



NEW MEXICO LEGISLATURE

REVENUE STABILIZATION & TAX POLICY COMMITTEE

2018 INTERIM FINAL REPORT

LEGISLATIVE COUNCIL SERVICE
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INTERIM SUMMARY

Revenue Stabilization and Tax Policy Committee 2018 Interim Summary

The Revenue Stabilization and Tax Policy Committee held six meetings in 2018. Bill endorsements were completed on the second day of the December meeting, at which three bills under consideration were endorsed.

The interim began with Ernst & Young LLP (EY) presenting its final report of the tax study commissioned by the legislature. EY performed a comparative analysis of New Mexico and several neighboring and peer states. EY found that New Mexico's gross receipts tax (GRT) revenue is more volatile than most of the peer states but that New Mexico is also less reliant on the GRT than other states are on their sales taxes. EY also found that New Mexico is less reliant on personal income tax (PIT) revenue, the volatility of which is lower than other states. EY also delivered a tax model for use by legislative economists in analyzing proposed changes to the GRT and PIT.

For the committee's July meeting, tax experts from around the country were scheduled to discuss various tax issues and provide insight into how New Mexico policymakers could address the changing economic and tax climate. These issues included impacts of the decision by the U.S. Supreme Court in *South Dakota v. Wayfair, Inc.* regarding taxation of out-of-state internet sales; conforming with the federal Tax Cuts and Jobs Act of 2017; lessons from previous tax reform efforts in New Mexico; tax implications of legalizing recreational marijuana; corporate income tax issues; and taxation of the health care industry, specifically the disparities between the nonprofit and for-profit sectors.

Other issues presented to the committee included problems with distributions to local governments; a discussion of the comparison of tax burdens on the oil and gas industry by various states; the revenue impacts of legalizing sports betting in the state; proposals of various tax incentives espoused to encourage economic development; modifying existing tax incentives; and reporting and analyzing tax expenditures and other economic development incentives.

The committee closed the interim with the annual revenue forecast from the Consensus Revenue Estimating Group; a discussion of how the permanent funds work; and two tax reform scenarios presented by the economists of the Legislative Finance Committee, parts or all of which could be included in legislation to be considered in the 2019 legislative session.

WORK PLAN AND MEETING SCHEDULE

**2018 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE**

Members

Rep. Jim R. Trujillo, Chair
Sen. Carlos R. Cisneros, Vice Chair
Rep. Sharon Clahchischilliage
Rep. Roberto "Bobby" J. Gonzales
Rep. Jason C. Harper
Sen. Gay G. Kernan
Rep. Tim D. Lewis
Rep. Antonio Maestas
Rep. Javier Martínez

Sen. Mark Moores
Sen. George K. Munoz
Sen. Clemente Sanchez
Sen. William E. Sharer
Sen. John Arthur Smith
Rep. James R.J. Strickler
Rep. Carl Trujillo
Sen. James P. White
Sen. Peter Wirth

Designees

Rep. David E. Adkins
Rep. Eliseo Lee Alcon
Rep. Cathrynn N. Brown
Sen. William F. Burt
Sen. Pete Campos
Sen. Jacob R. Candelaria
Rep. Daymon Ely
Rep. Bealquin Bill Gomez
Rep. Bill McCamley
Rep. Rod Montoya
Rep. Debbie A. Rodella

Sen. Nancy Rodriguez
Rep. Patricia Roybal Caballero
Rep. Angelica Rubio
Rep. Patricio Ruiloba
Rep. Tomás E. Salazar
Rep. Larry R. Scott
Rep. Nathan P. Small
Sen. Elizabeth "Liz" Stefanics
Rep. Candie G. Sweetser
Sen. Bill Tallman
Sen. Pat Woods

Work Plan

The Revenue Stabilization and Tax Policy Committee is a statutorily created joint interim legislative committee. Pursuant to Section 2-16-3 NMSA 1978, the committee is directed to "examine the statutes, constitutional provisions, regulations and court decisions governing revenue stabilization and tax policy in New Mexico and recommend legislation or changes if any are found to be necessary ... ". In the 2018 interim, as time permits, the committee proposes to:

1. investigate options to bring internet and remote sellers, including third-party sellers, into the tax base after the United States Supreme Court decision in *South Dakota v. Wayfair*;
2. examine the effects of federal tax reform on New Mexico's tax structure and its impact on New Mexico taxpayers and hear proposals to address those impacts;

3. review the state's primary revenue sources and options for revenue stabilization, especially the effects of the state's reliance on the oil and gas sector and that sector's impact on the stability of state revenues;
4. examine the effectiveness and value to the state of tax incentives and the state's ability to report and track the effectiveness of tax incentives, including an analysis of restructuring existing incentives from a cost-benefit per job basis to a per project basis;
5. discuss taxation of the health care industry, including the impact taxing that industry may have on state revenues and support for the Medicaid program;
6. review issues related to the Insurance Premium Tax Act, which transfers collection of premium taxes from the Office of Superintendent of Insurance to the Taxation and Revenue Department;
7. hear from the Taxation and Revenue Department about its business credit bureau, data analytics and taxpayer advocate initiatives, as well as a review of tax refund claims and protests and issues regarding distributions to local governments;
8. discuss the potential impact on state revenue from legalizing sports gambling in this state, including the provisions of the 2015 State-Tribal Class III Gaming Compact; and
9. determine legislative actions necessary to implement changes identified by committee members that will improve the state's tax system and revenue stabilization.

**Revenue Stabilization and Tax Policy Committee
2018 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
June 25	Santa Fe, State Capitol, Room 322
July 23-25*	Santa Fe, State Capitol, Room 322
September 20-21	Santa Fe, State Capitol, Room 322
October 29-30	Santa Fe, State Capitol, Room 322
November 19	Santa Fe, State Capitol, Room 322
December 17-18	Santa Fe, State Capitol, Room 322

*Meeting date moved to July 25-27

AGENDAS AND MINUTES

Revised: June 22, 2018

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

**June 25, 2018
State Capitol, Room 322
Santa Fe**

Monday, June 25

- 9:00 a.m. (1) **Post-Session Fiscal Review**
—Jon Clark, Chief Economist, Legislative Finance Committee (LFC)
—Dawn Iglesias, Economist, LFC
- 9:45 a.m. (2) **Discussion of Work Plan and Meeting Schedule**
—Pam Stokes, Staff Attorney, Legislative Council Service
- 10:15 a.m. (3) **Tax Study Final Report**
—Andrew D. Phillips, Principal, Quantitative Economics & Statistics
(QUEST), Ernst & Young, LLP (EY)
—Caroline M. Sallee, Senior Manager, QUEST, EY
—Robert D. Buschman, Ph.D., Senior Research Associate, Center for Fiscal
Research, Georgia State University
- 12:30 p.m. **Adjourn**

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

**June 25, 2018
State Capitol, Room 322
Santa Fe**

The first meeting of the Revenue Stabilization and Tax Policy Committee for the 2018 interim was called to order by Representative Jim R. Trujillo, chair, on Monday, June 25, 2018, at 9:00 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

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

Designees

Sen. Pete Campos (attending as a guest)
Rep. Bealquin Bill Gomez (attending as a guest)
Sen. Nancy Rodriguez
Sen. Elizabeth "Liz" Stefanics (attending as a guest)
Sen. Pat Woods

Absent

Sen. Gay G. Kernan
Sen. John Arthur Smith
Rep. Carl Trujillo

Rep. David E. Adkins
Rep. Eliseo Lee Alcon
Rep. Cathrynn N. Brown
Sen. William F. Burt
Sen. Jacob R. Candelaria
Rep. Daymon Ely
Rep. Bill McCamley
Rep. Rod Montoya
Rep. Debbie A. Rodella
Rep. Patricia Roybal Caballero
Rep. Angelica Rubio
Rep. Patricio Ruiloba
Rep. Tomás E. Salazar

Rep. Larry R. Scott
Rep. Nathan P. Small
Rep. Candie G. Sweetser
Sen. Bill Tallman

Guest Legislators

Rep. Larry A. Larrañaga
Rep. Patricia A. Lundstrom
Sen. Howie C. Morales

Staff

Pam Stokes, Staff Attorney, Legislative Council Service (LCS)
Erin Bond, Research Assistant, LCS
Ric Gaudet, Researcher, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Monday, June 25

Post-Session Fiscal Review

Jon Clark, chief economist, Legislative Finance Committee (LFC), and Dawn Iglesias, economist, LFC, gave a presentation to the committee about the state's financial outlook following the regular legislative session. Ms. Iglesias said that rising revenues and reserve levels allowed the legislature to appropriate \$259 million more for fiscal year 2019 than was made in 2018. The extra appropriations include \$90 million for state employee compensation increases while still maintaining reserve levels at 10 percent. Recurring revenues are finally expected to exceed fiscal year 2015 levels in fiscal year 2018, and revenues for each month in the current fiscal year have been above monthly levels for the two previous fiscal years. Revenue collections for the fiscal year through April increased 14.8 percent from the previous fiscal year and were \$307 million higher than was predicted by the January 2018 consensus revenue forecast.

The primary driver for the surge in revenues is from increased production in the oil and gas industry. Oil production is up 33 percent compared to last year, and gas production is up five percent. Oil prices have also risen and are \$4.00 per barrel higher than what the revenue forecast estimated. Matched taxable gross receipts have increased 13.6 percent for the first three quarters of fiscal year 2018, and most of that increase is attributable to the oil and gas industry.

Mr. Clark reviewed the following notable tax legislation debated during the recent legislative session:

- Senate Bill 99 (Chapter 62) created a gross receipts tax (GRT) deduction for certain military-related construction services;
- House Bill 79 (Chapter 46) created a GRT deduction for the sale of certain items by New Mexico small businesses on the Saturday after Thanksgiving;
- Senate Bill 231 (Chapter 36) provides foster youth employment income and corporate income tax credits of up to \$1,000 per foster youth employed;
- House Bill 35 (Chapter 48) increases the distribution of liquor excise tax revenue to the Local DWI Grant Fund and provides a distribution to the newly created Drug Court Fund;
- House Bill 194 (Chapter 56) allows taxpayers to present alternative evidence in lieu of a nontaxable transaction certificate for the purpose of claiming a deduction from gross receipts;
- House Bill 245 (Chapter 58) clarifies a definition for purposes of deducting certain construction-related material from gross receipts;
- House Bill 223 (Chapter 57) transfers collection of the premium tax and other related insurance taxes to the Taxation and Revenue Department (TRD);
- House Bill 329 (Chapter 77) allows truckers from Mexico operating within a 10-mile region of the international border to obtain longer-term special fuel user permits;
- Senate Bill 192 (vetoed) would have imposed a daily surcharge on certain health care facilities to leverage federal Medicaid dollars; and
- Senate Bill 17 (vetoed) would have imposed the GRT on the contractor of a national laboratory if the contractor is a nonprofit organization.

Mr. Clark discussed issues that the committee should consider during the interim, including the need to maintain higher reserve levels due to the heavy reliance of the state on the energy sector, possible legislation to hedge against negative impacts on certain New Mexico households resulting from recent federal tax reform, potential large revenue risks from new interpretations of the chemicals and reagents GRT deduction, legislation to align the GRT structure with a recent U.S. Supreme Court decision on internet sales and possible GRT reform legislation to broaden the tax base and lower rates.

Questions and comments from committee members included the following.

- Why was New Mexico's credit rating recently downgraded by Moody's? Mr. Clark said that the state's economy has long-term structural issues and an overreliance on volatile revenue sources. In addition, large unfunded pension liabilities contributed to the rating downgrade.
- What is the status of the many tax protests with which the TRD is involved? Mr. Clark said that the LFC requested more detailed information from the TRD about the nature of current tax protests but has not yet received a response. The legislature also needs more information from the department about the chemicals and reagents GRT deduction that is being exploited by some taxpayers.
- Is the entity that was recently awarded a contract to operate Los Alamos National Laboratory (LANL) a nonprofit organization? Mr. Clark said that Texas A&M University, which is part of the consortium that was awarded the contract, has indicated that the entity is applying for status as a nonprofit organization.
- What will be the impact on New Mexico taxpayers of recently enacted federal tax reform legislation? Mr. Clark said that the August consensus revenue forecast will provide detailed estimates of the impact on various categories of residents.
- How much money is expected to be deposited into the Tax Stabilization Reserve from excess oil- and gas-related tax revenue? Ms. Iglesias said that excess revenues are scheduled to begin in fiscal year 2019. The January revenue forecast estimated that \$15 million would be transferred to the reserve but that the number will be much higher based on recent expansion of oil production in the state.
- Insufficient pipeline capacity in southeastern New Mexico has meant that oil has been sold at a discount. This has probably cost the state hundreds of millions of dollars in royalty and tax payments.
- The state's economy is in need of diversification, but that will not happen unless its tax codes are reformed.
- Local governments surrounding LANL will suffer if they lose a significant portion of their GRT base from the operation of the laboratory by a nonprofit entity. Most GRT increments are already bonded against future revenue, and that revenue stream may be jeopardized.

Discussion of Work Plan and Meeting Schedule

Ms. Stokes discussed with the committee its proposed work plan and meeting schedule for the 2018 interim. The committee is proposing to hold six meetings during the interim in Santa Fe for a total of 11 meeting days. The proposed work plan includes broad areas of study, including options for taxing internet sales; the effects of federal tax reform on New Mexico's tax

structure; the increasing reliance on the oil and gas sector for the state's revenues; the effectiveness of tax incentives; taxation of the health care industry; issues related to the transfer to the TRD of the administration of the premium tax; and the effectiveness of the TRD in administering tax credits, tax protests, taxpayer advocacy, data analytics and distributions to local governments. The committee would also be tasked with determining any legislative changes that will improve the state's tax system and revenue stabilization. The July meeting of the committee will be designated a "Tax Summit", in which various national and state experts will provide testimony on many current tax issues.

Ms. Stokes said that the committee is proposing to retain the services of the New Mexico Tax Research Institute (NMTRI) to assist in the development of the summit. After discussion of the idea, a motion was adopted, with one vote against, to contract with the NMTRI.

A member requested that the committee study the possibility of legalizing sports betting in New Mexico, including any possible revenue impacts that may happen from that legalization. The item was added to the proposed work plan.

The committee adopted the amended work plan unanimously.

