REVENUE STABILIZATION AND TAX POLICY COMMITTEE

2007 INTERIM

Prepared by the Legislative Council Service
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REVENUE STABILIZATION AND
TAX POLICY COMMITTEE
for
2007

TABLE OF CONTENTS

REVENUE STABILIZATION AND

TAX POLICY COMMITTEE

Section 1

Annual Summary

2007 Interim

REVENUE STABILIZATION AND TAX POLICY COMMITTEE
2007 INTERIM
SUMMARY

Members of the Revenue Stabilization and Tax Policy Committee during the 2007 interim were:

Members	**Designees**
Sen. Timothy Z. Jennings, Chair	Sen. Ben D. Altamirano
Rep. Edward C. Sandoval, Vice Chair	Rep. Janice E. Arnold-Jones
Sen. Mark Boitano	Sen. Sue Wilson Beffort
Sen. Carlos R. Cisneros	Rep. Donald E. Bratton
Sen. Kent L. Cravens	Rep. Nathan P. Cote
Rep. Anna M. Crook	Sen. Phil A. Griego
Sen. Dianna J. Duran	Sen. John T.L. Grubesic
Rep. Keith J. Gardner	Rep. Manuel G. Herrera
Rep. Roberto "Bobby" J. Gonzales	Sen. Stuart Ingle
Rep. William J. Gray	Sen. Gay G. Kernan
Rep. George J. Hanosh	Sen. Cisco McSorley
Rep. Ben Lujan	Sen. Steven P. Neville
Sen. Bernadette M. Sanchez	Rep. Andy Nunez
Rep. Daniel P. Silva	Rep. John Pena
Sen. John Arthur Smith	Sen. Leonard Lee Rawson
Sen. H. Diane Snyder	Rep. Debbie A. Rodella
Sen. James G. Taylor	Sen. Nancy Rodriguez
Rep. Thomas C. Taylor	Sen. John C. Ryan
	Rep. Henry Kiki Saavedra
	Sen. William E. Sharer
	Rep. Don L. Tripp
	Rep. Luciano "Lucky" Varela

The Revenue Stabilization and Tax Policy Committee held six meetings in the 2007 interim. Three of those meetings were held at the State Capitol, while the others were held in Farmington, Clovis and Ruidoso. Throughout the interim, the committee reviewed statutory changes proposed by the Taxation and Revenue Department (TRD); however, some were not presented until December, and because the committee had no opportunity to review and suggest changes, only the TRD bill presented earlier in the interim was adopted (i.e., commercial driver's license changes). In addition, the committee heard extensive testimony from the State Racing Commission regarding the status of the industry in New Mexico. Data regarding the race tracks will be gathered so that the committee may review changes in attendance, capital expenditures and other revenue issues. The committee has been asked to visit the race tracks to provide a comparison of the facilities such as stands, stalls and track surfaces in the upcoming interim. The committee continued to discuss unitary reporting of interstate business organization income or combined reporting of corporate income taxes. The committee continued to review activities of the TRD and the Economic Development Department regarding assessing the impact of economic development tax credits, deductions or other incentives on the tax revenue of the state.

There are concerns that the film production tax credits could cost the state as much as $100 million per year, but were anticipated to cost the state less than $20 million annually. Although a study of these credits, deductions and other tax incentives was initiated in the 2007 interim, the planning was primarily still conceptual. The committee will follow the progress of the TRD as it develops a way to assess tax incentives.

Two additional applications for tax increment development districts were filed, one in Bernalillo County in Albuquerque and one near Santa Teresa. By year's end, the SunCal tax increment development district was well along in its process to set up its first district on the west side of the Rio Grande in the area formerly part of the Atrisco Land Grant. The Verde Group project had been withdrawn from consideration by the Dona Ana Board of County Commissioners, but the project is still being pursued and the application for a tax increment development district will be resubmitted at the appropriate time. A full-day meeting on the regulation of liquor licensees and availability of new liquor licenses was held in October.

A discussion of the effects of the three percent per annum limit on increases in residential property values was initiated in the 2007 interim. The committee agreed to continue its discussions of property tax issues and to examine yield control as it affects rates and is affected by the three percent limit on values. Legislators have reported concerns from constituents about the lack of uniformity of property taxes on substantially similar properties due to the application of the three percent value limitation.

Consensus revenue reports were presented in July and December and it became clear that there were some disturbing downward trends that would have a major effect on revenues to the state in the future. These trends must be followed closely in the coming year. Oil and gas revenue has provided the state with a considerable cushion against declines in revenue that were anticipated due to the final implementation of Governor Richardson's personal income tax rate decreases that were implemented over a five-year period. Although decreases in revenues have not materialized, increases in revenues from personal income tax are flattening. The final phase of the income tax rate reductions will leave a virtually flat income tax rate of 4.9 percent for persons with incomes in and above the mid-$20,000 per year range. Progressivity at the lower- and middle-income levels are now provided by the credits, deductions and exemptions at the state and federal levels that are in place. Problems developing in the subprime lending market are beginning to dampen the national economy. It is an unfolding problem that could slow revenue growth in gross receipts over the upcoming years. In New Mexico, it is clear that the price of natural gas, the main generator of severance tax receipts, has been readjusted to reflect lower prices although revenues are still strong. Oil revenue projections were based in October on $75.00 per barrel; in December, this was increased to $80.00 per barrel.

Seventeen drafts of legislation were reviewed by the committee and 11 were endorsed. A chart containing information on the draft legislation proposed, whether the committee endorsed the draft and committee sponsors of the endorsed draft legislation are included at the end of this report.

REVENUE STABILIZATION AND
TAX POLICY COMMITTEE

Section 2

2007 INTERIM
Work Plan
Schedule
Budget

2007 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

Members

Sen. Timothy Z. Jennings, Chair
Rep. Edward C. Sandoval, Vice Chair
Sen. Mark Boitano
Sen. Carlos R. Cisneros
Sen. Kent L. Cravens
Rep. Anna M. Crook
Sen. Dianna J. Duran
Rep. Keith J. Gardner
Rep. Roberto "Bobby" J. Gonzales
Rep. William J. Gray
Rep. George J. Hanosh
Rep. Ben Lujan
Sen. Bernadette M. Sanchez
Rep. Daniel P. Silva
Sen. John Arthur Smith
Sen. H. Diane Snyder
Sen. James G. Taylor
Rep. Thomas C. Taylor

Designees

Sen. Ben D. Altamirano
Rep. Janice E. Arnold-Jones
Sen. Sue Wilson Beffort
Rep. Donald E. Bratton

Rep. Nathan P. Cote
Sen. Phil A. Griego
Sen. John T.L. Grubesic
Rep. Manuel G. Herrera
Sen. Stuart Ingle
Sen. Gay G. Kernan
Sen. Cisco McSorley
Sen. Steven P. Neville
Rep. Andy Nuñez
Rep. John Pena
Sen. Leonard Lee Rawson
Rep. Debbie A. Rodella
Sen. Nancy Rodriguez
Sen. John C. Ryan
Rep. Henry Kiki Saavedra
Sen. William E. Sharer
Rep. Don L. Tripp
Rep. Luciano "Lucky" Varela

Work Plan and Focus for 2007

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 . . . ".

A. In the 2007 interim, the committee will:

1. review the work and recommendations of the blue ribbon tax task force and then examine the fairness, equity and effectiveness of the tax structure, including the balance of revenue collections from property taxes, personal income taxes, corporate income taxes and gross receipts taxes;

2. become familiar with revenue projections and any anticipated or observed trends occurring in the revenue outlook for the upcoming year;

3. review existing tax credits or incentives and review the effectiveness of those credits or incentives already in effect;

4. work with the taxation and revenue department and the economic and rural development committee to provide a tax impact report to the legislature on economic development tax credits, deductions or incentives to be proposed by the economic and rural development committee in the 2008 session.

5. identify options for addressing the issuance and transfer of liquor licenses and liability of liquor licensees and review the regulatory provisions controlling the issuance of picnic licenses;

6. review revenue sources for public school funding;

7. review status of dual taxation by the state and Indian tribes and consider developing a global formula to be used to eliminate dual taxation when it is identified; and

8. familiarize members with concepts of taxation and expenditure limits and consider developing a process to return funds to taxpayers when excess revenue comes into the state.

B. Other matters that will be addressed by the committee include:

1. taxation and revenue department legislative proposals to be introduced in the 2008 legislative session;

2. periodic updates on the progress of implementation of legislation adopted in the 2007 legislative session that fall within the purview of the committee;

3. development of a long-range plan for tax policy and tax changes in the state;

4. a review of the effect on tax revenue or tax policy of holding local governments harmless for unlimited time into the future when eliminating gross receipts taxes;

5. updates on the national effort to streamline sales taxes and sales tax policy;

6. discussions of the effects of the cap on property valuations and evaluation of the cap's effectiveness and a review of the collections process used by the taxation and revenue department and local governments to collect delinquent property taxes and consideration of alternatives, including contracting with the private sector to make collections;

7. a review of the collection, revenue impact, distribution and expenditure of gasoline and other fuel taxes and a comparison with the needs and uses identified;

8. information on various forms of tax reform of interest to the committee; and

9. a review of oversight of and access to data from local gross receipts tax collections and distributions.

MEETING SCHEDULE

Date	Location
June 15 (Fr)	Santa Fe
July 25-26 (W-Th)	Farmington
August 29-30 (W-Th)	Clovis
September 26-27 (W-Th)	Ruidoso
October 18-19 (Th-Fr)	Santa Fe
November 19-20 (M-Tu)	Santa Fe
December 12-13 (W-Th)	Santa Fe

REVENUE STABILIZATION AND
TAX POLICY COMMITTEE

Section 3

June 2007
Agenda
Minutes

Revised: June 8, 2007

TENTATIVE AGENDA
for the
FIRST MEETING IN 2007
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

June 15, 2007
State Capitol, Room 322

<u>Friday, June 15</u>

9:00 a.m.	**Call to Order** —Senator Timothy Z. Jennings, Chair
9:05 a.m.	**Post-Session Fiscal Summary** —David Abbey, Director, Legislative Finance Committee (LFC) —Norton Francis, Economist, LFC
10:00 a.m.	**Adoption of Committee Work Plan and Meeting Schedule** —Pam Ray, Staff Attorney, Legislative Council Service
10:45 a.m.	**Review of Tax Legislation from the 2007 Session** —Jan Goodwin, Secretary, Taxation and Revenue Department (TRD) —Jim Nunns, Tax Policy Director, TRD
12:15 p.m.	**Adjourn**

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

June 15, 2007
State Capitol, Santa Fe

The first meeting of the Revenue Stabilization and Tax Policy Committee (RSTP) was called to order by Senator Timothy Z. Jennings, chair, at 9:00 a.m. at the State Capitol, Santa Fe.

Present
Sen. Timothy Z. Jennings, Chair
Rep. Edward C. Sandoval, Vice Chair
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Sen. Dianna J. Duran
Rep. Roberto "Bobby" J. Gonzales
Rep. William J. Gray
Rep. Ben Lujan, Speaker of the House
Sen. Bernadette M. Sanchez
Sen. John Arthur Smith
Sen. H. Diane Snyder
Sen. James G. Taylor

Absent
Sen. Mark Boitano
Sen. Kent L. Cravens
Rep. Keith J. Gardner
Rep. George J. Hanosh
Rep. Daniel P. Silva
Rep. Thomas C. Taylor

Designees
Rep. Janice E. Arnold-Jones
Sen. Sue Wilson Beffort
Rep. Henry Kiki Saavedra
Rep. Luciano "Lucky" Varela

Sen. Ben D. Altamirano
Rep. Donald E. Bratton
Rep. Nathan P. Cote
Sen. Phil A. Griego
Sen. John T.L. Grubesic
Rep. Manuel G. Herrera
Sen. Stuart Ingle
Sen. Gay G. Kernan
Sen. Steven P. Neville
Rep. Andy Nunez
Rep. John Pena
Sen. Leonard Lee Rawson
Rep. Debbie A. Rodella
Sen. Nancy Rodriguez
Sen. John C. Ryan
Sen. William E. Sharer
Rep. Don L. Tripp

Also Present
Sen. Cisco McSorley

Staff
Tim Crawford, Legislative Council Service (LCS)
Doris Faust, LCS
Cleo Griffith, LCS
Norton Francis, Legislative Finance Committee (LFC)
Pam Ray, LCS
Stephanie Schardin, LFC
Doug Williams, LCS

Guests

The guest list is in the meeting file.

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

<u>Friday, June 15</u>

Post-Session Fiscal Summary

David Abbey, director, LFC, and Mr. Francis, chief economist, LFC, presented the post-session fiscal update.

The presentation began with a review of the following fundamental principles of sound tax policy.

- Adequacy: Does the tax system raise enough revenue to adequately fund government services?
- Efficiency: Does the tax system raise the most revenue with the least distortion?
- Equity: Are similarly situated taxpayers treated equally? Are taxes levied according to ability to pay?
- Administration: Does the tax system raise the most revenue with the least effort?
- Certainty: Can taxpayers confidently plan future tax liability?
- Accountability: Are exceptions to the rule justified and monitored?

Regarding tax legislation passed during the 2007 session, the following points were noted.

- Phased-in measures will drive growth in tax cuts. Measures include:
  - the Fire Protection Fund; and
  - the hospital gross receipts tax (GRT) credit.

- Economic development components have uncertain out-year impacts. Components include:
  - film credits, which cost $30 million now and are expected to double by 2012. Credits are expected to cost $23,000 per job created;

- locomotive fuel GRT; and
- the medical insurance pool.

- The pace of tax base erosion has quickened in recent years.

- The family tax provisions of 2007 restored progressivity to the personal income tax.

- Many other tax expenditures contradict the fundamental principles of tax policy by reducing revenue adequacy and increasing volatility and administrative burden.

Concerning capital outlay, the following points were noted.

- General fund and severance tax bond capacity have increased considerably in recent years as energy prices have soared. Capacity is greater in even-numbered years when general obligation bonds are issued.

- The capital outlay process suffers from lack of planning and accountability, which leads to a large number of under-funded projects, unexpended funds and disrepair of state-owned assets.

- After the 2007 session, unspent capital appropriations totaled $2.5 billion.

With respect to the state's overall fiscal condition, the following points were made.

- State reserves remain strong at 10% due to disciplined FY07 and FY08 budgeting in the presence of energy volatility.

- Revenues are expected to grow by an average of 3.6% over the next four years.

- "New money" is expected to average $230 million per year, down from historic amounts in FY07 and FY08.

- $80 million of FY09 new money is already committed to Medicaid, ERB and corrections priorities.

Representative Saavedra asked about the $2.5 billion in unexpended capital outlay funds. Mr. Abbey stated that this amount is a 10-year cumulative.

Representative Saavedra asked about the observation that "the capital outlay process suffers from a lack of planning... which leads to a large number of under-funded projects". Mr. Abbey gave examples of capital outlay appropriations that were made before projects were ready to go forward, resulting in delay and projects that now cost twice the original estimate.

Representative Sandoval asked for details, by year, of unspent capital outlay appropriations. Mr. Abbey stated that the LFC will be receiving a detailed report at the end of June.

Speaker Lujan asked about dynamic scoring in relation to the revenue impact of proposed legislation. Mr. Francis noted that the REMI project was not successful but that other attempts at dynamic scoring are in progress.

Senator Beffort indicated that dynamic scoring is essential. Mr. Francis stated that the LFC is actively pursuing a method of dynamic scoring.

Senator Snyder asked if the retirement plans are solvent. Mr. Abbey noted that the scheduled increase in Educational Retirement Fund contributions is leading to full funding over the next 30 years. However, he also stated that there are many variables that could affect the outcome.

Senator Snyder noted that some of the reason for unspent capital outlay is because money is not drawn down even though the project is complete. Mr. Abbey stated that the LFC staff is currently compiling a report of unexpended capital outlay appropriations. Ms. Linda Kehoe, LFC, stated that the staff is surveying the unexpended appropriations and will prepare a quarterly report, by sponsor.

Senator Jennings said that the state needs to examine building codes with respect to the design of roofs. He noted that flat roofs leak and that positive pitch roofs can eliminate leaking.

Adoption of Committee Work Plan and Meeting Schedule

Ms. Ray, staff attorney, LCS, reviewed the proposed work plan and meeting schedule. The committee adopted the work plan and meeting schedule.

Review of Tax Legislation from the 2007 Session

Jan Goodwin, secretary, Taxation and Revenue Department (TRD), and Jim Nunns, tax policy director, TRD, presented a summary of tax legislation from the 2007 session.

- Income tax credits and exemptions

Several new or expanded individual income tax credits and exemptions were incorporated into House Bill 436. General fund fiscal impacts are estimated at $50 million per year. Credits and exemptions include the:

  - working families tax credit;
  - expanded tax exemption for middle income taxpayers;
  - personal income tax exemption for active duty military pay; and
  - credit for adopted special needs children.

- Economic development incentives

The following economic development incentives were all incorporated into HB 839. Combined, the annual general fund fiscal impact of the provisions is estimated to be about $2.7 million in FY 2008, increasing to almost $12 million by 2010. Incentives include the:

  - angel investment credit;

- rural job tax credit;
- film production credit;
- lab partnership with small business tax credit;
- high-wage jobs tax credit — repeal of sunset date;
- GRT deduction — operationally responsive space program;
- GRT deduction — aircraft manufacturers;
- GRT deduction — military construction services;
- GRT deduction — boxing, wrestling, martial arts;
- GRT deduction — financial management, advisory services; and
- GRT and compensating tax deduction locomotive engine fuel.

- Renewable energy incentives
  A variety of new incentives was adopted to promote energy conservation and energy production using renewable or low-polluting energy sources. Most of the provisions were included in SB 463. General fund fiscal impacts of the provisions are estimated at $1.6 million in FY 2008, increasing to $16 million in 2010. Incentives include:
  - renewable energy production tax credit amendments;
  - sustainable building tax credit;
  - agricultural water conservation expenses;
  - tax incentives for producing biodiesel fuel;
  - GRT deduction for solar energy systems;
  - alternative energy products manufacturing tax credits; and
  - GRT deduction — Renewable Energy Tansmission Authority Act.

- Health system tax relief

HB 638 contained a variety of provisions that will reduce tax liabilities for health care providers, hospitals and insurance companies. General fund fiscal impacts are $20 million in FY 2008, increasing to $36 million in 2010. Local government impacts are $3.4 million in FY 2008, increasing to $5 million in 2010. Relief measures include:
  - income tax credit for rural health care practitioners;
  - increased insurance premiums tax credits;
  - GRT — credit for some unpaid doctor services;
  - GRT — credit for hospitals;
  - GRT deduction — oxygen delivery;
  - GRT deduction — Indian Health Service;
  - GRT deduction — receipts from Medicare and managed health care providers; and
  - GRT deduction — hearing aids, vision aids and related services.

- Tax administration

Several bills passed that will help to administer the tax code in a more efficient and taxpayer-friendly manner. Measures include:
  - increased penalty and reduced interest rates on tax underpayments;
  - disclosure of tax information;

- tax filing extensions and filing changes;
- repealed penalty for incorrectly reporting food and medical deduction; and
- managed audit extension of interest-free period.

- Miscellaneous exemptions and deductions. Deductions include:
  - college nonathletic event gross receipts;
  - low-income housing materials; and
  - cattle medicine and medical supplies.

The financial benefits of the income tax legislation is summarized in the following table:

Benefits for Working Families Tax Credit by Income Class

Adjusted Gross Income Class	Number of Returns	Working Families Tax Credit	
		Total ($millions)	Average ($)
Under $5,000	32,500	$1.7	51
$5,001 - $10,000	45,300	$6.1	133
$10,001 - $15,000	37,200	$8.7	234
$15,001 - $20,000	31,200	$6.7	216
$20,001 - $25,000	26,300	$3.8	146
$25,001 - $30,000	20,700	$1.6	78
$30,001 - $35,000	7,200	$0.3	37
Totals	200,600	$28.9	144

The committee adjourned at 11:50 a.m.

REVENUE STABILIZATION AND
TAX POLICY COMMITTEE

Section 4

July 2007
Agenda
Minutes

Revised: July 20, 2007

TENTATIVE AGENDA
for the
SECOND MEETING IN 2007
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

July 25-26, 2007
Sun's Room
Student Center
San Juan College
4601 College Boulevard
Farmington, New Mexico

Wednesday, July 25

9:00 a.m.	**Call to Order** —Senator Timothy Z. Jennings, Chair
9:05 a.m.	**Welcome and Local Issues** —Carol Spencer, President, San Juan College —Bill Standley, Mayor, Farmington —Dr. Jim Henderson, Member, San Juan County Commission
9:35 a.m.	**Tax Incentives and Economic Development** —Richard Anklam, President and Executive Director, New Mexico Tax Research Institute —Dr. Anthony Popp, Academic Department Head, Economics and International Business, New Mexico State University
10:55 a.m.	**Update on Current Tax Incentives** —Dr. Kelly O'Donnell, Deputy Secretary, Economic Development Department —Jim Nunns, Tax Policy Director, Taxation and Revenue Department (TRD) —Norton Francis, Chief Economist, Legislative Finance Committee (LFC)
12:00 noon	**Lunch** **San Juan College Update** —Carol Spencer, President, San Juan College

1:00 p.m. **Dual Taxation**

—Jim Nunns, Tax Policy Director, TRD
—Amy Alderman, Attorney, Navajo Tax Commission, Navajo Nation
—Darrell Paiz, Supervisor, Revenue and Tax Office, Jicarilla Apache Nation
—Teresa I. Leger, Attorney, Nordhaus Law Firm for the Jicarilla Apache Nation

2:30 p.m. **Produced Water — Current Disposition and Status and Future Possibilities**

—Mark Fesmire, Director, Oil Conservation Division, Energy, Minerals and Natural Resources Department
—John Volkerding, Basin Disposal

3:30 p.m. **Oil and Gas Industry Update, the Water Dog Project and the Produced Water Options Task Force**

—Bill Carr, Co-Chair, New Mexico Oil and Gas Association (NMOGA)
—Deborah Seligman, Government Relations, NMOGA

4:30 p.m. **The New Mexico Oil and Gas Safe Site Program and Award**

—Butch Tongate, Bureau Chief, New Mexico Occupational Safety and Health Bureau, Environmental Protection Division, Department of Environment

5:00 p.m. **Recess**

<u>Thursday, July 26</u>

9:00 a.m. **Current Status of Air Service — Farmington Area**

—Mike Miller, City Manager, Farmington

10:15 a.m. **Consensus Revenue Estimate**

—Jan Goodwin, Secretary, TRD
—Laird Graiser, Chief Economist, Department of Finance and Administration (DFA)
—David Abbey, Director, LFC
—Bill Mueller, Chief Economist, Department of Transportation

12:00 noon **Working Lunch**
Coal Surtax, Review SB 220 (Vetoed)

—David Saliba, Manager, Four Corners Power Plant, Arizona Public Service Company
—Justin Jones, Governmental Relations, BHP-Billiton

12:45 p.m. **San Juan Regional Medical Center — Tax Policy Relating to Local Hospitals**
—Steve Altmiller, Chief Executive Officer, San Juan Regional Medical Center
—Mike Philips, Chief Financial Officer, San Juan Regional Medical Center

1:30 p.m. **Capital Projects Quarterly Update**
—Linda M. Kehoe, Principal Analyst, LFC
—Robert Apodaca, Director, Local Government Division, DFA

2:30 p.m. **Adjourn**

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

July 25 - 26, 2007
San Juan College
Farmington, New Mexico

The second meeting of the Revenue Stabilization and Tax Policy Committee (RSTP) was called to order by Senator Timothy Z. Jennings, chair, at 9:15 a.m. at San Juan College in Farmington.

Present
Sen. Timothy Z. Jennings, Chair
Rep. Edward C. Sandoval, Vice Chair
Sen. Carlos R. Cisneros
Sen. Kent L. Cravens
Rep. Anna M. Crook
Sen. Dianna J. Duran
Rep. Keith J. Gardner
Rep. Roberto "Bobby" J. Gonzales
Rep. William J. Gray
Sen. Bernadette M. Sanchez
Rep. Daniel P. Silva
Sen. John Arthur Smith
Sen. H. Diane Snyder
Sen. James G. Taylor
Rep. Thomas C. Taylor

Absent
Sen. Mark Boitano
Rep. George J. Hanosh
Rep. Ben Lujan, Speaker of the House

Designees
Sen. Steven P. Neville (NVI)*
Rep. John Pena (AtA)* *
Sen. John C. Ryan
Rep. Henry Kiki Saavedra
Sen. William E. Sharer (AtA)**
Rep. Luciano "Lucky" Varela

Sen. Ben D. Altamirano
Rep. Janice E. Arnold-Jones
Sen. Sue Wilson Beffort
Rep. Donald E. Bratton
Rep. Nathan P. Cote
Sen. Phil A. Griego
Sen. John T.L. Grubesic
Rep. Manuel G. Herrera
Sen. Stuart Ingle
Sen. Gay G. Kernan
Sen. Cisco McSorley
Rep. Andy Nuñez
Sen. Leonard Lee Rawson
Rep. Debbie A. Rodella
Sen. Nancy Rodriguez
Rep. Don L. Tripp

*** NVI means "No Voucher Issued"**
****AtA means "Approved to Attend"**

Additional Legislators in Attendance
Rep. Ray Begaye (AtA) 7/25/07

Former Legislators
Former Rep. Sandra Townsend

Staff
Legislative Council Service (LCS)
Tim Crawford, LCS
Doris Faust, LCS
Cleo Griffith, LCS
Pam Ray, LCS
Doug Williams, LCS

Legislative Finance Committee (LFC)
David Abbey
Norton Francis
Linda Kehoe

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file and in the Legislative Council Service library.

<u>Wednesday, July 25</u>

Welcome and Local Issues

Dr. Carol Spencer, president, San Juan College, Bill Standley, mayor, Farmington, and Dr. Jim Henderson, member and former chair, San Juan County Commission, all welcomed the committee to Farmington and San Juan County.

Dr. Spencer welcomed the committee to Farmington and San Juan College. She explained that renovations at the student center are in progress and that the renovations would provide an expanded cafeteria.

Mayor Standley noted that the Farmington-Aztec-Bloomfield area has been designated a metropolitan statistical area (MSA) because it has a combined population in excess of 50,000. Farmington has 2,200 motel rooms and an aquatic center. The city is hosting the Western States Swim Meet, the Connie Mack Little League World Series and the national finals of a rodeo circuit in 2008.

Dr. Henderson, who was the original president of San Juan College, stated that only 6% of land in Farmington is in private ownership. Twenty-nine percent is federal land, 60% is Navajo Nation land and 5% is state land. There are 743 miles of road and 22 bridges that are maintained by the county. The county as a whole occupies 5,500 square miles and has a population in excess of 100,000. It became a class A county due to the 2000 federal census count.

Tax Incentives and Economic Development

Richard Anklam, president and executive director, New Mexico Tax Research Institute (NMTRI), began the presentation. Dr. Anthony Popp, academic department head, Economics and International Business, New Mexico State University, later joined in the presentation.

Mr. Anklam began by providing a reminder of basic tax principles. NMTRI has adopted the following principles of taxation.

- State and local taxes should be adequate to provide an appropriate level of those goods and services best provided by the public sector, such as education, public safety, law enforcement, streets and highways and the courts.

- State and local tax policy should do the least harm to the private economy. Therefore, tax bases should be as broad as possible so that tax rates can be as low as possible in order to raise the necessary revenues.

