
Rep. Luciano "Lucky" Varela

Rep. Donald E. Bratton
Rep. Nathan P. Cote
Sen. Phil A. Griego
Sen. John T.L. Grubesic
Sen. Gay G. Kernan
Sen. Cisco McSorley
Sen. Steven P. Neville
Rep. Andy Nuñez
Sen. Leonard Lee Rawson
Sen. John C. Ryan
Rep. Henry Kiki Saavedra
Sen. William E. Sharer
Rep. Don L. Tripp

* Permission to attend granted

Staff
Pam Ray
Tim Crawford
Doris Faust
Cleo Griffith
Doug Williams

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

<u>Wednesday, December 12</u>

Year-End Revenue Estimate

Jan Goodwin, secretary of taxation and revenue, Laird Graeser, economist, Department of Finance and Administration (DFA), and Norton Francis, chief economist, Legislative Finance Committee, presented the year-end revenue projections.

According to Secretary Goodwin, the revenue projections reflect a still-expanding state economy embedded in a national economy that faces significant headwinds. If the economy does not falter, New Mexico will see the second-longest economic expansion in the history of the state. Despite the national and state economy's good recent showing, these estimates for FY09 through FY12 are very slightly revised downwards from the October forecast. Crude oil revenue estimates have been revised upwards by approximately $10 million for FY09, based on prices that have flirted with $100/barrel, while natural gas revenues have been revised downwards by about the same amount. These estimates provide the governor and the legislature with opportunities to address critical needs in health care, education, transportation and corrections funding, even though there is less "new money" for FY09 than estimated in July or October.

Changes from October Forecast						
(Dollars in Millions)	FY07	FY08	FY09	FY10	FY11	FY12
October 2007 Revenue Forecast	5,748.6	5,943.6	6,062.6	6,248.6	6,400.0	6,574.5
December 2007 Forecast	5,754.5	5,949.3	6,044.1	6,225.0	6,387.2	6,547.1
Change from Previous	5.9	5.7	-18.6	-23.6	-12.9	-27.4
Approximate "New Money"			368.9			
"New Money" available for recurring appropriations assumes total appropriations growth sufficient to consume the entire amount of recurring revenues.						

Due to the upward revision to FY07 and FY08 revenues, nonrecurring general fund money available for appropriation in the 2008 session has been increased to $260.5 million while providing 10 percent reserves at the end of FY09, based on estimated recurring expenditures equal to the amount of revenue growth.

The current estimate of severance tax bond (STB) and general obligation (GO) bond capacities has been increased from the October forecast, primarily due to higher long-term oil and gas expectations.

	FY08		FY09		FY10	
	Oct. Est.	Dec. Est.	Oct. Est.	Dec. Est.	Oct. Est.	Dec. Est.
Senior STB Capacity, incl. sponge	303.5	319.1	287.8	306.7	294.3	301.1
Supplemental STB Capacity, incl. supplemental sponge	208.2	208.2	209.1	212.3	214.7	208.7
GO Bond (if approved by electorate)		223.8				160.9

Highlights of the economic forecast follow.

- The national economic outlook is somewhat weaker for FY08 and FY09 than expected in October, despite unexpectedly robust growth during the third quarter of 2007. There is a significant chance that the U.S. economy will experience a short and shallow recession between now and the middle of 2008. Domestically, the bursting of the housing bubble and increasing subprime mortgage defaults are providing a drag on the economy while elevated crude oil prices are siphoning off money from consumers that could be used to support other purchases. Because of the very weak dollar against the Euro, the yen and the aggregate trade-weighted currency, U.S. export growth is expected to top 10 percent for the next two years, while U.S. imports will slow significantly. These issues are of particular interest to individuals employed in the manufacturing sector because, among other things, manufacturing output is extremely sensitive to currency exchange rates. Due at least in part to concerns associated with the conditions mentioned above, the stock markets continue to oscillate over a broad range.

- Job growth in the state through October has moderated from the near-record two years of job growth in excess of two percent, which lasted from February 2005 through January 2007.

- Although crude oil (West Texas Intermediate) traded at $98.18/barrel on November 23 and the New Mexico (ONGARD) price for October exceeded $80.00/barrel for the first time in history, natural gas prices and tax revenues are forecast to be relatively flat. The traditional perspective that increases in oil are accompanied by corresponding increases in natural gas prices is increasingly untrue.