Tax Study Final Report

Andrew D. Phillips, principal, Quantitative Economics & Statistics (QUEST), Ernst & Young, LLP (EY); Caroline Sallee, senior manager, QUEST, EY; and Robert Buschman, Ph.D., senior research associate, Center for Fiscal Research, Georgia State University, presented the final report of the tax study commissioned by the legislature. Mr. Phillips said that EY was commissioned to develop a tax analysis model for the legislature's use, undertake an analysis of the degree of pyramiding in the GRT, analyze the distributional impacts of various tax changes on households and businesses and assess the strengths and weaknesses of New Mexico's tax system.

Analysis of Current Tax System in New Mexico

EY performed a comparative analysis of New Mexico and several neighboring and peer states, including Arizona, California, Colorado, Hawaii, Nevada, Oklahoma, Oregon, Texas and Utah. New Mexico's GRT rate of 5.125 percent is average compared to the peer states, and when factoring in a weighted average of state and local sale tax rates, it ranks even better. New Mexico also has low personal income tax (PIT) rates compared to most of its peers. New Mexico's GRT revenue is more volatile than most of the peer states, but it is also less reliant on the GRT than other states are on their sales taxes. New Mexico is also less reliant than its peers on PIT revenue, the volatility of which is lower than other states due, in part, to its lower share of business and capital gain income.

During the period of fiscal years 2005-2016, GRT revenue generally followed the trend of economic activity in the state. However, over the longer period of 1998-2016, revenue from the

GRT has grown more slowly than the state gross domestic product (GDP). PIT revenue grew faster than total personal income over this same period.

The tax analysis determined that the amount of state and local taxes borne by businesses in the state is 6.4 percent of state GDP, which is higher than the U.S. average and the peer state average. Business taxes per private sector employee equaled \$7,000, compared to the nationwide average of \$5,800. New Mexico residents, however, are relatively less burdened by the PIT than residents in peer states. About 45 percent of gross receipts in fiscal year 2017 were classified as taxable for firms with annual receipts of over \$10 million. For smaller businesses with annual receipts of less than \$100,000, more than 70 percent of their gross receipts were taxable. The GRT is also a fairly regressive tax. Taxpayers with incomes less than \$17,000 pay almost 10 percent of their incomes as GRT taxes, while those with incomes above \$338,000 pay 1.3 percent of their income as GRT taxes. New Mexico's PIT structure is fairly progressive for individuals with incomes up to \$100,000 due to the presence of credits that provide targeted relief to low-income taxpayers. Effective tax rates for businesses in New Mexico, before the application of various credits and deductions, are higher than the average of the peer states. However, for certain industries, such as manufacturing and services, effective tax rates are lower than the peer average.

GRT Model

Ms. Sallee presented the GRT model, which is able to model proposed changes in GRT law and provide an estimate of the effects. The model uses data from fiscal year 2016, which can be updated each year and are contained inside an Excel workbook. TRD RP-80 data were categorized into standard industry classifications, with reported gross receipts, deductions and gross tax estimated. Each industry was also ranked according to the dollar amount of deductions taken. The model also estimates changes made to compensating tax laws using similar data, and it estimates the distributional effects of tax proposals on various classes of households. Tax expenditures that have been estimated by the TRD or LCS were included, and many that did not have a calculated dollar amount were estimated using national data. Some tax expenditures are closely related, so EY attempted to account for overlap and cascading effects of eliminating one expenditure. This is particularly true in the health care sector, in which several deductions and exemptions cannot be measured independently of each other.

The model can estimate revenue impacts from a single change or multiple changes made to GRT deductions, exemptions and credits and provides a tax rate that would make the changes revenue neutral. It reports the value of the changes by industry and the distributional effect of the changes. In addition, the model can estimate the changes that could occur in the PIT program to offset revenue changes in the GRT program.

PIT Model

Dr. Buschman discussed with the committee the PIT model, which is able to model proposed changes in the PIT program and provide an estimate of the effects. The PIT model is also Excel based and is able to provide reports detailing tax law changes on taxpayers by filing

status, PIT-B status and itemizer status, in addition to income level. Data were obtained for PIT filers from the TRD for tax year 2015, but they can be updated annually. The model was modified to include federal tax reform changes, including eliminating personal exemptions, increasing the standard deduction and adjusting itemized deductions. He recommended that a full analysis be performed of the adjustments made to accommodate federal tax law changes to ensure accuracy of the model, as subsequent PIT data become available. The model also provides a distributional analysis for proposed PIT changes.

Questions and comments from committee members included the following.

- How accurate is the PIT model, since the TRD was unable to provide complete information for EY to complete the model? Dr. Buschman said that the model used itemized deduction data from the federal government because the state does not have the data in sufficient detail.
- The tax model presented by EY is a good framework for modeling future proposed tax law changes. The confidentiality statutes should be modified to allow the TRD to release more taxpayer data to the LFC.

Adjournment

There being no further business, the committee adjourned at 1:00 p.m.

Revised: July 24, 2018

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

**July 25-27, 2018
State Capitol, Room 322
Santa Fe**

Wednesday, July 25

- 9:00 a.m. **Welcome and Agenda Overview**
—Richard Anklam, President and Executive Director, New Mexico Tax
Research Institute
- 9:30 a.m. (1) **New Mexico Taxation Overview**
—Steven Keene, CPA, Managing Partner, Moss Adams, L.L.P.
- 10:30 a.m. (2) **Federal Tax Reform Conformity, Personal Income Tax Reform and
Gross Receipts Tax Reform**
—Michael Mazerov, Senior Fellow, Center on Budget and Policy Priorities
- 12:00 noon **Lunch**
- 1:15 p.m. (3) **Lessons from Past Tax Reform Efforts: the Blue Ribbon Tax Reform
Commission and the Professional Tax Study Committee**
—Robert J. Desiderio, Esq., Emeritus Professor of Law, University of New
Mexico School of Law
—Benjamin C. Roybal, Partner, Betzer, Roybal and Eisenberg P.C.
- 2:30 p.m. (4) **Update from the Taxation and Revenue Department (TRD): Discussion
of Current Issues**
—John Monforte, Esq., Acting Secretary, TRD
—Thomas E. Clifford, Ph.D., Economist
- 3:30 p.m. (5) **Tax Reform: City and County Perspectives**
—William F. Fulginiti, Executive Director, New Mexico Municipal League
(NMML)
—James P. O'Neill, Consultant, NMML
—Katherine Miller, County Manager, Santa Fe County
—Brian Moore, Lobbyist, New Mexico Counties
- 4:30 p.m. **Recess**

Thursday, July 26

- 9:00 a.m. (6) **Federal Tax Reform and National Trends; Recreational Marijuana Taxation; and Observations on Tax Reform in New Mexico**
—Joseph Bishop-Henchman, Esq., Executive Vice President, Tax Foundation
- 10:30 a.m. (7) **Developments in State Corporate Taxes**
—Richard D. Pomp, Esq., Professor of Law, University of Connecticut (UConn) School of Law
- 12:00 noon **Lunch**
- 1:15 p.m. (8) **Remote Sales in the Wake of the *Wayfair* Decision**
—Richard D. Pomp, Esq., Professor of Law, UConn School of Law
- 2:30 p.m. (9) **Medicaid and Taxes: an Overview**
—Brent Earnest, Secretary, Human Services Department
- 3:30 p.m. (10) **Taxation of Nonprofits and the Health Care Industry in New Mexico**
—Frank Crociata, Esq., Of Counsel, Gallagher & Kennedy, P.A.
- 4:30 p.m. **Recess**

Friday, July 27

- 9:00 a.m. (11) **Sales Tax Scorecard; Sales Tax Reform; Administrative Scorecard; and State Implications of Federal Tax Changes**
—Douglas L. Lindholm, Esq., President and Executive Director, Council on State Taxation Foundation
- 10:30 a.m. (12) **Corporate Taxes; Uniform Division of Income for Tax Purposes Act; and How the States Are Collaborating**
—Helen Hecht, Esq., CPA, General Counsel, Multistate Tax Commission
- 12:00 noon **Adjourn**

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

**July 25-27, 2018
State Capitol, Room 322
Santa Fe**

The second meeting of the Revenue Stabilization and Tax Policy Committee (RSTP) for the 2018 interim was called to order by Representative Jim R. Trujillo, chair, on Wednesday, July 25, 2018, at 9:05 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Jim R. Trujillo, Chair
Sen. Carlos R. Cisneros, Vice Chair
Rep. Sharon Clahchischilliage (7/25, 7/26)
Rep. Roberto "Bobby" J. Gonzales
Rep. Jason C. Harper
Sen. Gay G. Kernan
Rep. Tim D. Lewis
Rep. Antonio Maestas (7/25, 7/26)
Rep. Javier Martínez
Sen. Mark Moores
Sen. George K. Munoz (7/25)
Sen. Clemente Sanchez
Sen. William E. Sharer (7/25)
Sen. John Arthur Smith
Rep. James R.J. Strickler (7/25)
Rep. Carl Trujillo (7/26, 7/27)
Sen. James P. White

Absent

Sen. Peter Wirth

Designees

Rep. Cathrynn N. Brown
Sen. William F. Burt (attending as a guest
7/25)
Sen. Pete Campos (attending as a guest
7/25)
Rep. Bill McCamley (7/25, 7/27)
Sen. Nancy Rodriguez
Sen. Bill Tallman (7/25, 7/26)

Rep. David E. Adkins
Rep. Eliseo Lee Alcon
Sen. Jacob R. Candelaria
Rep. Daymon Ely
Rep. Bealquin Bill Gomez
Rep. Rod Montoya
Rep. Debbie A. Rodella
Rep. Patricia Roybal Caballero
Rep. Angelica Rubio
Rep. Patricio Ruiloba

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

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

Staff

Pam Stokes, Staff Attorney, Legislative Council Service (LCS)
Erin Bond, Research Assistant, LCS
Felicia Garcia, Intern, LCS
Ric Gaudet, Researcher, LCS
Sara Wiedmaier, Research Assistant, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Wednesday, July 25

Welcome and Agenda Overview

Richard Anklam, president and executive director, New Mexico Tax Research Institute, described to the committee the intent of the three-day committee meeting, dubbed the "Tax Summit". Tax experts from around the country were scheduled to discuss various tax issues and provide insights into how New Mexico policymakers could address the changing economic and tax climate. Recent federal tax law changes will have an impact on state revenues, and the recent decision by the U.S. Supreme Court in *South Dakota v. Wayfair, Inc. (Wayfair)* regarding taxation of out-of-state internet sales provides a complicated but potentially lucrative opportunity for state and local governments to increase the gross receipts tax (GRT) base. Mr. Anklam provided the committee with biographies of the 16 speakers presenting at the meeting.

New Mexico Taxation Overview

Steven Keene, CPA, managing partner, Moss Adams, L.L.P., provided the committee with an overview of the taxation system in New Mexico. Recurring state revenues come from a mix of taxes and investment income. By far, the largest source of revenue is from the GRT, followed by income taxes and then energy-related taxes. Property taxes provide a minimal source of state revenue. Mr. Keene discussed New Mexico's GRT system, which has evolved to be more of a sales tax over the years. First imposed in 1935 as the "Emergency School Tax" at a rate of two percent, the tax was originally a very broad-based tax on goods and services and was

imposed on the seller, rather than on the purchaser. This allowed for the tax to be imposed indirectly on the federal government, which for decades was the largest economic driver in the state. The GRT is the state's largest source of revenue and has grown to become the largest revenue source for municipalities and counties. The state rate of 5.125 percent is partially shared with municipalities, meaning the effective rate for state purposes is about 3.9 percent. The total GRT rate varies across the state, from 5.5 percent to 9.25 percent. Since 2004, the average total GRT rate has increased by more than two percent, as local governments have struggled to keep up with increasing expenses and a smaller GRT base.

The compensating tax is the companion tax to the GRT, intended to protect in-state businesses from unfair advantage by out-of-state businesses that, generally, are not required to pay the GRT. The tax is imposed on the purchaser of products and some services. The compensating tax rate is imposed at 5.125 percent for property and five percent for services, resulting in a perverse incentive for in-state businesses to purchase from out of state because of the tax rate differential. Generally, the compensating tax has similar deductions and exemptions as the GRT.

The GRT system taxes everything that is sold by a business in New Mexico, except for property and services that have an exemption or a deduction in statute. Many transactions are excluded from the base that are already taxed elsewhere, including motor vehicles, insurance and gasoline, and other activities that are not normally included in the concept of a traditional sales tax, such as wages, dividends, interest and the sale or lease of real property. Certain sales by and to governments and charitable organizations are exempted, and many deductions are provided to reduce the effect of pyramiding in the chain of commerce. Recently, there have been many more deductions enacted for social or economic development and special industries. In 2004, the legislature removed most food purchases and a large portion of medical services from the GRT base. There are also several credits that can be taken against GRT liability, most of which are designed to encourage economic development in the state.

Mr. Keene briefly discussed the personal income tax (PIT) and corporate income tax (CIT) systems with the committee. The PIT system derives from the federal tax system and takes as its starting point federal adjusted gross income. Taxable income is then calculated by adding or subtracting various additions, deductions and exemptions. The PIT program also has many credits, including several business-related credits. PIT rates vary from 1.7 percent to 4.9 percent, and top out at relatively low income levels.

The CIT is the most complex tax system in New Mexico but only accounts for a small portion of recurring General Fund revenue. Taxable income for corporations is generally derived from federal income, but that calculation quickly gets complicated for corporations with presence in more than one state. In New Mexico, most corporations are allowed to file as separate entities; that is, the income derived from each state is the basis for the state tax return. However, some corporations are required to file combined returns in which income is apportioned to the state based on several criteria.

Questions and comments from committee members included the following.

- What is the difference between a GRT and a sales tax? Mr. Keene said that the main difference is the incidence of the tax. The GRT is imposed on the seller, while sales taxes are imposed on the buyer, and the seller is required to collect it. GRTs are typically much broader based and are imposed on every transaction, except for those transactions that are specifically excluded.
- What can the legislature do to prevent abuse of the GRT deduction for chemicals and reagents? Mr. Keene said that the deduction was enacted long before hydraulic fracturing for oil and gas was developed. The new technology being applied to an old deduction could cost the state hundreds of millions of dollars.
- How will the *Wayfair* decision affect New Mexico? Mr. Keene said that New Mexico will need to make some changes to law in order to benefit from the decision, especially regarding how transactions are sourced.
- Using origination-based sourcing for services means that rural governments lose out on taxing those services, since most professionals are based in urban areas of the state. In addition, when most food ceased to be taxed in 2004, those communities lost much of their GRT base.