- State and local tax policy should be fair and equitable toward individuals and businesses similarly situated. Individuals with the same income level should be taxed the same. Businesses engaged in similar commercial activities should be subject to the same level of taxation.

- State and local tax policy should not be costly to administer and should be easily understood by taxpayers so as to minimize taxpayer compliance costs.

- The state and local tax burden should be evaluated on the basis of the impact of all taxes levied on a given taxpayer, not just on a single tax or tax rate.

- Deviations from established tax policy in pursuit of economic development, social or other goals should be well-reasoned and pursued only when established tax policies are not significantly undermined and the results of such deviations can subsequently be measured and evaluated.

The idea of economic growth is very simple in one sense and very complex in other ways. Most individuals would define state economic growth as the long-term increase in output and per capita income. Another definition would be the increase in the well-being of the residents of the state. How to achieve that long-term growth is the difficult part.

Government has a number of policy options available to promote economic development. The various policies can generally be put into one of three categories: legal policies, spending policies and taxation policies. Legal policies are the rules of the game. Spending policies would include expenditures for infrastructure and amenities, investment in human capital, business assistance centers and general promotion of the advantages of locating in the state. Taxation policy includes the overall tax structure of the state and the various tax incentives that could be granted to particular companies. The question of how to distribute scarce resources between the two sets of policies to enhance economic development effectively and efficiently is an important question.

Any discussion about overall taxes and changes in taxes should be done in the context of what makes a good tax structure. In general, the tax structure should provide adequate revenues, be efficient and equitable, be transparent and be easily administered. A formal statement of these principles was adopted by the NMTRI and is replicated here.

If the state chooses to deviate from the general principles of taxation, the deviation should be well-reasoned and subsequently measured and evaluated. Tax incentives fall into this definition of deviation. Most individuals would agree that, even if the tax incentives passed over the years by the New Mexico Legislature have been well-reasoned, they have not been measured or evaluated.

In general, economic growth will take place when economic base companies expand or new economic base companies locate in the region, selling more output to those outside the region, increasing employment and buying more intermediate goods and services within the region. This is known as the multiplier process. Spending takes place within the region from buyers outside the region. The spending of that revenue by the local firms for labor and intermediate goods and services generates more income to those within the region. The more goods and services and labor purchased within the region, the bigger the multiplier and the better off individuals within the region become (at least in terms of dollars).

The theory behind tax incentives is that the state or regional government unit is providing relief in terms of taxes paid by the business entity. The result of a tax incentive should either cause the cost of production to decrease or the amount of profits subject to tax to decrease. Either situation increases the amount of profit earned by the business. Generally, tax incentives lower the cost of production either through lowering the cost of labor (tax credits for hiring certain types or amounts of labor), capital (lower cost of borrowing) or land (lower property taxes). Given lower costs, profit margins increase, thus enticing firms to expand or enticing new firms to locate in the state or region.

The return to the state or region comes in the form of other tax revenues received. More business means higher gross receipts taxes and higher personal and corporate income taxes. The increase in any particular category depends on the form of the tax incentive package. In order for the tax incentive package to be cost-effective, the increase in other revenues must be large enough to offset the initial loss in taxes the firm does not have to pay.

In order for a tax incentive package to be cost-effective, it must first generate a response from firms and then generate enough business to repay the taxes foregone. In addition, if the goal is to increase the well-being of the residents of the state, the increase in jobs and income should accrue to residents and not to others outside the state. The increase in tax revenues should also be large enough to offset any other increase in costs to the government due to the provision of other services created by the activity.

The literature indicates that general tax incentives are not very cost-effective. In order to get a response from businesses, there has to be a deviation in tax rates across jurisdictions. While there are certainly differences in particular tax rates across states, the deviation in overall taxes is fairly small. Taxes are not very high on the list of considerations when businesses are making location decisions. Taxes are a small cost relative to labor, transportation and utility costs. This is not to say that, after businesses determine a number of places or regions that fit their intended profile, tax structures are not considered important. General tax breaks may give businesses a break for activity that would have taken place even in the absence of the incentives.

Once a firm decides to locate in a particular area, the question then becomes whether or not the activity generates enough other tax revenue to replace that which is lost due to the incentive. This will depend on the size of the multiplier. The size of the multiplier will depend on how integrated that firm becomes with the rest of the local market. If the firm buys lots of inputs from the local market, the multiplier will be large. If the firm buys most of the inputs from out of the region or state, the multiplier will be small. Also, if the firm is selling goods and services to the local market, displacing sales from local firms, the multiplier will be small.

One of the important issues is whether or not the firms receiving the incentives actually hire from the local labor pool. Firms locating in the state or region from outside the state will also relocate a management team and some essential workers. If few workers are hired from the local labor pool, the residents of the state are not better off.

Once a new business locates in the region, governmental services may need to be increased. Pressure may be put on the transportation system, the utility system, the police department, the fire department and the school system. Depending on the types of firms relocating, there may be some environmental concerns that need to be dealt with. In New Mexico, the effect on the water supply is particularly important.

The following principles should be considered:

- If the tax system is not sound, small changes will not affect businesses very much. Any deviations from the tax principles listed above should be well thought out and evaluated.

- Targeted tax incentives will be more effective than general tax incentives. Most incentives are given to business activity that would have occurred in the absence of the incentive.

- Targeting of those companies that will hire substantially from the local market and pay wages relatively high for the skills is needed.

- Targeting of those companies that will have a high multiplier or will entice other firms to relocate because of the existence of the new firm is needed. Most incentives are not cost-effective. Only if the original firm attracts other firms that do not receive the incentive will the overall effect be cost-effective.

- The evaluation of a tax incentive should include considerations of population pressure, traffic congestion, environmental issues and distribution issues.

- Spending on public services and infrastructure has a positive impact on growth. The right mix of spending and tax incentives is important.

- All regions have different economic characteristics. An active business location program with local business participation can be very effective.

Senator Jennings noted that: state government has unmet needs of approximately $200 million to $300 million in water issues; the Retiree Health Care Authority has a $5 billion problem; K-12 education will require between $0.5 billion to $1 billion; and the Educational Retirement Fund still needs $3 billion. When all requirements are totaled, they add up to approximately $11 billion, and the forecast is for only $400 million in new money for fiscal year 2009. These needs should be considered before new tax incentives are created.

Representative Crook stated that she learned a long time ago not to spend more money than that which is taken in.

Representative Sandoval asked about the use of sunset and claw-back provisions. Mr. Anklam responded that sunset provisions are good because they provide for program review; however, he noted that such review has generally not provided sufficient analysis prior to extending tax incentives. Only the City of Albuquerque has been actively pursuing claw backs.

Representative Sandoval asked about the "but for" question. Mr. Anklam agreed that this is always the problem with tax incentives, but he also noted that the Intel Corporation locating in Rio Rancho would surely not have occurred in the absence of incentives.

Representative Sandoval asked if New Mexico has gone too far with tax incentives. Dr. Popp stated that most incentives have benefited large businesses in large cities like Albuquerque, but he does not know if the state has gone too far because the impact of incentives has not been measured.

Senator Ryan asked for a comparison of New Mexico tax policy to that of other states. Dr. Popp responded that 20 years ago, New Mexico had one of the best tax structures of all the states. However, over time, the economy has shifted from commodities-based to service-based and he would now rate New Mexico a C+. Mr. Anklam stated that the pyramiding of the gross receipts tax (GRT) is a problem, but the personal income tax (PIT) is now favorable compared to other states.

Senator Smith was concerned about local government property transfer taxes and tax rates. Mr. Anklam noted that rural parts of the state do not benefit from the property transfer tax. Senator Smith is considering legislation that would restrict local property transfer taxes.

Senator Smith asked about the feasibility of allowing local governments to impose a GRT on commodities such as retail grocery food. Dr. Popp stated that there are administrative problems with local taxes and that rates are already high.

Senator Smith asked for an opinion on proposed tax incentives for Ruidoso related to its water issues. Dr. Popp responded that the best incentive for economic development in Ruidoso is to build water infrastructure.

Senator Snyder asked which NMTRI principle is referred to as the three-legged stool. Mr. Anklam responded that the first principle, related to adequacy, is the three-legged stool principle. Senator Snyder stated that New Mexico does not have a balanced tax system because of the limited use of the property tax.

Senator Snyder asked if other states have a requirement to reduce spending when cutting taxes. Mr. Anklam said that no state has such a requirement; however, numerous states have balanced budget requirements, and this constitutes an indirect method for reducing spending.

Representative Taylor asked about the "real" multiplier. Dr. Popp said that the multiplier depends upon the sector. Generally, 1.30 to 1.75 is an appropriate multiplier for statewide use. For local government, the multiplier would be less.

Update on Current Tax Incentives

Dr. Kelly O'Donnell, deputy secretary, Economic Development Department, Norton Francis, chief economist, LFC, and Jim Nunns, tax policy director, Taxation and Revenue Department (TRD), presented information on tax incentives currently in statute.

Dr. O'Donnell gave some background on tax incentives. She noted that New Mexico has the fifth-greatest rate of job growth in the United States. This is causing an increase in the standard of living in the state. New jobs bring new revenue into the state. The greatest value of tax incentives comes to the state when incentives are targeted at economic base industries that provide high-wage jobs. Dr. O'Donnell used the aircraft manufacturing industry as an example. She noted that it is difficult to identify revenue expectations from incentives. The fiscal impact of most tax credits does not have a great impact on the tax base. For instance, the high-wage tax credits add to approximately $300,000 statewide and the rural jobs tax credit has a statewide impact that is similar.

Mr. Francis discussed the accountability that should be built into tax credits. Although some credits, such as the aviation services tax credits, are reported, it is unclear if those taxpayers are also able to claim, or do claim, other tax credits as well. Very few of the current tax credits have a statutory requirement to report to either the LFC or RSTP. He said that four out of the 45 tax credits now in statute have specific reporting requirements. There are some data available for about 18 of the credits. Corporate income tax credits are especially difficult to monitor because the reporting dates are not specific. A historic archive of tax credits claimed has to be kept to track each corporate taxpayer's claims.

There is also limited transparency. When a taxpayer claims a tax credit, a report should be made available to the public online. Accountability increases the reporting burden on the taxpayer. Use of information from taxpayer reports must be used or released conservatively, and concerted attempts to limit the increased reporting and tracking burden on the taxpayer should be made by the TRD.

Mr. Francis suggested that tax credits be written with a four-year sunset provision to enable the TRD to report on the value of the tax incentive to the state.

Tax increment financing also needs to be reviewed to determine if the projects that have been established are in some way preventing growth in other parts of the state.

Mr. Francis also suggested that the legislature begin to track the issued and outstanding industrial revenue bonds to gain a better understanding of how widely those are used as an economic development incentive and what effect they have on local government tax bases.

Mr. Nunns discussed several projects that the TRD has underway related to tax incentive accountability:

- implementing new legislative requirements for business tax credit disclosure;
- a multiyear tax expenditure analysis that will initially focus on tax credits; and
- a comprehensive review of business tax credits that may lead to recommended legislation to make these credits simpler, more uniform and more effective.

1. Reporting and Disclosure of Business Tax Credits
    - House Bill 667 (Laws 2007, Chapter 164) brought several new business tax credits under the provisions of the Tax Administration Act.
        - One of these provisions is the requirement under Section 7-1-29 NMSA 1978 that the department make available, for inspection by the public, records related to tax credits claimed in amounts greater than $10,000.
        - HB 667 clarified that the following information will be provided under this provision: taxpayer name, credit amount, type of business tax credit claimed and the date the credit was issued.
    - Beginning with the 2006 tax year, the TRD has expanded the information captured on tax credits claimed on corporate income tax returns.
    - The TRD will continue to review rules governing public disclosures of business credits to determine whether additional disclosures could aid in making the credits more effective.

2. Tax Expenditure Analysis
    - The department is undertaking a multiyear, comprehensive review and analysis of tax expenditures.
    - This year, the TRD plans to complete a report that describes in depth the conceptual framework of tax expenditures.

Tentative outline of Fiscal Year 2008 report:

A. definition of tax expenditure:
    1. "normal" or "ideal" tax law; deductions and exemptions necessary to define the "normal" tax base; and
    2. deviations from "normal" or "ideal" tax law;

B. uses of tax expenditures:
    1. to evaluate government programs administered through taxes; and
    2. tax reform and tax expenditures;

C. tax expenditure analysis in the federal and state governments;

D. measurement of tax expenditures:
    1. measurement conventions; and
    2. differences from revenue estimates on fiscal impact reports;

E. analysis of tax expenditures:
    1. purposes of tax expenditure provisions;
    2. relationship of tax expenditures and other government programs;
    3. criteria for determining the appropriate form of program;
    4. criteria for measuring the effectiveness of tax expenditures; and
    5. data and analytical methods required for the analysis; and

F. illustration: measuring tax expenditure credits:
    1. income tax credits; and
    2. other credits.

The tax expenditure reports produced in future years will define and measure tax expenditures for a number of specific taxes, with final year reports covering the analysis of the effectiveness of specific tax expenditures.

3. In its review of business tax credits, the TRD is focusing on the goal of having greater uniformity in the structure of the tax credits and seeking improved targeting of businesses that benefit from tax credits. The review will determine if the following are specified in the statutory language of the tax credit:

- a requirement that the credit cover activity or property located in New Mexico;
- specification of qualifying periods, activities, etc.;
- events that should trigger credit recapture and the recapture mechanism;
- certification and ongoing monitoring and evaluation by other departments;
- clarification of "double dipping" potential (more than one credit or deduction for the same expenses);
- circumstances under which a credit should be nonrefundable, refundable or transferable;
- the "stacking sequence" of credits and their stacking order against taxes;
- carry-forward periods; and
- reporting requirements required by the TRD and other state agencies.

Consolidation of some of the credits would also be reviewed.

Dr. O'Donnell replied to a question from Representative Gonzales regarding community college involvement in creating and preparing the workforce for jobs available or that will become available in New Mexico. Although the community colleges can respond to current needs of the workforce, planning for future needs is a problem. Workforce shortages exist in many areas and industries in New Mexico.

Representative Varela noted that the NMTRI is intended to be independent of political pressure and should report to the legislature objectively. He also noted that the Big Mac tax legislation was not a good idea with respect to the property tax.

Representative Varela asked about the current average GRT rate. Mr. Nunns stated that it is 6.6%. Representative Varela also asked about the cost of all GRT deductions and what the tax rate might be if they were all repealed. Mr. Nunns could not estimate the cost of all deductions, but suggested that the tax rate might be one-half of the current actual in the absence of deductions. However, he also noted that, in the absence of deductions, the tax would apply to every transaction, including employee wages.

Representative Varela asked about the status of dynamic forecasting efforts. Mr. Francis responded that the LFC, Economic Development Department and TRD are working on a dynamic forecasting methodology that uses multipliers for fiscal impact reports. He also noted that the federal government, in its use of dynamic forecasting, has found that the most new revenue that can be credited to a tax reduction is 20% of the amount of the reduction.

Senator Jennings noted that if a tax cut creates 20% new money, holding municipalities harmless from a cut creates a windfall for them. Dr. O'Donnell stated that not all tax cuts are economic incentives, e.g., the food GRT deduction creates little or no new economic activity and, therefore, does not generate 20% new money.

Dual Taxation

Mr. Nunns, provided information to the committee on the status of tax sharing between the state and the tribal governments of Indian nations, tribes and pueblos located in New Mexico and tax credits currently in statute that affect tribal governments. Amy Alderman, attorney, Navajo Tax Commission, Darrell Paiz, Revenue and Tax Office, Jicarilla Apache Nation, and Teresa I. Leger, attorney for the Jicarilla Apache Nation, presented to the committee information on the success of the current arrangements with the state to eliminate dual taxation on businesses doing business on tribal land within New Mexico.

Intergovernmental agreements between tribal governments and the state, intergovernmental tax credits and specific statutory and regulatory provisions are all aimed at the avoidance of dual taxation of income, sales and property under Indian and state tax systems.

Under Section 9-11-12.1 NMSA 1978, the department may enter into agreements with the Pueblos of Acoma, Cochiti, Isleta, Jemez, Laguna, Nambe, Picuris, Pojoaque, Sandia, San Felipe, San Ildefonso, San Juan, Santa Ana, Santa Clara, Santo Domingo, Taos, Tesuque, Zia or Zuni or the 19 New Mexico pueblos acting collectively, the Jicarilla Apache Nation and the Mescalero Apache Tribe to collect any GRT imposed by the pueblos. If a pueblo, tribe or nation grants a 25% credit against its tax and meets other specified conditions, the state will grant a 75% credit against state and local GRT due from taxpayers subject to both taxes. The result is that taxpayers pay the same tax they would pay under state and local taxes alone, thus resolving any dual taxation issues. Tribal taxes only apply to businesses operating on land owned by a tribe or its members, with restrictions against alienation, or held by the United States in trust for the tribe.

The TRD has currently entered into eight such agreements with the Pueblos of Santa Clara, Santa Ana, Laguna, Sandia, Nambe, Pojoaque and Cochiti as well as the Jicarilla Apache Nation. A ninth cooperative agreement with the Pueblo of Santo Domingo will become effective on January 1, 2008.

The department estimates that a total of $1.27 million in tribal taxes was collected and distributed in fiscal year 2007. In addition, $5.0 million of GRT was collected from nontribal businesses doing business on tribal lands. Of this amount, $3.8 million was distributed to the pueblos/nations and $1.2 million to the state and local governments. Details on these revenues are provided in Table 1 attached to the TRD handout.

Section 67-3-8.1 NMSA 1978 gives the secretary of transportation the authority to enter into a gasoline tax-sharing agreement for up to 10 years with the Pueblo of Nambe or the Pueblo of Santo Domingo as long as it owns 100% of a registered Indian tribal distributor pursuant to the Gasoline Tax Act. The agreement provides that the tribal distributor receive 40% of the gasoline tax revenue paid on 2.5 million gallons per month ($170,000 per month/$2,040,000 per year), while the state and local governments share the remainder of the 60% paid on that gallonage. In exchange, the tribal distributor will not distribute gasoline for resale outside the boundaries of the reservation or pueblo land grant, and will not claim any of the deduction it is otherwise entitled to under Section 7-13-4 (F) NMSA 1978. Section 7-1-6.44 NMSA 1978 allows the TRD to make the necessary distributions pursuant to this gasoline tax-sharing agreement. Distributions have been made under these provisions beginning in March 2004. The cumulative amount distributed to the tribes to date is $13,260,000. The amount shared by the state and local governments is $19,890,000. The $33,150,000 is revenue that would otherwise not be collected by the state due to the exemption in Section 7-13-4 (F) NMSA 1978. The local government share is approximately 10% of the total tax, leaving $16,575,000 that is distributed to the State Road Fund as a result of these agreements.

Section 7-31-27 NMSA 1978 creates a "Jicarilla Apache tribal capital improvements tax credit" against oil and gas emergency school tax on products severed from wells drilled on the Jicarilla Apache Nation. The credit is the lesser of the amount of tribal capital improvements tax imposed by the Jicarilla Apache Nation upon the same products, or seven-tenths of one percent of the taxable value of the products as defined by state laws. The tribal capital improvements tax was imposed on qualifying wells after January 1, 2003 and is dedicated exclusively to fund capital improvements on tribal land. The credit is in addition to the credits claimed under Section 7-29C-1 NMSA 1978.

The credit is allowed only if the Jicarilla Apache Nation has entered into a cooperative agreement with the secretary of taxation and revenue for the exchange of information necessary for the administration of the credit. The TRD and the Jicarilla Apache Nation have entered into such an agreement. An average of $1.9 million in credits was claimed in each of the last two fiscal years. Figures for prior fiscal years are shown in Table 2 attached to this report. These amounts come from revenue that would otherwise be distributed to the general fund.

Section 7-1-8(U) NMSA 1978 authorizes the TRD to provide tax information to an authorized representative of an Indian nation, tribe or pueblo whose territory is within New Mexico pursuant to an information-sharing agreement with the Indian nation, tribe or pueblo. The Indian nation, tribe or pueblo must have enacted a confidentiality statute similar to Section 7-1-8 NMSA 1978. The information exchanged under such an agreement is to be used by either government entity for the administration of its respective tax laws to ensure the proper enforcement of the tax laws of each government. Currently, the department has entered into the following information-sharing agreements:

- joint powers agreement (gasoline tax) — Jicarilla Apache Nation;
- exchange of information agreement (various tax programs) — Navajo Nation;
- joint powers agreement and information-sharing agreement (fuel taxes) — Pueblo of Zuni;
- joint powers agreement and information-sharing agreement (fuel and GRTs) — Pueblo of Nambe;

- joint powers agreement (gasoline tax) — Pueblo of Laguna;
- joint powers agreement (gasoline tax) — Pueblo of Cochiti; and
- joint powers agreement (gasoline tax) — Pueblo of Santo Domingo.

Section 66-5-27.1 NMSA 1978 authorizes the Motor Vehicle Division (MVD) of the TRD to enter into intergovernmental agreements with Indian tribes to exchange information for the purpose of recording traffic convictions. Provided an intergovernmental agreement has been signed, this section gives the MVD authority to suspend or revoke a driver's license when an offense is committed within a tribal jurisdiction, provided that the offense would have been grounds for such action had it occurred within the jurisdiction of the state. The MVD is further authorized to suspend or revoke the license of a driver who has failed to appear in tribal court or has failed to pay a penalty assessment imposed by the tribe. This section allows the MVD to forward to a tribal court the records of a resident driver subject to the jurisdiction of the tribe. This law also mandates recognition of a DWI conviction pursuant to tribal law. The department has not yet entered into any such agreements.

Taxpayers who are liable for payment of the oil and gas severance tax, the oil and gas emergency school tax, the oil and gas conservation tax or the oil and gas ad valorem tax ("the four monthly taxes") on products severed from Indian tribal lands are eligible for this credit (Section 7-29C-1 NMSA 1978). The credit is equal to the lesser of 75% of: (1) the aggregate amount of the four monthly taxes imposed by the Indian nation in effect on March 1, 1995; or (2) the aggregate amount of the four monthly taxes imposed by the state. A separate credit is available against the oil and gas production equipment ad valorem tax ("annual tax"). This credit is also equal to the lesser of 75% of the tribally imposed tax or the state tax. Both credits are available only for production from wells that were drilled on or after July 1, 1995.

An average of $4.4 million per year has been claimed in each of the last two fiscal years. Figures for prior fiscal years are shown in Table 2 attached to this report. About half of these credits apply against general fund taxes, 45% against oil and gas severance taxes and the remainder against local taxes.

Section 9-11-12.2 NMSA 1978 provides a GRT credit (Section 7-9-88.1 NMSA 1978) on receipts from selling coal severed from Navajo Nation land when the Navajo Nation imposes a similar tax. An agreement with the Navajo Nation concerning this credit has not been entered into.

An average of $8.6 million in credits has been claimed in each of the last two fiscal years. These amounts come from revenue that would otherwise be distributed to the state general fund.

Taxpayers liable for the severance tax on coal severed from tribal land are eligible for a credit for a portion of similar taxes paid to a tribal government on that coal (Section 7-29C-2 NMSA 1978). The credit amount is 75% of the lesser of : (1) the tax due under tribal taxes in effect on March 1, 2001; or (2) the amount of severance tax and surtax due to the state. An average of $6.6 million per year in credits has been claimed in each of the last two fiscal years from revenue that would have gone to the Severance Tax Bonding Fund.

Ms. Alderman described the tax system of the Navajo Nation. The two main Navajo Nation taxes imposed are the possessory interest tax imposed on the right to operate a business or other enterprise within Navajo Nation jurisdiction and the business activity tax (BAT) levied on sales that take place within Navajo Nation jurisdiction. In addition, the Navajo Nation has imposed a fuel excise tax on gasoline and on diesel fuel. The distributor of fuel to retailers of gasoline on the Navajo Nation may claim a deduction against the state tax on the same gasoline in an amount equal to the fraction of the state tax that the tribal fuel tax represents, not to exceed a deduction of 100% of the state tax. This deduction is set forth in Section 7-13-4.4 NMSA 1978.

Ms. Alderman continued by saying that this deduction does not apply to the diesel fuel tax, so any person who purchases diesel on the Navajo Nation must pay both the tribal fuel excise tax and the special fuels excise tax imposed by the state. This is a total of $0.36 per gallon of gasoline. She also noted that the taxes imposed by the Navajo Nation are imposed nationwide and not just in the part of the nation in a particular state. All fuel excise taxes go into a fund to be used for Navajo Nation road maintenance

Mr. Paiz and Ms. Leger described the Jicarilla Apache Nation tax structure. The Jicarilla Apache Tax Department was established in 1975. The following taxes are presently imposed:

- privilege tax, J.A.N.C. § 11-2-2;
- possessory interest tax, J.A.N.C. § 11-2-3;
- severance tax, J.A.N.C. § 11-2-3;
- gasoline tax, J.A.N.C. § 11-2-4;
- capital improvements tax, J.A.N.C. § 11-2-5; and
- GRT, J.A.N.C. § 11-2-6.

Court cases on the Jicarilla Apache Nation's right to tax and dual taxation are as follows:

- *Jicarilla Apache Tribe v. Merrion*, 455 U.S. 130 (1982), inherent sovereign right of tribe to impose taxes; and
- *Cotton Petroleum v. New Mexico*, 490 U.S. 163 (1989) dual taxation of non-Indian producer allowed. In evaluating facts, the court noted that an important consideration was that dual taxation placed no economic burden on the tribe. The tribe was not a party to suit and, therefore, the court did not have before it information on economic burden dual taxation imposed on the tribe.

The tribe provides 90% of funding for government services available on the reservation. It is estimated that the state receives approximately $20 million to $23 million a year from oil and gas production taxes on the Jicarilla Apache Reservation.

Senator Taylor stated that Navajo tax revenue does not filter down to certain chapters of the Navajo Nation. Ms. Alderman responded that sales tax collections are not general fund revenue and that this revenue is put in a trust fund. Fifty percent of the earnings on the sales taxes in the trust fund are divided equally among the chapters. Only six chapters are certified pursuant to the Navajo Nation Local Governance Act and are able to receive and administer their own funds, out of 110 chapters. A certified chapter, among other administrative duties, retains sales tax revenue generated within the chapter and does not have to wait for the revenue-sharing distributions from the trust fund. The certified chapters are mostly in Arizona and are the following: San Juan, Shonto, Steam Boat, Newcomb, Tuba City and Hogback. San Juan, Newcomb and Hogback are chapters in the Shiprock area.

Senator Taylor suggested that the capital of the Navajo Nation should be in Shiprock, not Window Rock. He also inquired about the status of the Desert Rock power plant. Ms. Alderman said that a tax incentive has been approved by the Navajo Nation Council but that no further incentives are under consideration.

Representative Begaye asked what problems do private companies who want to produce oil or gas or develop other extractive resource operations face when seeking to begin business on the Navajo Nation. He also requested a list of companies drilling oil on Navajo land. Ms. Alderman said that 12% of all revenue collected by the Navajo Nation in taxes is deposited into the permanent fund. Oil and gas companies must enter into oil or gas leases. Possessory interest tax and an oil and gas severance tax are imposed on the revenue generated from the extracted product. The Bureau of Indian Affairs still must approve all mineral extraction leases on Indian land.

Representative Crook noted that it appears that a lot of money appropriated to the Navajo Nation for capital outlay projects is not being used.