- Gross receipts tax collections are forecasted to increase only slightly faster than overall revenue growth. Among other reasons, the medical services deduction (effective January 2005) is growing at a double-digit rate, although the food deduction growth has been slightly negative. The conversion of Los Alamos National Laboratory management from state government (University of California) to a private consortium provided a one-time bump in gross receipts tax collections during FY07, but the growth of this component may well be negative in the future. Also, other credits against gross receipts taxes — such as the high-wage jobs credit, intergovernmental credits and up to 10 others — are expected to increase at high single-digit to low double-digit rates throughout the forecast period.

- The final phase of 2003's personal income tax (PIT) rate cuts will affect collections during FY08 and on into FY09. Thereafter, rather than a return to the traditional six percent growth level of underlying tax collections growth, PIT collections are expected to grow at an average 3.4 percent annual rate during the forecast period.

- Corporate income tax (CIT) collections continue to exceed expectations. FY07 anticipated collections are estimated at $460.5 million. The consensus group developed and implemented a new model for CIT revenues for this forecast. This new model captures the influence of national corporate profits as well as specific state effects, including net oil and gas sales and construction employment. Based on this model, CIT revenues are expected to be higher in FY08 and FY09 than expected in the October forecast. However, the success of the new film production credit has resulted in refund approvals of over $30 million already this fiscal year. The consensus group could not agree to increase the forecast for CIT until it has more thoroughly studied the extent of the higher level of claims for refunds from the film production credits.

- Federal mineral leasing continues to contribute revenues in excess of expectations, and this enhanced performance is likely to continue for some time. One source of higher revenues is the expiration of the stripper oil well royalty rate. This has increased the average amount of royalties for crude oil production on federal lands from about 9.5 percent to 12 percent.

- As shown in Appendix Table 3 (General Fund Financial Summary), estimated general fund reserves will remain at the 10 percent level, tested against current year appropriations. Although the expectation is that appropriations can be balanced to relatively modest levels of "new money", the structure of general fund reserves should be reviewed jointly by the executive and the legislature. With the governor's spending plan and forecasted revenues for FY09, the expected level of the general fund operating reserve will be 1.62 percent of current year appropriations at the end of FY09. This maintains total general fund reserves at a level of 10 percent of FY09 appropriations. The balance of the 10 percent reserve level outside of the general fund operating reserve is located in the "Education Lockbox" of the Appropriation Contingency Fund, the Tax Stabilization Reserve and the Tobacco Settlement Fund. It would perhaps be prudent to make a plan during this session to address actions in the case of a shortfall of revenues at the end of FY08. An effective plan could be designed and implemented during the session. If revenues exceed the targets reported here, the contingency would expire. If the national economy falters and carries the state economy down with it, then the plan could be invoked automatically without the necessity of calling a special session.

Highlights of the revenue forecast are summarized as follows.

- FY07 general fund recurring revenues are expected to total $5.75 billion, which is $174.9 million, or 3.1 percent, higher than FY06. Actual revenues are available through May 2007, and preliminary figures are available for some revenues in June. The conversion to SHARE and the switch to modified accrual accounting have delayed accurate reporting on general fund revenues, and preliminary numbers shown here may be adjusted up or down.

- The FY07 estimate increased $89.1 million since the legislation-adjusted December 2006 estimate, an error of only -1.5 percent. A large part of the increase was an additional $50 million of CIT revenue that was not distributed throughout the year.

- Recurring revenue is expected to increase by 2.6 percent in FY08 to $5.90 billion. This is just $5.8 million more than the October 2007 estimate. The gross receipts tax estimate rose by $22 million, but that increase was offset by lower expectations for income taxes and interest earnings on the state treasurer's portfolio.

- Nonrecurring revenue in FY08 includes a $47 million minerals management service settlement made by Burlington Resources Oil and Gas Company for claiming unallowable deductions on federal royalty payments between 1998 and 2005.

- In FY09, recurring revenue will grow by 2.4 percent to $6.04 billion. The December 2007 estimate for FY09 is $18.6 million less than the October 2007 estimate.

- In FY10 through FY12, revenues are projected to grow by an average of 2.7 percent as energy prices moderate and the state's broad-based taxes grow modestly. FY10 through FY12 projected revenue growth is below the 18-year average of 7.1 percent, but, as Figure 2 shows, the growth rate has been as high as 18 percent and as low as -4 percent, and the deviation is significant.

- It may seem inconsistent that the revenue estimates have not changed significantly while the economic circumstances and prognosis have changed considerably. The first warning signs came at the end of last summer, and the October 2007 estimate reflected the slowdown. However, it appears that the economic slowdown nationally and in New Mexico will not have as dramatic an impact on revenues as was believed in October. The revenues are slowing down, but the FY07 base grew with more complete data, causing FY08 levels to increase.