Federal Tax Reform Conformity, PIT Reform and GRT Reform

Michael Mazerov, senior fellow, Center on Budget and Policy Priorities, discussed with the committee how federal tax reform has affected New Mexico and also discussed previous state tax law changes. In 2003, New Mexico enacted some of the deepest PIT rate cuts in recent history, cutting rates from 8.2 percent to 4.9 percent. That same year, a capital gains deduction of 50 percent was allowed. Together, those tax cuts cost the state \$500 million annually. In 2013, the legislature enacted another tax cut package, cutting CIT rates to 5.9 percent and allowing a single sales factor for manufacturers, costing an additional \$145 million annually. These tax cuts coincided with an overall decrease in the state of per-pupil spending on public school and higher education students. New Mexico has one of the lowest high school graduation rates in the country, and only 27 percent of its residents have completed a bachelor's degree. In addition, New Mexico ranked last in a 2018 report in overall child well-being and it also has the nation's highest child poverty rate. Rather than creating new jobs in the state, those tax changes have only exacerbated the challenges that the state has in caring for its residents.

Mr. Mazerov discussed impacts that federal tax reform legislation will have on New Mexico's state revenues and on its residents. The federal Tax Cuts and Jobs Act of 2017 (TCJA) made major changes to how income tax is calculated, and those changes are already affecting New Mexico's PIT system. The standard deduction for most filer categories was doubled, and personal exemptions were eliminated. For state taxpayers with children, this will mean that New Mexico PIT liability will increase. Mr. Mazerov said that it is unclear whether the elimination of

personal exemptions means that New Mexico's low-income PIT exemptions have also been eliminated. Other states with similar exemption statutes have come to differing conclusions about whether those exemptions have been eliminated. Other changes made by the TCJA include limiting the amount of state and local taxes that can be deducted and the permanent adoption of a "chained consumer price index" as an index to inflation. The estimated net impact to New Mexico state revenues from the TCJA is a gain of \$46 million annually, with the bulk of that revenue coming from increased tax liability of taxpayers with more than one dependent child.

Policymakers have several options in responding to changes made by the TCJA: do nothing and accept the tax increase for New Mexico taxpayers and higher state revenues; decouple the state PIT system from the federal tax code; remain coupled to some provisions of the federal tax code and decouple from others; or remain coupled to the federal tax code but create an offsetting tax cut or rebate for certain taxpayers. Any response, however, should be well informed, account for uncertainties in fiscal estimates, be designed toward meeting long-term adequacy needs and be equitable. New Mexico's tax system is already fairly regressive, and the changes made by the TCJA will benefit the highest income residents the most. Mr. Mazerov suggested that any changes made should mitigate the regressive nature of the federal tax cuts. Possible mechanisms to offset that regressivity include bolstering the low- and middle-income exemptions, increasing the earned income tax credit, creating a state child tax credit and increasing the low-income comprehensive tax rebate (LICTR), which was originally enacted to offset the regressive GRT system.

Questions and comments from committee members included the following.

- If the capital gains deduction is changed, that will mean that the sale of a business will be taxed at regular PIT rates, which does not seem fair to business owners. Mr. Mazerov said that there are many mechanisms that could provide targeted relief for small businesses to avoid being penalized by the repeal of the capital gains deduction. The current broad deduction is not good tax policy and has not created any new jobs in the state.
- A district court recently ruled that New Mexico is not adequately funding K-12 education. How could the legislature remedy this situation? Mr. Mazerov said that, from a tax policy perspective, once the state determines its expenditure needs, it will probably need to raise more revenue, but that revenue stream needs to be evaluated over the long term. Tax policy should not be based on current surpluses or deficiencies.
- If the legislature wants to make changes to the PIT system to respond to the TCJA, when does that need to happen? Mr. Mazerov said that the TCJA made changes to income tax law that are already in effect for the current tax year. If the legislature

wishes to alleviate some of the negative impacts on families with children for the current year, it will need to make changes during calendar year 2018.

Lessons from Past Tax Reform Efforts: The Blue Ribbon Tax Reform Commission and the Professional Tax Study Committee

Robert J. Desiderio, Esq., emeritus professor of law, University of New Mexico School of Law, and Benjamin C. Roybal, partner, Betzer, Roybal and Eisenberg P.C., discussed with the committee previous attempts at reforming New Mexico's tax codes. The Professional Tax Study Committee (PTSC), which met monthly from 1994 to 1996, was composed of five experts in the areas of tax policy and practice, law and economics. At its first meeting, the legendary guru of New Mexico tax law and former secretary of taxation and revenue, Franklin Jones, discussed tax policy principles, including adequacy, equity and efficiency, and also provided detailed information on the GRT. The PTSC subsequently examined every GRT deduction, exemption and credit and ranked them on their effectiveness.

The PTSC spent much of its time studying the taxation of nonprofit entities and business-to-business pyramiding. The PTSC sent questionnaires to more than 50 nonprofit entities asking them to detail their revenue streams. The Office of the Attorney General also provided information on some nonprofit entities that were required to file information reports. The PTSC determined that allowing tax-exempt entities an exemption from paying the GRT violated the tax equity principle and recommended that the exemption be repealed. The PTSC also recommended that certain kinds of entities continue to receive the exemption, depending on the kind of services they provided and that they met a minimum threshold in receipts.

The PTSC also studied the problem of business-to-business pyramiding created by the GRT. Nearly every industry is affected by pyramiding, and taxpayers have different remedies to solve the problem. Direct pyramiding, such as the taxation of the sale of a product by both a distributor and a retailer, is usually solved by the issuance of nontaxable transaction certificates (NTTCs) and other mechanisms. Indirect pyramiding, such as the taxation of fuel used to produce electricity for subsequent sale to customers, is often more problematic to solve.

The work of the PTSC was very comprehensive, and Mr. Desiderio said that it tried to remain politically neutral while making recommendations to amend the tax codes that aligned with tax policy principles. Unfortunately, the recommendation to tax the receipts of most nonprofit organizations was met with strong opposition, and the PTSC ceased its work in late 1996. Many of the PTSC's recommendations have been enacted into law over the years, including the recent enactment of anti-pyramiding legislation.

Mr. Roybal said that the PTSC examined each exemption, deduction and credit against the tax policy principles in order to decide whether the expenditure was worthwhile. When the PTSC met, there were about 80 tax expenditures in the Gross Receipts and Compensating Tax Act; today, there are more than 100. The PTSC's goal was to expand the GRT base by eliminating some tax expenditures and ensuring that all hospitals be taxed equally. The

extensive research on pyramiding done by the PTSC might still be relevant for today's policymakers. Mr. Roybal congratulated members of the RSTP for helping to enact a law in 2018 that allows for the Taxation and Revenue Department (TRD) to be flexible in allowing for a deduction from gross receipts if the NTTC is not available, something the PTSC recommended in 1996.

Questions and comments from committee members included the following.

- What was the rationale for eliminating exemptions from the GRT for nonprofit organizations? Mr. Desiderio said that the PTSC was not interested in removing the exemption from purchases by nonprofit organizations but wanted to eliminate the exemption from the receipts of some nonprofit organizations. The PTSC recommended that nonprofit organizations should be taxed to the extent that they compete in the market sector in the same way that the governmental GRT is imposed on the receipts of certain governmental activities. This would allow for the uniform taxation of entities like hospitals, while still not taxing entities such as private schools. Mr. Roybal said that the PTSC had also recommended that an organization have a minimum amount of receipts before being subject to the GRT.
- The issue of how to ensure GRT taxation of the prime contractor at Los Alamos National Laboratory (LANL) still needs to be resolved. The simplest solution would be to set a minimum threshold of receipts after which a nonprofit organization is required to pay the tax. Mr. Desiderio said that the nonprofit exemption is based on a federal exemption from income taxes, whereas the GRT exemption is an exemption from transactional taxes. This exemption is not based on sound tax policy, he said.
- What is the best plan for New Mexico to reform its tax system? Mr. Desiderio said that the state cannot piecemeal tax reform. Policymakers need to look at the entire tax system. For example, the regressivity of the GRT was originally balanced by the LICTR in the PIT system; but over the years, the LICTR rebates have not kept pace with the increasing regressivity of the GRT. Tax expenditures are used for economic development purposes, but they often result in unintended distortions in the tax base. Mr. Roybal said that since 1996, the state has only incrementally changed the tax codes. He recommended that any tax reform examine each industry and provide occasional diversions from tax principles based on the situation of the industry.
- No other state imposes a sales tax on nonprofit entities. Why is New Mexico even considering that issue? Mr. Desiderio said that New Mexico is one of five states that tax services, which means that the taxation of nonprofit entities in most states is not much of an issue. In New Mexico, there are many industries in which for-profit businesses are competing with nonprofit businesses. This creates a large equity issue.

- Before engaging in massive tax reform, New Mexico needs to be able to expand appropriations for basic services that its residents need. The state has huge educational, health care and infrastructure needs. Mr. Desiderio said that a well-designed tax system can easily be modified to raise or decrease revenue without causing distortion. He said that out-of-state businesses are often confused by New Mexico's ever-changing tax system.
- What would be the best approach for a state to provide incentives for businesses to locate in the state? Mr. Desiderio said that tax incentives, by definition, interfere in the market, so economic tradeoffs need to be quantified. He said that it would be better to provide for expenditures to attract businesses.
- The largest company in the state is currently operating as a nonprofit entity and does not pay the GRT.

Update from the TRD: Discussion of Current Issues

John Monforte, Esq., acting secretary of taxation and revenue, and Thomas E. Clifford, Ph.D., economist and consultant to the TRD, provided an update to the committee on activities at the TRD. Distributions to all funds in fiscal year (FY) 2018 rose 14 percent from the previous fiscal year, with a total revenue stream of over \$8 billion. This growth rate is more than double the rate forecast earlier in the year and includes increases in the oil and gas, GRT, PIT and CIT programs.

The TRD is implementing several changes in the law passed during the 2018 legislative session. House Taxation and Revenue Committee (HTRC) Substitute for House Bill 194 (Chapter 56) allowed for GRT taxpayers to provide alternative evidence to claim a deduction from gross receipts if an NTTC is not available. The TRD has updated taxpayer packets and audit manuals to implement the change.

HTRC Substitute for House Bill 223 (Chapter 57) transfers collection of the premium tax from the Office of Superintendent of Insurance to the TRD. Many issues remain outstanding for the transfer, including the need for the tax to be administered as part of the Tax Administration Act, the need for additional funding and personnel to convert and maintain the tax collection system and the need for additional stakeholder input. Secretary Monforte said that unless the TRD is allowed to audit premium tax filings, its role will be merely as a revenue-collection function.

House Business and Industry Committee Substitute for House Bill 88 (Chapter 50) allows for a streamlined process to be developed in liquidating parcels of land in large, failed subdivisions. In many cases, the value of the property to be sold is less than the total tax liability owed, and there is little incentive to buy these parcels. The bill allows for consolidated sales of the properties via an online platform.

Other recently enacted laws include provisions to provide a GRT holiday for the Saturday after Thanksgiving to certain New Mexico businesses, foster youth employment PIT and CIT credits, a GRT deduction for tangible personal property in projects that are part of an industrial revenue bond issuance, an aircraft training construction GRT deduction and a distribution of a portion of motor vehicle excise tax revenues to the State Road Fund.

The TRD completed conversion of oil and gas tax reporting from the old ONGARD system to the TRD's GenTax system. The new system allows for better enforcement across all oil and gas taxes and allows taxpayers to manage all of their account activity from a single taxpayer access point. The TRD recently created a Business Credit Bureau to manage the more than 30 business credits available in statute. Many credits are extremely complex and require staff with special expertise to administer. The bureau will also work with the Tax Policy Office in making recommendations for changes to law to ensure that the credits are not exploited in unintended ways.

The TRD is increasing the use of data analytics to detect fraud, select audits and increase collections. New software to provide for audit selection in the GRT program is expected to be functional in the first quarter of FY 2019. The department has maintained the position of taxpayer advocate since 2016, which has, so far, assisted 594 taxpayers with issues. The position is now a classified position.

Secretary Monforte said that New Mexico's tax codes may need to be modernized to address issues like remote sales, pyramiding and local distributions. Given the recent budget surplus, now may also be a good time to reform the tax codes.

Questions and comments from committee members included the following.

- The TRD's implementation of recent driver's license legislation has been a disaster, and the department is not currently following the law.
- The LICTR requires a person to have federal tax exemptions to qualify; however, federal tax law no longer has exemptions. Did the federal legislation eliminate the LICTR? Secretary Monforte said that the TRD is interpreting the changes in federal law as not affecting the LICTR.
- What does New Mexico need to do to implement the *Wayfair* decision? Dr. Clifford said that the definition of "nexus" that the court applied in the case will need to be addressed. TRD staff are currently researching how much the department can do on its own. The legislature, however, will need to address how transactions are sourced. Policymakers need to be very careful to ensure that out-of-state vendors are not treated in a different manner than in-state vendors.

- The Motor Vehicle Division (MVD) of the TRD needs a consumer advocate. Many elderly residents are being denied REAL ID driver's licenses because their original documents have been lost. Exceptions must be allowed in certain cases.
- Some residents' voter registrations are being changed by the MVD without their knowledge. The problem seems to occur when an MVD agent asks a customer if the customer wants to update the customer's voter registration. The agent then asks for the customer's political party affiliation, which many decline to state because they do not want to tell government officials which political party they belong to. This confusion causes MVD agents to change the customer's political party affiliation to "Decline to State".
- MVD employees do not inform customers of their ability to apply for a driving authorization card.

Tax Reform: City and County Perspectives

William F. Fulginiti, executive director, New Mexico Municipal League (NMML); James P. O'Neill, consultant, NMML; Katherine Miller, county manager, Santa Fe County; and Brian Moore, lobbyist, New Mexico Counties, discussed with the committee local government perspectives on potential tax reform. Mr. Fulginiti began by reminding the committee that municipalities are completely dependent on GRT revenues for their operations. Local governments need diverse tax revenue sources. Any tax reform effort that changes the GRT system needs to include participation by local governments. Changes in the GRT system affect individual municipalities differently.