Senator Snyder observed that the State Road Fund is bankrupt, and part of the problem is the diversion of gasoline tax revenue due to agreements with the tribes.

Senator Ryan noted that dual taxation is a disincentive to economic development.

Senator Duran asked about the percentage of Navajo land in New Mexico, Arizona and Utah. The amount of land is 17.5 million acres, and approximately 35% is in New Mexico.

Senator Jennings said that New Mexico capital outlay appropriations to the Navajo Nation are appropriated to be spent in New Mexico. He also noted that the federal government is not paying its fair share of Indian health care.

Produced Water — Current Disposition and Status and Future Possibilities

Mark Fesmire, director, Oil Conservation Division (OCD), Energy, Minerals and Natural Resources Department, and John Volkerding, basin disposal, gave a presentation to the committee.

Mr. Fesmire explained that when a well is new, very little conventional produced water is created. As the well ages, more and more conventional produced water is created in the drilling process. Last year, New Mexico produced approximately 60 million barrels of oil and about 1.6 trillion cubic feet of natural gas. But, along with that oil and gas, New Mexico produced over 640 million barrels of produced water. That is about 83,000 acre-feet of water. Most of that water is of such a poor quality that it is unusable for almost any purpose and must be disposed of, usually by injecting it back into the ground. Sometimes this injection is for secondary recovery or pressure maintenance, and sometimes the injection is an expedient way to dispose of the wastewater. However, desalinization and purification technology is quickly making this waste a potential asset.

Produced water in New Mexico can be categorized into two types, conventional produced water and water associated with coal bed methane (CBM) production. Conventional produced water occurs in volumetric oil and gas reservoirs and is generally created by the concentration of seawater components present when the geologic formations were originally deposited. CBM produced water is the water that is present in coal deposits, which is produced with the methane, and may or may not be associated with the original deposition of the coal. Last year, the produced water in New Mexico was made up of about 94.5% conventional water and about 5.5% CBM water. However, the production trend for conventional produced water was relatively flat, while the amount of CBM produced water has tripled since 2000.

While the water quality of both can be extremely variable, it can generally be said that CBM produced water is of a much higher quality than conventional produced water. Another major difference is the water production profile during the life of the well. Another difference between conventional produced water and CBM produced water is seen in the water production profile, in that CBM produced water will generally begin as a large percentage of the total production, as much as 100%, and tapers off over the life of the well. Conventional produced water (along with the oil and gas) is contained in the pores and fractures of the reservoir rock. CBM produced water also occurs in the pores and fractures (called cleats) in the coal, but the gas, at least initially, is usually present as molecules adsorbed to the face of the coal, and the pressure that keeps the gas adsorbed to the coal is provided by the hydrostatic column of water.

Removing the water from the coal lowers the hydrostatic pressure and causes the gas to begin desorbing and flowing through the cleats to the well bore. In conventional oil and gas production, the water is produced with the oil and gas, whereas CBM reservoirs must be "dewatered" to the point that the pressure is less than the desorption pressure before the gas will begin to flow to the well. Additionally, coal bed waters can contain coal fines that are generally not present in conventional produced water, but CBM waters will not contain the hydrocarbons prevalent in conventional produced water. Also, conventional produced water can be produced from geologic formations at virtually any depth, where CBM, and consequently CBM water, is usually produceable from depths less than 3,000 feet.

A characteristic related to the depth of the produced water is whether the produced water is in hydrologic connection, or hydrologic communication with currently usable water. If the production of the produced water will deplete the pressure or decrease the volume of usable water, it is said that the water sources are in hydrologic communication. The deeper the water and the poorer the quality, the less likely it is to be in hydrologic communication with usable water. Conversely, production of high-quality produced water from shallow depths is more likely to deplete usable water supplies than deeper production.

At present, there is no indication any place in the state where the produced water is in hydrologic communication with usable water supplies, but there is a possibility that this may occur in the Raton Basin. The quality of the produced water is not always bad, and as purification technology advances, more and more of it can be treated economically and put to some sort of use.

In 2004, the legislature passed, and the governor signed, a bill that became Section 70-2-12.1 NMSA 1978. It says, "No permit shall be required from the state engineer for the disposition of produced water in accordance with rules promulgated pursuant to Section 70-2-12 NMSA 1978 by the oil conservation division of the energy, minerals and natural resources department". As long as this water is a waste byproduct of the production of oil and gas, and as long as the OCD promulgates rules regulating its "disposal", no permit will be needed from the state engineer for the use of that water.

At least in New Mexico, produced water does not fall within the jurisdiction of the state engineer, but is the regulatory responsibility of the OCD. This includes the purification and use of that water. In regulating the produced water, the OCD has identified three potential areas of regulation in which it must eventually promulgate rules. The first is that the state must promulgate rules that clearly establish the ability to use the water. The second area is the regulations governing the actual use of the water to protect the environment, and the third area is the disposal of the water after it has been used so that the state does not violate state or federal laws or cause contamination.

The OCD has a draft of these proposed rules and will be holding stakeholder meetings, tentatively scheduled to begin in early October, to receive input on the regulation of produced water. At the same time, the OCD will comply with Senate Memorial 53 of the last legislative session requiring the secretary of energy, minerals and natural resources to convene an executive task force to review options for use of produced water. During these meetings, the OCD will try to comply with some basic principles in creating the rules on the use of produced water.

Representative Gray asked who would own the cleaned-up water. Mr. Fesmire said that the company that cleans it would own it.

Senator Jennings questioned a tax credit that will reduce general fund revenue and not create a significant amount of usable water.

Mr, Volkerding described Basin Disposal, his business, as the largest produced water disposal facility in northwest New Mexico. It has experienced an increase of 2.5 million barrels in the quantity of the produced water it has handled in the last year. Basin Disposal receives both conventional produced water and CBM produced water. The total of produced water in northwest New Mexico is now 4.0 million barrels annually. There are two methods that best treat produced water. Multiple stage flash evaporation is a proven technology that is simple to operate. It is used on cruise ships to recycle saline water. The disadvantage of this method is that natural gas is required to heat the water. A high volume of natural gas is needed for this purpose. Only 50% of the water is able to be reclaimed.

The second method commonly used is advanced membrane technology coupled with reverse osmosis. Water is first treated using permeable membranes to filter out particulates. Then the water is treated with biological agents that will aerobically convert solid and liquid hydrocarbons. The disadvantage to this method is the high amount of capital outlay money required to initiate use of the method. Advanced membrane technology is not as well proven as multiple stage flash evaporation.

Oil and Gas Industry Update: The Water Dog Project and the Produced Water Options Task Force

Bill Carr, co-chair, New Mexico Oil and Gas Association (NMOGA), and Deborah Seligman, government relations, NMOGA, continued the discussion of oil and gas industry issues. Gary Kilpatric, chair of the NMOGA Legislative Affairs Committee, joined them to discuss prior legislative initiatives.

Mr. Kilpatric noted that the following legislation was adopted in the 2007 legislative session:

- functional and economic obsolescence;
- overweight and oversize permits for transport of oil and gas equipment; and
- the Surface Owners Protection Act.

The Surface Owners Protection Act brought the oil and gas industry, the agricultural industry, represented by the cattle growers, and environmental interests together to resolve problems with oil and gas use of the surface rights above the industry's mineral rights. The practices of the oil and gas industry to proceed to develop resources without taking into consideration the interests of the surface owners were changed to require procedures that include consideration of the surface owner's desires. Now, more time must be allowed to provide notice, and a proposed surface use agreement must be completed to allow production to go forward. For developing oil or gas that will not disturb the surface, five days' notice must be given to the surface rights holders, and if the surface will be disturbed, the notice must be at least 30 days.

Ms. Seligman discussed the Governor's Greenhouse Gas Initiative (GGGI). She noted that CBM produces carbon dioxide (CO_2). The governor's effort would return greenhouse gases by 2012 to the level of greenhouse gases present in 2000. By 2050, greenhouse gases would be reduced by 75% of current levels. Two processes that will help achieve this reduction are sequestration of CO_2 emissions from burning oil and gas. Currently, the state is able to register emission levels and will require all industry in the state to participate in the registration.

Representative Saavedra sought information about the level of involvement of the oil and gas industry in determining the outcomes from the GGGI. Ms. Seligman stated that the industry helped the governor's task force build background on industry emissions levels and content. The TRD is charged with developing financial incentives that will help achieve the goals of the GGGI.

Ms. Seligman also discussed the climate registry, a hemispheric effort involving 31 states and two provinces, to track climate change.

Mr. Carr discussed regulatory justice and the problems that develop from an uncertain regulatory climate for industry. Right now, Mr. Carr claims, regulatory changes are coming more quickly than industry can adjust to them. The regulatory changes are also coming in areas that are not traditional areas of regulation, such as sequestration and water issues. He noted that common goals between industry and the state have been identified, such as safety, human health and preservation of the environment. The oil and gas industry will help to develop the rules and regulations that are needed. The rules should fall within the delegated authority of the regulatory agency. Factors to be considered in establishing a regulatory framework are costs to the industry and feasibility to achieve the regulation. Stable industry revenue streams to the state rely on a stable regulatory environment for industry. As the committee knows, the oil and gas industry has provided the state with $25 billion in capital outlay funding over the last few years. Increased regulation causes the best operators in the state insecurity about whether they are meeting the requirements of the new regulatory scheme. The oil and gas industry is subject to regulations from the OCD, the Oil Conservation Commission (OCC), the State Land Office (SLO), the Cultural Affairs Department (CAD), the Bureau of Land Management (BLM), the Interstate Stream Commission (ISC), the Department of Game and Fish and from counties and courts. The CAD has laws with which it is difficult to comply. The BLM in May 2007 expanded state and fee surface regulation where there are minerals. The ISC has five-year term easements unless there is an exemption from the State Board of Finance (BOF). The BOF is pulled in many directions and has many issues to deal with, making an exemption unlikely or time consuming to obtain. Counties are establishing their own rules that are difficult to keep track of and courts have not decided that the OCD has primacy regarding much of oil and gas development and rulemaking. The OCD also slows down the process of making rules. Mr. Carr feels that politics trump technology. The NMOGA is appealing new enforcement rules. Orphan wells are an issue, and the OCD is trying to prevent orphan wells from becoming a problem of the state. It took over one year for the OCD to issue surface waste management rules. Initially, these rules were scheduled to be completed in one month, but due to involving others besides the stakeholders, it took much longer.

Mr. Carr thinks a new approach could be effective. He thinks that the OCD could address environmental concerns, but the impact on the oil and gas industry is not clear. Right now there is no place to dump the soil that is cleaned up from oil and gas production sites. The industry feels it is being held up to a higher standard than other industries. Pit waste also presents a problem because there is no place identified where it can be dumped. The rule for this is supposed to be out in mid-August. The cost of all this regulation may push oil and gas development elsewhere. All the industry is seeking is a reliable, predictable regulatory environment.

The CAD focuses on its issues and rules, but fails to address large pieces of the puzzle that might allow the CAD to operate compatibly with the oil and gas industry. Technologies such as horizontal drilling should be considered to abate damage to some cultural properties. The OCD needs to develop rules on acid gas injection wells, where CO_2 is injected into wells to increase production. Also, rules need to be developed for cleaning up tailings ponds from potash development, which are very salty. The clean-up rules are not the same as the OCD rules.

Representative Gray noted that CO_2 disposed of in a well and that is then capped with cement will eventually cause deterioration of the cement cap. He questioned Mr. Fesmire, asking if he knows who would be responsible if the cement cap fails. Mr. Fesmire noted that there is a $60 million grant from the federal Department of Energy nationwide that will have a project on CO_2 sequestration in northwest New Mexico.

The implementation plan for proposed revisions to 20.2.73 NMAC regarding greenhouse gas (GHG) emissions is as follows.

2007

- June — release draft implementation plan for GHG gas emissions reporting under proposed revisions to 20.2.73 NMAC.
- July — begin public comment period regarding revisions to 20.2.73 NMAC.
- September — release GHG emissions reporting procedures to be used (by Title V sources for $C0_2$ emissions) during 2008 if revisions to 20.2.73 NMAC are adopted.
- October — propose revisions to 20.2.73 NMAC before the Environmental Improvement Board.
- October — the New Mexico Department of Environment (NMED) will finalize GHG emissions reporting procedures for the 2008 reporting year.
- If revisions are adopted, inform Title V sources that emissions inventories for 2008 must include $C0_2$ from combustion and vented $C0_2$ if above a threshold level.

2008

- Title V sources will collect data regarding fuel, fuel use and vented $C0_2$.
- The NMED will outreach to major sources to inform them of additional 2009 Title V source inventory requirements for GHGs (see below).
- The NMED will outreach to minor sources to inform them of 2009 minor source inventory requirements for criteria pollutants and $C0_2$ emissions from combustion and venting.
- As funding allows, the NMED will expand upon existing studies of area source and minor source GHG emissions in New Mexico, particularly emissions in the oil and gas sector and, if the need is indicated, develop proposals for additional minor source GHG reporting for 2010.

- October — the NMED finalize GHG emissions reporting procedures for the 2009 reporting year.

2009

- Title V sources will collect data regarding fuel, fuel use and vented $C0_2$.
- Title V sources will submit 2008 GHG emissions data with annual criteria pollutant emissions inventory report.
- Minor sources will collect data regarding fuel, fuel use and vented $C0_2$, along with information needed for criteria pollutant emissions inventory.
- The NMED will outreach to major sources to inform them of additional 2010 Title V source inventory requirements for GHGs (see below).
- The NMED will announce proposals, if any, for additional minor source GHG reporting for 2010 and outreach to affected sources.
- October — NMED will finalize GHG emissions reporting procedures for 2010 reporting year.

2010

- Title V sources will collect data regarding fuel, fuel use, vented $C0_2$ and direct emissions from the other five GHGs.
- Title V sources will submit 2009 GHG emissions data with annual criteria pollutant emissions inventory report.
- Minor sources will submit 2009 GHG emissions data with criteria pollutant emissions inventory report.

Mr. Carr noted that the industry needs regulatory certainty and would like the legislature to be involved.

Senator Ryan stated that the governor's executive order is very ambitious and that the legislature should be involved.

Senator Smith said that the industry needs to go to court sometimes. Congress and the state legislature have abdicated their responsibility concerning regulatory matters.

Staff was asked by the committee to schedule a future presentation by the NMOGA to discuss the loss of oil and gas activity from the state due to an uncertain regulatory climate.

The New Mexico Oil and Gas Safe Site Program and Award

Butch Tongate, bureau chief, New Mexico Occupational Safety and Health (OSHA) Bureau, Environmental Protection Division, NMED, presented the first Oil and Gas Safe Site Program Award to Aztec Well Service (AWS). Jason Sandel accepted the award for his company, AWS. AWS has 750 employees and is the third-largest employer in San Juan County. Mr. Sandel agreed with the NMOGA representatives, especially Ms. Seligman and Mr. Carr, who emphasized the need for a reliable and predictable regulatory environment so that business can thrive. Mr. Tongate noted that AWS has a program that works well and it has a stable and professional workforce.

The committee recessed at 5:21 p.m.

<u>Thursday, July 26</u>

Senator Jennings reconvened the meeting at 9:11 a.m.

Current Status of Air Service — Farmington Area

Mike Miller, city manager, Farmington, discussed the discontinuation of air service to Farmington by Mesa Airlines.

The City of Farmington's Four Corners Regional Airport was notified that Mesa Airlines will cease to provide B1900 scheduled air service to Albuquerque on August 19, 2007. Mesa Airlines was providing one roundtrip flight daily to Albuquerque, with an average seat cost of $148 per roundtrip plus tax. The average daily use of the flights is 8.5 persons, with a capacity of 19 passengers. This constitutes 10% of the airline seats used at the Four Corners Regional Airport.

The departure of Mesa Airlines from the small community air service market is an across-the-board business decision by Mesa Airlines and affects all communities currently being served by the B1900 aircraft. This, certainly, is not a decision based on service to Farmington alone.

When the city first heard rumors that Mesa Airlines would be departing, the city immediately started the search for a replacement carrier that would fill the flight void. The city first turned to Farmington's most reliable air carrier, Great Lakes Airlines. In several conversations with the president and CEO of the airline, the company expressed a desire to expand services to Farmington and agreed to take a serious look at all opportunities to do so. Great Lakes Airlines is currently trying to purchase additional B1900 aircraft to provide such service. It is also awaiting the results of essential air service (EAS) bids that would free up an - existing aircraft that it could move to Farmington. The results of the bids will be known on July 19, 2007.

In addition to contacting Great Lakes Airlines, the city asked Fixed Base Operators if it would be interested in providing enhanced air charter services to Albuquerque to provide a means of air transportation if no scheduled airline services are available. 7Bar Aviation responded that it would be interested, and it is currently surveying the feasibility of the venture.

The city also found the name of the air service provider that was bidding on other New Mexico EAS routes vacated by Mesa Airlines. The airline was, at that time, Pacific Wings of Maui, Hawaii. Pacific Wings has since established a local company known as New Mexico Airlines. The city contacted it, and on June 9, it flew an aircraft to Farmington for an introduction to the community. It is flying the single-engine, nine-passenger Cessna caravan aircraft. Although this would be a downgrade in size from the twin engine, 19-passenger Beechcraft 1900 aircraft, the Caravan is a reliable airframe with an excellent safety record. New Mexico Airlines has since taken delivery of three aircraft for routes in New Mexico. It has stated that the aircraft cabins are not pressurized.

The city met with the CEO of New Mexico Airlines in Mr. Miller's office on Monday, July 16, to discuss the details of a draft agreement for it to provide air service from Farmington to Albuquerque. The following points of agreement were reached and will serve as the basis of the official proposal to the city council.

- There will be two flights per day, Monday through Friday, and one flight per day, Saturday through Sunday.
- Ticket prices are 5% less than that currently paid on Mesa Flights (approximately $70.48 one way).
- $325,000 subsidy paid to New Mexico Airlines per year for two years. This is contingent upon the city receiving funds from the Federal Aviation Administration (FAA) for a Small Community Air Service Development Program (SCASDP) project for which it has applied ($650,000 total).
- The agreement is dependent upon the receipt of the SCASDP funds from the FAA and the approval of the city council. Should the funds not be available or the city council not approve the agreement, the deal is off.
- Should the city receive the SCASDP funds, the city is obligated to fund a local share of $119,706 in matching funds or in-kind service. Of these matching funds, $15,000 must be spent by the city to market commercial air flights from the Four Corners Regional Airport in support of this grant.
- New Mexico Airlines has provided a fare summary break-even report that will be submitted to the FAA along with a letter of interest to show commitment to the project. The city is trying to convince the FAA to do two things: (1) award the SCASDP grant money to use for this purpose; and (2) extend the grant period to match the two-year agreement period.

The departure of Mesa Airlines presents a modest impact to the Four Corners Regional Airport. The city will still have far more scheduled airlines options than any other airport in New Mexico, except the Albuquerque International Sunport, with over 41,000 annual seats available to over 250 destinations worldwide.

Representative Silva inquired about the locations that might be served by New Mexico Airlines. Mr. Miller said it is considering Farmington, Albuquerque, Santa Fe and Durango.

Senator Ryan suggested a government subsidy to the airline in order to reduce air fares for New Mexico residents.

Senator Smith asked what other airlines serve Farmington. Mr. Miller said that Great Lakes Airlines flies to Phoenix and Durango from Farmington. Senator Smith noted that it is difficult for the state to commit to a recurring subsidy because oil and gas revenues will eventually decline. Mr. Miller responded that the subsidy is only intended to build ridership and would not be long term.

Representative Silva suggested that the Department of Transportation should be working on a statewide plan for serving small New Mexico airports.

Representative Taylor supports a short-term, perhaps two-year, subsidy in order to develop reliable air service. He noted that the nine passenger Cessna Caravan is an ideal aircraft for regional service.

Senator Cisneros asked how much of a subsidy would be needed. Mr. Miller responded that a two-year match for the federal funds would reduce airfares and would cost approximately $120,000 per year.

Senator Jennings noted that a key to building ridership is reliability. Mesa Airlines flies when it wants to and cannot be counted on.

Consensus Revenue Estimate

Jan Goodwin, secretary of taxation and revenue, introduced the topic of the consensus revenue estimate by thanking the economists involved for their participation and cooperation. She identified the people who worked on the consensus estimate as: Mr. Francis; Stephanie Schardin, deputy chief economist, LFC; Laird Graeser, chief economist, Department of Finance and Administration (DFA); Tom Clifford, chief economist, TRD; and Bill Mueller, chief economist, Department of Transportation.

Mr. Graeser began the discussion of the preliminary consensus estimate. He noted that the national economy seems to be in a nervous recovery, and the state economy seems to be doing well at this time. The revision of the December forecast numbers was $24.3 million and was the least revision made in many years. The forecast was very solid. Overall, general fund recurring revenue is expected to total $5.69 billion for fiscal year 2007, or by 2% over the fiscal year 2006 recurring revenue total. This is an increase in $450 million in recurring revenue.

The July revenue forecast may be summarized as follows:

FY07:

- The preliminary estimate for actual collections is $24.3 million higher than the December 2006 forecast, adjusted for tax law changes. This will leave the general fund operating reserve of $91.3 million.

FY08:

- The new forecast is $126.5 million higher than the forecast used for building the budget during the 2007 session. Total general fund revenue is now expected to be

$5,895.5 billion. During the next session, this revenue will be available for appropriations in addition to the operating reserve noted above.

FY09:

- The forecast for revenue growth from 2008 to 2009 is modest at 3.9%. However, because this is based on a higher fiscal year 2008 estimate, it means that the outlook is $176.8 million higher than was believed to be the case last January. Once again, this takes into account all tax law changes.
- The result of these changes is that the estimate of "new money" for fiscal year 2009 is $417.9 million on a recurring basis.
- Per capita income data rank New Mexico at forty-sixth in the nation, above Louisiana, Mississippi, West Virginia, Utah and Arkansas.

All reserves taken together, including the Tobacco Permanent Fund, etc., should exceed $0.5 billion at the start of fiscal year 2008.

Representative Varela noted that spending needs to decline by 3% to 4% from fiscal year 2007 to 2008 in order to build the operating reserve.

Senator Cravens asked about corporate revenue. Secretary. Goodwin said that it is being driven by oil and gas profits. Mr. Graeser noted that two-thirds of corporate income tax revenue is from the minerals sector.

Senator Smith is concerned about local government GRT revenue declining because of a slowdown in construction.

Senator Taylor asked about factors other than oil and gas driving revenue. Mr. Graeser responded that manufacturing, e.g., Eclipse Aviation, Intel, electric cars, is helping.

Coal Surtax, Review Senate Bill 220 (Vetoed)

David Saliba, manager, Four Corners Power Plant, Arizona Public Service Company (APS), Justin Jones, governmental relations, BHP-Billiton (BHP), and Joe Grennwalt, BHP, presented Senate Bill (SB) 220 and their case for submitting a similar bill in 2008.

SB 220 was sponsored by Senate President Pro Tempore Altamirano during the 2006 legislative session. SB 220 phased out the coal surtax by June 30, 2009. SB 220 passed both houses of the legislature in 2007. SB 220 received a "pocket veto" in that it was not signed into law by the deadline; therefore, it did not receive a veto message from Governor Richardson, but the veto is thought to have been a comment on the air quality degradation in the Four Corners area caused by coal-fired power plants and the open pit mining of coal.

A dialogue between the Governor's Office and interested parties, APS and BHP's Navajo Coal Company (BNCC) was requested. Representatives of all three groups met at the Four Corners Power Plant on May 25, 2007. The air quality in the Four Corners area is not significantly degraded below national standards. Federal Environmental Protection Agency (EPA) data indicate that the Four Corners area has air quality that is a fraction of a percent lower than national ambient air quality standards. The Four Corners Power Plant is in the process of meeting or exceeding all ambient air quality standards of the EPA. The sulfur dioxide (SO_2 or SOX) levels will be reduced by 100 tons, and APS has searched for leadingedge technology to be in place and operating to accomplish this goal. The CO_2 emissions will be used in biodiesel fuel technology beginning in six months by Greenfuels, a technical partner with APS, even though CO_2 emissions are not regulated at this time. APS has submitted an application to the Energy, Minerals and Natural Resources Department for energy innovations. Nitrous oxide (NO_2 or NOX) and particulates will be lowered through use of the "best achievable retrofit technology" or BART. The Four Corners Power Plant will reduce NOX emissions significantly over the next five to 10 years. The APS investment with its partners in the Four Corners Power Plant is about $0.5 billion to accomplish these goals.

The coal surtax discriminates against a declining number of long-term coal contracts. The existing coal surtax is unfair and is inconsistent tax policy. The electrical generation market is a competitive industry across the western United States. The repeal of the coal surtax will not significantly impact the New Mexico general fund. Removal of the coal surtax will increase the ability of the Four Corners Power Plant to sell electricity at a competitive rate to markets throughout the country. The presenters requested that the coal surtax be repealed.

Coal is the only severed natural resource with a surtax added to the basic severance tax. This surtax on coal has now become discriminatory in that new coal contracts in New Mexico are not subject to the coal surtax. For calendar year 2007, it is likely that only three coal contracts will pay the coal surtax. New coal mines are not subject to the coal surtax, placing existing coal producers with long-term contracts and their customers at a competitive disadvantage in a very competitive marketplace.

Representative Saavedra recommended a field trip to the mine and power plants.

Representative Gray asked about regulation of plant emissions. Air quality is regulated by the EPA. The plant has volunteered to submit to Navajo Nation regulation. The state regulates dam safety.

Senator Ryan supports coal-fired power production and is opposed to taxing coal production unfairly. He noted that repeal of the surtax will lower the cost of electricity in the market and not result in increased profits.

Senator Smith envisions a day when New Mexico will have to increase taxes. He expressed support for combined unitary corporate income tax reporting. He suggested that instead of removing the coal surtax, it could be spread to all contracts. BHP pays the surtax on all of its contracts, but few other producers pay on all of their contracts. Mr. Grenawalt noted that increasing the tax on all contracts would reduce competitiveness of all coal contracts in New Mexico. He encouraged the committee to consider the need for competitiveness in the very competitive coal market in the western states.

Senator Jennings said he is interested in expanding electricity service to the Navajo Nation.

Senator Snyder expressed disappointment that the governor pocket-vetoed SB 220 without adequate knowledge of the emissions controls already in place. She asked about the Energy Innovation Fund. Mr. Saliba stated that it is his understanding that $2 million was appropriated to the Energy Innovation Fund to encourage use of new technologies.

Senator Smith noted that if combined unitary reporting is adopted for corporate income tax, it could make up for the loss of revenue to the state that would occur if the coal surtax was repealed.

The partners in the Four Corners Power Plant are the following companies:

- APS (38% interest)
- New Mexico residents (7% interest)
- Southern California-Edison
- Tucson Electric

San Juan Regional Medical Center — Tax Policy Relating to Local Hospitals

Steve Altmiller, chief executive officer, San Juan Regional Medical Center (SJRMC), and Mike Philips, chief financial officer, SJRMC, presented information on the status of their facility.

Mr. Altmiller thanked the legislature for enabling the one-eighth of one percent hospital GRT. It has financed one-third of the SJRMC renovations. He also thanked the legislature for elimination of the GRT on physicians. This has helped with retention of existing doctors and recruitment from out of state. However, there is a need for 20 additional physicians, which the hospital cannot find or recruit. SJRMC is one of three trauma centers in the state.