Five-Year Tax Revenue Projections

Jim Nunns, tax policy director, Taxation and Revenue Department (TRD), reviewed the 10-year history of recent tax collections and provided the following five-year outlook:

Total Collections

- Total tax collections rose over the last 10 years from $4.3 billion to $7.8 billion, an increase of over 80 percent.

- Over the next five years, collections are projected to increase to $8.9 billion, an increase of 13 percent over the FY07 level.

Gross Receipts Tax Revenue

- Gross receipts taxes collected rose from $1.8 billion to $3.3 billion, a little over 80 percent since 1998.

- Gross receipts taxes are forecasted to increase to $3.9 billion, or by about 20 percent, over the next five years.

Selective Excise Tax Revenue

- Selective excise taxes rose over 50 percent, from about $0.4 billion to about $0.6 billion, since 1998. Much of the increase is due to legislative action amending rates upward.

- Over the next five years, selective excise taxes are predicted to rise about 15 percent to $0.7 billion.

PIT Revenue

- PIT revenue increased from $0.8 billion, about 46 percent, to $1.2 billion since 1998 in spite of the recent reduction in PIT rates for higher-bracket earners.

- PIT receipts are predicted to increase to $1.3 billion by 2012, or by 14 percent over FY07 receipts.

CIT Receipts

- CIT revenue rose from under $0.2 billion in FY98 to roughly $0.5 billion in FY07, more than 250 percent, mainly due to increasing corporate profits.

- Over the next five years, CIT receipts are predicted to decline slightly from the 2007 level.

Oil and Gas Tax Revenue

- Oil and gas tax receipts increased the most since 1998, both in dollar value and percentage, from $0.4 billion to over $1 billion, or 278 percent, due to rising oil and gas prices.

- Over the next five years, oil and gas tax receipts are predicted to rise and then decline, ending the period about eight percent below the FY07 level.

All Other TRD-Collected Tax Revenue

- Revenue from all other TRD-collected taxes rose only modestly since 1998, and those collections are predicted to remain essentially stagnant and unchanged over the next five years.

Property Tax Revenue

- Property tax revenue rose 80 percent, nearly the same rate as all major taxes, since 1998. The increase was from $0.5 billion to slightly under $1.0 billion.

- Property taxes are forecast to increase by 20 percent, somewhat faster than other taxes, over the next five years to $1.2 billion.

Taxes As Percent of All Tax Collections

Oil and Gas Taxes

- The share of oil and gas taxes as a percent of all taxes rose significantly since 1998 due to the increase in oil and gas prices. These taxes now produce 13.4 percent of the overall collected tax revenue, up from 8.7 percent in 1998.

- The share of overall collected tax revenue from oil and gas taxes is predicted to decline over the next five years to 10.9 percent by 2012.

Gross Receipts Taxes

- Gross receipts taxes as a percent of overall tax revenue are predicted to increase through FY12.

CIT

- The CIT is predicted to increase as a percentage of overall taxes through FY12.

Selective Excise Taxes

- The selective excise tax share fell as a percent of total taxes collected, but the share of these taxes is expected to increase above their FY07 levels by FY12.

PIT

- The PIT share of total taxes collected fell; however, the PIT's share of total taxes is expected to increase above its FY07 level by FY12.

All Other TRD-Collected Taxes

- All other TRD-collected taxes fell as a percent of total taxes collected. This trend is predicted to continue through FY12.

Property Tax

- Property taxes remained relatively stable as a share of all taxes collected. They are, however, predicted to rise over the next five years.

Taxes As a Percent of Personal Income

- Personal income grew a little slower than total tax collections since 1998, increasing from 67 percent to 80 percent over 1998 levels. Total taxes as a percent of personal income rose from 12.1 percent to 13.1 percent since 1998.

- Over the next five years, total tax collections are forecasted to decline steadily relative to personal income.

- The taxes that grew faster than personal income since 1998, i.e., gross receipts tax, corporate income tax, oil and gas taxes and property taxes, all rose relative to personal income.

- The remaining taxes fell relative to personal income since 1998.

- Over the next five years, no major tax source is forecasted to grow as fast as personal income.

TRD Legislative Proposals

Secretary Goodwin and Mr. Nunns presented a draft of the PIT changes that the department seeks to make. The federal itemized deduction, personal exemption amount, New Mexico low- and middle-income exemption, low income comprehensive tax rebate (LICTR) and other low- and moderate-income deductions or exemptions are combined, and tables are created so that a taxpayer need only the taxpayer's taxable income and number of dependents to find the PIT owed.