Ms. Miller said that the Tax Policy Advisory Committee of New Mexico Counties works closely with the NMML. The advisory committee wants to be included in any tax reform effort. Counties would like to be able to have a set number of GRT increments that can be used for general purposes, replacing the current myriad increments that all require the revenue to be dedicated to a particular purpose. When the legislature reduced hold harmless GRT payments to local governments and allowed them to impose hold harmless GRT increments, that caused the total GRT rates in some localities to increase dramatically, which further exacerbated business-to-business pyramiding. Counties rely to some extent on property tax revenues, but the yield control statute effectively froze that revenue at 1979 levels, except for inflation and new growth. Counties today have much more responsibility to provide services to residents than they did 40 years ago, and their only option to raise revenue has been to increase GRT rates.

Mr. O'Neill discussed how the *Wayfair* decision could be implemented in a way that local governments could benefit from the new revenue. A separate U.S. Supreme Court case in 1994 prohibited states from imposing use or compensating taxes on remote sellers at local rates. This means that implementation of the *Wayfair* decision needs to be part of the GRT system, if local governments are to benefit from the decision. The biggest obstacle to implementing the decision in New Mexico is how to source transactions. The state will probably need to switch to

destination-based sourcing, but that change will have unknown consequences on distributions of current revenue to local governments. Another idea is to apply destination-based sourcing only to tangible personal property and keep origin-based sourcing for services. However, that could overly complicate an already Byzantine set of rules that governs the GRT.

Mr. Moore said that counties want to be involved in any tax reform effort, and he wants all parties to cooperate in any reform. One legislative priority for the 2019 legislative session is to de-earmark many GRT increments and allow counties to use GRT increments for general purposes. There are currently dozens of unused and unusable increments in statute. Counties are also interested in lowering state administrative fees for processing GRT revenues.

Questions and comments from committee members included the following.

- Most small cities do not have a substantial GRT base. When food ceased being taxable, many local governments lost what little tax base they had. Gasoline tax rates and distributions have not changed in more than 25 years, but local road needs have increased. The property tax base in many counties is not sufficient to fund school construction. Local governments need another tax base. The legislature should consider including a PIT distribution to local governments.
- If the legislature de-earmarks all GRT increments, would local governments accept a lower total increment capacity? Mr. Moore said that counties are willing to give up some capacity; however, there needs to be some room for future increases in GRT rates. Mr. Fulginiti said that GRT increments that are imposed countywide and those that are imposed outside the limits of municipalities will need to be negotiated.

Recess

The committee recessed at 5:49 p.m.

Thursday, July 26

The committee was reconvened on Thursday, July 26, 2018 at 9:07 a.m. by Representative Jim R. Trujillo.

Federal Tax Reform and National Trends; Recreational Marijuana Taxation; and Observations on Tax Reform in New Mexico

Joseph Bishop-Henchman, Esq., executive vice president, Tax Foundation, discussed with the committee the taxation of recreational marijuana. Given time constraints, the discussion of federal and New Mexico tax reform was postponed until later. Several states have adopted laws legalizing and taxing recreational marijuana. Colorado and Washington have had legal marijuana for the longest time, and other states may wish to study their experience to provide a better regulatory environment. Marijuana tax collections in Colorado and Washington have exceeded initial estimates, and revenues continue to rise. However, it can take a significant

amount of time and money for the revenues to materialize while customers, regulators and businesses get used to the new taxation and regulatory regime. In addition, the black market for marijuana may not be reduced sufficiently if the tax rates for legal marijuana are set too high. Colorado, Washington and Oregon have recently taken steps to reduce the tax rate because of that issue.

Taxing final retail sales has proven to be the most workable form of taxation. Other forms of taxation have been proposed but have proven difficult to implement, such as taxing marijuana flowers at a certain amount, taxing the processor or producer or taxing products according to their tetrahydrocannabinol content. Some states have previously established medical marijuana programs that are often taxed at much lower rates than recreational marijuana. This can cause problems because medical marijuana patients may resist being moved to the recreational marijuana program. States that legalize recreational marijuana also need to pay attention to health, agricultural, zoning, local enforcement and criminal penalty issues.

Mr. Bishop-Henchman provided estimated tax revenue for each state at different levels of taxation of marijuana, based on estimated demand in each state. New Mexico could realize between \$34 million to \$57 million annually from taxing marijuana. However, he cautioned that a significant portion of that revenue could be offset by additional regulatory and criminal justice costs from marijuana legalization.

Questions and comments from committee members included the following.

- How do states use the money generated by the taxation of recreational marijuana? Mr. Bishop-Henchman said that Colorado allocates one-half of the revenue for school construction projects and the rest is spent on marijuana-related enforcement and regulatory issues.
- Is the recreational and medical marijuana industry cash only? Mr. Bishop-Henchman said that the industry is almost exclusively a cash industry. However, the industry wants to be regulated and taxed. Banks generally do not get involved with the industry for fear of running afoul of federal banking regulations.
- If recreational marijuana is legalized in New Mexico, current medical marijuana patients should not be forced into the recreational program. Many patients already struggle to pay for the marijuana, and imposing a 25 percent tax would mean that many patients could not afford it.
- If New Mexico legalizes recreational marijuana, it should not follow the state's model in regulating alcohol. The state's liquor laws are a huge mess and have essentially created a monopoly. Mr. Bishop-Henchman said that there are several models to investigate, including Utah's very centralized liquor system and Washington's regional monopolies in recreational marijuana.

Developments in State Corporate Taxes

Richard D. Pomp, Esq., professor of law, University of Connecticut School of Law, discussed with the committee developments in state corporate taxes. He discussed his time served from 1981 to 1987 on the New York Tax Study Commission, which succeeded in reforming much of that state's tax codes. Professor Pomp said that, in the past, he discussed New Mexico's GRT system as an example of good tax policy, with a large base and relatively low rate. The goal of a sound sales tax system is to exempt business inputs and tax the final consumer good or service. The regressivity of the system was offset somewhat by the LICTR and other PIT credits. However, since New Mexico stopped taxing most food purchases, the GRT base has shrunk, and local rates, in some cases, have risen to more than nine percent. This has exacerbated business-to-business pyramiding, which, he said, would be more descriptive if that term were instead called "cascading".

Professor Pomp discussed issues surrounding taxation of nonprofit entities and focused on the property tax. In Hartford, Connecticut, about one-half of all real property is exempt from property taxation, which has made it difficult for the city to raise sufficient operating revenue. Although Harvard University makes voluntary payments to the City of Cambridge, Massachusetts, the amount of payments it makes is a tiny fraction of what it would pay if a property tax were imposed on the university. In both examples given, the municipality bears the burden of a state tax policy. He suggested that municipalities should be able to decide whether the sale of previously taxed real property to a nonprofit entity should change the taxable status of the property. Another idea is to allow municipalities to impose "user fees" to compensate for the loss in tax revenue for entities that benefit from municipal services.

Professor Pomp also discussed the state CIT. New Mexico still allows for an election to file separately for most corporations, which makes it easier for companies to avoid paying much CIT to the state. A company can set up a subsidiary located in another state that does not impose a CIT and then "sell" most of its goods or services to that subsidiary. The company can, in this way, reduce or eliminate its New Mexico CIT liability. Most states require companies to file taxes using unitary or combined reporting, which allocates a portion of the entirety of the company's payroll, sales and property to each state.

Questions and comments from committee members included the following.

- There is a difference between yesterday's charitable institutions, which used to include hospitals and other health care providers that cared for indigent patients, and today's giant hospital corporations that are classified as nonprofit entities solely to avoid paying taxes. Professor Pomp agreed and said that approximately one-third of the nation's gross domestic product is attributable to tax-exempt, nonprofit entities.
- New Mexico has been trying to improve its business tax policy, but manufacturing jobs in the state have not increased. Professor Pomp said that tax policy is not the

most important factor in locating a business. Other factors, including workforce readiness, transportation and energy availability, are much more important. If the state does not have an educated workforce, no amount of tax incentives will serve to attract new businesses to the state. He suggested that if incentives are being considered to attract a certain business to relocate, the incentive package should be thoroughly analyzed by disinterested experts and that a strict set of clawback provisions be included.

- Businesses never move to a location merely because of tax rates. Professor Pomp agreed and added that he has often been commissioned to do tax analyses for companies considering relocation. However, those analyses are almost always done for the purpose of "checking off a box on the form" and are rarely used as the most important factor in relocation decisions.

Adoption of Minutes

The committee adopted the minutes of the June 25, 2018 meeting.

Remote Sales in the Wake of the *Wayfair* Decision

Professor Pomp discussed with the committee ramifications for the state in light of the *Wayfair* decision allowing states to tax online sales from out of state. This issue began long before the internet and was first addressed by the U.S. Supreme Court in 1967 in *National Bellas Hess v. Department of Revenue*. That case prohibited states from collecting sales tax from companies that had no physical presence in the state. In 1992, the court rejected North Dakota's claim that the Quill Corporation was required to collect a sales tax, since it had no substantial physical presence in that state. The court stated, however, in *Quill Corp. v. North Dakota (Quill)*, that Congress could enact a law requiring just that. North Dakota had argued that, under due process provisions of the U.S. Constitution, the company had established nexus by sending its software to customers located in the state. The court did not rule on the due process issue but instead made its ruling based on the Commerce Clause of the U.S. Constitution. Congress has since been unable to enact any legislation relating to interstate sales. Following a 2015 related court ruling essentially inviting states to enact laws challenging the *Quill* case, South Dakota enacted a statute that required out-of-state vendors that had more than \$100,000 in sales or more than 200 transactions annually in the state to collect tax on its sales to state residents. South Dakota specifically did not attempt to impose its sales tax retroactively, and it already was a regular member of the Streamlined Sales and Use Tax Agreement (SSUTA). The *Wayfair* decision, arising from a challenge to South Dakota's law, affirmed the state's law and overturned the *Quill* decision. The court also cited South Dakota's limits on the sales tax collection in its affirmation of the law.

Professor Pomp said that New Mexico could enact legislation requiring a minimum threshold amount for out-of-state vendors and could also join the SSUTA. However, joining the SSUTA would require that the state reform the GRT system to align with SSUTA standards. Policymakers will need to consider changing how transactions are sourced, from origin-based

sourcing to destination-based. He also recommended that the state not attempt to collect the GRT retroactively. Another related case prohibited states from treating out-of-state vendors unfairly, compared to in-state vendors. Professor Pomp said that New Mexico might not be able to collect local GRT increments for this reason, especially if current sourcing rules are maintained.

Questions and comments from committee members included the following.

- Will collecting the GRT from out-of-state vendors help bring back brick-and-mortar stores? Professor Pomp said that people do not shop online because of the lack of sales taxes. He said that collecting the GRT from out-of-state vendors will not change the economic landscape of New Mexico very much.

Medicaid and Taxes: An Overview

Brent Earnest, secretary of human services, discussed with the committee the Medicaid program administered by the Human Services Department (HSD) and the taxation structure associated with the program. The Medicaid program is a jointly financed federal-state health care program, with an average federal match of 78 percent. Federal funding is received as a reimbursement to the state for allowable expenses.

The federal government requires states to develop actuarially sound schedules of reimbursements, including the cost of doing business. This includes various taxes and assessments imposed by the state and federal government on insurers and health care providers. The premium tax, including the health insurance premium surtax, of 4.003 percent is included in the Medicaid reimbursement schedule for managed care organizations (MCOs) that manage the state's Medicaid program. In 2017, approximately \$130 million was added to MCO rates for the cost of the premium tax. Health insurers are allowed a credit against a portion of their premium tax due for the New Mexico Medical Insurance Pool (NMMIP). The NMMIP assessment accounts for approximately \$63 million in reimbursement rates, and participation fees in the New Mexico Health Insurance Exchange add approximately \$9 million. The GRT is also included but is not specifically identified in the rate structure. However, its estimated cost is built into the rate structure.

Several states have enacted so-called "Medicaid provider taxes", in which a tax is imposed on health care providers in order to generate more money for a larger federal match of Medicaid funding. The federal government has restricted conditions under which such a tax may be allowable for reimbursement. The tax must be broad-based and uniformly imposed and does not hold providers harmless from the tax burden. The hold harmless test is measured by requiring that the tax be less than six percent of net patient revenue or, if revenue exceeds that threshold, by requiring that more than 75 percent of taxpayers do not receive more than 75 percent of the extra revenues generated by federal matching funds realized from the imposition of the tax. Secretary Earnest said that any provider tax that does not meet the rules of the federal government may jeopardize Medicaid reimbursements. The New Mexico Legislature passed

legislation that would have imposed a provider tax for certain nursing home facilities in 2018, but the legislation was vetoed by the governor.

Questions and comments from committee members included the following.

- Do independent entities that contract with an MCO receive sufficient reimbursement to cover GRT liabilities? Secretary Earnest said that, typically, the GRT is included in Medicaid reimbursement rates.
- What is the status of proposed HSD rules to require Medicaid copayments by insureds? Secretary Earnest said that the HSD is proposing to require copayments for non-emergency use of hospital emergency rooms and for the use of brand-name prescription drugs when equivalent generic brands are available. Those rules are still being developed.
- Why is Medicaid enrollment declining in the state? Secretary Earnest said that Medicaid enrollment declines reflect increased economic activity. More people with well-paying jobs are no longer eligible for the program.
- The state paying \$63 million to insure only a few thousand patients in the NMMIP seems like a very expensive insurance program. Secretary Earnest said that the NMMIP is used by people who otherwise cannot get insurance.

Taxation of Nonprofits and the Health Care Industry in New Mexico

Frank Crociata, Esq., of counsel, Gallagher & Kennedy, P.A., discussed with the committee the taxation of the health care industry, specifically the disparities between the nonprofit and for-profit sectors. A nonprofit corporation is merely a form of business organization allowed by the state. A nonprofit corporation can apply to the Internal Revenue Service for exemption from the federal income tax, which exemption has many benefits for taxation in New Mexico. Income and profits of nonprofit corporations are not distributed to members of the corporations, but they can otherwise act as regular corporations. New Mexico law confers tax benefits on many tax-exempt nonprofit corporations, including the payment of the CIT, the payment of the GRT for goods and services sold, the payment of the GRT for goods and services purchased (except for construction-related activities) and the payment of property taxes for property used for religious, educational or charitable purposes.

Mr. Crociata explored how the GRT system is applied to the health care sector. New Mexico is an outlier in that most states do not tax professional services. New Mexico, however, generally taxes all services, except for those that have been specifically exempted or made deductible. The problem is that there are numerous, often overlapping variables that determine whether the provision of health care is subject to the GRT, including:

- the form of the provider, which can be the government or a nonprofit or for-profit entity;
- the type of facility, including a hospital, long-term care facility, outpatient clinic, home health agency or assisted living facility;
- the ownership structure of the provider, including a doctor-owned partnership or a corporation;
- the payor, including Medicare, Medicaid, TRICARE, the Indian Health Service, an MCO, a health insurer, the Workers' Compensation Administration, a private payor or a copayment by the patient;
- the umbrella under which the service is provided, including a commercial contract service or Medicare part C; and
- the type of service or product being provided.