Mr. Philips discussed the Trauma System Fund and the needed revenue for fiscal year 2009. In fiscal year 2007, $850,000 was appropriated to the fund. Additional funding is needed. The request for fiscal year 2008 is $1,011,000. This will allow training of emergency medical technicians at San Juan College and fund physician call coverage for trauma work. San Juan College trains 70% of the nurses that work at the SJRMC. The University of New Mexico trains 20% of the physicians that staff the SJRMC and 25% of all physicians practicing in New Mexico. The purpose of this presentation was to inform the committee members about the needs of the SJRMC and to urge the committee to make certain that the Trauma System Fund is fully funded for fiscal year 2009.

Senator Smith asked about ownership of the hospital. Mr. Altmiller stated that the county owns the facility and a private nonprofit leases the hospital from the county.

Capital Projects Quarterly Update

Ms. Kehoe, principal analyst, LFC, and Robert Apodaca, director, Local Government Division, DFA, presented an update of the distribution of capital outlay funds and the completion of projects funded by the legislature.

Deficiencies have been noted in New Mexico's process of allocating capital projects funding. The following are included in those deficiencies:

- develop a consolidated statewide capital projects plan;
- align factors that go into consideration of projects to be funded;
- track the number and dollar amount of appropriations that were included in capital plans;
- generate internal monitoring reports documenting progress on all projects;
- develop a consolidated report on deferred maintenance needs; and
- report on operation and maintenance budgeted at the agency level.

New Mexico has made significant progress in moving forward with capital outlay reform, but there is still more work to be done. Examples of the progress that has been made include:

- a significant share of the capital budget is now linked to policy priorities and is going toward projects of statewide significance;
- fewer small appropriations;
- more rapid completion of projects;
- better planning and information systems (e.g., the Property Control Division, the Higher Education Department and the Public School Facilities Authority (PSFA) have continued to refine the facility index, facility assessment and ranking tools); and
- implementation of significant, well-planned and well-managed infrastructure improvement projects (e.g., GRIP, significant water infrastructure projects, Tribal Infrastructure Fund, colonias initiative, Housing Trust Fund and PSFA process).

The next steps that need to be taken include:

- strengthening appropriation language that will add clarity and facilitate timely project implementation (e.g., remove ambiguity regarding appropriate close dates, ensure language allows intended project);
- providing a reporting tool to assist the executive and legislators in prioritizing projects that are community priorities and are ready to be implemented (e.g., community can accept the project);
- establishing policy guidelines for reversions; and
- communicating throughout the interim on state needs.

The status of 2007 session appropriations from the general fund is summarized below:

- $187 million for 75 projects that are more than $1.0 million (includes severance tax bonds (STBs) if project received both STB and general fund money);
- 48 projects "on track";
- five appropriations for multiple projects that are moving forward (e.g., tribal infrastructure projects);
- 10 projects have had grant agreements sent, but the agreements have not yet been returned;
- three projects have had an award letter sent to a tribal entity, but the scope of work has not yet been received;
- four projects had grant agreements held because the project was funded by both general fund and STB; these agreements are now being sent out; and
- five projects on "watch list":
    - $1.0 million — State Police Crime Laboratory;
    - $3.0 million ($2.5 million STB) — pre-K classrooms;
    - $2.0 million — acequia water storage;
    - $1.5 million — Santa Cruz Dam/Reservoir improvements; and
    - $1.98 million — Moriarty Cultural Arts Center.

The status of 2007 and prior session appropriations from the STBs is summarized below:

- $19.5 million in 32 projects (not including future fiscal years);
- lower than authorized, but unissued in recent years = more projects ready to go ($82.3 million authorized for future years);
- 17 projects from 2007 STB appropriations were not issued:
    - six projects equal to or less than $250,000;
    - four projects more than $250,000 but less than $1.0 million;
    - $2.0 million — parks statewide;
    - $2.5 million — pre-K classrooms;
    - $1.2 million — a veterans' and military technology museum;
    - $3.0 million — Sunland Park sports complex;
    - $3.0 million — Native American behavioral health facilities;
    - $1.3 million — trades and technology building at San Juan College; and
    - $1.0 million — health sciences building at Santa Fe Community College; and

- remaining authorized but unissued projects are all from the 2006 session.

Representative Crook asked about the process for reverting unused appropriations. Ms. Kehoe stated that there is clear reversion language, but some agencies encumber money without a legitimate third-party obligation. For construction projects, money reverts after four years if it is not spent. For vehicles, reversion should occur after two years if the appropriation is not encumbered and expended.

Mr. Apodaca recommended that the encumbrance language be eliminated from the capital outlay bill. Ms. Kehoe also noted that blanket reauthorizations are contributing to money not being spent. Ms. Kehoe mentioned that unused Navajo Nation appropriations do not revert to the original fund, but revert to the Tribal Infrastructure Fund now.

Senator Cravens inquired about the status of individual capital outlay reports for legislators. Ms. Kehoe said that preparation of these reports is in progress and they should be ready in about one month. From then on, the reports will be updated quarterly.

The committee adjourned at 2:04 p.m.

REVENUE STABILIZATION AND
TAX POLICY COMMITTEE

Section 5

August 2007
Agenda
Minutes

Revised: August 27, 2007

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

August 29-30, 2007
Clovis Civic Center
801 Schepps Boulevard at 7th Street
Clovis, New Mexico

<u>Wednesday, August 29</u>

9:00 a.m.	**Call to Order** —Senator Timothy Z. Jennings, Chair
9:05 a.m.	**Welcome and Local Issues** —David M. Lansford, Mayor, Clovis —Alvin Smith, Chair, Curry County Commission
9:45 a.m.	**Cannon Air Force Base Transition Update** —General Hanson Scott, Retired, Director, Office of Military Base Planning —Randy Harris, Vice Chair, Commission on Military Base Planning
10:45 a.m.	**Restoring Progressivity to Personal Income Tax** —Bill Jordan, Deputy Director for Policy, New Mexico Voices for Children —Gerry Bradley, Research Director, New Mexico Voices for Children
11:30 a.m.	**Duplicate Issuance of Income Tax Refund Checks** —Mitch Simms, Owner, Mr. Payroll Check Cashing
12:00 noon	**Lunch**
1:15 p.m.	**Corporate Income Tax Reform — Combined Reporting** —Bill Jordan, Policy Director, New Mexico Voices for Children —Gerry Bradley, Research Director, New Mexico Voices for Children —Jim Nunns, Director for Tax Policy, Taxation and Revenue Department (TRD) —Helen Hecht, Member, Board of Directors, Association of Commerce and Industry of New Mexico —James P. O'Neill, Consultant

2:45 p.m. **TRD Legislative Proposals**
—Jan Goodwin, Secretary, TRD
—Jim Nunns, TRD

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

Thursday, August 30

9:00 a.m. **Reconvene**

9:05 a.m. **Property Tax Limitations — Update and Policy Impact**
—Tim Eichenberg, Director, Property Tax Division, TRD
—Al Maury, Tax Research and Statistics, TRD
—Leo Barraza, Chief Deputy Assessor, Los Alamos County
—Tracy Langford, Legislative Committee, Realtors Association of New Mexico

10:15 a.m. **Road Fund Revenue Estimate**
—Rhonda Faught, Secretary, Department of Transportation (DOT)
—Bill Mueller, Chief Economist, DOT

11:30 a.m. **Challenges in an Energy Era of Change**
—Art Hull, Governmental Affairs, PNM
—Mike D'Antonio, Public Policy, PNM

12:30 p.m. **Lunch** (on-site)

2:30 p.m. **Adjourn**

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

August 29-30, 2007
Clovis Civic Center
Clovis

The third meeting of the Revenue Stabilization and Tax Policy Committee (RSTP) was called to order by Senator Timothy Z. Jennings, chair, on August 29, 2007 at 9:15 a.m. at the Clovis Civic Center in Clovis.

Present	**Absent**
Sen. Timothy Z. Jennings, Chair	Sen. Carlos R. Cisneros
Rep. Edward C. Sandoval, Vice Chair	Sen. Kent L. Cravens
Sen. Mark Boitano	Rep. Roberto "Bobby" J. Gonzales
Rep. Anna M. Crook	Rep. George J. Hanosh
Sen. Dianna J. Duran	Rep. Ben Lujan, Speaker of the House
Rep. Keith J. Gardner	Sen. Bernadette M. Sanchez
Rep. William J. Gray	
Rep. Daniel P. Silva	
Sen. John Arthur Smith	
Sen. H. Diane Snyder	
Sen. James G. Taylor	
Rep. Thomas C. Taylor (8/29)	

Designees

Rep. Janice E. Arnold-Jones	Sen. Ben D. Altamirano
Sen. Stuart Ingle	Sen. Sue Wilson Beffort
Rep. Henry Kiki Saavedra	Rep. Donald E. Bratton
Rep. Luciano "Lucky" Varela	Rep. Nathan P. Cote
	Sen. Phil A. Griego
	Sen. John T.L. Grubesic
	Rep. Manuel G. Herrera
	Sen. Gay G. Kernan
	Sen. Cisco McSorley
	Sen. Steven P. Neville
	Rep. Andy Nuñez
	Rep. John Pena
	Sen. Leonard Lee Rawson
	Rep. Debbie A. Rodella
	Sen. Nancy Rodriguez
	Sen. John C. Ryan
	Sen. William E. Sharer
	Rep. Don L. Tripp

Also Present
Rep. Richard J. Berry (8/30) ATA*
Rep. Jose A. Campos (8/29) ATA*
Sen. Clinton D. Harden, Jr. (8/30) NVI**

(Attendance dates are noted for members not present for both days of the meeting.)

Staff
Tim Crawford, Legislative Council Service (LCS)
Doris Faust, LCS
Pam Ray, LCS

Guests

The guest list is in the meeting file.

Handouts

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

<u>Wednesday, August 29</u>

Welcome and Local Issues

Senator Jennings invited Representative Crook to chair the meeting. Mayor David M. Lansford of Clovis thanked the committee for coming to Clovis, expressed his appreciation for the legislature's hard work and gave a brief history of Clovis. Curry County Commissioner Albin Smith reported that Curry County is booming and that the county is always looking for funding to provide services because the county has greater needs than it has funding.

Senator Smith noted that the state may not have much money in future years, in light of the state constitutional mandate for a balanced budget and the fact that 60% of the general fund goes to education, 25% goes to health care and social services, 7% goes to corrections and less than one-half of 1% goes to operate the legislature. Senator Smith further commented that the state may need to spend more money on transportation infrastructure due to concerns raised by the recent Minnesota bridge disaster and the likelihood that the federal Road Trust Fund will run out of money in 2009.

Cannon Air Force Base Transition Update

General Hanson Scott, retired, director of the Office of Military Base Planning, and Randy Harris, vice chair of the Commission on Military Base Planning, reported that local community support helped avoid closure of Cannon Air Force Base and thereby avoided a huge economic disaster in the Clovis area. General Scott provided an overview of the New Mexico military base planning program, the New Mexico Military Base Planning Commission, the base realignment and closure process and how Cannon was affected by the process. Cannon was one of two bases proposed for closure in 2005, but concerted efforts by all levels of New Mexico government were rewarded by a Department of Defense recommendation that a new mission be

*ATA means "Approved to Attend".
**NVI means "No Voucher Issued".

found for Cannon. The New Mexico team aggressively looked for new missions for Cannon, and in June 2006, the U.S. Air Force announced that a special operations wing would be established at Cannon, effective October 1, 2007.

The Cannon transition is moving ahead, and the new mission will ensure that New Mexico continues to play a key role in national defense. Under its new mission, Cannon will have more activity than it has had since the 1990s.

Restoring Progressivity to Personal Income Tax

Norton Francis, chief economist, Legislative Finance Committee (LFC), reported that New Mexico is right in the middle of the 50 states in terms of progressivity of taxes, based on a 2003 comparison study of state taxes nationwide. The progressivity of New Mexico's income tax is offset by the regressivity of the gross receipts tax. The burden on taxpayers in middle-income brackets is staying the same, but taxpayers in the upper and lower brackets are changing with changes in the tax code.

Bill Jordan, deputy director for policy for New Mexico Voices for Children (NMVFC), and Gerry Bradley, research director for NMVFC, provided the committee with copies of the Citizen's Guide to New Mexico's Tax System, a new publication by the NMVFC fiscal policy project. Mr. Jordan stated that in 2003, New Mexico had a somewhat regressive system, but has since cured some of the problems. NMVFC contends that improved progressivity increases social justice.

NMVFC would like to close a perceived loophole in the New Mexico personal income tax law that is attributed to the linkage of the federal and state income tax. Under current state law, taxpayers may deduct state and federal taxes paid in the previous year that are itemized on their federal returns. The itemized deduction is carried over from the federal tax return to the state tax return. Because wealthy taxpayers are more likely to file itemized returns, this policy is likely to favor wealthy state taxpayers.

New Mexico is one of only eight states with an income tax that allows itemizers to deduct state and local taxes paid in the previous year when calculating state taxable income. The majority of other states require taxpayers to add this amount back in when calculating taxable state income. The Taxation and Revenue Department (TRD) estimates that requiring New Mexico taxpayers to add previously paid taxes to their taxable income would have generated $66 million in additional revenue in 2005.

Mr. Francis reported that the proposal would affect one in four state taxpayers who itemize deductions and that a bill had been introduced in 2006 to change the tax code as proposed by the NMFVC, but the bill died in committee. Representative Taylor noted that the committee should be careful with changes that would affect taxpayers making $50,000 to $100,000, such as two teachers who are married and filing a joint return and whose state tax payment would be adversely affected by the proposal. The committee expressed doubt that families earning $50,000 to $75,000 should be considered wealthy and suggested that corrective action should be taken, but that it may be premature to consider this proposal.

Duplicate Issuance of Income Tax Refund Checks

Mitch Simms, owner of Mr. Payroll Check Cashing, described a $375 loss incurred by his business that was caused when the TRD issued duplicate tax refund checks. Mr. Simms asserted that the problem has been ongoing since 2006, that the TRD told him that nothing would be done to reimburse Mr. Payroll Check Cashing for its loss and that under the Uniform Commercial Code (UCC), he is a holder in due course and should be reimbursed by the state.

Jan Goodwin, secretary of taxation and revenue, stated that the department has been aware of the problem from the beginning and is looking into it. Secretary Goodwin noted that the UCC section cited by Mr. Simms is inapplicable because it applies to checks, whereas the state issues warrants. However, the department believes it should resolve the problem and has worked out a solution that has gone to the Department of Finance and Administration (DFA) for review.

Corporate Income Tax Reform, Combined Reporting

Eric Griego, NMVFC executive director, began the panel discussion by stating that his intent is to make the tax code more fair. Although the NMVFC is part of a nationwide organization that is looking at state budgets through the lens of how money is spent on children, the NMVFC also believes that fairness is an issue for small businesses and that they are not on a level playing field with large multistate corporations. Mr. Griego urged the committee to consider combined reporting as one of the policy choices that the legislature should make.

Mr. Bradley stated that:

* a combined reporting bill has been introduced three times, but has failed each time;
* the fiscal impact report on the most recent combined reporting bill projected that combined reporting would raise $80 million in tax revenue;
* combined reporting would eliminate corporate ploys to avoid New Mexico taxes;
* the state will not solve the problem of corporations moving profits around until it mandates combined reporting;
* the Blue Ribbon Tax Reform Commission recommended combined reporting in 2003;
* only one other state west of the Mississippi River does not mandate combined reporting; and
* combined reporting is not an economic development issue because New Mexico's competitor states already have combined reporting.

Jim Nunns, director of tax policy for TRD, reviewed the current reporting methods available in New Mexico to corporate taxpayers. The default reporting method is filing as a separate corporate entity. Combined reporting can be elected by unitary corporations. This requires a common owner holding more than a 50% share in each corporation. Once combined reporting is elected, a taxpayer cannot file as a separate corporate entity without permission from the secretary of taxation and revenue. Another option is consolidated reporting, which follows federal rules and requires 80% corporate ownership by a common parent entity. Once consolidated reporting is elected, a taxpayer cannot file as a separate corporate entity without permission from the secretary of taxation and revenue.

Mr. Nunns also informed the committee that:

* the largest corporate taxpayers (49 of the 19,875 filers) pay most of the tax liability ($234 million of $331 million, or 71%);

* 63% of corporations do not pay corporate income tax;

* 92% of filers use the single corporate entity method;

* combined and consolidated filers pay 45% of the corporate taxes received by the state; and

* mining, manufacturing and oil and gas industries pay over 60% of the state's corporate income tax.

After a discussion of the policy issues, the committee discussed possible approaches, including mandatory combined reporting, mandatory consolidated reporting and additional tools that could be given to the TRD to combat understatement of New Mexico income.

Helen Hecht, a board member of the Association of Commerce and Industry of New Mexico (ACINM), spoke regarding the business community's concerns. A transcript of her testimony is in the meeting file. The ACINM opposes mandatory combined reporting on the basis that:

* the majority of states that impose a corporate income tax still allow or require separate corporate filing in all or a large number of cases;

* many other states successfully curb perceived abuses of the separate filing method without getting rid of that method altogether;

* a number of businesses have located in New Mexico based on the existing tax law, and it would be unfair to change the rules on those companies who have already made significant investment in this state;

* New Mexico has enjoyed several years of significant revenue surpluses and should not need to raises taxes;

* there are solutions to abuses of the current tax system that will have less chance of unintended effects;

* mandatory combined filing is likely to generate a lot of litigation;

* corporate income tax revenue has significant fluctuations and should not constitute a significant piece of state revenue; and

* New Mexico's top corporate tax rate is already higher than that in most of the western states.

Ms. Hecht read the committee a letter from Tempur-Pedic regarding Tempur-Pedic's opposition to mandatory combined reporting. Tempur-Pedic moved to Albuquerque after considering 50 other cities and believes that mandatory combined reporting is hostile to business and would negatively affect economic development in this state.

James O'Neill provided a brief history of corporate income tax in New Mexico and concluded his remarks by opining that combined reporting should be one of the options available to corporate taxpayers.

Discussion ensued regarding where New Mexico ranks in tax rates in relation to other states, tax equity for all businesses located in new Mexico, tax policy as it affects economic development, encouraging business development in New Mexico and retaining a business presence in the state and other options to increase tax revenue, such as a weight/distance tax on commercial transit.

TRD Legislative Proposals

Secretary Goodwin and Mr. Nunns presented an outline of alternatives under consideration for the TRD's legislative proposals. The proposals fall into the categories of personal income tax simplification, tax increment financing and business tax credits.

The TRD policy goals for personal income tax simplification include reducing the time taxpayers devote to record keeping, reducing out-of-pocket payments to return to payers and increasing fairness across families. Mr. Nunns described the current law and rates, how progressivity is achieved and how family- and child-related tax benefits contribute to progressivity. One alternative under consideration to simplify personal income tax returns is to combine family- and child-related tax benefits into a new credit.

With regard to tax increment financing (TIF), Mr. Nunns reported that Mesa del Sol will begin receiving gross receipts tax increment distributions for gross receipts tax liabilities reported on or after January 1, 2008, and other TIF districts are under consideration.

In order to clarify the TIF law, the TRD is considering: (1) amendments to certain definitions in the TIF statute; (2) estimating actual receipts from the first year a district has a dedicated gross receipts increment; (3) reducing the incentive for projects to be divided into multiple districts; (4) describing the circumstances under which there are "excess increment revenues" that can be used for purposes other than debt service on increment bonds; and (5) some minor technical changes to facilitate tax compliance and administration.

With regard to business tax credits, it was noted that the TRD would like to improve the specification of business tax credits to make them simpler, more uniform and more effective. There is currently a variation among credits and different rules that make them more difficult to administer. The alternatives under consideration include legislation to:

* require that all business tax credits apply only to investment in New Mexico, compensation of employees in New Mexico or other qualifying activities or expenditures in New Mexico;
* carefully specify the qualifying periods, activities, etc., that entitle a taxpayer to a business tax credit;
* make credits subject to recapture in a specified manner if the conditions of the credit are not met over a specified time following qualification for the credit;
* require that a department with expertise in the objectives of each business tax credit be required to certify, monitor and evaluate the credit;
* prevent "double dipping", or the allowance of more than one credit or deduction for the same expenses, which should be addressed explicitly in the statutory language for each credit;

* specify the stacking sequences of credits and their stacking order against taxes; and
* re-codify credits with general rules and definitions in one section of the statutes.

Gail Reese, Albuquerque chief financial officer, reported that Albuquerque has already looked at the TIF legislation with the TRD. Albuquerque's concerns are that the definition of the term "governing body" is not clear and that the organization of TIF districts is becoming incestuous. Albuquerque would like to come back to the committee closer to the legislative session and talk to the committee about these issues.

The committee also discussed whether taxpayers that overpay taxes should get interest on their refunds, whether small businesses can change their information electronically on the TRD web site and whether the TRD can provide an estimate of how much revenue would be generated by a flat 3% personal income tax so that the legislature could compare that number to taxes generated by the current tax system.

The committee recessed at 5:15 p.m.

Thursday, August 30

The committee reconvened at 9:05 a.m.

Chase Gentry, executive director of the Clovis Industrial Development Corporation, and Gene Hendriks addressed the committee regarding House Bill 606, which was signed into law in the last session. Under the new law, economic development tax funds can be used for tourism-related activities and projects, such as museums, theaters, libraries, galleries, cultural compounds, educational organizations, studios, media laboratories and live-work housing facilities.

Property Tax Limitations — Update and Policy Impact

Tim Eichenberg, director for the Property Tax Division of the TRD, and Al Maury, senior economist for the TRD, gave a presentation on property tax rates, revenue and collection and on property tax limitations. Leo Barraza, deputy assessor for Los Alamos County, and Tracy Langford, a Los Alamos real estate agent representing the Realtor's Association of New Mexico, joined in the discussion regarding property tax inequities and the issues raised by House Memorial 85 and Senate Memorial 45.

The current property tax system generates approximately $1 billion in revenues annually from $43 billion in net taxable value. Approximately two-thirds of the revenues flow to counties and school districts in equal proportions. Slightly less than one-sixth is distributed to municipalities, with the remaining amounts distributed to various health facilities, higher education, conservancy districts and the state for capital construction projects. Approximately 626,000 residential parcels generate $605 million in revenue, with an average residential property tax bill of $970. Approximately 1,040,000 nonresidential parcels generate approximately $377 million in revenue annually, and oil, natural gas and copper ad valorem taxes generate approximately $160 million annually.

Tax rates range from about eight mills to 40 mills, and average about 26 mills statewide on residential property, 30 mills on traditional nonresidential property and 21.6 mills on ad valorem production equipment property.

The presenters briefly explained certain tax limitations, including:

* constitutional 20-mill rate limit;
* $2,000 head-of-household exemption;
* $4,000 veterans' exemption;
* disabled veteran property tax exemption;
* debt limitations on taxable value;
* limitations on increase in value for single-family dwellings owned by low-income owners that are 65 years of age or older or who are disabled;
* yield control provisions; and
* one- and two-year appraisal cycle.

The 3% valuation increase limitation was enacted in 2001 in response to dissatisfaction with property tax increases. After a detailed explanation of how the 3% limitation in Section 7-36-21.2 NMSA 1978 works, the committee heard testimony about concerns with the statute and with property tax law in general, including:

* equity, both horizontal and vertical;
* ease of administration;
* efficiency;
* revenue adequacy; and
* data limitations.

Mr. Barraza discussed the impact of residential property valuation limitations on counties and policy concerns. Under the current 3% limit, a lot of property is locked in at less than market value. Tax on a given property may double if the owner moves and a new buyer purchases the property, resulting in reluctance in property owners to move to a new house. This violates the general theory that good tax policy does not affect a taxpayer's decision to undertake an activity. Other concerns that local government taxing authorities have include:

* a select few are paying the majority of the tax burden required for services that all taxpayers use;
* loss of revenue affects operations;
* loss of valuation affects bonding capacity; and
* specifically, for 2006, Los Alamos had a loss of $99,626,143 in assessed valuation due to the limitation on residential property valuation, corresponding to an actual tax loss of $1,672,507.

Concerns that affect the property tax system and taxpayers include:

* inequities in neighborhoods where homes are very similar;
* confusion in declining markets; and
* title companies understating tax liability, resulting in "tax shock" when taxpayers receive their bills.

Ms. Langford presented her concept of how the law is affecting individuals.

Road Fund Revenue Estimate

Bill Mueller, chief economist for the New Mexico Department of Transportation (NMDOT), and Robert "Bo" Olcott reported on patterns and trends in the road fund. The NMDOT budget for fiscal year 2009 totals $806.7 million, of which $358.7 million are federal funds and $448.0 million are state funds. The five unit-based variables that determine 94% of road fund revenue are:

* number of gallons of gasoline sold;
* number of gallons of special fuels sold;
* number of miles traveled on New Mexico highways by heavy commercial vehicles;
* weight of trucks; and
* number of vehicle registrations.

New Mexico ranks forty-fourth nationwide in gasoline tax, but has the fourth-highest gasoline price at the pump, indicating that there is very little correlation, if any, between the rate of tax on gasoline and the price consumers pay for gasoline.

Among the challenges the NMDOT faces are modest growth in state revenue, flat growth in federal revenue and extraordinary inflation of the cost of materials for road construction that began in fiscal year 2004. As the purchasing power of state taxes has gone down, construction costs have increased.

The committee also discussed whether or not road fund payments to counties are decreasing, railroad crossings, ownership and use of railroad tracks in New Mexico and revenue derived from state-owned railroad tracks.

Energy Challenges in an Era of Change

Art Hull, with PNM's Governmental Affairs Department, reported that New Mexico is using a lot more energy than in the past, which requires a greater level of investment to serve the demand. The increased demand is caused, in part, by population growth, larger homes and many new businesses.

The price of electricity in New Mexico today is 28% below the regional average and 21% below the national average. Today's residential rate is approximately the same as in 1982. However, the cost to produce electricity has gone up. PNM's annual revenue from new customers since 2002 is about $35 million, but the annual cost to serve new customers is about $100 million.

To address the cost issues, PNM is seeking a $68.9 million increase in base rates, which is about a 12% increase.

The committee adjourned at 1:00 p.m.