New Mexico taxable income is computed as follows under current law:

- start with federal adjusted gross income (AGI);
- \+ NM additions (e.g., interest on federally tax-exempt bonds);
- \- federal standard or itemized deductions;
- \- federal personal exemption amount;
- \- NM low- and middle-income exemption;
- \- NM subtractions (e.g., interest on NM savings and loan bonds, capital gains);

- \- NM uncompensated medical care deduction;
- = NM taxable income.

Tax liability is computed at graduated rates as follows:

- rates are from 1.7 percent to 4.9 percent in 2008;
- tax rebates and credits are computed and applied (most credits are nonrefundable);
- refundable rebates and credits, except the new working families tax credit (WFTC), are based on modified gross income (MGI);
- withholding and estimated payments are applied; and
- taxpayers compute their tax due or refund due.

Progressivity is achieved primarily through certain family- and child-related tax benefits. These benefits are:

- the standard deduction;
- personal exemptions;
- New Mexico low- and middle-income exemption;
- graduated rates;
- LICTR; and
- beginning in 2008, the WFTC will also add to the progressivity of the rates.

The WFTC is eight percent of the federal earned income tax credit amount. Only families with earned income qualify to claim the WFTC.

The TRD proposes to restructure the New Mexico PIT in the following way.

- Combine the family- and child-related tax benefits into a new credit.
- The new credit would replace the standard deduction, personal exemptions, New Mexico low- and middle-income exemption, graduated rates and LICTR. The new credit would be indexed for inflation.
- Income for purposes of the new credit would be taxable income, so no taxpayer would need to calculate MGI to claim the credit.
- The standard deduction, personal exemptions and New Mexico low- and middle-income exemption would no longer be needed under this proposal.
- Taxpayers who itemize deductions would be able to deduct the excess of their itemized deductions over their standard deduction amount.
- The portion of the new credit that replaces LICTR would begin at a constant amount (the maximum LICTR amount for the family size) to insure that very low-income families do not lose benefits.
- The single PIT rate would be 4.9 percent because the first part of the new credit would replace the benefit of graduated rates.
- If the new credit amount exceeded a taxpayer's income tax liability, the excess would be refundable if the taxpayer was a resident of New Mexico and had taxable income of $22,000 or less.
- The definition of MGI would be greatly simplified.

- Few taxpayers would need to calculate MGI, and those only for purposes of the remaining refundable credits.
- Low-income families are most likely to have differences between MGI and AGI because MGI includes total Social Security benefits and TANF, SSI and other benefits not included in AGI.
- Benefits other than Social Security tend to be relatively small and difficult for many families to track carefully and to verify.
- The simplified definition would add to federal AGI only the nontaxable portion of Social Security benefits.
- A separate, new refundable credit for low-income elderly and blind individuals, based on MGI, would replace the additional exemptions they currently receive for purposes of LICTR.

Secretary Goodwin explained that, compared to the current revenue forecast, restructuring the PIT would reduce revenue by $1 million in FY09 due to a slightly higher low-income credit and another $2 million to $3 million due to indexing beginning in FY10.

The second TRD bill draft presented by Mr. Nunns and Secretary Goodwin was drafted to ensure that income tax owed to the state by a nonresident film production company on behalf of a performing artist would be paid. The bill also ensures that the film credit could be claimed by a production company.

It was noted by members of the committee that bills to be endorsed should be accompanied by a fiscal impact report. The committee tries to uphold its policy of not endorsing bills that have no fiscal impact data available for review. It was also noted that the committee does not endorse bills that are in the concept stage and have not been passed through the Legislative Council Service (LCS) for rewriting. Another member of the committee noted that the bill appeared to be revenue positive, and that there should be no problem endorsing the bill.

Economic Development Department Tax Credit Proposals

Mathew Woodlee, director, Office of International Trade, Economic Development Department (EDD) presented a bill draft that proposed amendments to the high-wage jobs tax credit (HWJTC), Section 7-9G-1 NMSA 1978. The HWJTC amendments would have the following effect:

- widen the time frame during which a company may receive the HWJTC for the jobs it creates;

- create a sliding scale for jobs located in municipalities with a population of 40,000 or greater and that have compensation of more than $28,000 but less than $40,000; jobs paying above $40,000 in communities with populations greater than 40,000 receive the maximum credit as do jobs created in communities with populations less than 40,000; and

- create a sliding scale with a reduced credit rate for jobs with total compensation between $28,000 and $40,000 for jobs located in municipalities with populations of 40,000 or more. The sliding scale will allow more jobs to qualify for the credit, but at lower credit rates, as follows.