Mr. Crociata evaluated New Mexico's GRT taxation of the health care industry and determined that the system failed most tax policy principles, especially the equity and simplicity principles. It is also extremely difficult to administer and provides questionable revenue adequacy, given increased Medicaid obligations. Accountability is also difficult to discern because the system does not enable a full, transparent understanding of all deviations from the tax base.

Questions and comments from committee members included the following.

- How can New Mexico ensure that the new operator of LANL pays the GRT without affecting all nonprofit organizations? Mr. Crociata said that there is no perfect solution but that a threshold amount in receipts could be established before an entity is required to pay the GRT.
- Why does New Mexico tax health care services at all, when very few other states do not? Mr. Crociata said that health care is the fastest growing sector of the economy. States can only tax what they have. Other states are looking to New Mexico to see how they can tax certain professional services.

Recess

The committee recessed at 4:32 p.m.

Friday, July 27

The committee was reconvened on Friday, July 27, 2018 at 9:00 a.m. by Representative Jim R. Trujillo.

Sales Tax Scorecard; Sales Tax Reform; Administrative Scorecard; and State Implications of Federal Tax Changes

Douglas L. Lindholm, Esq., president and executive director, Council on State Taxation (COST), discussed with the committee the COST scorecards that rank states according to the fairness of their tax systems. He also discussed federal tax reform and how it impacts state CIT programs. The federal system that governs the United States is relatively unique in the world and sometimes makes domestic companies operate at a disadvantage. Besides the federal tax system, each state has its own unique tax system. Most states have some kind of sales tax that tends to tax business inputs. A recent COST study found that 42 percent of total sales tax revenue in the country is generated from taxing business inputs. Most of the world is, instead, imposing consumption taxes on the final sale of a product, which tends to reduce business-to-business pyramiding. Mr. Lindholm said that a tax on a business is reflected in higher consumer prices, lower employee wages or reduced profits.

Mr. Lindholm discussed the issue of mandatory combined reporting for multistate corporations. While combined reporting sounds elegant in theory, in practice it can be a nightmare, he said, because companies have to calculate sales, property and wages to allocate to each state. State tax auditors can sometimes make the problem worse by attempting to force unrelated affiliates to report in a state. This results in audits that can drag on for years. Mr. Lindholm said that requiring mandatory combined reporting makes state CIT revenue even more volatile than it already is. At a minimum, states that require combined reporting should allow corporations to file unitary returns, which makes accounting much simpler.

Mr. Lindholm also discussed the COST sales tax and tax administration scorecards. New Mexico received an "F" on the sales tax scorecard and a "B+" on the tax administration scorecard. The primary reasons for the poor rating on the sales tax scorecard were high GRT imposition on business inputs; no manufacturing equipment or inputs exemptions from the GRT; high levels of business-to-business pyramiding in the service sectors; burdensome NTTC procedures; lack of participation in the SSUTA; unclear taxation of access to software; burdensome tax liability relief procedures; no credit for payment of other states' sales taxes paid by businesses; and no ability for purchasers to obtain refunds of tax paid directly from the state.

Questions and comments from committee members included the following.

- When New Mexico cut taxes for businesses in 2012, wages did not rise. Cutting taxes leaves states with less revenue to provide vital state services.
- The TRD does not have the technical expertise to correctly manage the CIT system.

- The only way to get the GRT system to have a broad base and low rate is to eliminate most deductions and exemptions, but that approach is very problematic. Mr. Lindholm said that the state should not offer incentives for behavior that will take place regardless of the incentive. For example, wealthy people should be paying the GRT for food purchases.
- The state needs much more revenue to invest in New Mexico's workforce, solve the crisis in child well-being and increase educational funding to comply with a court order. How else, besides raising taxes, can New Mexico solve this problem? Mr. Lindholm said that policymakers should look for ways to raise revenue that do not harm interstate competitiveness.

Corporate Taxes; Uniform Division of Income for Tax Purposes Act; and How the States Are Collaborating

Helen Hecht, Esq., CPA, general counsel, Multistate Tax Commission (MTC), discussed with the committee issues affecting state taxation of businesses. All states are facing similar issues regarding how to respond to the *Wayfair* decision and to federal tax reform. Any changes that states make, however, should strive to make the tax system simpler and fairer. One legislative issue that will be ready for the 2019 session is legislation to allow New Mexico to collect the PIT from certain pass-through entities (PTEs) that have been audited by the federal government and found to owe tax. Current New Mexico law imposes the PIT on individual members of PTEs, but federal law in 2015 allowed for federal income tax to also be imposed on the PTE itself after an audit. The MTC has been working with several tax groups to develop model legislation for states to consider enacting.

Enactment of the TCJA has presented several challenges for states, including whether to conform with federal law and make corresponding changes to their tax codes. Some of the issues for New Mexico policymakers to consider include:

- should the state conform with changes made in the TCJA allowing a deduction from adjusted gross income for a portion of qualified business income? This provision is very complicated to administer, and it is unclear what the fiscal impact will be on the state;
- should the state conform with changes taxing repatriation income and a related deduction from that income?; and
- should the state comply with the global intangible low-taxed income, known as "GILTI" provisions, that source extra profit as income that would otherwise be sourced overseas for federal tax purposes? If the state does not comply, it may need to specify that the related 50 percent deduction cannot be claimed.

Ms. Hecht said that requiring companies to file using combined reporting on their CIT returns is not as complex as opponents claim it is. She said that combined returns are actually somewhat less complex to administer than separate returns. In a related CIT issue, Ms. Hecht said that changing apportionment sourcing laws for intangible property to a market-based approach would be beneficial to New Mexico businesses. Otherwise, they will end up paying more taxes in New Mexico.

The MTC is currently involved in developing standards for states to adopt in implementing the *Wayfair* decision. The MTC is encouraging the development of uniform marketplace facilitators to collect and remit sales taxes and is developing minimum threshold amounts for out-of-state vendors to be considered to have nexus. The MTC is also recommending that states not attempt to collect sales taxes on out-of-state vendors retroactively.

Mr. Lindholm and Mr. Bishop-Henchman joined Ms. Hecht in discussing various tax-related issues with the committee. Questions and comments from committee members included the following.

- Did the court in the *Wayfair* decision prohibit the retroactive collection of sales taxes from out-of-state vendors? Ms. Hecht said that the court did not prohibit it, but pointed to the fact that the South Dakota law specifically did not allow for retroactivity as being one of the factors for the ruling in its favor.
- The recent surge in state revenues makes now a good time for the legislature to consider broad tax reform. Mistakes in crafting the reform can be absorbed temporarily by the extra revenues.

Mr. Bishop-Henchman said that seven states have enacted major tax reform legislation in the past year, including addressing conformity with the TCJA. He recommended that New Mexico focus on several areas for potential reform: conformity with the TCJA; implementing the *Wayfair* decision; reforming the GRT system, including deciding what exemptions and credits should be repealed and how nonprofit organizations should be treated; deciding on combined reporting and market-based sourcing in the CIT system; and eventually deciding whether to legalize and tax recreational marijuana.

Mr. Lindholm said that the state should implement the *Wayfair* decision as soon as possible because that is essentially "free money". He cautioned the committee against making any changes to comply with or differentiate from the TCJA without fully understanding the many interrelated provisions that may also need to be modified.

Adjournment

There being no further business, the committee adjourned at 11:51 a.m.

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

**September 20-21, 2018
State Capitol, Room 322
Santa Fe**

Thursday, September 20

- 9:00 a.m. (1) **Revenue Forecast**
—Jon Clark, Chief Economist, Legislative Finance Committee (LFC)
—Clinton Turner, Chief Economist, Department of Finance and
Administration
—John Monforte, Acting Secretary, Taxation and Revenue Department
(TRD)
- 12:00 noon **Lunch**
- 1:15 p.m. (2) **Tax Protest Issues**
—John Monforte, Acting Secretary, TRD
—Brian VanDenzen, Chief Hearing Officer, Administrative Hearings Office
- 2:30 p.m. (3) **TRD Business Credit Bureau, Data Analytics Group and Taxpayer
Advocate**
—John Monforte, Acting Secretary, TRD
—Aysha Mora, Deputy Director, Audit and Compliance Division, TRD
—Tiffany Smyth, Taxpayer Advocate, TRD
- 3:30 p.m. (4) **New Mexico Cost Burden on the Oil and Gas Extraction Industry**
—Dawn Iglesias, Economist, LFC
- 4:30 p.m. **Recess**

Friday, September 21

- 9:00 a.m. (5) **Sales Tax Simplification and Sourcing**
—Richard Cram, Director, National Nexus Program, Multistate Tax
Commission (MTC)
—Helen Hecht, General Counsel, MTC
—Jim O'Neill, Consultant, New Mexico Municipal League (NMML)

- 10:30 a.m. (6) [Payment in Lieu of Taxes \(PILTs\): An Overview](#)
—Steve Kopelman, Executive Director, New Mexico Counties (NMC)
—Joy Esparsen, Government Affairs Director, NMC
- 11:00 a.m. (7) [Distributions to Local Governments: Problems and Issues](#)
—William F. Fulginiti, Executive Director, NMML
—Jim O'Neill, Consultant, NMML
- 12:00 noon **Adjourn**

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

**September 20-21, 2018
State Capitol, Room 322
Santa Fe**

The third meeting of the Revenue Stabilization and Tax Policy Committee for the 2018 interim was called to order by Representative Jim R. Trujillo, chair, on Thursday, September 20, 2018, at 9:05 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Jim R. Trujillo, Chair
Sen. Carlos R. Cisneros, Vice Chair
Rep. Sharon Clahchischilliage
Rep. Roberto "Bobby" J. Gonzales
Rep. Jason C. Harper
Rep. Antonio Maestas (9/20)
Rep. Javier Martínez (9/20)
Sen. George K. Munoz
Sen. Clemente Sanchez
Sen. William E. Sharer
Sen. John Arthur Smith
Rep. James R.J. Strickler
Sen. James P. White
Sen. Peter Wirth

Designees

Sen. William F. Burt
Rep. Bealquin Bill Gomez
Rep. Bill McCamley (9/21)
Rep. Rod Montoya
Sen. Elizabeth "Liz" Stefanics (9/20,
attending as a guest)
Sen. Pat Woods

Absent

Sen. Gay G. Kernan
Rep. Tim D. Lewis
Sen. Mark Moores
Rep. Carl Trujillo

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

Rep. Tomás E. Salazar
Rep. Larry R. Scott
Rep. Nathan P. Small
Rep. Candie G. Sweetser
Sen. Bill Tallman

Guest Legislator

Senator Linda M. Lopez (9/20)

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

Staff

Pam Stokes, Staff Attorney, Legislative Council Service (LCS)
Erin Bond, Research Assistant, LCS
Felicia Garcia, Intern, LCS
Ric Gaudet, Researcher, LCS
Sara Wiedmaier, Research Assistant, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Thursday, September 20

Revenue Forecast

Jon Clark, chief economist, Legislative Finance Committee (LFC); Clinton Turner, chief economist, Department of Finance and Administration (DFA); and Jon Monforte, acting secretary, Taxation and Revenue Department (TRD), presented the Consensus Revenue Estimating Group's (CREG's) revenue forecast to the committee. Mr. Turner began by emphasizing the fact that the revenue estimate is performed by the professional staff economists of the DFA, TRD, Department of Transportation and LFC. Since the January CREG forecast, revenues have grown tremendously, leaving fiscal year 2018 with an extra \$500 million on the books. Current fiscal year and fiscal year 2020 revenues are also expected to grow, with \$1.17 billion in new revenue available for fiscal year 2020. However, since much of this new revenue is attributed to the volatile oil and gas sector, Mr. Turner said that the state should target at least a 20 percent reserve level as a hedge against future downturns.

The national economy is expected to grow by three percent in fiscal year 2019 and between one percent and two percent the following two years. Inflation is expected to increase to between two percent and three percent in the next two years. The three years of historically low inflation appear to be over, and the rate is expected to remain in the range most economists

consider optimal. New Mexico employment numbers are expected to continue to grow at 1.4 percent in fiscal year 2019 and drop to .8 percent the following year. The unemployment rate has also dropped to 4.7 percent, the lowest level the state has seen in almost a decade.

Gross receipts tax (GRT) revenues have rebounded since fiscal year 2017, mostly due to the huge increase in oil and gas production in the Permian Basin and increased economic activity in the Albuquerque metropolitan area. Out-of-state GRT revenues also increased, partially due to the collection of the state portion of the GRT by online retailer Amazon. The volatility in GRT revenue in Eddy and Lea counties is strongly correlated to the rig count in those counties. The Permian Basin rig count has climbed from fewer than 10 in 2016 to nearly 100 in 2018.

The General Fund witnessed approximately 14.8 percent recurring revenue growth in fiscal year 2018 and is expected to grow by eight percent in the current fiscal year, slowing to three percent growth in fiscal year 2020. Fiscal year 2019 reserve levels are expected to end at 34.2 percent of recurring spending levels. Mr. Turner said that although those levels seem very high, they could very quickly drop to almost nothing during an economic downturn.

Acting Secretary Monforte discussed in detail the sources of recurring revenue to the General Fund. Approximately \$425 million of the additional \$924 million in extra expected revenue since the January 2018 revenue forecast is from GRT revenue. Oil- and gas-related taxes account for an additional \$324 million, and expected increases in personal income tax (PIT) revenue account for \$149 million. Oil and gas activities accounted for one-third of the growth of taxable gross receipts (TGR) in fiscal year 2018, and construction and manufacturing TGR growth was in the double digits. Other factors accounting for TGR growth include the Albuquerque Rapid Transit system construction, Amazon's payment of the GRT for online purchases, transportation and warehousing services growth and an increase in professional services activities.

PIT revenues have increased for the past two years, and recent federal tax reform legislation will yield an extra \$54 million in recurring state revenue. Most of that increase will be paid by residents with more than two dependents. Legislation enacted in 2017 to put excess oil and gas emergency school tax revenue into the Tax Stabilization Reserve will mean that about \$135 million in the current fiscal year and \$177 million in fiscal year 2020 will be set aside. Acting Secretary Monforte said that the legislature should consider treating some of the new revenue the state is generating as nonrecurring. Oil and gas revenue, which accounts for most of the new revenue, is historically volatile and can easily drop dramatically in less than one year. The state also received more than \$200 million in federal mineral lands bonus payments from oil and gas leases this fiscal year. Bonus payments are one-time payments and should not be included in recurring revenue.