- 9 -

REVENUE STABILIZATION AND
TAX POLICY COMMITTEE

Section 6

September 2007
Agenda
Minutes

Revised: September 24, 2007

TENTATIVE AGENDA
for the
FOURTH MEETING IN 2007
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

September 26-27, 2007
Hubbard Museum of the American West
Ruidoso Downs, New Mexico

<u>Wednesday, September 26</u>

9:00 a.m.	**Call to Order** —Senator Timothy Z. Jennings, Chair
9:05 a.m.	**Welcome and Local Issues** —John Waters, City Manager, Ruidoso Downs —Tom Battin, Chair, Lincoln County Commission
9:45 a.m.	**Taxpayer Protection Act and Fair Tax Burden Proposals** —Senator Kent L. Cravens —Paul Gessing, Rio Grande Foundation —Michael J. New, Consultant
10:45 a.m.	**Property Tax Disclosure — House Bill 1087** —Karen Montoya, Assessor, Bernalillo County —Leo Barraza, Chief Deputy Assessor, Los Alamos County —Tim Eichenberg, Director, Property Tax Division, Taxation and Revenue Department (TRD)
11:45 a.m.	**Soil and Water Conservation District Levy Duration Change** —Debbie Hughes, Executive Director, New Mexico Association of Soil and Water Conservation Districts
12:30 p.m.	**Lunch**
1:45 p.m.	**Taxation and Revenue Department — Legislative Proposals** —Jan Goodwin, Secretary of Taxation and Revenue —Jim Nunns, Tax Policy Director, TRD

2:45 p.m. **State Racing Commission and Gaming Control Board — Status Report**
—Julian Luna, Executive Director, State Racing Commission
—David Norvell, Chair, Gaming Control Board

3:45 p.m. **Racetrack Status and Concerns**
—Bruce Rimbo, General Manager, Ruidoso Downs Race Track and the Billy the Kid Casino
—Scott Scanland, Lobbyist, Sunland Park Racetrack and Casino
—Don Cook, General Manager, The Downs at Albuquerque
—Bryon Campbell, General Manager, Sun Ray Park and Casino
—Bill Hayles, General Manager, Zia Park Racetrack and Black Gold Casino

5:00 p.m. **Regional Water and Wastewater Authority**
—John Underwood, Lobbyist

5:30 p.m. **Recess**

<u>Thursday, September 27</u>

9:00 a.m. **Reconvene**
—Senator Timothy Z. Jennings, Chair

9:05 a.m. **Small Winery Issues**
—Dan Weaks, Lobbyist
—Beal Gomez, Lobbyist
—Jim Nunns, Tax Policy Director, TRD

10:00 a.m. **Streamlined Sales Tax Project — Update**
—Jim Nunns, Tax Policy Director, TRD

11:00 a.m. **Blue Ribbon Tax Reform Task Force Review and Update**
—James P. O'Neill, Consultant

12:00 noon **Working Lunch**

Hold Harmless Provisions of Recent Tax Changes
—Bill Fulginiti, Executive Director, New Mexico Municipal League
—Richard Anklam, Executive Director, New Mexico Tax Research Institute
—James P. O'Neill, Consultant
—Jim Nunns, Tax Policy Director, TRD

1:00 p.m. **New Mexico Horsemen's Association Report**
—Pat Bingham, Executive Director, New Mexico Horsemen's Association

2:00 p.m. **Relative Revenue Generation from New Mexico Taxes**

—Jim Nunns, Tax Policy Director, TRD

3:00 p.m. **Adjourn**

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

September 26-27, 2007
Hubbard Museum of the American West
Ruidoso Downs, New Mexico

The fourth meeting of the Revenue Stabilization and Tax Policy Committee was called to order by Senator Timothy Z. Jennings, chair, at 9:16 a.m. at the Hubbard Museum of the American West in Ruidoso Downs, New Mexico.

Present
Sen. Timothy Z. Jennings, Chair
Rep. Edward C. Sandoval, Vice Chair
Sen. Kent L. Cravens (9/26)
Rep. Anna M. Crook
Sen. Dianna J. Duran (9/26)
Rep. Keith J. Gardner
Rep. William J. Gray (9/26)
Rep. Ben Lujan, Speaker of the House
Sen. Bernadette M. Sanchez
Rep. Daniel P. Silva (9/26)
Sen. John Arthur Smith
Sen. James G. Taylor
Rep. Thomas C. Taylor

Absent
Sen. Mark Boitano
Sen. Carlos R. Cisneros
Rep. Roberto "Bobby" J. Gonzales
Rep. George J. Hanosh
Sen. H. Diane Snyder

Designees
Rep. Nathan P. Cote (9/27)
Rep. Andy Nuñez
Rep. John Pena
Rep. Henry Kiki Saavedra (9/26)

Sen. Ben D. Altamirano
Rep. Janice E. Arnold-Jones
Sen. Sue Wilson Beffort
Rep. Donald E. Bratton
Sen. Phil A. Griego
Sen. John T.L. Grubesic
Rep. Manuel G. Herrera
Sen. Stuart Ingle
Sen. Gay G. Kernan
Sen. Cisco McSorley
Sen. Steven P. Neville
Sen. Leonard Lee Rawson
Rep. Debbie A. Rodella
Sen. Nancy Rodriguez

Sen. John C. Ryan
Sen. William E. Sharer
Rep. Don L. Tripp

(Attendance dates are noted for those members not present for the entire meeting.)

Staff
Tim Crawford
Doris Faust
Cleo Griffith
Pam Ray

Guests

The guest list is in the meeting file.

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

Wednesday, September 26

Welcome and Local Issues

John Waters, city manager, Ruidoso Downs, and Tom Battin, chair, Lincoln County Commission, presented local issues of concern to the town of Ruidoso Downs and Lincoln County. Mr. Waters gave the committee Mayor Miller's regrets for not being able to be present to welcome them and discuss Ruidoso Downs issues. Mr. Battin discussed problems associated with the growth of the county, focusing mainly on infrastructure issues. He noted that the Department of Finance and Administration published "Growth in New Mexico — Impacts and Options", in which it was clearly stated that revenues of local governments are not keeping pace with needs presented by increased population growth in those areas. There is always pressure to expand services currently funded. Lincoln County will be asking for an increased mill levy for expansion of the county hospital. Currently, there are two rural clinics, and the increased millage will allow development of more. The court complex also will be expanded. Currently, there is $1 million set aside for this expansion, but another $3.8 million is needed. The complex will house the district attorney's office and the probation and parole offices. Two hundred fifty thousand dollars is needed to purchase a fire truck for Hondo, $100,000 is needed to expand county offices and $120,000 is needed for the Glencoe fire station. The land in Glencoe has already been donated for the fire station. The county has been unable to participate in GRIP II because the local match required is too high for Lincoln County to meet.

When questioned about outstanding capital projects, Mr. Battin noted that in Lincoln County, capital funding appropriated by the state is used in a timely manner, and there are really no outstanding unused capital appropriations.

Senator Jennings acknowledged the service of the Ruidoso Downs mayor to the state as a state police officer.

Mr. Waters discussed the issues surrounding the wastewater treatment plant being built by Ruidoso Downs and the Town of Ruidoso. There are serious financial concerns that have been raised due to the $35 million cost of the plant. The cost is high because of the phosphorus and nitrate standards that the communities are required to meet. Much of the development money has already been identified. The remaining cost of the facility will be approximately $13 million, provided that the federal funds continue to be allocated. Ruidoso is providing 85% of the cost of the plant, and Ruidoso Downs is providing the remaining 15%. It appears that the federal government will not be able to appropriate adequate funding to help complete construction of the plant. Mr. Waters supplied several handouts, one of which provides a breakdown of the money already allocated to the plant. Ruidoso Downs is hoping to be classified by the federal government as a "colonia", which would then allow it to access additional federal funding for the wastewater treatment plant. Mr. Waters' concern about the Department of Environment is that the standards for phosphorus and nitrogen adopted by the state are the most stringent in the nation. The federal government adopted the water quality standards of the Department of Environment. Right now, about 15% of Ruidoso Downs residential customers are not able to pay their water bills and are in default. Mr. Waters noted that Cuba and Chama will also be facing the same water quality issues now faced by Ruidoso Downs. The state will be asked to help to build the wastewater treatment plants that will be required by all of these communities.

Mr. Waters replied in response to committee comments that Ruidoso Downs had imposed the greatest amount of local gross receipts tax that it could to provide needed services. The community had asked Representative W.C. "Dub" Williams to introduce a bill in the last session that would allow the community to receive a portion of the gaming tax that is paid by Ruidoso Downs and the Billy the Kid Casino. In response to a committee question, Mr. Waters noted that if Ruidoso Downs does not build its wastewater treatment plant in a timely manner, it will be fined by the federal government. The communities had already begun plans for the plant that were sufficient to meet the phosphorus standards, but when the nitrogen standards were adopted, they had to change the plans to incorporate the new nitrogen standards. This substantially increased the cost and complexity of the plant.

Speaker Lujan suggested that there may be money left over from an appropriation made for a landfill in Lincoln County. The appropriation should be checked for a balance. The committee generally agreed that, because the state set the water quality standards that have increased the cost of the wastewater treatment facility, it is incumbent upon the state to help provide the funding for the project. In response to a committee question, Mr. Waters noted that the initial wastewater treatment facility as planned would have cost $35 million to provide water that met the phosphorus standard. When the nitrogen standard was adopted several years later, the planned treatment facility was not going to be able to meet that standard. Ruidoso Downs and Ruidoso agreed to build the plant to standards needed to remove phosphorus, but in the five-year period beginning in 2006, they would have to add to the plant to meet the nitrogen standards. They are now seeking the money needed to meet the nitrogen standards.

Taxpayer Protection Act and Fair Tax Burden Proposals

Senator Cravens introduced the speakers for the Taxpayer Protection Act (TPA) proposal. Paul Gessing, executive director, Rio Grande Foundation, and Michael J. New, Ph.D., a consultant for several think tanks and an assistant professor at the University of Alabama, spoke about fiscal limits states have placed on tax revenues they have received.

Mr. Gessing presented information about the Rio Grande Foundation, New Mexico's free market think tank, to the committee. He introduced the concept of revenue and spending limits. He discussed his organization's support of the TPA as a means to keep money in the hands of the most efficient spender, the one that generates revenue. Mr. Gessing noted that only 40% of the state's excess revenue would be returned to the taxpayers, and 60% would be deposited in the Severance Tax Permanent Fund. He then turned the discussion over to Dr. New for the details of revenue and spending limits and a comparison of the TPA with other states' revenue and spending limit schemes.

Dr. New noted that 30 states have enacted some kind of revenue or spending limit. New Jersey adopted its limit first, in 1976. During the tax revolt of the 1970s, 17 states enacted some form of revenue or spending limits. Few states adopted revenue or spending limits during the 1980s, but in the 1990s, states again began to look at the concepts, and some states considered and enacted revenue and spending limits. Maine adopted a revenue or spending limit as recently as 2005. Colorado's TABOR (taxpayer bill of rights), possibly the best known of any of the revenue and spending limits, was enacted in 1992.

Colorado's TABOR allows revenues for state and local governments to increase by no more than the inflation rate plus population growth every year. It also requires that all surpluses be returned to the taxpayers in the form of rebates. In 1997, state revenues began to exceed TABOR, and a total of $3.2 billion was returned in rebates to the taxpayers.

The TPA differs from Colorado's TABOR in several important ways. The TPA sets higher limits for revenue growth than TABOR or any other revenue limitation in any of the 30 states with those limits. In addition, there is no "ratchet back" effect in the TPA. Therefore, when revenue drops for one year, it can climb back to prior levels as revenue sources gain strength again.

Dr. New stated that New Mexico is said to have the highest tax burden in the southwest and one of the highest tax burdens in the country. According to the U.S. Census Bureau, New Mexico's combined state and federal tax burden places it at tenth highest in the nation. Dr. New suggested that this tax burden might be hampering economic growth and discouraging businesses from locating in New Mexico.

Dr. New concluded that he believes other states have shown that well-designed revenue and spending limits are able to limit government growth. The TPA would also accomplish this goal. In addition to limiting the rate of government growth, it would promote tax relief, strengthen the economy and provide a more lean and efficient government for New Mexico taxpayers.

Property Tax Disclosure — House Bill 1087

Karen Montoya, assessor, Bernalillo County; Leo Barraza, deputy assessor, Los Alamos County; and Tim Eichenberg, director, Property Tax Division, Taxation and Revenue Department (TRD), asked the committee to support a change in Section 7-38-12.1 NMSA 1978 to allow assessors to release to protestors appearing at a county valuation protest board hearing information from affidavits filed with the county clerk regarding details of the sale or transfer of real property. Currently, the only use permitted for information in the affidavits is for analytical and statistical purposes in the application of appraisal methods. For the release of information in the affidavits, it must be determined that the information is material to resolving the dispute before the board. Mr. Barraza noted that this change would benefit the protestors more than the assessors. The committee did not discuss the disclosure of sale values of residential property to aid assessors in setting values for residential housing, except to ascertain that the bill would not allow that to occur.

New Mexico Soil and Water Conservation Levy Duration Change

Debbie Hughes, executive director, New Mexico Association of Conservation Districts (NMACD), noted that soil and water conservation districts were initially created without a revenue stream. They are political subdivisions of the state and were given the authority by statute to impose a mill levy within their districts by resolution following a referendum approving the imposition of not more than one mill on real property within the district. The real property within an incorporated municipality may be excluded from the assessment. Supervisors (the elected governing officials of the district) must adopt a resolution each year after the imposition that continues the imposition. A new resolution and another referendum is necessary to extend the levy beyond its original 10-year period. The amendment language would allow the levy to be extended beyond the 10-year limit by a resolution of the supervisors. Ms. Hughes asked that an emergency clause be included in the bill.

Ms. Hughes also provided the committee with a list of all 47 soil and water conservation districts and their budgets for the last two years. In addition, she provided the committee with a list of the districts that have imposed a mill levy, the percent of a mill imposed and the amount of revenue generated by the imposition. Also included as part of the NMACD information packet was information about the many projects currently being implemented by the various districts.

TRD — Legislative Proposals

Jan Goodwin, secretary of taxation and revenue, and Jim Nunns, tax policy director, TRD, presented several proposals that the department is considering for introduction in the upcoming legislative session.

However, prior to presenting the TRD's legislative proposals, Ms. Goodwin spoke about the quarterly reporting issue that had arisen due to the state beginning to charge interest and penalties on taxpayers who are required but failed to make quarterly reports of their income. Penalties charged for not filing quarterly reports in 2006 were abated. Two letters will be sent to taxpayers by the TRD, one dealing with those who already paid penalties and the second reminding taxpayers that, beginning in 2008, they are expected to report quarterly according to statute. Ten years ago, the penalties were enacted; prior to that, reporting quarterly was required, but there was no penalty. Some people who owe as little as $10.00 in taxes may not realize that they also must report quarterly. In response to committee questioning, Ms. Goodwin noted that quarterly reporting helps the state to have a year-round revenue stream and enables the state to have reliable revenues. In response to a question from the audience, Ms. Goodwin assured the committee and audience that the farm and ranch exemptions from quarterly reporting are still in effect.

All of the TRD proposals first have to be approved by the Governor's Office before they can be introduced on behalf of the department. Proposals are in four categories: Motor Vehicle Code changes; changes in requirements for electronic filing and administration; revenue distribution procedure changes; and administrative and technical changes.

Motor Vehicle Code Changes

In the Motor Vehicle Code, there are several proposals. The federal government is requesting further changes to the Commercial Driver's License Act. Not making these changes could expose the state to various onerous sanctions by the federal government whereby New Mexico's federal highway funds would be decreased by a greater amount each year until compliance occurs.

The Driver License Compact needs to be updated. The 1987 version does not reflect many of the changes in technology and communications that have become commonplace since the 1990s.

The Motor Vehicle Code needs to be updated so that enforcement and administration are made easier. Inconsistencies need to be addressed and reconciled. A major area of concern is the inability of the Motor Vehicle Division of the TRD to obtain updated address information for registration, license and identification card holders.

The TRD also wants to increase the registration reinstatement penalties from $25.00 to $100 to enforce the Mandatory Financial Responsibility Act.

Electronic Filing and Administration

The TRD would like to introduce a bill that would require more businesses to file tax returns electronically. This has been introduced in the past. In this version, the TRD is considering phasing in compliance of businesses with tax liabilities of less than $25,000 but more than $10,000. Also, tax returns filed pursuant to the Cigarette Tax Act and the Alternative Fuel Tax Act would be included among the returns required to be filed electronically.

Distribution Clarification

Rules in statute for distribution of revenues to local governments and special funds are sometimes unclear or silent on the specific rules governing the distributions. Computer systems can be used more effectively if these distribution rules are clarified. There are a number of areas that need to be clarified for more accurate distributions. They include:

- the revenue source of the distribution;
- the stacking order for multiple revenue sources or from one revenue source;
- the exact base for the distribution from gross receipts tax revenues;
- more specificity regarding the treatment of the food and medical gross receipts tax hold-harmless provisions;
- more specificity in the order in which tax credits may be applied;
- the payment source for refund interest;
- consistent imposition of administrative fees;
- clarification of the TRD's authority to make a distribution to any party other than the named beneficiary;
- clarification of the TRD's authority to correct all distributions to all beneficiaries; and
- more specificity regarding effective dates of distributions to identify clearly the first distribution that will be made or affected.

Adjustments that need to be made to distributions to local governments should not have a time limit, as time limits cause the TRD's information technology (IT) systems to have complications. Time limits can provide an unintended hold-harmless provision for local governments.

Technical and Tax Administration Changes

The TRD included in its presentation innumerable ideas for administrative and technical changes that it would like to make. (See handout for details.)

State Racing Commission and Gaming Control Board — Status Report

Julian Luna, executive director, State Racing Commission (SRC); Frank Sena, chair, SRC; and David Norvell, chair, Gaming Control Board (GCB), discussed the implementation of the Horse Racing Act enacted in the 2007 legislative session. The GCB and the SRC are now housed in the same building and are able to work together as necessary. The main change in the Horse Racing Act that requires greater coordination between the two agencies is a requirement that the SRC have the GCB conduct its background investigations. The change requested by the Federal Bureau of Investigation (FBI) regarding gathering of fingerprint cards was approved by the FBI.

Racetrack Status and Concerns

Bruce Rimbo, general manager, Ruidoso Downs and Billy the Kid Casino, noted that his operation is a casino, but is also a thriving racetrack. He suggested that the GCB needs additional IT support personnel to help facilitate the changes needed in computer systems linking the racetrack gaming machines to the GCB. He noted that the overlap in racing days found among the tracks shortens the live racing in the state and provides less time for fans and customers to spend at the races. These overlapping race days also are difficult to accommodate for the racers.

Bill Hayles, general manager, Zia Race Track and Black Gold Casino, noted that finding competent employees is one of his greatest concerns. Few people living in the Hobbs area have experience with either horse racing or casinos. He added that IT people are needed for staff positions also. He is especially concerned that when power outages occur in Hobbs, the casino is out of operation for several days until the IT people of the GCB can get the systems operating again.

Don Cook, general manager, The Downs at Albuquerque, stated that this year's attendance was up 20%. The handle was up 15%. There was a 100% increase in purses. The main concern of The Downs at Albuquerque is the condition of the facility. It is owned by the State Fair and needs to be upgraded for the safety of the horses and the customers. The electrical system needs upgrading and the stands are not in good shape.

Byron Campbell, general manager, SunRay Track and Casino, San Juan County, reported that SunRay is growing. Farmington is expanding the track. Horse racing is growing also. The casino is using all of the expanded hours allowed. There will be demand for 1,000 machines by 2010. The business needs to grow as the population increases, because demand increases. The hours allotted are too confining, as is the limit on machines. San Juan County has increased the rent, so the business has to grow to cover those increased costs. SunRay is adding 17,000 square feet of space for gaming and other activities. The high school rodeo finals will be held at SunRay's track in 2008-09.

Scott Scanland spoke on behalf of Sunland Park Racetrack and Casino, which went into business in 1999. Now the Tiguas reopened their casino in El Paso. They offer only 8-line bingo machines, which are Class 2 gaming. Sunland Park believes that Texas law is being bent a bit by the Tigua operation. Mr. Scanland also reminded the committee that there still could be another tribal casino in the area if the Pueblo of Jemez and Gerald Peters are able to complete their purchase of land in Dona Ana County, have it placed in trust and then have it approved by the state governor and the federal Department of the Interior. Mr. Scanland noted that the legislature has very little control over the establishment of that casino.

There followed a discussion of the reasons why The Downs at Albuquerque believes it needs to relocate to Moriarty. This is mainly because the opportunities to expand the services offered by the casino are limited on the fairgrounds and because the facility is not being properly maintained. Reasons noted by Gino Zamora were:

- new facilities are needed that offer more family-oriented entertainment;
- the grandstands need renovation; and
- equestrian facilities need upgrading because they can be dangerous to horses, riders or others, such as grooms.

Moving the racetrack/casino would not require the state to continue to expend money to maintain the track and its facilities.

Hobbs, according to Mr. Hayles, is faced with a great economic development opportunity. More lodging, restaurants and other amenities are required to keep out-of-state visitors to the Black Gold Casino and Race Track in Hobbs staying longer. Mr. Hayles is planning year-round events, such as concerts and upscale food and beverage facilities, to keep people coming back and playing longer.

Byron Campbell, SunRay Track and Casino, noted that to keep players interested in gaming machines, the machines need to be changed every five to six years. SunRay has just completed a renovation that includes a new restaurant and new simulcast facilities. He lamented that keeping the track and casino in acceptable condition is a capital-intensive process.

Committee members expressed their ongoing concern that horse racing operations are still bringing in a small percentage at most of the tracks. All of the general managers were reminded that gaming was provided to help reinvigorate horse racing because it provides many agricultural jobs and keeps money in rural areas of the state. Ruidoso Downs and The Downs at Albuquerque show that racing provides a double-digit percent of overall receipts (32% and 34%, respectively). Most other tracks show that the percent of overall receipts generated by racing is under 10%. (See attached chart.) Ruidoso Downs has decreasing gross revenue. It has the fewest gaming machines, but has strong attendance at live races. Its gaming revenue is still the greater portion of its total revenue. Ruidoso Downs showed a 41.2% decrease in gaming revenue between 2002 and 2007. This includes the period when Zia opened near the Texas line in Hobbs and also reflects the opening of the new casino at the Inn of the Mountain Gods.

It was noted that the approval process for the Hobbs track and casino was expedited. Race days were assigned before the track opened. The casino was able to begin operation before the first races were held.

There are two license applications pending: Raton and Santa Fe. There is tentatively a racetrack planned for Tucumcari. Only one license can be issued pursuant to the compacts adopted in 2007.

Mr. Cook, The Downs at Albuquerque, noted that it takes 90 to 120 days to get background investigation reports back on an employee. He stated that there needs to be a temporary work permit that will allow an employee to work on a conditional basis until the background information comes in.

Mr. Norvell and Mr. Luna noted that Georgene Lewis is now the state gaming representative. There are 3,500 to 3,600 nontribal gaming machines in the state. Three hundred nineteen gaming machines are located at The Downs at Albuquerque. They would like to increase that number to 500. There are 14,000 gaming machines within a 45-mile radius from Albuquerque. Indian gaming operations now have about 17,000 gaming machines statewide. The northern part of the state can absorb more racing days. There are five "racino" licenses, with six racing licenses active. The sixth is the State Fair horse race. It is the only racing license that does not also have a casino license. The Downs at Albuquerque and SunRay Park run an average of 8.5 horses per race. SunRay has a 10-horse track. There are two to three times as many horses available to race as there are stalls to house them in the state.

Mr. Scanland noted that overlap of seasons hurts all of the tracks. In the summer, Ruidoso Downs and the northern tracks run. Racing is only possible in the north in the summer months.

Speaker Lujan reminded all present that when Governor Gary Johnson allowed gaming machines to be placed at tracks, the tracks were virtually dying. Gaming was allowed at the tracks for the sole purpose of infusing money into horse racing so it would not die. Mr. Luna noted that when purses were down, licensing was down. In the 1998-99 race season, total purses were down to $30,000 per day; now total purses are up to $250,000 per day. Total purses for the state were at $6.5 million in 1998-99 and are now at $50 million for the season. There are new breeding farms in the state, and the quality of the horses is much greater than in the 1990s.

Ruidoso Downs still loses money on horse racing each year. It must supplement its revenue with revenue from its gaming machines. Sunland Park lost $1,000,000 on live racing last season. SunRay lost $1.5 million, or $35,000 per day. Senator Jennings noted that it was all right for the tracks to be subsidized by gaming machine revenue in the beginning because it was expected that horse racing would require subsidization to keep it going. Otherwise, there would never have been gaming machines allowed at the tracks. The demand on local infrastructure with increased traffic to casinos and racetracks must also be recognized and taken into consideration. Services such as expanded fire protection and law enforcement are needed.

The meeting recessed at 6:16 p.m.

<u>Thursday, September 27</u>

The meeting was reconvened at 9:11 a.m. by Senator Jennings.

Small Winery Issues

Dan Weaks, representing the New Mexico Winegrowers Association, introduced the small wineries discussion by describing two bills that he would be presenting. The first provides a regulatory framework for tracking direct sales of wine to consumers, and the second increases the amount of wine that can be sold by a "small winery" for tax calculation purposes. With him were Katy McCoy, Wine Institute of California, Beal Gomez and Florent Lescombes, owner, St. Clair Winery, Deming.

Ms. McCoy spoke about the direct wine shipment issue. The bill creates a permitting system for in-state and out-of-state wineries that allows a winery to sell up to 24 cases of wine to an individual in New Mexico and provides for tax to be paid on the wine. The bill proposed is essentially the same as bills introduced in 2006 (HB 1018 sponsored by Representative Silva and SB 1047 sponsored by Senator Taylor).

Mr. Gomez compared tax rates between New Mexico and other states. He discussed the growth of the wine industry in New Mexico and how small wineries in New Mexico have grown, but they are still small by industry standards.

Mr. Lescombes discussed how the wine business requires a commitment to a long-term business. It can take seven years to create a product, even longer if grapes are just beginning to be planted. He requested the committee to consider the investment required to enter the winemaking business and asked that members do whatever they can to help the industry to prosper.

Mr. Nunns spoke directly about the bill. He noted that the cap should be such that an entire operation can come under it, so that a winery with several labels or winemaking locations does not have to split its operation into separate entities to avail itself of the lower tax rate. He discussed a tax credit that might be more effective in providing New Mexico's small wineries with the tax break desired.

There also was a discussion among the panelists about the difference between the scrutiny received by out-of-state, and possibly foreign, wineries as compared to the scrutiny that occurs with local wineries. They suggested that more attention be paid to out-of-state wineries seeking to claim the tax status of a small winery. Mr. Lescombes also noted that there are only two distributors that carry and distribute New Mexico wines. These distributors only carry Gruet, St. Clair and Santa Fe Vineyards products. All of the other 42 wineries in the state must distribute their own products. He is interested in the legislature looking at a way to get greater access to markets through a more balanced and receptive distribution system.

The committee questioned the impact on the state's economy of wineries in New Mexico. No information was available on the overall revenue generated by New Mexico wineries. There was concern that the direct shipment bill might be limiting marketing strategies of local wineries by limiting the number of cases to 24. In addition, the constitutionality of a credit was discussed. Finally, a question arose as to the reasons it took so much longer to get a winery license than a racetrack license.

Streamlined Sales and Use Tax Update

Mr. Nunns gave an update on the streamlined sales and use tax effort taking place. He said it is estimated that there is possibly a $34 billion loss in revenue nationwide because internet and catalogue sales are not taxed. New Mexico is following the streamlined sales and use tax negotiations as an "advisor" state. The streamlined sales and use tax initiative will require that definitions nationally be uniform so that it can be determined whether a product is or is not to be taxed. Sourcing, whether the tax is imposed at the destination of a transaction or origin-based, is still a problem among the states, the effects of which still need to be understood. Along with changes in the law that will be required, there will be some fees included in the streamlined sales and use tax process that the state will be required to pay. The state will have to develop rate and boundary tables and make them available for publication throughout the nation. Ohio will not join the initiative unless the sourcing rule is resolved to its satisfaction. Amnesty is also an issue with Ohio. In this case, "amnesty" deals with sellers who voluntarily enter into the streamlined sales and use tax process, but who may not be registered with the state at the time the seller joins the initiative. Kansas has adopted an "affiliated nexus" rule stating that if a business operates within the state, it has a nexus with the state, and any affiliate has automatic nexus. In summary, the major issues remaining are:

- sourcing;
- amnesty and anti-donation issues;
- whether to keep a gross-receipts-based tax or change to a sales tax;
- programming and computer systems changes, as well as process changes needed to implement the changes the state adopts;
- funding streamlined sales and use tax agreement (SSUTA) costs; and
- determining the net revenue anticipated.