10% for jobs created in rural areas (rural area = population less than 40,000)
2.5% for urban jobs paying from $28,000 up to $32,000
5.0% for urban jobs paying from $32,000 up to $36,000
7.5% for urban jobs paying from $36,000 up to $38,000
10% for urban jobs paying $40,000 or more

Currently, the fiscal impact of the HWJTC averages under $300,000 annually, suggesting that many companies have difficulty accessing it. Improved access to the HWJTC is critical to at least one major recruitment project currently underway through the New Mexico partnership. Regarding the railroad diesel gross receipts tax exemption:

- In the 2007 session, the legislature passed and the governor signed an exemption for the sale or use of fuel for rail locomotive engines from state gross receipts and compensating taxes. The effective date of the exemption is July 1, 2009, provided that, prior to January 1, 2009, the EDD certifies that the construction of a rail locomotive fueling facility in Dona Ana County has commenced, including land acquisition and necessary permitting.

- An intent of the legislation is to assist the Union Pacific Railroad in establishing a major new rail yard facility near Santa Teresa and the Mexican border. Land for the facility is being acquired through a land exchange between the United States Bureau of Land Management and the State Land Office and subsequent sale to Union Pacific. The exchange is the most rapid method of land acquisition for the project.

- The amendment provides that the date of certification be extended for at least one year. The Bureau of Land Management has advised the railroad that the exchange cannot be effected before late 2008. Subsequent transfer to the railroad and construction is therefore not expected to occur until the following year.

Funding Formula Study Task Force Report and Proposals

Representative Mimi Stewart presented the findings of the Funding Formula Study Task Force (FFSTF).

The FFSTF is close to the conclusion of a three-year effort to define and support a sufficient public education. In response to its request for proposals, the task force selected the American Institutes for Research to study the state's funding formula and make recommendations for changes. The following are the recommendations.

Increase State Funding to Achieve Sufficiency

- Based on sufficiency as determined by a number of professional judgment panels and the project advisory panel, the contractor recommends the state increase funding for public education by approximately 13.5 percent ($294 million) to 15 percent ($326 million).

- The range in costs is due to how special education students are identified and whether the state adopts an index of staff qualifications to replace the training and experience index.

Basic Funding Formula

- Creates a smaller and simplified set of pupil weighting factors to distribute funds according to pupil need (funding provided above the base cost per student for poverty, English language learner status, mobility and special education).

- Addresses the achievement gap by providing funding for high-poverty schools and schools in need of improvement.

- Boosts current year funding for high-growth schools and eliminates complex calculations for determining eligibility for growth funding.

- Creates a simplified set of weights for the differences in costs required for elementary, middle and high schools.

- Creates a weighting schedule that accounts separately for the scale of district operations (district size) and the scale of charter school operations.

- Eliminates special formula funding for small schools and districts requiring approximately $7 million per year in recurring emergency funding.

- Obviates the need for some programs currently funded categorically (e.g., professional development, at-risk prevention and after-school enrichment programs).

Special Education

- The contractor recommends the use of a single overall weight for special education rather than three separate weights corresponding to A/B, C and D categories.

- The proposed formula provides for the use of a census-based system for special education that determines funding by setting a fixed identification rated for each district (16 percent).

Instructional Staff Education and Experience

- An index of staff qualifications is recommended to replace the current training and experience index to account for costs associated with training and experience as well as aligning the index to the three-tier licensure system.

Student Growth and Decline

- The contractor recommends eliminating the growth unit factor and funds on the greater of the previous year's 80- and 120-day average or the current year's fortieth-day enrollment. This method provides funding to growth districts when needed and holds districts harmless for a year if enrollment declines.

- The contractor also proposes that the state establish a fund outside of the funding formula to provide funds to districts for nonpersonnel programmatic costs associated with opening a new school or charter school.

Program Implementation

- The FFSTF is considering both revenue and implementation options. Revenue options are being considered for partial or full funding of the new formula. These involve, among other options:
  - an equalization of the school tax rate for oil and carbon dioxide with natural gas;
  - mandatory combined or consolidated corporate reporting for the CIT;
  - increasing distributions from the Land Grant Permanent Fund; and
  - immediate implementation with a phase-in of funding. With as little as $50 million to implement the formula and base funding to open the doors, about 90 percent of districts would likely have increased funding in FY09.