The TRD is studying how to implement the U.S. Supreme Court's *South Dakota v. Wayfair, Inc. (Wayfair)* decision, which allows states to impose sales taxes on interstate online transactions. The court removed the requirement that nexus be established before goods can be

taxed, but it recommended that there be a minimum threshold for businesses to be subject to taxation, that state taxation systems be simplified and streamlined with other states' systems and that taxation of online purchases be prospective only. The TRD can adopt regulations to comply with some of the court's guidance but will need legislative action to change how transactions are sourced if local option taxes will be collected. The legislature needs to ensure that out-of-state businesses be treated the same as in-state businesses. Acting Secretary Monforte said that the legislature should probably also clarify that the TRD be allowed to collect the GRT from sales made through online third-party sales platforms.

Mr. Clark discussed the risks associated with classifying new revenue as recurring revenue. In 2006, the state had a huge spike of revenue, which was subsequently budgeted into recurring appropriations. After the economic crash that began the following year, New Mexico struggled to maintain its budgets for several years and has only recently enacted budgets at the same level as 2006. An oil and gas industry downturn could be just as bad for New Mexico's economy and the state budget as was the recession 11 years ago, cautioned Mr. Clark.

The CREG has begun performing stress tests for volatile revenue sources to measure the impacts of upturns and downturns on General Fund levels. If oil prices rise dramatically to \$100 per barrel, the state would see upwards of \$1.2 billion in additional revenue. However, if oil prices drop to \$35.00 per barrel, oil production would begin to decline, severance tax collections would decrease by at least \$200 million, bonus payments from lease sales would drop and GRT revenues would drop significantly. The state could lose nearly \$1.3 billion in revenues from the drop in oil prices.

Questions and comments from committee members included the following.

- Was the CREG recommendation of a 20-percent reserve level unanimous? Mr. Clark said that setting a reserve level is a policy decision for the legislature to make, but the CREG used that number as a reasonable and cautious starting point. The nearly \$1.2 billion in excess revenue projected for fiscal year 2020 already includes an expected fiscal year 2020 reserve level of 20 percent. The CREG cautions the legislature to not treat all of that excess revenue as recurring, however. If much of that money is budgeted into recurring appropriations, then reserve levels should also be increased.
- Acting Secretary Monforte was asked to give an update on litigation involving a GRT deduction for chemicals and reagents. Acting Secretary Monforte said that the current case involves about \$212 million in potential liability for the state. The Court of Appeals moved the hearing date to October 2018.
- How much of the \$1.2 billion in new money should be set aside to allow for relatively risk-free tax reform legislation? Acting Secretary Monforte said that the tax reform legislation from the 2018 session had a risk of \$200 million associated with it. He

suggested that the state consider implementing tax reform over a few years. Mr. Turner said that for some tax reform ideas, it will be impossible to accurately model a revenue estimate.

- If federal and state regulators destroy the oil and gas industry, as was done to the coal industry, New Mexico will not have a tax base. In San Juan County, efforts are being made to develop the tourism economy, but tourism jobs are no replacement for oil and gas or coal jobs.
- Has the TRD sent letters to out-of-state online vendors informing them of an intent to collect the GRT from them? Acting Secretary Monforte said that no such effort has yet been attempted.
- How does the CREG determine which revenues are recurring? Mr. Clark said that there is no statutory guidance on how the CREG should assign revenues, unlike in some other states. The CREG examines revenues from previous years to estimate that number, but the group only assigns revenue as recurring or nonrecurring if it is clearly in one category.
- Why is the price received by New Mexico producers of oil much lower than published prices for West Texas intermediate (WTI) crude oil? Mr. Turner said that New Mexico currently lacks pipeline capacity, so much of the oil produced is first trucked. Severance and other taxes paid on oil are based on the actual price paid and not on the WTI price. The state loses at least \$150 million annually in severance taxes because of the price differential.
- How many wells have been drilled but not yet activated in the Permian Basin? Dawn Iglesias, economist, LFC, said that currently there are 3,000 drilled but not activated wells, compared to 2,000 last year. Most of those wells are associated with the lack of pipeline capacity. Once wells are activated, they generate very little GRT revenue, but they start generating severance and related tax revenues. Much of the GRT revenue received that is related to the oil and gas industry is not recurring because it is generated from the one-time drilling and completion of wells.
- New Mexico should put the majority of its extra revenues into reserves, because the oil and gas boom will not last forever.
- The oil and gas industry is the main economic driver in the state, and one reason for the sudden increase in activity is because more than 600 drilling permits were approved shortly after the Trump Administration began. The state should have more than 20 percent reserves, and it should use at least \$270 million in excess revenue as a hedge for tax reform legislation.

- The coal and oil and gas industries have paid for state and local government operations for decades. As renewable energy gains more market share of the energy supply, a mechanism to tax that industry needs to be developed.

Adoption of Minutes

The minutes of the July 25-27, 2018 meeting of the committee were adopted without changes.

Tax Protest Issues

Acting Secretary Monforte and Brian VanDenzen, chief hearing officer, Administrative Hearings Office (AHO), discussed with the committee the process involved in resolving tax protests. Mr. VanDenzen began by giving a history of the AHO, which was created in 2015 to establish an independent entity for tax protest hearings, separate from the TRD. The AHO now also hears motor-vehicle-related appeals from the Motor Vehicle Division of the TRD. Taxpayers generally must file an administrative protest with the TRD that, if it is not resolved, is forwarded to the AHO within 45 days. Taxpayers who were denied a refund also have the option of filing a civil action in the district court. Once a protest reaches the AHO, it is either given a merits hearing within 90 days or, if the case is complex, given a scheduling hearing first, followed by a merits hearing. At a scheduling hearing, the AHO attempts to get both parties to communicate, which sometimes allows for the discovery of areas of potential agreement. A scheduling hearing also sets deadlines for discovery and motions, and a formal merits hearing date is set.

At a merits hearing, which is by statute confidential, a taxpayer generally has the burden of proof to overcome the presumption of the correctness of the TRD ruling. Hearings are conducted in a quasi-legal setting, in which testimony is given under oath and is subject to cross-examination. After the hearing, an administrative law judge reviews the hearing record and prepares a written final decision and order, which contains detailed findings of fact, a discussion addressing the arguments made and conclusions of law in the matter. Appeals of AHO decisions can be made to the Court of Appeals. Currently, there are 27 appeals of AHO decisions pending before the court.

The number of tax protests in the state has grown tremendously in the past several years — from 34 in 2008 to 493 in 2017. Some of these protests are resolved administratively by the TRD, but the majority are eventually heard by the AHO. With this large caseload, it takes, on average, almost 200 days to resolve each protest.

Mr. VanDenzen discussed possible statutory changes to make the tax protest hearings process more efficient. The anti-cancellation of debt clause in the Constitution of New Mexico (Article IV, Section 32) makes it impossible for litigants to settle claims for less than the original amount. However, there are many other changes that could streamline the process, including clarifying the subpoena power of the TRD and the AHO; increasing the minimum threshold for a tax protest to be filed and pursued through the AHO; purchasing comprehensive case and docket

management software; and increasing the number of AHO administrative law judges and TRD staff. Mr. VanDenzen mentioned that the AHO's domain could also be expanded to hear all executive agency appeals.

Acting Secretary Monforte discussed the TRD's role in resolving tax protests. In 2016, the protest office of the TRD received 1,900 protests, of which 1,200 were resolved by the protest office. Most protests filed with the TRD are resolved, often by the protestant filing corrected paperwork. Top reasons for taxpayers filing protests in the past several years include missing documents, erroneous reporting of the GRT, the high-wage jobs tax credit, the hospital GRT credit and the chemical and reagents GRT deduction.

Acting Secretary Monforte discussed changes being made at the TRD to decrease the need for tax protests. The department recently established the Business Credit Bureau within the Office of the Secretary to assist with day-to-day determinations and to develop long-term policies. The unit will examine business credits and make recommendations on statutory changes to make the incentives clearer and less susceptible to taxpayer protests. The Legal Services Bureau is also adding staff to assist with quick resolution of tax protests.

Questions and comments from committee members included the following.

- What is the status of the protests involving the chemicals and reagents GRT deduction? Acting Secretary Monforte said there are two cases on that issue pending before the Court of Appeals. There are several other cases still pending at the AHO, which should be resolved once the court rules on those two cases. He said that if the court rules against the TRD position, the GRT deduction will continue to be claimed for the foreseeable future. Currently, the TRD is not advocating any statutory language changes.
- What explains the increase in tax protests and appeals? Mr. VanDenzen said that the perceived fairness of the AHO process probably has encouraged more taxpayers to protest assessments. However, both taxpayers and the TRD seem to appeal low-priority cases with small dollar amounts.
- What discretion does the TRD have to settle tax protests? Acting Secretary Monforte said that TRD attorneys have discretion to settle cases based on the level of doubt that the TRD position will be upheld by the AHO or the court. The TRD has chosen not to settle the chemical and reagents GRT cases because the possible liability to the state is too high.

TRD Business Credit Bureau, Data Analytics Group and Taxpayer Advocate

Acting Secretary Monforte, Aysha Mora, deputy director, Audit and Compliance Division (ACD), TRD, and Tiffany Smyth, taxpayer advocate, TRD, discussed new developments in the TRD designed to assist taxpayers and streamline tax administration. The TRD recently created

the Business Credit Bureau to manage business tax credits and to provide the public with better service. More than \$50 million in business tax incentives was approved in fiscal year 2017. Tax expenditures require continuous review to ensure they are effective and are not being exploited in unintended ways. These unintended consequences can have a significant detrimental impact on the General Fund. The bureau will be staffed by an economist, an attorney, two research analysts and a tax examiner. Its tasks include development and tracking of tax incentives, development of a compliance strategy, providing guidance to other TRD divisions, providing expert consultation to the executive and legislative branches regarding tax incentives, drafting changes to regulations and proposed statutory changes, assisting with the annual Tax Expenditure Report and continuously monitoring tax incentives and attempting to react to any system weaknesses.

Ms. Mora described the activities of the newly created Data Analytics Group, which is part of the ACD. Its mission is to advise senior TRD management of trends and to empower TRD users with advanced analytics tools. Part of the group is involved in developing and testing new technology projects, and the other part of the group uses those tools to design datasets, analyze data, build models for audit selection and help in the prevention of fraud. The ACD has previously used outside data to reduce fraud and better select audit candidates in various tax programs. The new group is currently developing a GRT analytics tool to discover previously unknown patterns and key relationships to identify variables of taxpayer noncompliance. This can then be used to compile likely audit candidates, also resulting in higher TRD collections.

Ms. Smyth described the position of taxpayer advocate at the TRD. The taxpayer advocate's role is to provide assistance to taxpayers, identify systemic problems in the department and recommend long-term solutions to those problems. The advocate can assist in resolving taxpayer issues when the normal administrative process has not worked. However, the taxpayer advocate cannot provide relief or a remedy not provided by law or reverse decisions made by the AHO or the courts.

Questions and comments from committee members included the following.

- It is often very difficult to get anybody at the TRD to answer taxpayer questions.
- Using data analytics to select taxpayer audits is much more effective than manual selection and also removes politics from the process. Ms. Mora said that the ACD has changed its approach to tax collections. It is more interested in achieving voluntary compliance by taxpayers, rather than just enforcement through auditing.

New Mexico Cost Burden on the Oil and Gas Extraction Industry

Ms. Iglesias discussed with the committee the results of an LFC analysis of recent studies calculating the total cost burden by states on the oil and gas industry. True comparisons of effective tax rates among states are virtually impossible due to differences in how taxes are imposed and assessed. Most cross-state comparisons only consider severance and production taxes. However, such calculations exclude other taxes and fees that add to the total cost of doing

business, such as rents and royalty payments, income taxes, sales taxes on drilling and other activities, property taxes and motor vehicle and motor fuel taxes. In addition, costs of transportation and processing vary, which can further skew the calculation of effective tax rates.

New Mexico's effective tax rate on oil and gas, when only looking at production tax revenues divided by the taxable value of production, averaged 7.3 percent over the last three years. This rate is based on the taxable value of production, which takes into account transportation and processing costs as well as state and federal royalty payments. When looking at the combined rate of production taxes, ad valorem taxes and royalty payments, the total cost burden averages about 26 percent. This figure, however, is not very useful in state-to-state comparisons, because New Mexico has such a high percentage of state- and federal-owned land. In a recent study comparing production and ad valorem taxes, New Mexico's effective tax rate was 9.1 percent, and it ranked in the middle compared to nine other states. A study in 2018 examined effective tax rates that considered severance, property, income and sales taxes across 16 oil-producing states. That study ranked New Mexico as having one of the highest effective tax rates; however, the study erroneously included royalty payments as taxes paid. LFC staff recalculated the state's effective tax rate using the same parameters less royalty payments and found the effective tax rate to be the sixth highest.

Ms. Iglesias said that the New Mexico Oil and Gas Association recently commissioned Moss Adams LLP to perform a comprehensive study of the relative cost burdens on the oil and gas industry in several states. She introduced Jeff Bjarke, consulting manager, Moss Adams LLP, who described the study. He said that Moss Adams LLP is going to study the industry's total contributions to government across several states, as opposed to doing a standard tax burden study. The company will be asking for help from the LFC, TRD and DFA, and will try to make the study as transparent as possible. The study will attempt to quantify contributions made to state and local governments and will estimate PIT and corporate income tax contributions.

Questions and comments from committee members included the following.

- Colorado should be included as one of the comparison states, and the study needs to include payments made by the industry for the GRT. Mr. Bjarke said that the study will include sales taxes. The study will include New Mexico, Texas, Oklahoma, Colorado, Wyoming and North Dakota. It may also include Utah, Montana and Kansas.

The committee recessed at 4:43 p.m.

Friday, September 21

Reconvene

The committee was reconvened on Friday, September 21, 2018, at 9:10 a.m. by Representative Trujillo.