To make an informed decision about whether New Mexico should join the SSUTA, an assessment of the additional revenue that will come to the state, the costs of compliance and membership and any revenue losses that will occur in the state must be completed.

Blue Ribbon Tax Reform Task Force Review and Update

Jim O'Neill reviewed the background and findings of the Blue Ribbon Tax Reform Task Force. The composition of the task force and the subcommittees formed by the task force are described in Mr. O'Neill's handout. The task force adopted 71 recommendations, only two of which were to study the issues further. Further study was suggested in the areas of property tax administration and effectiveness of economic development incentives. Mr. O'Neill characterized most of the recommendations as "adjustments" to the current tax system rather than tax reform. The following recommendations have not as yet been implemented:

1. to become a full participant in the streamlined sales and use tax initiative;

2. to repeal the "next sale taxable" requirement of Section 7-9-48 NMSA 1978, except for sales to government and nonprofits;

3. to implement an independent hearing process;

4. to expand local revenue options; and

5. to change the role of the corporate income tax.

Two items that were discussed, but were not included in the recommendations, were to remove the gross receipts tax from food consumed at home and to tax the commercial activities of nonprofit organizations. In 2004, the legislature did adopt a provision (Section 7-9-92 NMSA 1978) that removed the gross receipts tax from food items that are considered food for food stamp purposes.

Mr. O'Neill noted that the legislature since 2003 has adopted 136 tax measures, not including changes in distributions. Of those, 62 were adopted in 2007 alone. Some of those proposals reflected sound tax policy; however, many were economic development incentives that were not necessarily based on sound tax policy. He noted that there are no uniform standards used to determine the benefit to the state of adopting a tax incentive. There is also very limited follow-up and tracking once an incentive becomes law to determine its value to the state or target of the incentive. Mr. O'Neill suggested that tracking and evaluating tax incentives would benefit the legislative process. Finally, Mr. O'Neill suggested that many items that were recommended by the task force are still being discussed and presented to the legislature for approval. He noted that it may be time to review the entire Gross Receipts and Compensating Tax Act to determine if its effectiveness as the mainstay of New Mexico's tax system has been damaged by the amendments that have been adopted over the years. He wondered if these taxes still provide the bulk of the revenue for the state or have the recent changes structurally damaged the system the state relies on for much of its revenue.

Hold-Harmless Provisions

Bill Fulginiti, executive director, New Mexico Municipal League; Mr. Nunns; and Richard Anklam, executive director, New Mexico Tax Research Institute (NMTRI), reviewed the current hold-harmless provisions of various tax laws and discussed the need for these provisions, the effect of enacting these provisions and the relative ease of administering these provisions.

Mr. Fulginiti noted that municipalities and counties need hold-harmless provisions when their taxing authority or the amount of revenue will be affected by the tax provision to be implemented. However, if a hold-harmless provision is created, it should provide adequate lead time before implementation to allow the budgeting process of the municipalities and counties to account for changes in revenue that will occur. Gross receipts tax changes should begin in July rather than January because budgets have been set for the fiscal year. He noted that the hold-harmless provision in the food and medical gross receipts deductions is effective in keeping revenue stable in cities. He suggested that new enactments should contain provisions that will allow future reductions at the state level in rates or future credits, deductions or exemptions to be implemented without effect on the revenue stream of the municipalities or counties.

Mr. Anklam noted that hold-harmless provisions have an effect on three areas of the NMTRI's policy principles:

- state and local tax policy should not be costly to administer and should be easily understood by taxpayers to minimize compliance costs;

- state and local tax policy should do the least harm to the *private economy* and thus should consist of the broadest possible tax base to promote the lowest possible tax rates; and

- state and local taxes should be adequate to provide appropriate levels of services or goods best provided by the public sector (i.e., education, public safety and law enforcement, public thoroughfares and courts).

Gross receipts tax (GRT) sharing between the state and local govenments at one time had no exceptions, i.e., no credits or deductions and few exemptions. If the GRT were increased or decreased, everyone's share to be paid would increase or both the state and local government would see decreased distributions if the rate or base were narrowed. There was a balance between proponents and opponents of changes in the GRT that caused considerable debate when changes were proposed. New exemptions, deductions and credits were difficult to get adopted. Although the base GRT rate is 5%, the state receives only an amount equal to 3.775% of gross receipts within a municipal boundary. The difference, or an amount equal to 1.225% of gross receipts, is distributed to municipalities. The GRT makes up 35% of the general fund. However, GRTs, including local GRTs, make up 75% of municipal governments' revenues. County governments depend less on the GRT because they also have property tax as a revenue source. The average GRT contribution to county budgets is 10% to 20% of total revenue.

Mr. Anklam said hold-harmless provisions simply shift the distribution to local governments from the revenue percentage coming in from the GRT collections to the general fund. Because the exemption, deduction or credit is eliminating the revenue coming into the general fund, revenue from other collections must be used to keep the distribution back to the local government at the same level it was prior to the change in the GRT that prompted the need for a hold-harmless provision. In actuality, the percentage of the GRT returned to the local government increases to account for the decrease in the overall GRT revenue collected in the municipality.

Alternative ways of devising hold-harmless provisions include:

1. increasing the distribution to municipalities and counties while providing an across-the-board credit against GRTs; this method does not have a uniform effect on all local governments;

2. diversifying the sources of revenue to allow one revenue source to remain strong, although this method puts pressure on rates, tending to make them increase;

3. allowing a credit against the state portion of the GRT only; and

4. specifying a distribution formula that builds in a hold-harmless effect to local governments.

The hold-harmless provisions of the food and medical deductions are burdensome on both the vendor and the TRD. It should not be replicated due to these problems. Using the type of hold-harmless provision in the phase-in of the for-profit hospital credit provides language that explicitly directs that the credit be netted against the general fund distributions. This is probably the best language so far developed. It provides for ease of administration and compliance, without excessive additional cost or difficulty.

Regional Water and Wastewater Authority

John Underwood, an attorney representing the communities of Ruidoso Downs and Ruidoso, noted that there is a joint powers agreement between those two communities to fund water and wastewater facilities. Right now, both communities are bonded to capacity, with no additional capacity soon to become free. One of the problems in small communities that have high tourist populations is that water and wastewater facilities must be constructed to accommodate peak tourist populations. Small municipalities need help dealing with standards for water and wastewater. The legislation being drafted will most likely look like the authorities permitted in the Solid Waste Act. They can cross county lines as needed and also include multiple municipalities. Arsenic is not a problem in the area. The nitrogen and phosphorus standards are causing this fiscal problem. It is possible that lodger's taxes can be used to help ease the financial shortfall. The committee suggested that a check-off box should be put on all registration forms for lodging that allows an amount to be added to the bill and be dedicated to water and wastewater facility construction and clean water initiatives.

New Mexico Horsemen's Association Report

Terry Walker, president, New Mexico Horsemen's Association (NMHA); Susan Vescovo, vice president, NMHA; Pat Bingham, executive director, NMHA; and Frank Sena, board member, NMHA, spoke for the NMHA.

Racing and breeding industries are labor-intensive. There are thousands of people employed by these industries in the state. These range from owners of racing and breeding operations to trainers, grooms, drivers, riders and exercisers, veterinarians, racetrack employees and employees of other support businesses. An economic impact study is being developed by Dr. Weiss of New Mexico State University. The breeding industry has grown in the state since

1999, when there was a total of 980 to 1,100 foals in the state. In 2007, the number of thoroughbred foals alone was 1,000. There is too much overlap in racing days of tracks. More and better stables need to be available for horses stabled at racetracks.

Issues that should be addressed in the future are the availability and needs of jockeys, tracks, breeders and owners. Because races are split between quarter horse races and thoroughbred races, enough stalls need to be available to accommodate a larger number of horses than will run. The State Fair needs to upgrade its facilities. All tracks should provide figures for jockey safety records and types of accidents, racetrack surfaces and horse mortality. The committee should schedule time to inspect tracks, stalls and other facilities at racetracks.

Arnold Rael, chair, SRC, commented on the need to coordinate among racetracks to keep the number of horses at an optimum level to provide good races.

Relative Revenue Generation from New Mexico Taxes

Mr. Nunns discussed the amount of revenue collected by the TRD from various taxes. Since fiscal year 1998, the GRT has almost doubled from $1.8 billion to an estimated $3.3 billion in fiscal year 2007. Personal income tax increased from $.8 billion to $1.2 billion. Corporate income tax more than doubled from $.18 billion to $.4 billion. Oil and gas taxes went from $.38 billion to $1.05 billion between fiscal years 1998 and 2007. The most recent GRT totals are from after the food and medical gross receipts credits went into effect. There was a substantial increase in gross receipts collected in spite of the lack of collections from fiscal years 2006 and 2007.

The committee adjourned at 2:59 p.m.

REVENUE STABILIZATION AND
TAX POLICY COMMITTEE

Section 7

October 2007
Agenda
Minutes

Revised October 15, 2007

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

October 17-19, 2007
Room 322, State Capitol
Santa Fe

Wednesday, October 17

9:00 a.m.		**Call to Order** —Senator Timothy Z. Jennings, Chair
9:05 a.m.		**Introduction to Liquor Licensing Concerns** —Joe Nestor Chavez
9:25 a.m.		**Liquor License Status and Regulation** —Edward Lopez, Jr., Superintendent of Regulation and Licensing —Gary Tomada, Director, Alcohol and Gaming Division, Regulation and Licensing Department
10:35 a.m.		**Enforcement** —Herman Silva, Director, Special Investigations Division (SID), Department of Public Safety (DPS) —Sergeant Lee Mullen, Field Operations, SID, DPS
11:35 a.m.		**Liquor License Availability** —Hil Davidson, Broker
12:30 p.m.		**Lunch**
1:30 p.m.		**Liquor Licensing Issues** —Maurice Bonal, License Broker
2:15 p.m		**Recent Liquor Regulation Changes — Impact on the Industry** —Ruben Baca, New Mexico Petroleum Marketers Association —Billy Baldwin, President, New Mexico Hospitality Retail Association
3:00 p.m.		**Owner-Management Enforcement Concerns** —Annette Lujan, Manager, Fusion Night Club and Restaurant —John Frazier, Regional Manager, Hooters

3:45 p.m. **Public Concerns**
—Donna Yetter
—Evelyn Feltner

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

Thursday, October 18

9:00 a.m. **Reconvene**
—Senator Timothy Z. Jennings, Chair

9:05 a.m. **Taxation and Revenue Department (TRD) Legislative Proposal Drafts**
—Jan Goodwin, Secretary of Taxation and Revenue
—Jim Nunns, Tax Policy Director, TRD

10:00 a.m. **Franchise Fees — County Authority**
—Tasia Young, New Mexico Association of Counties (NMAC)
—Tito Chavez, NMAC
—Dan Bryant, Otero County Attorney

11:00 a.m. **DWI Program and Facilities Funding**
—Tasia Young, NMAC
—Rob Mitchell, Chair, DWI Coordinators, NMAC

12:00 noon **Lunch**

1:30 p.m. **Locomotive Fuel Tax**
—Fred O'Cheskey, Lobbyist
—Luis Heredia, Union Pacific Railroad
—Steve Sand, Union Pacific Railroad

2:30 p.m. **TIF Eligibility and Law Changes**
—Bill Jordan, Deputy Director for Policy, New Mexico Voices for Children
—Gerry Bradley, Research Director, New Mexico Voices for Children

3:30 p.m. **Recess**

Friday, October 19

9:00 a.m.	**Reconvene** —Senator Timothy Z. Jennings, Chair
9:05 a.m.	**House Memorial 35 — Transportation Technical Committee** —Rhonda Faught, Secretary of Transportation —Chris Wormer, Consultant, Cambridge Systematics
10:05 a.m.	**Municipal League Priorities** —Bill Fulginiti, Executive Director, New Mexico Municipal League (NMML)
11:00 a.m.	**Commercial Driver's License Compliance Issues** —Ken Ortiz, Director, Motor Vehicle Division, TRD —Javier Lopez, Attorney, Office of Legal Counsel, Department of Transportation
12:00 noon	**Lunch**
1:15 p.m.	**Local Government Access to Gross Receipts Payment Data** —Bill Fulginiti, Executive Director, NMML
2:15 p.m	**Comp Time and Overtime Issues** —Bill Fulginiti, Executive Director, NMML —Tasia Young, NMAC
3:15 p.m.	**Adjourn**

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

October 17-19, 2007
Room 322, State Capitol
Santa Fe

The fifth meeting of the Revenue Stabilization and Tax Policy Committee was called to order by Senator Timothy Z. Jennings, chair, at 9:14 a.m. in Room 322 of the State Capitol in Santa Fe.

Present
Sen. Timothy Z. Jennings, Chair
Rep. Edward C. Sandoval, Vice Chair
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Sen. Dianna J. Duran
Rep. Roberto "Bobby" J. Gonzales
Rep. William J. Gray
Rep. Ben Lujan, Speaker of the House
Sen. Bernadette M. Sanchez
Rep. Daniel P. Silva
Sen. John Arthur Smith
Sen. H. Diane Snyder
Sen. James G. Taylor
Rep. Thomas C. Taylor

Absent
Sen. Mark Boitano
Sen. Kent L. Cravens
Rep. Keith J. Gardner
Rep. George J. Hanosh

Advisory Members
Sen. Sue Wilson Beffort (10/17-18)
Sen. Phil A. Griego (10/18-19)
Sen. Cisco McSorley (10/18-19)
Rep. John Pena (10/19)
Rep. Debbie A. Rodella (10/19)
Rep. Henry Kiki Saavedra

Rep. Janice E. Arnold-Jones
Rep. Donald E. Bratton
Rep. Nathan P. Cote
Sen. John T.L. Grubesic
Sen. Gay G. Kernan
Sen. Steven P. Neville
Rep. Andy Nuñez
Sen. Leonard Lee Rawson
Sen. Nancy Rodriguez
Sen. John C. Ryan
Sen. William E. Sharer
Rep. Don L. Tripp
Rep. Luciano "Lucky" Varela

(Attendance dates are shown for those members not present for the entire meeting.)

Staff
Pam Ray
Doris Faust
Jeret Fleetwood
Doug Williams
Cleo Griffith

Guests

The guest list is in the meeting file.

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

Wednesday, October 17

Senator Jennings noted some changes to the agenda. Hil Davidson will not be appearing to make a presentation. Maurice Bonal will be moved to 11:35 a.m. Speakers in the afternoon will be moved up in the order that they appear on the agenda.

Introduction to Liquor Licensing Concerns

Joe Nestor Chavez, lobbyist, introduced the topics to be discussed and considered by the committee. He is mainly concerned about regulatory issues that extend the time for obtaining new licenses to six months or more, even for restaurant licenses to serve only beer and wine. In addition, some licensees are concerned that certain license holders are targeted for constant surveillance and that their patrons are harassed, while other licensees are virtually ignored and unregulated. Some people are concerned that the prices of licenses are again very high and that, as businesses expand in the metropolitan areas, the state has no rational procedure for providing dispenser's licenses except through quota and purchasing systems. Licensees also have some problems with the way that "picnic licenses" are administered, especially that liquor service is cut off before 2:00 a.m. There is also concern among licensees that licenses will be revoked for three violations of selling alcoholic beverages to an intoxicated person or a minor.

Liquor License Status and Regulation

Ed Lopez, superintendent of regulation and licensing, introduced the staff who would be making comments and responding to questions. Gary Tomada, director, Alcohol and Gaming Division (AGD), Regulation and Licensing Department (RLD), gave a presentation to the committee and discussed the handouts provided. Bob Schwartz, chief prosecutor, RLD, and Benina Armijo Cisneros, hearing clerk, responded to questions from the committee.

Mr. Tomada noted that, recently, two "quota licenses", those moved from one location to another with full dispenser and retailer capacity, sold for a combined cost of $1.2 million. He noted that there are serious issues with dispensing liquor under "picnic licenses" and that, in most cases, no oversight is available to keep people who have consumed too much alcohol from leaving a function driving a car. He noted that there is a high incidence of binge drinking in New Mexico and that the largest contributors to binge drinking are bars and lounges, where about 40% of binge drinking occurs. Only two percent of binge drinking occurs as a result of alcohol consumption in restaurants. The remainder may be from various other sources of alcoholic beverages, such as private or public parties. As yet, there has not been a license revocation for serving alcohol to an intoxicated person or a minor.

Mr. Tomada noted that the time it takes to issue a license is lengthy in New Mexico because of the hearing procedure that must occur prior to issuance. There is a possibility that some parts of issuing licenses can be expedited, but the AGD has had its staff drastically reduced and would need at least two additional staff members to move the procedure along. It was noted that small businesses are no longer the owners of licenses. In most cases, the businesses are large out-of-state concerns or businesses with locations in most states, such as grocery stores, hotels and restaurants.

There are approximately 600 inmates in New Mexico prisons as a result of alcohol-related crimes, according to Mr. Tomada. A comment from the committee posited that the enforcement and issuance of citations are based on some kind of profiling of licensees.

In his handout, Mr. Tomada:

1. described the division's duties and responsibilities as they apply to liquor licensing, oversight and regulation pursuant to the Liquor Control Act;

2. described the liquor licensing system in the state, the quota system, the types of licenses and how they are renewed and distributed throughout the state in incorporated areas and unincorporated areas, including:

a. license ownership: the AGD does not sort licenses by ownership structure so no information was provided on this question;

b. active and inactive licenses: there are 40 "expired" dispenser and retailer licenses; others are "inactive" due to tax holds, litigation or death and cessation of business; and

c. transferability of licenses: dispenser and retailer licenses can be transferred (Section 60-6A-19 NMSA 1978) or leased;

3. described how licensing procedures of surrounding states differ from New Mexico's, including:

a. Arizona has 17 types of licenses. The procedures to obtain a license are similar in that: background information on owners of 10% or more of the business is required; if the location is within 300 feet of a church or school, this information must be disclosed; premises are posted; and local governing bodies hold meetings for public comment. A difference is that the state does not hold a hearing unless the license is disapproved at the local level. Arizona also has a quota system, which means that after the quote is reached, no new licenses of that type can be issued. These are called "quota licenses". Licenses can be transferred within a county and can be bought and sold. It takes 65 to 105 days to transfer a license.

b. Texas has approximately 31 types of licenses. All licenses are issued by the Texas Alcohol and Beverage Commission (ABC). No transfers are allowed except in the case of death, partnership dissolution, bankruptcy or receivership. Then, an application by a partner, receiver or successor in interest may be considered to operate the license until the end of the term of the license. At the end of the term, a new application would have to be submitted by the new operator. The entire process, including postings, hearings, etc., must be repeated;

4. provided information about types of infractions, including how many in what categories? (This information was provided as Exhibits 6, 7 and 8 of the handout);

5. described new regulations that have been implemented in the last 18 months:

a. effective 10/18/06:

(1) the definition of "sales to intoxicated persons" was changed to define more clearly a sale to an intoxicated person and to extend the time period in which a breath or blood test can be administered to a suspect. Employees are prohibited from imbibing while on duty; and

(2) penalties were revised for sales to intoxicated persons or minors from five permitted within a 12-month period to three citations within that period before the licensee would face a possibility of revocation of the licensee's license;

6. discussed whether the server training program works. Since 1994, over 200,000 servers have been trained and certified; 200,433 certificates have been issued; and 15,000 servers are trained annually. The program is staffed by 1.5 FTEs. The department has not asked for additional funds for those positions and has funded them out of existing department funds. (See the department handout for more information and backup for these questions.); and

7. discussed how much time does it take to issue a license. One hundred twenty days is the anticipated time to issue a license. The time depends on all parties adhering to the necessary time line and procedures, including:

a. application and background investigations;
b. posting notice of license application — requires 20-day period;
c. noting deficiencies in a license application and completions or correcting as required;
d. posting the license application which then goes to the local governing body for a hearing and public comment. There is a 45-day window in which the hearing must be scheduled; and

e. department review of application and public comments within 30 days.

Mr. Lopez noted that in other states, there is an expedited process for beer and wine licenses; in New Mexico, a beer and wine (restaurant) license goes through the same application time line as any other license. He suggested that an expedited process for approving beer and wine licenses be adopted. He noted that it is clear that there is no property right in a restaurant license. It cannot be sold. There are no package sales privileges with a restaurant license.

The committee noted that it wants to see more efficiency in the process, but does not want to ignore the need for local public input. A concern was noted that in the 1990s, specific brokers were recommended by the AGD to be used to "expedite" an application. Profiling of establishments and patrons also appears to be a problem in some legislators' districts. All patrons and licensees should be treated with respect. The division asked for recommendations to correct the problems seen.

In response to a question about local option districts that have more than their quota of licenses, Mr. Tomada noted that local option district transfers have occurred, and up to 10 local option district transfers into a district can occur in one year. The density of licensee locations is not an issue that is reviewed by the AGD. The quota system allows one license for 2,000 residents but allows licenses to be transferred into a local option district as long as the number of licenses in the district from which the license is transferred does not fall *below* the quota number. In 1997, a law was adopted that prevented the AGD from considering the quota as a maximum when transferring licenses into a local option district when the local option district is under quota to begin with. Mr. Lopez noted that the artificial limit on licenses is one cause of the price being so high. No new full dispenser's licenses have been issued since 1981, according to Mr. Tomada. Mr. Tomada responded to a committee member's question about how a local option district gets above quota by noting that licenses purchased from outside of a local option district and transferred in from a local option district that is losing population can cause the local option district to have more licenses than the quota indicates should be present. Some local option districts are already over quota due to population decreases. Mr. Lopez indicated that his data showed that the greater the number of licenses in a local option district, the higher the number of DWI-related car crashes, arrests and fatalities. Mr. Tomada suggested that the legislature could prohibit inter-local option district transfers. He also noted that the high price of licenses in 1980 was pushing families out of ownership of licenses and preventing them from purchasing licenses. The high costs moved the licenses to larger corporate owners. Various legislators related that it was taking nine months to get beer and wine licenses and that in 1981, the overhaul of the Liquor Control Act converted "canopy licenses" (multiple businesses using the same license on one premises location) into separate licenses, which caused an increase in the licenses available in a local option district.

A member of the audience, Peter Faye, owner of Ram's Grill, purchased his establishment on December 4, 2006, and, in August 2007, was informed by the AGD that he could not store beer and wine in a separate, unattached building on the premises and could not serve alcohol on the patio. The AGD was asked to follow up on this licensee's issue and to find a means to resolve it. The prior owner was able to serve on the patio and store his product in the unattached building.

Mr. Tomada stated that there are 3,300 licenses in the state and that 1,400 of them are full service licenses. He discussed the issues brought up regarding picnic licenses or licenses that are temporarily issued for off-site or special events. It is now a regulation that picnic licenses stop serving alcohol at 11:00 p.m. Many times, these events begin early in the morning and continue all day into the evening. Weddings, dances and other events tend to have the same patrons consuming alcohol for long periods of time. This cut-off was to minimize the number of late night intoxicated people leaving events. There is little oversight of the service at these events.

Another comment by the committee dealt with the ability of the AGD to overturn denial of a license following a local hearing. The superintendent reviews the outcome of the local hearing and reviews the license for deficiencies and can overturn the finding of the local governing body if the superintendent finds its decision unsupported.

Mr. Tomada responded to questions about other state's practices by noting that Arizona has nontransferable beer and wine licenses; Texas licenses are issued by the county; and Colorado chains cannot amass liquor licenses and may only hold one full-service license, with other sites getting beer and wine licenses. Also, in Colorado, food must be served in a liquor business. Package sales are only permitted in grocery stores.

In response to another query about whether the forms for application and other services can be accessed online, Mr. Tomada stated that application forms can be downloaded from the web site and that RLD gives seminars on applying for appropriate business licenses. The email address is RLD@state.nm.us. It was noted that two counties, Curry and Roosevelt, are still dry, even though the municipalities within those counties are not. DWI arrests in Curry and Roosevelt counties are lower than most other counties proportionately. Mr. Lopez noted that although the Navajo Nation is dry, there is still considerable DWI activity in that area. He also noted that restaurant license applications have doubled in the last 12 months. Mr. Lopez also needs two additional hearing officers and administrative law judges. These positions have no staff, which results in an enormous paperwork burden. When Mr. Lopez began as superintendent in 2005, there were 272 applications for new or transferred licenses; in 2006, that increased to 502; and in 2007, through the end of September, 253 applications were submitted.

Mr. Tomada noted that population growth in New Mexico is about 2.5% annually. Full service liquor licenses are hard to get, bur restaurant licenses are easier to obtain. It takes six to eight months to approve a winegrower's license. Mr. Lopez added that he thinks the Liquor Control Act needs to be simplified.

Committee members noted that off-premises sales and licensing with trained employees sounds like a good idea. It appears that the AGD does not like the picnic license system. The committee is still concerned that picnic licenses are cut off before 2:00 a.m. and do not allow service after midnight. The law permits fines to be assessed over a broad range, such as from

$500 to $5,000 per incident. The committee suggested that fines for liquor offenses should be reevaluated and possibly reduced due to excessiveness.

Mr. Lopez responded to the committee by noting that these licenses have turned into a way to increase profitability for licensees. What were originally anticipated as occasional events have turned into daily events. The statute limits picnic licenses to be uses for a 12-hour period in a day; therefore, a picnic license cannot be issued for one day extending into the morning of the next day. A second permit would be required for the second day.

Enforcement

Herman Silva, director, Special Investigations Division (SID), Department of Public Safety (DPS), introduced Sergeant Lee Mullen and Sally Archuleta, who were available to the committee to respond to questions. Mr. Silva noted that he has 31 agents and currently has eight vacancies. In Albuquerque, each agent is assigned to 128 establishments. The most common infractions are sales to intoxicated persons and sales to minors. He noted that where substance abuse is high, DWIs are also more frequent. Server laws are enforced by the SID. The SID coordinates with the AGD by following up on investigation requests or complaints, posting liquor licensing notices and enforcing compliance with special dispenser's permits. Training on sales to intoxicated persons are given four to six times per year. The SID has implemented a prevention program that involves selective enforcement. Agents focus on six counties.

Lieutenant Ortiz described the selective enforcement parameters. First, agents analyze data from infractions at the premises of licensees. The agents of the SID then establish a rotation so that all licensees in the Bernalillo county area receive visits from the agents. They may return more frequently to those premises where more infractions have occurred. Rachel O'Connor, the governor's DWI czar, noted that there are few to no felony convictions for selling alcohol to minors. These are the basis of plea bargains and usually are pled to lesser offenses that are misdemeanors. Mark Rhodes, attorney, noted that his clients are unhappy with the manner in which the SID agents seem to target and intimidate licensees.

Liquor Licensing Issues

Mr. Bonal gave some background about the availability of licenses and the authority to sell licenses. He noted that in 1981, Tito Chavez and Les Houston sponsored the Liquor Control Act, a significant revision of the state alcohol laws. The thought was to have one license per 1,300 people, but the quota adopted required one license per 2,000 people. There has always been an argument that there are too many licenses or too few licenses and that licenses are not distributed evenly throughout the state. Right now, if a full-service license (one with dispenser and retailer capabilities) is involved in an inter-local option district transfer, the license loses its package sales (retailer) authorization. The highest value paid is for the ability to sell in unbroken packages. Mr. Bonal described Senate Bill 1028, which he promoted in the 2007 session. In that bill there would have been:

- no new licenses created;

- free movement of licenses throughout the state;

- a requirement that package sales provisions remain intact when a license is transferred across local option district lines; and

- a restoration of licenses that had their package component lost.