Committee member comments noted that no one really knows how much "new money" might derive from unified CIT reporting. Other committee members expressed a desire for the funding formula reform bill to be stand-alone legislation absent a tax increase. It was also noted that there would be opposition to unified CIT reporting. Opposition to property tax increases was also noted to be a likely response to increases in property taxes. Others noted that different states have different testing standards and that New Mexico's poor performance is therefore difficult to compare to testing performance in other states.

Assisted Living Charitable Property Tax Exemption

Jody Knox, director, Lakeview Christian Home, Carlsbad, Linda Sechovic, executive director, New Mexico Health Care Association, and Leslie Padilla, attorney, Modrall Sperling Law Firm, presented information about their concerns about splitting the operating components of certain senior citizen or long-term care communities. The TRD and some assessors have been dividing some of these residential projects and taxing those components that are not directly involved in providing nursing care services, such as assisted living accommodations. Ms. Padilla noted that it is the burden of the organization seeking an exemption to establish its right to that exemption.

The fact that the organization is a nonprofit is not sufficient to bring it under the exemption of this section. No matter how praiseworthy the purposes of the organization are, it is still subject to taxation if the standards set forth are not met. The nonprofit character of the owner of property does not permit the granting of an exemption from ad valorem taxes unless the property is used primarily for educational, religious or charitable purposes. Nonprofit organizations have to pay an ad valorem tax on their property; for example, union halls and lodge buildings, unless such property is used primarily for educational or charitable purposes. A facility used for caring for aged, sick and infirm individuals is generally deemed "charitable". Where the recipients of a nonprofit corporation's efforts are indeed sick and largely indigent, the facility used for the purpose of caring for the aged, sick and infirm falls within the category of "charitable purpose". *Retirement Ranch Inc. v. Curry County Valuation Protest Board*, 89 N.M. 206, 549 P.2d 1199 (1976).

Ms. Knox and Ms. Sechovic discussed the situation in Carlsbad in which a charitable organization providing nursing facilities also has expanded to provide assisted or independent living for senior citizens. The assisted or independent living facilities are split from the nursing facilities and are taxable according to the TRD and the Eddy County assessor. This panel is seeking to change that ruling so that all of the facilities within the complex providing nursing care are classified as exempt from property taxes. The panel had a draft that the panel members are hoping to have introduced in the upcoming session.

New Mexico Municipal League and New Mexico Association of Counties; Legislative Proposals

Bill Fulginiti, executive director, New Mexico Municipal League (NMML), and Tasia Young, lobbyist, New Mexico Association of Counties (NMAC), presented the following bill drafts:

- increased distributions from the Law Enforcement Protection Fund to all recipient governments (bill #4);
- urgent changes to the minimum wage law to allow counties and municipalities to use nontraditional work week and hours assignments for nonprofessional occupations that require employees to be available on an on-call or 24/seven basis, such as police, fire and hospital personnel, without overtime compensation for the hours exceeding FLSA requirements (such as 10 consecutive days of 24-hour days, then 10 days off) and allow for compensatory time off (bill #5);

- small counties assistance distribution correction (bill #1);
- county authority to impose franchise fees (bill #2);
- appropriation to the Emergency Medical Services Fund (bill #3);
- local option gross receipts taxes amendments to allow the local option capital outlay tax to be imposed by a local government without requiring that all other possible gross receipts increments be imposed first (bill #6); and
- exchange gross receipts distributions for a distribution of a portion of the income tax generated in the jurisdiction of the local government (bill #7).

Qwest's lobbyist, Leo Baca, expressed the concern of Qwest that if counties are allowed to impose franchise fees as municipalities now are, the tax burden on local businesses will increase to a greater and intolerable level.

The committee recessed at 5:06 p.m.

<u>Thursday, December 13</u>

Property Tax Limitation; County-by-County Data

Richard Anklam, executive director, New Mexico Tax Research Institute (NMTRI), and Tom Clifford, research director, NMTRI, presented information on the three-percent limitation on property valuations. The discussion included some information about yield control. It was decided that the committee would continue to gather information on property tax limitations in the state and their effects on revenue generation and tax rates. Yield control will also need to be a subject of committee examination in the 2008 interim.

✓ *Residential value, obligations and average tax rates from 1990 to 2000*:
- residential taxable value grew by 7.4 percent per year statewide between 1990 and 2000 while obligations grew by eight percent per year;
- average tax rates increased from 22.7 to 25.7 mills;
- county-specific value growth ranges from 1.1 percent per year in Quay County to 15.5 percent per year in Rio Arriba County. County obligation growth ranged from zero percent in Catron County to 14 percent per year in Sandoval County;
- average tax rates fell in 10 counties, with the largest decrease over 40 percent in Rio Arriba County; and
- rates increased in 23 counties, with the largest increases over 50 percent in De Baca and Roosevelt counties.