Sales Tax Simplification and Sourcing

Richard Cram, director, National Nexus Program, Multistate Tax Commission (MTC), Helen Hecht, general counsel, MTC, and Jim O'Neill, consultant, New Mexico Municipal League (NMML), discussed with the committee how states can implement the *Wayfair* decision, specifically regarding how states can source sales. Most states use destination-based sourcing to establish the tax rate, but New Mexico generally uses origin-based sourcing, meaning the tax rate is based on the location of the seller. New Mexico could switch to destination-based sourcing to assess the GRT at the rate of the location of the customer, which would allow for local governments to receive a portion of tax revenue from online sales. However, switching to destination-based sourcing for services and some intangible products could complicate the system. New Mexico has many options so long as it does not tax out-of-state sales more than in-state sales.

The *Wayfair* decision specified several aspects of South Dakota's online transactions law that the U.S. Supreme Court found to be reasonable, including a threshold requirement of \$100,000 in sales or 200 transactions to establish substantial nexus; no retroactive tax liability for out-of-state vendors; and South Dakota's membership in the Streamlined Sales and Use Tax Agreement (SSUTA). The SSUTA provides that member states must provide for state-level administration of sales taxes, simplified tax rate structures, vendor access to software provided by the state and liability protection for vendors relying on state software. For New Mexico to become a member state of the SSUTA, it would need to change at a minimum to destination-based sourcing services and certain leases and rentals, but it could maintain origin-based sourcing for tangible personal property. Destination-based sourcing has some disadvantages, including the difficulty for the seller in determining what the local tax rate for each customer will be. However, newer software programs are capable of calculating tax rates for almost any address in the nation. In-state businesses that make deliveries to customers may also face challenges in calculating taxes under the new regime.

Mr. O'Neill described changes that New Mexico would need to make to become a member of the SSUTA. New Mexico is mostly in compliance with the SSUTA sourcing rules, except in how digital products are sourced and possibly leases of tangible personal property. The SSUTA also prohibits states from imposing limits on or thresholds for claiming deductions. New Mexico only has a few deductions that would need to be modified to meet this requirement, including the GRT deduction for chemicals and reagents. In addition, the SSUTA does not allow states to grant partial deductions, except for food or pharmaceutical drugs. New Mexico has several such deductions that would need to be modified to meet the requirements. Finally, New Mexico should change some exemptions for local option GRT impositions related to transportation services to align with SSUTA requirements.

Questions and comments from committee members included the following.

- How will services that are sold out of state be taxed? Ms. Hecht said that, in general, for destination-based sourcing, the tax rate at the location of the customer will prevail.

However, New Mexico currently has a deduction from the GRT for services that are initially used in another state. There may be situations in which two states impose a sales tax, but New Mexico allows for a credit to be claimed in that situation.

- How would any changes New Mexico makes regarding sourcing apply to the various tribal lands that also impose a version of the GRT? Mr. O'Neill said that there are about 17 tax collection agreements with tribes that are currently in effect. Any changes New Mexico makes will also apply on tribal lands, according to the agreements. In general, tax collected from tribal members is distributed to the tribe, and tax collected from non-tribal members is shared among the tribe, county and state.
- Does New Mexico need to become a member of the SSUTA to collect the GRT from online vendors? Mr. O'Neill said that the state is already mostly in compliance with the SSUTA. It probably is not necessary to actually join.
- New Mexico needs to switch to destination-based sourcing, at least for tangible personal property. Otherwise, local governments will lose out on tax revenue from online transactions.

Payment in Lieu of Taxes (PILTs): An Overview

Steve Kopelman, executive director, New Mexico Counties, and Joy Esparson, government affairs director, New Mexico Counties, discussed with the committee the federal PILT program and how it affects counties. PILTs are reimbursements from the federal government to a county to offset the substantial amount of nontaxable federal land in the county. Not all federal land is eligible for inclusion in the PILT calculation, however. U.S. Department of Energy, National Aeronautics and Space Administration, U.S. Department of Homeland Security and most military property is not eligible to be included, and neither is tribal property. Some counties, such as Catron, Rio Arriba and San Juan, have very high proportions of nontaxable property, and much of that property is often excluded from PILT calculations. The PILT formula considers how many acres in the county are eligible, the population, prior year federal payments from other federal reimbursement programs, state laws, the Consumer Price Index and the year's congressional funding. The 2018 total PILT payment for the state was \$42 million, with the payment per acre ranging from \$.24 in Catron County to \$2.70 per acre in Dona Ana County.

The Secure Rural Schools and Community Self-Determination Act of 2000 (SRS) also provides funding to rural counties and school districts as an offset to the majority of forest reserve funding traditionally provided to forested states in the Pacific Northwest. When the authorization for SRS funding expired in 2014, New Mexico's forest reserve payments dropped from \$9.3 million to \$725,000. Congress reauthorized funding for federal fiscal years 2017 and 2018 but has not yet acted on the upcoming fiscal year. PILT funding, which is not always recurring, is usually put into county general funds. This is a risky revenue source that can change from year to year. SRS funding can only be used for public schools, roads and certain county

services. The bulk of SRS funding the state receives is directed to Catron and Rio Arriba counties.

Questions and comments from committee members included the following.

- Why are tribal lands excluded from PILT funding? Ms. Esparson said that Alaskan Native tribes have lobbied against tribal lands being included in PILT calculations, mostly due to large oil and gas reserves in some areas of Alaska. Mr. Kopelman said that the federal government often makes a huge amount of money from federal lands and returns a small portion to the counties. Tribal land, however, does not typically generate any revenue for the federal government.

Distributions to Local Governments: Problems and Issues

William Fulginiti, executive director, NMML, discussed with the committee problems associated with distributions of GRT revenues to municipalities and take-backs of distributions by the state. In 1981, the TRD took back money from a distribution that had been delivered to Artesia. Artesia sued the state on the basis that the state had no statutory authority to take back a distribution, and it won the case in state district court. At that point, the TRD negotiated with the NMML and counties to establish a statute that would allow for adjustments to distributions under certain circumstances. This was the genesis of Section 7-1-6.15 NMSA 1978, which puts limits on how much money can be taken back at a given time and sets limits on how far back a distribution can be adjusted. This system worked for a while, until the TRD reported to the City of Eunice that it owed the state \$2.3 million because of a business that reported income in the wrong location for several years. The city sued the TRD and won the case, based on the fact that the statute did not allow adjustments of distributions to extend beyond one year after the distribution had been made. The TRD, however, continued to ignore the provisions of the statute and has taken distributions back from many other municipalities and counties. Mr. Fulginiti estimated that the amount of money incorrectly taken from local governments in the past two decades is more than \$150 million. The NMML is deciding whether to file a lawsuit to force the TRD to start following the law.

Section 7-1-6.15 NMSA 1978 was amended in 2015, but the TRD interpreted the changes to mean that the department does not need to notify a local government until the take-back amount exceeds 20 percent of the local government's annual distribution. This interpretation has resulted in an absurd situation in which the TRD does not ever notify local governments of adjustments to distributions. The GenTax system that is used by the TRD to administer most tax revenues does not include programming to track distribution adjustments.

Mr. Fulginiti stated that another issue that may need to be addressed by the courts is the inclusion of language in the annual general appropriation act — House Bill (HB) 2 — to include extra administrative fees that the TRD is authorized to withhold from distributions. The NMML has hired an outside attorney who has provided a legal opinion that finds there is no constitutional authority for the legislature to make substantive law changes in HB 2, and if the

legislature wants to grant authority for the TRD to withhold more administrative fees, it needs to make statutory changes to sections of the Tax Administration Act. The NMML has been working with legislative leadership to remove this language from future appropriation acts. Mr. Fulginiti said that, taken together, the distribution adjustments and the extra administrative fees total more than \$260 million in money that belongs to local governments.

Questions and comments from committee members included the following.

- Will the proposed legislation put forth to amend the distribution adjustment statute be identical to Senate Bill 236, adopted nearly unanimously in 2017 but vetoed by the governor? Mr. Fulginiti said that the new legislation will be identical to the previous legislation.
- Does the NMML have estimates for how much each municipality and county is owed in incorrectly adjusted distributions? Mr. Fulginiti said that the NMML has done thorough research to arrive at the more than \$260 million estimate, which includes \$110 million in inappropriate administrative fees. Each local government will need to determine exactly how much is owed, and whether to pursue compensation.
- Do local governments have sufficient expertise and staffing to make a determination of how much they are owed? Mr. Fulginiti said that it would involve a simple arithmetic process to calculate the inappropriate administrative fees, but calculating distribution adjustments may require some auditing to arrive at a final number. The NMML has contracted with experts to assist small local governments in making these calculations.
- Are the distribution adjustment calculations made by the TRD legitimate? Mr. Fulginiti said that taxpayers can claim refunds for misfiling their GRT tax returns going back several years, but the TRD is not allowed to take back those distributions from local governments more than 23 months prior to the current distribution.
- What explanation did the governor give for her veto of Senate Bill 236 in 2017? Mr. Fulginiti said that the governor claimed that the state could not afford at the time to give money back to the local governments.

Adjournment

There being no further business, the committee adjourned at 11:32 a.m.

Revised: October 25, 2018

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

**October 29-30, 2018
State Capitol, Room 322
Santa Fe**

Monday, October 29

- 9:00 a.m. (1) **Legislative Finance Committee (LFC) Tax Policy Principles; Economic Development Tax Incentive Issues**
—Jon Clark, Chief Economist, LFC
—Dawn Iglesias, Economist, LFC
- 10:30 a.m. (2) **How New Mexico Benefits by Exempting Nonprofits from Taxation**
—Tsiporah Nephesh, Executive Director, New Mexico Thrives
—Curtis J. Mearns, Ph.D., Senior Evaluator, Pivot Evaluation
—Denise Garcia, Evaluator, Pivot Evaluation
—Mag Strittmatter, President and CEO, Roadrunner Food Bank of New Mexico
- 11:30 a.m. (3) **Laboratory Partnership with Small Business Tax Credit Report**
—Genaro Montoya, Program Leader, New Mexico Small Business Assistance (NMSBA) Program, Sandia National Laboratories
—Kim Sherwood, Manager, NMSBA Program, Los Alamos National Laboratories
—Drew Trujillo, Director of Technology, Meow Wolf, LLC
- 12:15 p.m. **Lunch**
- 1:30 p.m. (4) **Using Tax Incentives to Encourage Investments in Rural Areas**
—Mark Scheffel, Senior Vice President, Advantage Capital
- 2:30 p.m. (5) **Economic Development Tools and Strategies**
—Gary Tonjes, President, Albuquerque Economic Development (AED)
—Debra Inman, Senior Vice President, Business Development, AED
- 3:30 p.m. (6) **Holtec International's Proposed Consolidated Interim Storage Facility in Southeastern New Mexico**
—John Heaton, Vice Chair, Eddy-Lea Energy Alliance
—Gerges Scott, Public Relations Consultant for Holtec International

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

Tuesday, October 30

9:00 a.m. (7) **New Mexico Voices for Children (Voices): "Roadmap to a Stronger New Mexico"**

- James C. Jimenez, Executive Director, Voices
- Amber Wallin, Deputy Director, Voices
- Kelly O'Donnell, Ph.D., O'Donnell Economics and Strategy

10:00 a.m. (8) **Revenue Impacts of Legalizing Sports Betting in New Mexico**

- Representative Antonio Maestas
- Jeffrey S. Landers, Chair, Gaming Control Board
- James Girard, Economist, Taxation and Revenue Department
- Rick Baugh, General Manager, Sunland Park Racetrack and Casino (Sunland)
- Rich Baldwin, Managing Director, Investment Banking, Head of Union Gaming Analytics, Union Gaming
- Rob Oseland, Chief Operating Officer, Paragon Gaming
- Scott Scanland, Lobbyist, Sunland

12:00 noon **Adjourn**

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

**October 29-30, 2018
State Capitol, Room 322
Santa Fe**

The fourth meeting of the Revenue Stabilization and Tax Policy Committee for the 2018 interim was called to order by Representative Jim R. Trujillo, chair, on Monday, October 29, 2018, at 9:04 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Jim R. Trujillo, Chair
Sen. Carlos R. Cisneros, Vice Chair
Rep. Roberto "Bobby" J. Gonzales
Rep. Jason C. Harper
Sen. Gay G. Kernan
Rep. Antonio Maestas
Rep. Javier Martínez
Sen. Clemente Sanchez
Sen. William E. Sharer
Sen. John Arthur Smith
Rep. Carl Trujillo (10/29)
Sen. James P. White
Sen. Peter Wirth

Designees

Sen. William F. Burt (attending as a guest)
Sen. Pete Campos (attending as a guest 10/29
and as a designee 10/30)
Rep. Bealquin Bill Gomez (attending as a
guest)
Rep. Rod Montoya
Rep. Patricia Roybal Caballero (attending as
a guest 10/29 and as a designee 10/30)
Sen. Bill Tallman (10/29)

Absent

Rep. Sharon Clahchischilliage
Rep. Tim D. Lewis
Sen. Mark Moores
Sen. George K. Munoz
Rep. James R.J. Strickler

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

Guest Legislator

Rep. Georgene Louis (10/29)

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

Staff

Pam Stokes, Staff Attorney, Legislative Council Service (LCS)

Ric Gaudet, Researcher, LCS

Sara Wiedmaier, Research Assistant, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Monday, October 29

Legislative Finance Committee (LFC) Tax Policy Principles; Economic Development Tax Incentive Issues

Jon Clark, chief economist, LFC, and Dawn Iglesias, economist, LFC, presented to the committee updated LFC tax policy principles. Ms. Iglesias began by describing the five standard tax policy principles used by the LFC and other economic agencies nationally to help evaluate existing and proposed tax policies. Those principles include adequacy, efficiency, equity, simplicity and accountability. However, those principles have proven inadequate to evaluate some tax incentives, and new policy guidelines are needed. The state has witnessed a significant, unexpected rise in the cost of several tax expenditures recently, including the exploitation of the high-wage jobs tax credit. The cost of the tax credit ballooned, from less than \$10 million annually to more than \$50 million in fiscal years 2014 through 2016, due to the usage of the credit by businesses that were never originally intended to be eligible. The 2016 special session of the legislature closed the statutory loophole and narrowed the eligibility for the credit. Unintended consequences of tax expenditures are one reason why the LFC adopted additional tax policy principles when evaluating tax expenditures. The new tax expenditure principles include that a proposed or existing tax expenditure be:

- *vetted* thoroughly by interim legislative committees;
- *targeted*, with a clearly stated purpose, long-term goals and measurable annual targets;
- *transparent*, requiring at least annual reporting to the Taxation and Revenue Department (TRD) and other relevant agencies;

- *accountable*, to allow for analysis by state and legislative agencies and the public and to periodically expire unless renewed by the legislature;
- *effective* in its stated purpose, including a determination of whether the behavior desired by the expenditure would occur regardless of its existence; and
- *efficient* and the most cost-effective way to achieve the desired result.