No licenses can be transferred into San Juan or San Miguel counties. Mr. Bonal claimed that in the last five years, tribal liquor control authorities have issued approximately 100 liquor licenses on tribal land. Another provision of Mr. Bonal's bill would have allowed beer and wine service under a restaurant license to be served only before, after and during a meal.

Rural liquor licenses were created to remain in rural areas. There were 26 to 30 of these licenses created. The license could not be operated within 10 miles of another operating liquor license. Also noted as a change made by the Liquor Control Act was that retailer licenses could not be changed into distributor's licenses.

A question from the committee queried what the role of a license broker is. Mr. Bonal stated that brokers facilitate liquor license applications and transfers. He further responded that liquor license brokers do not have to have a license and that there are really no qualifications required to become a liquor license broker. Another comment from the committee noted that the requirement for a restaurant license limits the amount of income that can be made from the beer and wine service on the premises. Restaurants that sell high-end wine find it difficult to keep below the 40% limit on gross receipts from wine and beer.

Mr. Lopez noted that the price of liquor licenses transferred will be posted on the RLD web site beginning the day before or the day of the current meeting, October 16 or 17. Mr. Chavez noted that, currently, package sales authority is in demand. Arizona revamped its liquor licensing to create more package licenses.

Mr. Bonal continued discussion of his proposal that would create package capability for 500 licenses that are currently just dispenser's licenses. Those licensees, according to Mr. Bonal, have lost their package sales capability. Mr. Lopez, although taking a neutral position on the bill, is concerned that the bill is very complex and would make the licensing procedures so complicated that only a very few people who have a long history with the industry would be able to interpret who should and should not have certain licenses.

Linda Aiken noted that Section 60-6A-19 NMSA 1978 explicitly states that there is no property interest derived from the state by obtaining a liquor license, but the license can be used for collateral for loan purposes. The licenses to which this provision pertains are dispenser, retailer, canopy and other transferable licenses.

Recent Liquor Regulation Changes — Impact on the Industry

Billy Baldwin and Ruben Baca presented information for this topic. Mr. Baca provided a handout. He stated that there are about 400 licenses at which package sales for off-premises consumption are authorized. Concerns about the ability of servers to recognize intoxicated persons who purchase alcohol from these licensees arise often, especially because of the limited contact a clerk has with the person making the purchase. He noted that the clerk involved in the last point of sales is presumed to be responsible for the behavior and acts of an intoxicated person for up to 1.5 hours after the purchase of the alcohol. Mr. Baldwin thanked the executive for its willingness to meet and speak about the issues that arise from this presumption. Mr. Tomada noted that it is presumed that if a person has a blood or breath alcohol concentration (BAC) of .14 or higher 1.5 hours following the purchase of alcohol, that the person was intoxicated at the time that the alcohol was purchased and was most likely showing visible signs of intoxication. He reminded the committee that a person is considered intoxicated at a BAC of .08. At .08, there are generally few visible signs of intoxication.

Mr. Silva noted that most infractions the SID deal with are .2 or greater, much higher than the limit for DWI, and even though the presumption is that at 1.5 hours after purchase that the person was already intoxicated when purchasing alcohol, the SID must establish the time line of where the person was over the last three hours. Mr. Schwartz noted that the DWI standard is a "per se" standard, or, if the person is measured and has a BAC of .08 at the time that the person is driving, then by definition the person is intoxicated, whereas a BAC of .14 at 1.5 hours after a purchase is a presumptive standard that can be rebutted. The presumption may be rebutted by showing that during the intervening 1.5 hours, additional drinking did occur.

A question from the committee asked for a description of what .14 BAC looks like. Mr. Tomada said six drinks for a 150-pound man who has eaten no food would cause a .14 BAC. A BAC of .08 results from approximately four drinks. A drink is 12 ounces of beer, five ounces of wine or one ounce of spirits.

Mr. Schwartz suggested that it is fairly common for a person who has been stopped and has been drinking to tell an officer where the person was in the previous three hours, including where the person stopped to drink or purchase alcohol. The person also might tell the officer if the person was visibly intoxicated when that person last purchased the alcohol.

Mr. Baca suggested that all petroleum marketers that also sell alcohol post signs that they will not accept licenses that are for underage persons. This would mean that at 21, a person would have to obtain a new license to purchase alcohol. He also thinks that the cost of an underage license could be prorated so that a young person would have to get a new license at age 21.

A comment from the committee expressed concern that the offense is sales to an intoxicated person, but being visibly intoxicated is not illegal.

Owner-Manager Enforcement Concerns

Annette Lujan, manager, Fusion in Santa Fe, said that her club provides wristbands when a person enters so that the person can receive no more than two drinks in one hour. For some reason, the City of Santa Fe is fighting the free cab ride program. It appears that there are two problems; one is the expense, but the other is that at closing time a crowd develops in the parking lot while awaiting cabs. DWI funding provides the funds for "safe ride home" programs. The city contracts with the transportation provider and receives money from the state for the service.

Ms. O'Connor noted that service from these free-ride services is many times not available when needed or on demand. So far, the programs have provided poor service.

Mr. Chavez spoke about the citations being issued to bartenders and customers with help from Mya Luna, a bartender that has received citations. Mr. Chavez noted that some criminal citations are dropped, but the costs to defend against an administrative citation are high: as much as $2,500 per case and $250 for administrative fees. The fines are very high both to the establishment and to the servers.

Nadine Milford noted the drop in DWIs since 1992. New Mexico used to be number 1 in alcohol-related incidents and now has fallen to eighth or tenth place in the nation. There still is a problem with irresponsible drivers, but things are improving.

The committee noted that people may make mistakes and get drunk, but the perpetrator should not be afraid to engage with regulators. Regulators should be concerned with making sure that the incident is not repeated rather than making an example of or humiliating the person. It was also noted, however, that people holding a commercial driver's license or pulling a trailer with animals for personal use need to take responsibility for their actions and not endanger others or their cargo. There was a suggestion that servers should be protected from fines if they report a person who is intoxicated or help get that person a cab, similar to the way the legislature provided immunity from fines or arrest if a person reports an overdose.

Posting of Notice of Hearings

Evelyn Feltner, president, Inez Neighborhood Association, and Donna Yetter from the Northeast Heights of Albuquerque brought concerns to the committee about the requirements for posting a notice prior to local and state hearings on liquor licenses. Ms. Yetter discussed the process of issuing a license. She said that the first part of the period after the application is devoted to reviewing the license for completeness and making certain that all documentation is accurate and complete. Background investigations are made during this period. Then, the hearings are supposed to be held on applications that are sufficiently completed. These applications would need a site plan of the location of the proposed premises and include in that plan should be identification of what businesses are adjacent to or in the immediate area of the proposed licensee. There should also be a map of the surrounding area so that the AGD can get an idea of whether the new license will be compatible with the surrounding area and assess the application for appropriate siting of the new business. Ms. Yetter suggested that the number of other bars in the immediate area should be assessed to determine if the density of liquor licensees is appropriate to the area. Ms. Yetter noted that the liquor license she is concerned about is a license going to an area where there are five other liquor licenses. She would like the state to have the ability to assess appropriateness and feel comfortable doing so. This would most likely require a change in law providing this authority to the AGD. The New Mexico Supreme Court is reviewing the issuance of a license for the establishment that Ms. Feltner and Ms. Yetter are concerned about. Mr. Tomada noted that the state attempted to deny the license but a district court judge determined that the license should be issued. Ms. Yetter said that the state was asked to overturn the decision of the local government to allow the license. She noted that there is only one hearing officer in Albuquerque to determine whether to approve or disapprove applications for new license locations in the city. Mr. Lopez stated that his office is in the process of tightening up on applications and the hearing process.

Mr. Lopez was instructed to submit new rules and procedures adopted by the RLD for the AGD enforcement of the law to the staff person in charge of the Revenue Stabilization and Tax Policy Committee, Pam Ray, at the Legislative Council Service. The chair also stated he is considering sponsoring legislation to require review of regulations by the legislature. A question arose from the committee on when a new liquor licensee or a transferred license can begin to operate. It appears that a preliminary approval from the department comes prior to the local government approval or before the final approval.

The committee recessed at 4:39 p.m.

Thursday, October 18

The meeting was reconvened at 9:15 a.m. by Senator Jennings.

Taxation and Revenue Department Draft Legislative Proposal

Jan Goodwin, secretary of taxation and revenue, and Jim Nunns, tax policy director, Taxation and Revenue Department (TRD), presented five draft proposals for the committee's review and consideration.

Draft #1 revises Section 7-1-8 NMSA 1978, the section that restricts disclosure of taxpayer information to the agencies listed for the purposes listed. One of the suggested additions is to allow taxpayer information to be released to the RLD. This change elicited a great deal of discussion on what data would be released and how it would be used, stored and handled. There is concern about the way taxpayer information from liquor licensees would be used. There was also some concern on the sanctions that are meant in the draft (page 20). The RLD should be present if this bill is reviewed for endorsement.

Draft #2 would set a threshold for special payment methods. This would include electronic payment methods. The threshold for electronic payments would be decreased from the current $25,000 in taxes owed to $10,000. The reduction would be made in increments of $5,000 over three years. The quarterly electronic filing threshold would be decreased, also. There is an appropriation located in the secretary's duties for fees that are designated to be used for administration of the electronic filing system.

Draft #3 pertains to other Tax Administration Act matters, such as lengthening of the protest filing period from 30 days to 90 days. No special request must be made by the taxpayer to access the longer period.

Draft #4 is a very rough proposal to simplify the exemptions, deductions and some low-income credits that can be claimed against a taxpayer's income tax. This will be drafted and brought back to the committee in November or December.

Hoyt Pattison, lobbyist, Dairy Farmers Association, wanted to know if there are changes in the provisions that farmers and ranchers do not have to pay estimated taxes. The response was that this exemption would still be available to be taken. Mr. Nunns also noted that, in the future, letters of reminder will be sent out to remind people that they are required to file estimated tax returns and pay the estimate. Mr. Pattison also wanted to know if the Withholding Tax Act would make estates and trusts pass-through entities. Mr. Nunns explained that New Mexico law does not track the federal law, and out-of-state taxpayers are able to meet their tax liabilities without filing. Mr. Pattison's final question was whether the number of employees would be decreased on information returns that must be filed by farmers and ranchers from a minimum of 50 employees.

It was noted by the committee that a farmer or rancher cannot include income other than ranch- or farm-generated income. If two-thirds of the person's income is from farming or ranching, the exemption would apply. Secretary Goodwin noted that there will be no penalty for 2007 for failure to pay estimated taxes. Estimated tax payments will begin after the notice is sent out for 2008 income. Another comment was about oil and gas withholding. It appears that oil and gas entities that are pass-through entities will have to make the estimated payment, and the recipient will have the amount withheld if the pass-through entity meets the threshold for paying estimated taxes. The film industry also may have to withhold and make estimated payments before it distributes money to film personnel from New Mexico-based productions.

Draft #5 would conform certain provisions of the Cigarette Tax Act with the Master Settlement Agreement that was adopted after litigation by the states against cigarette manufacturers in the 1990s.

A question from the committee sought more information on the issue of taxation of small wineries that was discussed at the September meeting. Mr. Nunns noted that it might be reasonable to phase out the state small winery tax at the same level as the federal small winery capacity, or 960,000 liters. Right now, a small winery in New Mexico must make 560,000 liters or less. Mr. Nunns also wants to consider allowing a credit for New Mexico wineries instead of the lower rate of tax, simply because so many out-of-state or foreign wineries that are difficult to monitor are also claiming the lower tax rate. He thinks that a production credit might possibly serve the same purpose. Small breweries also might need to be changed to a production credit, also.

Utility Franchise Fees

Tasia Young, lobbyist, New Mexico Association of Counties (NMAC), and Tito Chavez, lobbyist, NMAC, presented a draft bill that would specifically allow counties to charge utilities fees for use of the public rights of way in the unincorporated area of the county. Currently, a county is permitted to charge the "reasonable actual expenses" to obtain access for use of a right of way. The bill would enable counties to negotiate fees for rights of way, according to Dan Bryant, county attorney from Lincoln County. Concern was expressed by committee members that municipal and county jurisdiction would not overlap so that the utility would have to pay twice for the same right of way. In addition, there were questions asked about whether pipelines would have to pay these additional fees. Mr. Bryant thinks that pipelines are included in the utilities to which fees could be charged. It was noted that one to three percent of a utility company's gross revenue comes from unincorporated areas of counties. Mr. Bryant provided a definition of a "franchise" as it pertains to utilities. A franchise is a utility that is granted authority by a government to operate in a specific territory. In response to another question, Mr. Bryant noted that an attorney general opinion limited counties to charging only the actual expenses directly associated with granting the easement to use a right of way. Another query was in regard to possible anti-donation issues resulting from providing use of the right of way without charge. Mr. Bryant stated that opinions from the attorney general are silent on potential anti-donation issues in regard to utility easements obtained from counties. When asked if the fees would be one-time payments at the beginning of the grant of the right of way, the panel stated that the fee would be assessed annually. Another question posed by the committee asked if it would be necessary to speak to the Public Regulation Commission (PRC) regarding this fee. Ms. Young stated that the fee would be included in the rate base of the utility by the PRC.

Local DWI Grant Fund and Program Update

Rob Mitchell, member, Board of County Commissioners, San Juan County, and chair, DWI Coordinators Committee, NMAC, told the committee that the fiscal year 2008 distribution of DWI grant and program money was reduced because of an excess distributed in 2007. There was an overprojection of Local DWI Grant Fund revenue by the TRD and the Department of Finance and Administration (DFA) of $4.5 million. Distributions were made based on the projected revenue, but the money did not materialize. The money will be deducted from 2008 and 2009 allocations to the counties from the Local DWI Grant Fund. Grants are being reduced by $1.6 million for two years to make up for the overdistribution.

Liza Lubach, Local Government Division, DFA, attempted to clarify the problem. She said that $1.5 million will be reverted from the counties. The DFA calculated the amount of overpayment to each specific county and then subtracted that amount from the distribution to the county. Out of a distribution total of $9.8 million, a total of $1.5 million has to be reverted from all of the counties in each of the next two years. This amount includes other reversions also from the Local DWI Grant Fund and from detox funds distributed. It appears that a total of $2.7 million will be withheld from future distributions to make up for the error in distribution.

Discussion among committee members returned to targeting and profiling of certain liquor establishments. Some members are concerned that this is malicious on the part of the SID rather than an attempt to provide prevention in the field. Others explained that the SID has targeted establishments that have a record of producing DWIs and so there is some merit to using limited resources where the need is greatest. Additional funding should be provided for Bernalillo County and other safe ride programs to help provide more assistance to liquor licensees when potentially intoxicated patrons are identified. Again, anti-donation problems were cited as potentially interfering with the safe ride programs that transport people for free from a liquor establishment to the person's home. Ms. Lubach suggested that excess funding from the liquor excise tax could be used to fund safe ride programs.

A question from the committee asked how DWI programs would be able to reconcile their books with their budgets when this money is withheld from them. Does the excess money for the distribution reduce the amount of money flowing into the general fund? Also, questions arose about accountability and whether programs are effective. Mr. Mitchell noted that the DFA requires evidenced-based programs. He noted that the aggregate data for the year will be available by January 1, 2008 in fiscal year 2007.

The committee requested that the DFA distribute the report containing the DWI evidence-based program data on a routine basis to legislators. This is data that can be used to assess the benefit of programs funded by the Local DWI Grant Fund and other program funds. Other comments from the committee noted that more programs should be targeted to children to prevent them from growing up and becoming DWI perpetrators; not all of the money should be spent on adults who are already in the system and are causing the problems. Ms. Lubach stated that each county has a component to provide prevention and education programming for children. The committee asked to be informed about the programs that are working for children and in what schools the programs are offered. Ms. Lubach said that children's programming is part of the multipronged approach taken by counties, and the funding is not followed separately but as a part of the overall programming. The committee also requested the schools in which "all stars" programs are located. A concern was expressed that contract programs, such as all stars, are not long-term.

Locomotive Fuel Tax

Luis Heredia, Union Pacific Railroad (UP), presented information about the UP's request to amend the law that was adopted in the 2007 session. He requested that an extension of time be granted for beginning the community development project that the railroad has planned. First, Mr. Heredia presented background information on the size of the operation the UP is considering and the number of people that will eventually be employed in the Santa Teresa area. Right now, the UP has a network that crosses 23 states to move goods and provide services. More than 32,000 rail miles course those states, with 50,000 employees on a $3.9 billion payroll. There are 125 UP employees currently in New Mexico, with track covering 644 miles and generating $9.5 million in expenditures in the state. The plan is for terminal facilities to be housed at Santa Teresa. The rail line goes from Tucumcari to El Paso and on to Lordsburg then Arizona. The rail line also goes to Chihuahua (city), Mexico, and through Texas. Steve Sand, Real Estate Acquisitions Group, UP, described the location of the UP facility planned as beginning west of the Santa Teresa airport and allowing larger trains with intermodal cars to be accommodated. The project will relocate 285 jobs from El Paso and add about 60 more new jobs through 2010 at the end of the first phase. The project will involve approximately $300 million in construction costs. Design of the facility is being handled by the Wilson architect firm in Albuquerque. Design and permitting should be completed by the summer of 2008. It should take two to 2.5 years to complete phase one. In 2014, the UP plans to begin the intermodal facility. The state and the Bureau of Land Management (BLM) will be swapping land to allow for acquisition of the property needed from the state. There are three time-sensitive components to House Bill 839 (2007 session) to provide a fuel tax credit for the UP project. First, the UP was to obtain the permits by summer 2008; second, the UP was to begin construction of the facility by the fall or winter of 2008; and finally, the UP was to complete the land acquisition by the end of 2008. The land acquisition will probably not be completed until later than 2008, and this is the element that must be changed in the law. Ron Dutton noted that there are 10 sections of BLM land that must be exchanged for state land. This will take a great deal of time because federal land exchanges are slow and time-consuming. Not only does the BLM in Washington, DC, have to approve the exchange, but first an NEPA assessment must be completed. The BLM had suggested it could complete the land exchange by November 2008, but it may not be possible. If the exchange cannot be completed then a right of way can be granted so the project can move forward. An extension must be put in place in the 2008 session or it will be too late to accommodate any delays that may occur. There also will be rail line construction from Ensenada to Santa Teresa. This activity will all serve to expedite economic development in southern New Mexico. In response to a question from the committee, UP representatives stated they could not estimate the fuel costs that would be saved by this credit at this time. Tom Clifford, New Mexico Tax Research Institute, noted that when the bill was adopted the TRD estimated that $3.5 million in fuel would be used or loaded in the state. Texas does not tax fuel loading, and this is one reason that New Mexico adopted the credit.

Tax Increment Financing

Bill Jordan, deputy director for policy, and Anne Stauffer, economist, New Mexico Voices for Children (Voices), presented to the committee some concerns about tax increment development districts (TIDDs). They raised questions about the costs to the state of continuing to approve TIDDs under the Tax Increment for Development Act (TIDA). They are not interested in changing the law as it applies to Mesa del Sol, the only existing TIDD in the state, but in reviewing the purposes of the TIDA before more TIDDs are approved. Ms. Stauffer spoke from a handout that was given to the committee. She noted that in most cases, TIDDs are not intended to develop "green-field" areas or areas where development would naturally occur without tax increment financing (TIF). Most states reserve TIF for "brown-field" areas that are areas of urban blight that are higher-risk areas to develop. They noted that state budgets rely on growth in the state to maintain and expand current programs and fund new programs. To give up that revenue from an area where services will have to be provided hampers the state's ability to expand services into the new areas and it reduces the money available to the state to provide for the needs of the people. It also may spur relocation of businesses and homeowners so that tax revenue from their current locations is lost and reduced new revenue will be realized. By the fifteenth year of a TIDD development, the state will have to provide more services than the increment it is receiving from the TIDD will pay for. The services are schools, law enforcement, fire protection and other basic needs of a community. For example, businesses moving into

Mesa del Sol, such as Advent Solar, are not new businesses to the state, but are relocating. The film studio that will be locating in Mesa del Sol had intended to locate in the Barelas area of Bernalillo County. There is limited-to-no oversight of a TIDD once it is established. The principles that should be incorporated into the TIDA are:

- oversight, transparency and enforcement;
- stakeholder input;
- no net expense to the state for providing governmental services;
- work force housing within the TIDD;
- small local businesses;
- a requirement that jobs created are high-paying and long-term;
- transit-oriented development;
- that schools must be constructed to accommodate the population;
- a sustainable business community; and
- plans for and development of open space.

The recommendations Ms. Stauffer made were:

- obtain a better understanding of the impact TIDDs will have on the general fund; and
- clarify questions and resolve uncertainties.

The TIDA should be amended to:

- exclude undeveloped greenfields from inclusion in TIDDs;
- include oversight and enforcement by specified state agencies;
- require that certain public policy goals be met, such as work force housing, transit-oriented development, high-value jobs, sustainable businesses, etc.;
- add a reporting requirement for counties and municipalities to inform the Legislative Finance Committee and DFA of TIDD proposal submission; and

- prohibit capital outlay funds from being appropriated to TIDDs, which are political subdivisions of the state.

Other questions to be answered:

1. Use and Oversight:

    - What happens if every new development in New Mexico wants to be a TIDD?
    - Which state agency has oversight over TIDDs?
    - What state agency has done a complete, independent analysis of the fiscal impact of proposed TIDDs?
    - If the state's analysis relies upon data from the developers, are the assumptions made by the developers adequate to ensure that the taxpayers are protected?

2. Fiscal Impact:

    - What happens if the TIDD does not generate enough revenue to cover the state's operating costs within the TIDD?
    - What is the total impact on state revenues given tax incentives provided to businesses that locate within the TIDDs?
    - Is it realistic to assume that all of the economic development would not have occurred without a TIDD?
    - Is it realistic to assume that the state's 25% of the gross receipts tax (GRT) from the TIDD will exceed the GRT revenue that the state would have received from that area in the absence of a TIDD?
    - If TIDD revenue is greater than the costs of the public infrastructure, which entity gets the excess revenue and for what purpose? Does the developer keep the revenue?

3. Enforcement:

    - What state agency has enforcement authority to ensure that TIDD revenue is used for public infrastructure and policy goals consistent with the TIDA, especially when the state is not a party to the master development agreements?

- What are the penalties if the infrastructure is substandard or not built?
- Since one of the goals of the TIDA is job creation, what happens if a TIDD does not meet its job creation targets?
- Which TIDD ordinance is controlling if a TIDD spans a city and a county?

The committee noted the concerns brought to it by Voices, but generally was positive and supportive of TIDD development, although it was agreed that the legislature must look carefully at each TIDD that seeks approval. The committee recognized that if adequate revenue does not come from within the TIDD to the state, the state general fund will have to make up the difference to pay for state services provided to residents and businesses within the TIDD. It was noted that TIDDs provide for planned, reasonable growth of an area and generally establish schools for children of new residents. Committee members did agree that strict oversight is needed and all plans should be reviewed at the state level carefully to ensure that the state general fund does not bear the costs of creating infrastructure in TIDDs. It was pointed out that the state or local governments already give up some of their revenue if industrial revenue bonds (IRBs) are issued for a new business and net deficits in revenue occur when schools are built in communities in which low-income parents generate limited or no income tax. There is also no indication of how additional increments of GRTs would be handled. Would the percent division apply to those increments, even if the TIDD expenditures were predicated on a lower amount? The committee agreed that planning is lacking in most developments and the preplanning required is one benefit of a TIDD.

The committee suggested that there is little information and tracking of IRBs. Tracking and information-gathering on IRBs need to be improved.

Mr. Jordan suggested that the state should assess the impact of Mesa del Sol on the general fund as soon as possible. SunCal is proposing a project that is at least four times as large as Mesa del Sol. The state should not rely on developers to provide the analysis of the impact of a TIDD. Counties and municipalities negotiate the development agreement with the developer and the State Board of Finance has authority to approve the agreement after it has been negotiated. Mesa del Sol keeps 75% of the GRTs generated within the boundaries of that TIDD.

The chair asked that the committee members be present to begin business on Friday, October 19, at 8:30 a.m., when Bill Fulginiti and Ms. Young will begin their presentation on compensatory time off and overtime issues resulting from the changes made to the minimum wage law in the 2007 session, and for Mr. Fulginiti to provide to the committee the New Mexico Municipal League (NMML) legislative priorities.

The committee recessed at 3:05 p.m.

Friday, October 19

The meeting reconvened at 8:30 a.m., with Senator Timothy Z. Jennings chairing.

Municipal League Legislative Proposals

Mr. Fulginiti, executive director, NMML, Ms. Young, lobbyist, NMAC, and Grace Philips, attorney, addressed the changes that the cities and counties have discovered that need to be made in the minimum wage law changes adopted in the 2007 session that will become effective on January 1, 2008.

Municipalities and counties discovered that the new wording of the law would require that overtime be paid to personnel working on nontraditional work schedules, such as law enforcement, fire protection, hospital and other emergency services personnel. Many of these workers are assigned to work more than seven days in a row or more than 40 hours in a week and then get extended time off between shifts. To allow for compensatory time off rather than overtime, a change had to be made in the law. No additional money was included in budgets to pay overtime for these workers who previously did not get overtime when they worked the hours traditional to their positions. Overtime will have to be paid until the law is changed.

Mr. Fulginiti also discussed the need to allow municipalities access to taxpayer data generated from taxpayers within a municipality. Currently, local GRTs are collected by the state and returned to the municipality of origin. However, the municipality does not have access to the data supporting the distribution and cannot take action if a taxpayer has failed to pay all of the taxes due. Secretary Goodwin verified that:

1. local GRTs are inherently fluctuating sources of revenue and do not constitute a reliable and consistent source of revenue from month to month; and

2. the taxpayer confidentiality statutes prevent the data for auditing to be made available to municipalities.

Mr. Fulginiti presented the additional legislative priorities of the NMML adopted at its annual meeting a few days ago. They were as follows:

- exchange a distribution of municipal GRTs for a distribution of personal income tax that would be returned to the site of the residence of the taxpayer;

- add municipal judges to Section 34-10-1 NMSA 1978 to provide for a municipal judge to sit on the Judicial Standards Commission;

- support the 2008 general obligation bond issue for libraries;

- increase the Emergency Medical Services Fund Act distribution to municipalities and counties;

- increase the distribution to municipalities, counties and tribes from the Law Enforcement Protection Fund; and

- amend the Local DWI Grant Fund program to provide funding to municipalities.

House Memorial 35 — Transportation Infrastructure Futures Task Force

Rhonda Faught, secretary of transportation, presented the findings of the Transportation Infrastructure Futures Task Force (Task Force) created as a result of House Memorial 35 from the 2007 legislative session. The goal of the committee was to develop a concept of sustainable transportation with a sustainable revenue source. Taxes that are funding transportation infrastructure right now are remaining relatively flat while costs are rising rapidly. The gas tax is split, with 76% of the revenue deposited in the State Road Fund and the remaining 24% being distributed to local governments. In 2009, the federal highway fund is projected to have a $2 billion deficit. The state is responsible for the maintenance of interstates, New Mexico highway routes, ramps, frontage roads, bus loops and relief routes. The conclusions of the Task Force were:

- transportation needs far outweigh available funding;
- federal revenue streams are decreasing with more emphasis being placed on states to pick up the slack;
- the current level of funding will not sustain New Mexico's transportation needs into the future; and
- options in transportation funding are needed.