✓ *Nonresidential value, obligations and average tax rates from 2000 to 2007*:

- statewide values grew by 5.2 percent per year while obligations grew 5.3 percent. The average tax rate grew one percent to 29.2 mills;
- value growth was slowest in McKinley County (-0.4 percent) and fastest in Sandoval County (12.9 percent per year). Obligations growth was slowest in San Juan County (-7 percent) and fastest in Sandoval County (11 percent per year);
- in 16 counties, nonresidential obligations grew more slowly than values, implying tax rate decreases. The largest rate cut was in San Juan County at 48 percent;
- in 17 counties, obligations grew faster than values, implying tax rate increases. The largest increase, at 79 percent, was in Grant County; and
- 2007 average rates ranged from 12.7 mills in San Juan County to 44 mills in Bernalillo County.

✓ *Nonresidential value, obligations and average tax rates from 1990 to 2000*:

- statewide value increased by 3.9 percent per year while obligations increased 5.9 percent per year during the decade. The average tax rate increased from 23.8 to 28.8 mills;
- county growth in value ranged from -3.6 percent per year in Grant County to 12.3 percent per year in Rio Arriba County. Obligations growth rates ranged from -22 percent per year in Catron County to 10.1 percent in Guadalupe County; and
- average countywide tax rates fell in six counties, with the largest decrease in Catron County. Rates increased in 27 counties, with the largest increase in Hidalgo County (162 percent).

✓ *Components of residential value growth for tax years 2000 to 2006*:

- statewide, total net taxable value of residential property grew by 50 percent between 2000 and 2006, a compound annual growth rate of seven percent. Total growth was split evenly (roughly) between *new construction* and *valuation maintenance, two components of yield control*. Compound annual growth rates for both *new construction* and *valuation maintenance* were about four percent during this period;
- county-level growth rates varied. Slower growth of new construction tended to be associated with slower valuation maintenance growth. Valuation maintenance grew significantly more slowly than new construction in Roosevelt, Curry, Torrance, Sandoval, Luna and Catron counties. Valuation maintenance grew significantly faster than new construction in McKinley, Rio Arriba, Grant and Colfax counties; and
- in 16 counties, valuation maintenance growth was two percent or less. In seven counties, growth was three percent, and in the remaining 10 counties, valuation maintenance growth exceeded three percent, with the highest compound growth rate being 14 percent in Colfax County.

✓ *Residential valuation maintenance percent of prior year value from 1998 to 2006*:

- after a sharp increase in 1999, valuation maintenance has averaged two percent to four percent per year statewide;
- most counties have valuation maintenance growth of less than five percent in most years. Several counties have had rates of seven percent or more in recent years; and
- large adjustments in certain counties in certain years appear to be due to one-time corrections to the tax base for previous errors.

✓ *Change in residential tax rates by recipient from 2000 to 2007*:

- statewide residential tax rates increased by 1.1 mills, with the increase attributable to schools and "other", i.e., hospitals and higher education. Statewide, the average levies of counties and municipalities were about the same in 2007 as in 2000. Some of the municipal levy appears to have been shifted from debt service to operating;
- in most counties, increased taxes went mostly to schools and to county government;
- counties with the largest rate increases were Roosevelt (6.8 mills), Valencia (5.5 mills), McKinley and Sierra (5.4 mills) and Bernalillo (4.8 mills); and
- counties with the largest decreases in tax rates were Quay (-10 mills), Colfax (-9.7 mills), Lea (-7.2 mills) and Socorro (-5.4 mills).

✓ *Percent change in residential obligations by recipient from 2000 to 2007*:

- statewide obligations for operating increased by 85 percent, higher than the increase in total value (71 percent). Debt service obligations increased by 68 percent, roughly in line with the value increase;
- counties varied dramatically in the change in operating obligations. Roosevelt County increased 166 percent while Quay County decreased four percent. A few counties collected substantially more in debt service levies (Santa Fe and Sandoval); and
- several counties had a substantial increase in municipal operating levies, with Santa Fe the largest at 244 percent.

The committee discussed issues such as perceived problems with yield control. It was pointed out that yield control only applies to county operational budget mill levies. A question arose as to whether yield control applies to vacant land. Mr. Clifford responded that vacant land is subject to yield control, but as nonresidential property. It was noted that all categories of property, except schools, are subject to yield control. The committee also discussed that county assessors are underpaid and that information, particularly about nonresidential property, is cloaked in secrecy. A concern was expressed that an increasing amount of property tax revenue is being used for operating expenses rather than debt service. A suggestion was made that a centralized property tax administration might be more effective at accurately assessing property and sending out bills. Some committee members support establishing minimum qualifications for assessors. Mr. Clifford was asked to study yield control more and present his summary to the committee in the 2008 interim. Another idea presented by committee members was that an approximation of the taxes that will be due on transferred property should be given to the purchaser at the time of transfer. Rick Silva, director, Property Tax Division, TRD, suggested that such a requirement should be made mandatory.

Other Legislative Proposals

The Village of Angel Fire, represented by J.D. Bullington, presented a draft of the Sports and Recreation Facility Lodger's Fee Act. Also presenting were Alvin "Bubba" Clanton, mayor, Village of Angel Fire, and Chris Muirhead, attorney, Modrall Sperling Law Firm.

The proposed legislation authorizes the Village of Angel Fire, as a qualified municipality, to impose a sports and recreation facility fee on lodging occupancy of lodging rooms within the village. To be imposed, the village council must adopt an authorizing ordinance and the voters in the village must approve the sports and recreation facility fee.

The sports and recreation facility fee can be imposed for a period of 20 years at a maximum rate of 2.4 percent of the gross room revenue for each day the room is occupied. The sports and recreation facility fee is collected by the lodger from customers as a room surcharge and remitted to the village on a monthly basis. The village can use the sports and recreation facility fee to design, construct, equip, furnish and landscape a sports and recreation facility in the village, or can issue revenue bonds, backed by fee revenues, to generate funds for this purpose.

Sports and recreation facility fee revenues can also be used for operation costs for the sports and recreation facility. The village council must determine annually that the sports and recreation facility would benefit tourism in the community. The sports and recreation facility fee does not apply to the following types of lodging:

- lodging owned by federal, state or any political subdivision thereof;
- religious, charitable, educational or philanthropic institutions;
- clinics, hospitals or other medical facilities, including convalescent homes; and
- lodging with less than three rooms for rent.

The chief financial officer of the village would be required to report to the Local Government Division of the DFA on a quarterly basis any expenditure of sports and recreation facility fees generated.

Discussion by committee members noted that:

- other more reliable taxes, such as the property tax, should be used for servicing debt on bonds. Mr. Bullington also noted that the proposed 2.4 percent tax would be in addition to the existing five percent lodger's tax; and
- the bonding should have oversight from the New Mexico Finance Authority because it has expertise to which many small communities do not have access.

Legislative Proposal Endorsements

Pam Ray, staff attorney, LCS, Cleo Griffith, drafter, LCS, and Doris Faust, staff attorney, LCS, presented the bills that were drafted for review for endorsement by the committee. Seventeen bills were presented to the committee for endorsement. Twelve were endorsed. The chart attached presents the bills and the sponsors from the committee.

The following are the votes for endorsement of the drafts.

- Bill draft #1 unanimously endorsed.
- Bill draft #2 not endorsed. Questions arose regarding whether the bill might have federal preemption problems or antidonation issues.
- Bill draft #3 was unanimously endorsed.
- Bill draft #4 was unanimously endorsed.
- Bill draft #5 was endorsed with amendments as proposed in committee on a 13 to 10 vote, with Speaker Lujan, Representative Rodella and Senator Snyder opposing the endorsement.
- Bill draft #6 was endorsed on a nine to four vote with Representatives Taylor, Arnold-Jones and Crook and Senator Snyder voting in opposition to the draft.
- Bill draft #7 was not endorsed on a unanimous vote.
- Bill draft #8 was endorsed on a unanimous vote.
- Bill draft #9 was endorsed on a 12 to one vote, with Senator Boitano casting the opposing vote.
- Bill draft #10 was endorsed unanimously.
- Bill draft #11 was not endorsed unanimously.
- Bill draft #12 was not endorsed on a 13 to four vote against endorsement.
- Bill draft #13 was endorsed on a 12 to one vote in favor of the draft, with Senator Snyder casting the opposing vote.
- Bill draft #14 was endorsed on an 11 to two vote, with Senators Boitano and Snyder voting in opposition to the draft.
- Bill draft #15 was endorsed unanimously.
- Bill draft #16 was endorsed unanimously.
- Bill draft #17 was not endorsed due to its failure to receive endorsement among the house members present.

The committee completed its business for the year and adjourned at 12:36 p.m.