The Task Force presented several funding options. Some revenue sources can be redirected to increase State Road Fund deposits.

1. Dedicate all of the motor vehicle excise tax to transportation. This would raise $136 million, assuming the tax remains at three percent. The 19-year (2008 to 2026) revenue estimate is $2,449 million.
2. Dedicate the GRTs on New Mexico Department of Transportation (DOT) contractors to transportation. This would raise $14 million annually. The 19-year revenue estimate is $760 million.
3. Improve compliance with the weight-distance tax and trip tax. This estimate assumes an increased collection of 25% over current collections. It would provide $19 million annually. The 19-year revenue estimate is $335 million.

Some new revenue sources can generate additional funds for the State Road Fund.

1. Impose a transportation-dedicated GRT. This could raise as much as $121 million annually, with an increase of $.2527 added to the current GRT.

2. Add a statewide GRT on gasoline of five percent on retail sales. This would generate about $116 million per year.

3. Add a statewide GRT on special fuels. This would generate about $78 million annually.

4. Increase the annual vehicle registration fees by $69.00 per vehicle per year. This might be indexed to increase three percent to six percent per year. This would generate $122 million annually and with the indexing could generate $160 million to $213 million per year.

5. Allow local governments to impose a dedicated local GRT of $.25 or $.50 at a regional level. This could generate as much as $40 million to $80 million per year.

6. Index the special fuels tax to allow for a three to six percent increase annually. This would generate $25 million to $60 million annually.

7. Index the gasoline tax to increase three to six percent annually. This would generate $31 million to $76 million annually.

8. Index the vehicle registration and transaction fees to increase three to six percent per year. This would generate from $19 million to $46 million annually.

9. Index the weight-distance tax and the trip tax to increase three to six percent annually. This would generate $25 million to $60 million annually.

The DOT believes that increased enforcement of the weight-distance tax might be the first, easiest and cheapest step to take to improve State Road Fund revenue. There are estimated to be, at a minimum, 704 noncompliant trucks in the state, and many are not paying the appropriate taxes. Secretary Faught suggested that motor vehicle excise taxes be reviewed during the interim to determine if these taxes should be raised.

The DOT is very close to a resolution of the rights of way issues on US 491. The department has been seeking some contribution from the Navajo Nation to help with the costs of that project.

In response to a question about the projects in GRIP I that have been initiated, Secretary Faught noted that all projects have at least received planning funding. It was suggested by the committee that, whatever source of revenue is chosen, the DOT should do a visible public information campaign to make tax or fee increases more acceptable to the public. Secretary Faught indicated that she would do a public awareness survey to determine the revenue generation methods most acceptable to the public. She also noted in response to a committee question that the weight-distance provisions of the law have not been enforced at night because the ports-of-entry stations are unmanned. Many violations are identified through these enforcement checks: driving without a commercial driver's license; truckers out of compliance with taxes; and motor vehicle issues such as nonfunctioning lights, tire problems and other safety issues. She asked that the legislature invest in increased full-time-equivalent positions so that new staff could be hired to cover the ports of entry. Concern was expressed that agencies are unable to request the expansion funds that are needed because they are required to present a flat budget year after year. This causes government to be acting always in a crisis mode, when budgets are inadequate to cover the actual operating expenses of a department and necessary new staff positions cannot be filled. Concerns about expenditures on the Rail Runner and the Spaceport were voiced by committee members.

Commercial Driver's License Compliance Issues

Kenneth Ortiz, director, Motor Vehicle Division (MVD), TRD, and Javier Lopez, counsel, DOT, presented changes that need to be made to the commercial driver's license provisions. Three sections of the Motor Vehicle Code are amended in the draft. Sections 66-5-60 and 66-5-68 NMSA 1978 are amended to:

1. remove waiver language that allows the MVD to waive the requirement for testing to receive a commercial driver's license; and

2. include persons who require a commercial driver's license as persons whose motor vehicle offenses can cause the issuance of a commercial driver's license to be delayed for at least one year.

Section 66-8-102 NMSA 1978, describing the offense of driving while under the influence of intoxicating alcohol or drugs, was a section that was amended multiple times in 2007 and needs to be reconciled so that the federal government transportation and highway fund people can see that New Mexico's definition of "conviction" is uniform throughout the Motor Vehicle Code and complies with the requirements of the federal DOT.

Committee members questioned whether the definition of "drug" in Section 66-8-102 NMSA 1978 includes prescription drugs. The answer to this question was "yes, any drug that causes the impairment of a driver, whether the drug is prescribed or a street drug" can cause a violation under that section. Also, it was noted that there is still a lack of clarity regarding the provisions under which a mobile home is issued a title.

Adjournment

The committee adjourned at 10:50 a.m.

- 23 -

REVENUE STABILIZATION AND
TAX POLICY COMMITTEE

Section 8

November 2007
Agenda
Minutes

Revised: November 16, 2007

TENTATIVE AGENDA
for the
SIXTH
MEETING IN 2007
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

November 19-20, 2007
Room 322, State Capitol
Santa Fe

<u>Monday, November 19</u>

9:00 a.m.	**Call to Order** —Senator Timothy Z. Jennings, Chair
9:05 a.m.	**Verde Realty — Santa Teresa Tax Increment Development District** —Jack Darnall, Vice President, Verde Realty —Brian McDonald, Ph.D., Economic Consultant —Peter Mallery, Lobbyist
10:00 a.m.	**Tribal Gaming Representative Report** —David Norvell, Chair, Gaming Control Board —John Monforte, Executive Director, Gaming Control Board —Georgene Lewis, Tribal Gaming Representative, Gaming Control Board
11:00 a.m.	**Tribal Gaming Compact and Gaming Tribe Updates** —Governor Charles Dorame (Pueblo of Tesuque), Chairman, New Mexico Indian Gaming Association —Governor George Rivera, Pueblo of Pojoaque —Robert Winter, Chief Executive Officer, Navajo Nation Gaming Enterprises
12:00 noon	**Lunch**
1:15 p.m.	**Oil Conservation Division — Oil and Gas Regulatory Issues** —Mark Fesmire, Director, Oil Conservation Division, Energy, Minerals and Natural Resources Department
2:00 p.m.	**Public Comment**

2:15 p.m.	**Small County Assistance Fund Distribution Adjustment** —Jim O'Neill, Consultant, New Mexico Association of Counties (NMAC) —Tasia Young, Legislative Liaison, NMAC
2:45 p.m.	**State Treasurer's Office Legislative Proposal — HB 532** —James Lewis, State Treasurer —Mark Valdes, Deputy State Treasurer
3:30 p.m.	**National Laboratories Partnerships with Small Businesses Annual Report** —Marianne Johnston, Economic Development Team Leader, Community Programs Office, Los Alamos National Security, LLC
4:30 p.m.	**Pit Rules** —Bob Gallagher, President, New Mexico Oil and Gas Association
4:50 p.m.	**Public Comment**
5:30 p.m.	**Recess**

<u>Tuesday, November 20</u>

8:30 a.m.	**Reconvene** —Senator Timothy Z. Jennings, Chair
8:35 a.m.	**Taxation and Revenue Department Legislative Proposal Drafts** —Jan Goodwin, Secretary of Taxation and Revenue —Jim Nunns, Tax Policy Director, Taxation and Revenue Department
9:35 a.m.	**SunCal Companies — Tax Increment Development District** —Will Steadman, President, New Mexico Division, SunCal Companies (NMSCC) —Luisa Casso, Vice President, Economic Development, NMSCC —Vanessa Alarid, Governmental Affairs Manager, NMSCC
10:35 a.m.	**Property Tax Limitation — Suggested Responses** —Richard Anklam, Executive Director, New Mexico Tax Research Institute (NMTRI) —Tom Clifford, Research Director, NMTRI
11:35 a.m.	**Assessor's Draft Legislation — HB 1087 and CAMA Appropriation** —Karen Montoya, Bernalillo County Assessor

12:00 noon	**Property Tax Limitation Draft Legislation** —Senator Mark Boitano
12:30 p.m.	**Adjourn**

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

November 19-20, 2007
State Capitol, Room 322
Santa Fe, New Mexico

The sixth meeting of the Revenue Stabilization and Tax Policy Committee (RSTPC) was called to order by Senator Timothy Z. Jennings, chair, at 9:15 a.m. in Room 322 of the State Capitol in Santa Fe, New Mexico.

Present
Sen. Timothy Z. Jennings, Chair (11/19)
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 (11/19)
Rep. Roberto "Bobby" J. Gonzales
Rep. William J. Gray
Rep. Ben Lujan, Speaker of the House
Sen. Bernadette M. Sanchez
Rep. Daniel P. Silva
Sen. John Arthur Smith
Sen. H. Diane Snyder
Sen. James G. Taylor
Rep. Thomas C. Taylor

Absent
Sen. Kent L. Cravens
Rep. George J. Hanosh

Designees
Sen. Ben D. Altamirano (11/20)
Sen. Sue Wilson Beffort
Rep. Henry Kiki Saavedra
Rep. Luciano "Lucky" Varela

Rep. Donald E. Bratton
Rep. Nathan P. Cote
Sen. Phil A. Griego
Sen. John T.L. Grubesic
Sen. Stuart Ingle
Sen. Gay G. Kernan
Sen. Cisco McSorley
Sen. Steven P. Neville
Rep. Andy Nuñez
Rep. John Pena

Rep. Janice E. Arnold-Jones

Rep. Debbie A. Rodella
Sen. Nancy Rodriguez
Sen. John C. Ryan
Sen. William E. Sharer
Rep. Don L. Tripp

Sen. Leonard Lee Rawson

(Attendance dates are noted for members not present for the entire meeting.)

Staff
Tim Crawford
Doris Faust
Cleo Griffith
Pam Ray
Doug Williams

Guests

The guest list is in the meeting file.

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

Monday, November 19

Verde Realty — Santa Teresa Tax Increment for Development District

Peter Mallery, lobbyist, introduced Jack Darnall, vice president, Verde Realty, who then presented information about Verde Realty's proposed Tax Increment Development District to be located in south central New Mexico near the Mexico and Texas border in the Santa Teresa area.

State Tribal Gaming Representative Report

David Norvell, chair, Gaming Control Board (GCB), introduced John Monforte, executive director, GCB, and Georgene Lewis, state tribal gaming representative. Mr. Monforte gave some background on the GCB and its limited jurisdiction in matters of tribal gaming. Ms. Lewis gave some data, all found in her handout, on the status of tribal gaming in the state.

Tribal Gaming Compact — Gaming Tribes Updates

Of the three panelists invited, only Governor Charles Dorame of the Pueblo of Tesuque was able to attend. Governor Dorame is the chair of the New Mexico Indian Gaming Association (NMIGA). Governor Dorame gave a thorough report on the tribes that have entered into the 2007 amendments to the 2001 Tribal-State Gaming Compact. The NMIGA represents the state's 11 gaming tribes (pueblos of Acoma, Isleta, Laguna, Ohkay Owingeh, Sandia, San Felipe, Santa Ana, Santa Clara, Taos and Tesuque and the Jicarilla Apache Nation). He emphasized that the communities surrounding gaming tribes reap economic benefits from the gaming activity on tribal land. Seventy-five percent of employees of tribal gaming facilities are not tribal members. The state has gained $419 million from tribes in revenue sharing and other fees since 1995 when the first compacts were entered into. During the same period, racetracks with gaming machines have paid the state $250.6 million. Although racetrack gaming taxes currently exceed revenue sharing to the state, this situation will change when the third quarter 2007 payments are received by the state. The third quarter 2007 remittances from the tribes will be the first payments pursuant to the enhanced revenue sharing provisions of the 2007 compact. The pueblos of Nambe and Picuris are contemplating beginning gaming operations and will increase the revenue sharing realized by the state. Tribal median income has risen since 1990 from $18,568 to $28,499 in 2000. Poverty levels have dropped from 27.5 percent to 19.6 percent in the same period. Education levels have risen. Tribes are developing and prospering as a result of the economic boost provided by gaming in those communities.

Oil Conservation Division — Oil and Gas Regulatory Issues

Mark Fesmire, director, Oil Conservation Division (OCD) of the Energy, Minerals and Natural Resources Department (EMNRD), presented a reasoned discussion of the activities the OCD is now involved in regarding regulation of pits holding waste from the oil production process. Mr. Fesmire gave background information regarding the need for enhanced regulation of oil waste pits. He noted that the concern of the EMNRD is to prevent ground water contamination from poorly maintained and monitored pits. Mr. Fesmire provided data that indicated there had been 2,582 spills from oil production operations in New Mexico, 800 of which had resulted in some amount of ground water contamination and 400 of which could be linked directly to poorly maintained waste pits. No operators have challenged or contested the findings of the OCD regarding these spills. He noted that there are two kinds of pits: drilling pits and workover pits. Mr. Fesmire reminded the committee that the prevention of spills and ground water contamination is many times less expensive than remediation after contamination occurs. Flora Vista's water supply has been contaminated by oil production, and Lovington also had to flush its system due to contamination. The costs of controlling waste and pollution should be included in the price paid for gas or oil. There was a great deal of concern among committee members regarding the process and the perceived outcome of the pit rule hearings. It was suggested that the driving force behind the new pit rules are residents who do not understand the importance of the oil and gas industry to New Mexico's economy. However, it is clear that the OCD believes that there are some problems with the way pits are being used, monitored and maintained that require regulatory attention.

Public Comment

Several members of the public spoke in response to Mr. Fesmire's report. Comments were made that emphasized the recent decline in natural gas prices. There also has been a significant decline in the rig count in Utah, and it was suggested that the number of oil rigs in use in New Mexico would plummet if the OCD tightens up on pit oversight and requirements in New Mexico. Committee members noted that there are rumors that New Mexico will lose rigs to other states if regulatory pressure is placed on the industry. Other comments included a concern that regulatory parameters were based on the cleanup difficulties faced in other states or on climatic concerns from other areas of the country, all of which cannot be equated to conditions in New Mexico. Committee members also suggested that regulators and the oil and gas industry need to work together to come to a reasonable accommodation that allows the industry to operate profitably and maintain a quality environment. Another member of the public, Ron Fellabaum, San Juan Casing Service, Farmington, expressed to the committee that increased regulatory oversight and monitoring by the OCD would be more effective than the increased stringency of regulations. More severe regulations might cause him to close his doors, although the business has been a going concern for 50 years. Other speakers were Henry Valdez, Scorpion Drilling, Farmington, and Tucker Bayless, manager, Robert L. Bayless Oil and Gas Producer, San Juan. Johnny Micou, from Santa Fe County, discussed the issues related to drilling for oil or gas in the Galisteo area of that county. The people in the area do not want to have to clean up contaminated water; they want the water to remain uncontaminated. He spoke of meetings drawing overflow crowds and petitions that have been circulated to obtain signatures against the Galisteo drilling. David Bacon, energy consultant, discussed the effect that Tecton's drilling proposal will have on reducing land values. Theo Coburn discussed the possible effect of endocrine system disruption from oil or gas production contamination of ground water.

Small County Assistance Fund Distribution Adjustment

Tasia Young and Jim O'Neill from the New Mexico Association of Counties presented a change to the formula on which distributions from the Small Counties Assistance Fund are determined. An error was made in the formula determining the distributions to small counties, and that error needs to be corrected. A bill containing a correction to the formula will be presented to the committee in December for endorsement.

State Treasurer's Office Legislative Proposal — HB 532

Mark Valdes, deputy state treasurer, and Joelle Nevy, chief investment officer, State Treasurer's Office, presented an updated proposal of HB 532 from the 2007 legislative session. In 2007, the bill was endorsed by the RSTPC and the Investments and Pensions Oversight Committee. The Short-Term Investment Fund created in Section 6-10-10.1 NMSA 1978 is amended to allow more investors to participate in the fund and to allow investments to be placed for up to 36 months rather than for a limit of six months. The name of the fund is changed to the "Participating Government Investment Fund". The bill will be presented in the list of bills to be considered for endorsement by the RSTPC in December.

National Laboratories Partnerships with Small Businesses Annual Report

Mariann Johnston, economic development team leader, community programs office, Los Alamos National Security, LLC, provided the committee with an update on the use of the laboratory partnership with small business tax credit. Los Alamos National Security was first eligible to claim the tax credit beginning in July 2007. Sandia National Laboratories has been operating the New Mexico small business assistance program since early in the decade. Now the goal is for both labs to join together to provide small business technical assistance to build business capacity and technical capabilities.

Pit Rules

Robert Gallagher, president, New Mexico Oil and Gas Association, gave an impassioned presentation about the industry's concern about the overzealousness of the OCD in developing rules to regulate wastewater and other products held in lined pits on oil and gas production sites. There appears to be considerable concern that additional regulatory burdens will be so great that marginally successful oil and gas businesses will no longer be economically feasible.

According to Karin Foster, Independent Petroleum Producers, the federal Small Business Regulatory Relief Act requires regulators to identify the economic impact of the rules they propose. The rules must protect "correlative rights", defined as the right to capture oil and gas from a property. The correlative rights doctrine also imposes a duty on a correlative right to exercise that right without waste or negligence. This is a corollary to the "rule of capture", which states that there is no liability for drainage of oil and gas from under the lands of another so long as there has been no trespass and all relevant statutes and regulations have been observed. Ms. Foster also noted that the OCD has a fund with approximately $300,000 in it from fines. Mr. Fesmire noted that the money is used for emergency repairs and replacement of vehicles and other equipment acquisition and maintenance. The OCD received over $40,000 in fines in 2007.

The committee recessed at 5:05 p.m.

Tuesday, November 20

The meeting was reconvened by Representative Sandoval at 8:36 a.m.

Taxation and Revenue Department Legislative Proposal

Jan Goodwin, secretary of taxation and revenue, and Jim Nunns, policy director, Taxation and Revenue Department (TRD), presented only one new proposal. It consisted of changes to the personal income tax that would combine several state tax credits and eliminate some confusion in filing personal income tax returns, especially for low-income families. It does away with the standard exemption, the low-income credit tax rebate and the New Mexico low- and middle-income tax credit, but provides an equivalent credit that can be accessed based on earnings through tables inserted into the law. This should simplify tax returns of low-income families.

SunCal Companies — TIDD

Will Steadman, president, New Mexico division, SunCal Companies (NMSCC) gave a general overview of the TIDD that NMSCC is proposing to create on the west mesa of Bernalillo County and Albuquerque. Vanessa Alarid, governmental affairs manager, and Luisa Casso and Owen Fabian were also present to respond to questions regarding financing and other matters.

SunCal is also located in northern and southern California and Nevada. It is a privately held company. Boris Eloff is the master plan developer. Luisa Casso spoke about the economic development that is planned for the TIDD. The business that will be sought for development will provide export of goods and services from the state. The TIDD will allow the infrastructure to be placed prior to development of the commercial ventures and residential housing. The goal is to develop more jobs on the west side to reduce the need to cross the river for employment. Businesses also will be sought that will require inputs that will cause development of support businesses in the area. The plan is to have 29,000 to 30,000 new permanent jobs in 15 years. There should be initially 3,000 construction jobs per year. Bernalillo County adopted the TIDDs proposal on October 9. The first four TIDDs are requesting that 70 percent of the state gross receipts taxes from within the TIDDs be dedicated to the TIDDs, that 50 percent of the Bernalillo County property tax from within the TIDDs be dedicated and that 22 percent of Bernalillo County's local gross receipts taxes from within the TIDDs also be dedicated to infrastructure and other support of the TIDD. A total of nine TIDDs are now planned, most within the unincorporated county area. The TIDDs will issue property tax bonds and gross receipts tax bonds, as well as short-term 30-day bonds. SunCal is anticipating that $946.3 million will be available from the combination of short-term and long-term bonds. After Thanksgiving, SunCal will continue negotiating with Bernalillo County regarding the tax increments that will be authorized and will make another presentation on December 11. After the county approves a plan, SunCal will present its plan to the State Board of Finance for approval before taking it to the legislature for approval during the 2008 short session.

Comments from the committee included acknowledgment of the increased revenue that will come to the state as a result of the expedited new development. Bernalillo County will also see increased local gross receipts taxes and an expanded property tax base. The number of units to be built over a 15-year period should be 20,000, whereas, currently, New Mexico is seeing 5,000 to 7,000 new units in that period. Water rights held by SunCal are senior rights. School districts will retain all of their property taxes levied. SunCal would presume that if taxes increased, a TIDD would still retain 70 percent of the increased revenue collected from within the TIDD. Competition among TIDDs in the Bernalillo County area, especially Mesa del Sol and the SunCal project, could cause slower development of both in terms of attracting businesses and causing growth on the time line established. Concern was also voiced that even though most states have some form of TIDD authorization, the TIDDs are generally used as an urban renewal tool, whereas in New Mexico location of a TIDD is not limited to inner city blighted areas, but is being used simply as a tool to drive planned economic development and residential communities. Concern about the lack of uniformity among tax increments retained that have been authorized for the current TIDDs was expressed. More uniformity should be sought in the future. Infrastructure as contemplated by the Tax Increment for Development Act (Chapter 5, Article 15 NMSA 1978) means "public improvements", such as wastewater systems, domestic water systems, parks and open space improvements or roadways, but does not include construction of commercial or residential buildings and will be further limited in the plan adopted by Albuquerque, Bernalillo County and the State Board of Finance. The definitions used by SunCal will be compared with those used by Mesa del Sol.

Alan Armijo, chair, Bernalillo County Commission, noted that the county has been working with SunCal. He noted that there are no longer large tracts of land for planned development in Bernalillo County, except in the areas where Mesa del Sol and SunCal have chosen to develop.

Property Tax Limitation — Suggested Responses

Richard Anklam, executive director, and Tom Clifford, research director, New Mexico Tax Research Institute, presented information on limitations currently in law on increases in property taxation. They noted that yield control and the three percent limit on residential property values have been implemented. The three percent limit helps to control the assessed value of property, but this can cause an increase in tax rates to generate the needed revenue for county and municipal budgets. Yield control limits the increase in municipal and county budgets over the level in the prior year. It controls the amount of revenue that a local government can collect. Bond issues, however, are not included in this limitation. Taxes must be collected to cover bonds issued. New purchasers of residential property have property tax increases that are considerably more than taxes paid by previous residents. Usually, property taxes paid in the first year after purchase are at the prior owner's rate because the assessment is usually completed prior to purchase. However, in the next year, the assessor will value the property based on the value of comparable residences in the area. This can raise the valuation considerably and cause the taxes to increase. To reduce the tax burden, especially for low-income people, the low-income and elderly tax rebate could be expanded to cover more people. It was noted that all rebates or other methods of tax relief for a portion of the population only shift the tax burden to other people so that the amount of revenue needed is still collected. It causes a shift to higher rates for those who still must pay property taxes. Industrial revenue bonds and other tax reduction incentives for businesses also cause shifting of the tax burden to those without the incentives. Commercial property taxes that are forgiven or reduced can be a substantial sum.

Members of the committee noted that over a six-year period, there is roughly a 45 percent turnover in residential home ownership. A county-by-county review of the effects of the three percent limit was requested to be presented at the next RSTPC meeting.

Mr. Anklam and Mr. Clifford gave a thorough presentation of the issues that have arisen from the implementation of a three percent limitation on the increases in valuation of residential property, provided the property is not transferred in the tax year.

Assessor's Draft Legislation

Karen L. Montoya, Bernalillo County assessor and chair of the New Mexico Assessor's Association, explained two proposed bills for which the association is seeking the RSTPC's endorsements. One is a $6 million appropriation to the Property Tax Division of the TRD to oversee the installation of computer-assisted mass appraisal systems in all counties, at the TRD and at the Department of Finance and Administration that will allow these entities to be connected and to aid in the valuation of real property.

The second bill, similar to House Bill 1087 sponsored by Speaker Lujan in the last legislative session, allows sales affidavits to be used by protestors in property tax protests. Some changes in format were made to clarify the language of the bill.

Property Tax Limitation Draft Legislation

Senator Boitano presented a draft of a proposal to prevent increases in property valuations over the next two property tax years and do away with the need to value property at its current and correct value if transferred in those years. The valuation would be based on the 2004 property tax year valuation of the property.

In those two years, Senator Boitano is hopeful that the legislature will devise a more equitable scheme for limiting property tax increases. He believes that approximately 42 percent of the property owners in the state have been adversely affected by the property tax limitation. He would like to give them some relief. There is a great deal of public concern in the Albuquerque area over the increases in property taxes that some new property owners are experiencing.

The bill will be reviewed and amended slightly and then brought to the committee for endorsement in December.

Adjournment

The committee adjourned at 1:26 p.m.

REVENUE STABILIZATION AND
TAX POLICY COMMITTEE

Section 9

December 2007
Agenda
Minutes

Revised: December 11, 2007

TENTATIVE AGENDA
for the
SEVENTH MEETING IN 2007
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

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

Wednesday, December 12

9:00 a.m. **Call to Order**
—Senator Timothy Z. Jennings, Chair

9:05 a.m. **Year-End Revenue Estimate**
—Jan Goodwin, Secretary of Taxation and Revenue
—Katherine Miller, Secretary of Finance and Administration
—Norton Francis, Chief Economist, Legislative Finance Committee

10:00 a.m. **Five-Year Tax Revenue Projections**
—Jim Nunns, Tax Policy Director, Taxation and Revenue Department (TRD)

10:30 a.m. **TRD Legislative Proposals**
—Jan Goodwin, Secretary of Taxation and Revenue
—Jim Nunns, Tax Policy Director, TRD

11:30 a.m. **Economic Development Department Tax Credit Amendments**
—Mathew Woodlee, Director, Office of International Trade, Economic Development Department

12:30 p.m. **Lunch**

1:30 p.m. **Public School Funding Formula Study Task Force Report and Proposals**
—Representative Mimi Stewart

2:30 p.m. **Assisted Living Charitable Property Tax Exemption**
—Jody Knox, Director, Lakeview Christian Home
—Linda Sechovic, Executive Director, New Mexico Health Care Association
—Leslie Padilla, Attorney, Modrall Sperling Law Firm

3:30 p.m.	**New Mexico Municipal League and New Mexico Association of Counties — Legislative Proposals** —Bill Fulginiti, Executive Director, New Mexico Municipal League —Tasia Young, Lobbyist, New Mexico Association of Counties
4:30 p.m.	**Recess**

<u>Thursday, December 13</u>

9:00 a.m.	**Reconvene** —Senator Timothy Z. Jennings, Chair
9:05 a.m.	**Property Tax Limitation — County-by-County Data** —Tom Clifford, Research Director, New Mexico Tax Research Institute
10:00 a.m.	**Other Legislative Proposals** —Village of Angel Fire — Sports and Recreation Facility — Lodger's Fee —Alvin "Bubba" Clanton, Mayor, Village of Angel Fire —Chris Muirhead, Attorney, Modrall Sperling Law Firm —J.D. Bullington, Lobbyist, Village of Angel Fire
11:00 a.m.	**Legislative Proposal Endorsements** —Pam Ray, Staff Attorney, Legislative Council Service (LCS) —Cleo Griffith, Drafter, LCS —Doris Faust, Staff Attorney, LCS
12:00 noon	**Adjourn**

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.

Wednesday, December 12

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.

REVENUE STABILIZATION AND
TAX POLICY COMMITTEE

Section 10

2007
Legislation Reviewed
and Committee Endorsements