Mr. Clark discussed economic development incentives and the special analysis they need. It is difficult to ensure that the state receives a net benefit from each tax expenditure recipient. Instead of automatically granting an incentive to qualifying companies, the legislature could provide for a project-by-project review of incentive candidates before granting approval by an expert, disinterested government entity. An example of a well-designed incentive system is the Job Training Incentive Program (JTIP), in which awards are given at the discretion of the Industrial Training Board at public meetings while maintaining appropriate levels of employer confidentiality. The JTIP provides an effective and efficient use of taxpayer money.

The Local Economic Development Act (LEDA) provides funding for economic development projects, but there are very few safeguards to ensure that the state receives a net benefit from the incentive. Cash awards are given at the sole discretion of the secretary of economic development, and there is no limit on how much can be awarded. Mr. Clark said that the legislature should consider amending the LEDA to provide restrictions on the amount of funding per project and to reform the award process to provide for incentives to be vetted, targeted, transparent, accountable, efficient and effective.

Tax increment development districts (TIDDs) are economic development incentives that allot a portion of gross receipts taxes (GRTs) and property taxes to a TIDD to pay for infrastructure improvements in the district. Local governments can dedicate a portion of their respective tax bases, and the legislature can, by law, dedicate a portion of the state GRT. Recently, however, some industry representatives have argued that the State Board of Finance can bypass legislative approval and dedicate the GRT. The legislature may wish to clarify the TIDD statutes to ensure legislative approval of the state portion of GRT dedications and may wish to ensure that TIDD projects are only approved that create net new economic base jobs. Mr. Clark said that many TIDD projects are very small in scope, and there is no filing fee required for a new proposal or a requirement for the retaining of an economist for analysis of the project.

Questions and comments from committee members included the following.

- Does the LFC have data to analyze the effectiveness of the GRT deduction for dialysis services? Mr. Clark said that most GRT deductions are reported in the aggregate, which makes it nearly impossible to estimate any fiscal impact.

- It is bad tax policy to have tax incentives. The state would be better off appropriating money to incent economic development activity.
- How can economists determine the effectiveness of a particular tax expenditure? Ms. Iglesias said that the effectiveness principle is more of a theoretical idea that tries to determine whether a tax expenditure conforms with generally accepted economic theory. Mr. Clark said that the LFC needs access to more data from the TRD and the Workforce Solutions Department. The legislature could change tax confidentiality statutes to allow the LFC to access taxpayer data while maintaining the same safeguards that the TRD is required to maintain.
- Are the LFC economists having trouble receiving aggregated taxpayer data from the TRD? Mr. Clark said that the LFC has had to file Inspection of Public Records Act requests with the TRD in order to receive publicly available data.
- Any economic development incentive given for a project also needs to have some sort of financial buy-in from the local government.
- Most of the GRT exemptions should be converted into deductions so that accurate data can be collected about them. Mr. Clark said that much of New Mexico's agriculture industry does not file tax returns for the GRT, and requiring reporting would be burdensome.

How New Mexico Benefits by Exempting Nonprofits from Taxation

Tsiporah Nephesh, executive director, New Mexico Thrives; Curtis J. Mearns, senior evaluator, Pivot Evaluation; and Mag Strittmatter, president and chief executive officer, Roadrunner Food Bank of New Mexico, discussed with the committee the benefits New Mexico receives from not taxing nonprofit organizations. For the purpose of the presentation, Ms. Nephesh limited what was meant by "nonprofit organization" to those organizations granted an exemption from federal income taxes by the Internal Revenue Service pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986. Traditionally, nonprofit organizations were exempted from taxation because they reduce the workload of the government and perform certain services that the government does not do. Nonprofit organizations provide direct services to people in need, including providing food, shelter and medical services to needy people; providing shelter, counseling and legal services for victims of domestic violence; providing group homes, day services and job training for people with disabilities; and providing shelter and counseling for people struggling with addiction.

Nonprofit organizations contribute to the economic development of the state by providing job training and placement services, jobs and services to those who cannot work independently, literacy training and loans for new businesses. Nonprofit organizations also work to break the cycle of poverty by creating work and business opportunities for poor people and working with financial institutions to create programs to encourage people to save. Nonprofit organizations

also contribute to better educational outcomes by providing early childhood education services, after-school programs and child and adult literacy training. Nonprofit organizations make significant contributions to culture and local economies and also contribute to the protection of the environment.

Policymakers wishing to impose GRT and other taxes on nonprofit organizations often have erroneous assumptions about the role those organizations play and what the impacts of taxation would be. For example, one assumption is that nonprofit organizations do the same work as for-profit entities and, therefore, have an unfair tax advantage. Actually, nonprofit organizations often take on work that for-profit organizations refuse because of a lack of profitability for the activity. Another erroneous assumption is that there would be little impact on nonprofit organizations by imposing the GRT on the purchase of goods by nonprofit organizations. Every dollar spent on paying taxes means less money available for the organization to carry out its mission. Finally, if the state were to impose the GRT on the receipts of nonprofit organizations, many people assume that the cost could be passed on to customers, or that an average seven percent loss in revenues would not impact the services being provided. However, many medical and behavioral health service providers are prohibited from passing on the GRT to their patients. In addition, a recent study estimated that a seven percent reduction in nonprofit organization revenue would result in more than a 10 percent reduction in services provided.

Ms. Strittmatter said that if the GRT deduction for goods purchased by nonprofit organizations is repealed, the Roadrunner Food Bank of New Mexico would incur an additional \$107,000 in expenses annually, which would result in 30,000 fewer meals being provided to needy people.

Questions and comments from committee members included the following.

- It has become very attractive from a tax liability perspective to convert an entity's structure into a nonprofit organization. Many of the state's largest employers do not pay any taxes.
- How can the state ensure that the GRT is collected from nonprofit organizations operating national laboratories without affecting other nonprofit organizations? Ms. Nephesh said that there could be unintended consequences from enacting legislation that establishes a threshold in gross receipts before a nonprofit organization becomes taxable. Even a threshold of \$1 billion in gross receipts would capture Presbyterian Healthcare Services.
- Many for-profit organizations have nonprofit subsidiaries. Large hospital corporations are currently inappropriately gaming the GRT system in the state.

Laboratory Partnership with Small Business Tax Credit Report

Genaro Montoya, program leader, New Mexico Small Business Assistance (NMSBA) Program, Sandia National Laboratories; Kim Sherwood, manager, NMSBA Program, Los Alamos National Laboratory; and Drew Trujillo, director of technology, Meow Wolf, LLC, discussed with the committee the NMSBA Program and some of the businesses assisted in 2017. During 2017, 346 businesses participated in the NMSBA Program. A total of \$4.6 million in technical assistance from the national laboratories was provided to businesses in 28 counties. Since 2000, the NMSBA Program has helped New Mexico's small businesses create jobs, increase revenues, decrease operating costs and attract new funding opportunities. Nearly 2,800 businesses have been helped, enabling nearly 7,000 jobs across the state to be created or retained.

This past year, the NMSBA Program focused its assistance program toward five sectors: agriculture, oil and gas, renewable energy, manufacturing and high technology. Businesses receiving assistance for manufacturing issues are often referred to the New Mexico Manufacturing Extension Partnership for technical expertise.

Mr. Trujillo described to the committee the technical assistance that Meow Wolf received from Sandia National Laboratories. Meow Wolf's installation in Santa Fe has been using a camera developed by Microsoft to be able to track peoples' movements inside rooms, in order to provide a full interactive experience with visitors. However, when production of the camera was discontinued, Meow Wolf was faced with the possibility of no longer having interactive rooms. Researchers from Sandia National Laboratories helped Meow Wolf program an off-the-shelf digital camera to achieve the same interactive abilities that the former Microsoft camera was capable of. This new development allowed Meow Wolf to expand its technology department from 12 employees to 42 in one year, as the company expands its offerings to the public.

Adoption of Minutes

The minutes of the September 20-21, 2018 meeting of the committee were adopted without changes.

Using Tax Incentives to Encourage Investments in Rural Areas

Mark Scheffel, senior vice president, Advantage Capital, discussed with the committee strategies to leverage capital investment in rural areas of New Mexico. Rural areas have suffered from a persistent lack of capital, which prevents existing companies from growing and creating new jobs. Large investors tend to shun investment in most of the state's small communities, which are increasingly becoming the new "inner cities" of America in terms of poverty, lack of college achievement, teenage pregnancy, death rates from heart disease and cancer and reliance on federal disability insurance.

Mr. Scheffel proposed one solution to the rural underdevelopment problem facing the state: enactment of a rural manufacturing jobs act to provide a funding mechanism for small rural businesses to expand their operations and to encourage leveraged capital investment from private investors. The legislation would set up a \$50 million private investment fund targeted at

rural communities. The legislation would overlap with other state and federal rural development programs and would be designed to spur additional private equity investment after businesses had been invested in by the state. The legislation would include strict transparency and accountability parameters, including requiring businesses to qualify for assistance, strict time lines, regular reporting, job creation, training and retention, the potential for state sharing of investment profits and clawbacks for violating the rules of the investment contracts. The legislation could also work by providing a post-performance tax credit instead of an initial investment because the tax credit documents could then be monetized into a loan from a financial institution.

Mr. Scheffel said that the legislature has broad latitude in creating rural investment legislation specifically suited to the needs of the state. Areas of focus for investment could include rural broadband companies. High-speed internet in rural areas is developing very slowly across the country because the large broadband providers typically do not want to invest heavily in providing broadband to areas that are not densely populated. Any state investment or tax incentive, however, needs to ensure measurable milestones for the company to meet.

Questions and comments from committee members included the following.

- The lack of high-speed internet in rural areas is a big problem in New Mexico. Mr. Scheffel said that Advantage Capital makes investments in rural broadband companies around the country. Leveraging state money with private equity is a proven, successful economic development strategy for rural areas.
- Are tax credits more successful than direct state investment in rural development programs? Mr. Scheffel said that the provision of tax credits is more common because the fiscal impact to the state can be postponed for a few years, until after a project has been proven to be successful. However, many states prefer to avoid the administrative complexity and poor tax policy of providing credits and prefer to make investments directly. Both types of programs still need to have strong accountability and transparency controls.

Economic Development Tools and Strategies

Gary Tonjes, president, Albuquerque Economic Development (AED), and Debra Inman, senior vice president, business development, AED, discussed with the committee how the AED assists in recruiting businesses to the Albuquerque metropolitan area. The AED, founded in 1960 as a nonprofit organization, has as its central mission to strengthen the economy of the Albuquerque metropolitan area by recruiting export-oriented employers to the area and by assisting in the retention and expansion of existing local businesses.

Mr. Tonjes said that New Mexico has many business incentives to attract new economic base companies to the state. The recent enactment of legislation to allow certain corporations to use a single sales factor in calculating corporate income tax (CIT) due was an important tool that

will make headquarters and manufacturing more attractive in the state. Under previous law, if a company reduced employment in New Mexico, it would receive a CIT reduction. Other critical economic development tools include the JTIP and LEDA funding, but funding for those programs has been erratic over the years. New Mexico was a finalist for the siting of the new Tesla, Inc., battery production facility, and that company listed the JTIP and LEDA programs as important factors in making New Mexico a finalist in the selection process. The Facebook data center, which AED was involved with, has created a construction boom in the metropolitan area, with more than 170 companies providing goods and services to the project.

Ms. Inman said that the JTIP and LEDA programs should be funded adequately by the legislature in order to ensure consistency with recruitment efforts. It often takes between six to 24 months for a company to decide to either expand or relocate, but if funding for either program is curtailed, a company may decide to look elsewhere. Between 2015 and 2017, various JTIP applications were denied because funding ran out for the fiscal year. Word of that kind of unexpected surprise to a company spreads quickly, which can have a chilling effect on other companies considering relocating to New Mexico. JTIP funding is expected to be \$3 million short for the current fiscal year, and the AED is advocating that the legislature fund that shortfall and provide \$12 million in funding for fiscal year 2020. The LEDA program needs about \$50 million annually to ensure adequate funding for various projects across the state each year. There is currently \$18 million remaining in LEDA funding, with about \$75 million in possible applications for funding.

Ms. Inman said that the legislature should consider exempting qualifying manufacturing equipment from the GRT and compensating tax. The existing tax credit available in the Investment Credit Act has burdensome employment requirements, which are set to become even more burdensome in 2020. For every \$100,000 in new equipment purchased, an employer must increase its full-time employment by at least one person. This requirement makes no sense to the many existing businesses that need to reinvest in equipment periodically but have no need to hire additional employees. Most states do not impose sales or use taxes on manufacturing equipment, and the New Mexico Legislature should consider the same. At a minimum, the new employment requirements set to begin in 2020 should be eliminated; if not, very few businesses will find it economical to take advantage of the credit.

Questions and comments from committee members included the following.

- Many policymakers have a love-hate relationship with business incentives. How can a balance between economic benefits and a pure giveaway to business be reached? Ms. Inman said that each potential project needs to be thoroughly vetted, with a demonstrated net positive impact to the economy and job growth. The AED contracts with the Bureau of Business and Economic Research at the University of New Mexico to evaluate potential projects.

- Does the secretary of economic development have too much discretion in choosing which LEDA projects to fund? Ms. Inman said that a company applying for LEDA funding undertakes an internal process to determine a funding gap in order to close a deal. This is not an arbitrary process. Only projects that have been fully evaluated are considered for LEDA funding, and funding decisions are made based on the quality of a proposal.
- New Mexico needs to focus energy on retaining and expanding existing businesses. Ms. Inman said that all statutory business incentives also apply to existing New Mexico businesses. The AED has four dedicated staff members to work with resident economic base companies.

Holtec International's Proposed Consolidated Interim Storage Facility in Southeastern New Mexico

John Heaton, vice chair, Eddy-Lea Energy Alliance, and Gerges Scott, public relations consultant for Holtec International, discussed with the committee the progress of the proposed consolidated interim nuclear fuel storage facility to be located near the border of Eddy and Lea counties. The federal Department of Energy (DOE) has failed to fulfill its obligations pursuant to the Nuclear Waste Policy Act of 1982 to provide long-term storage for spent nuclear fuel. As a result, the DOE has paid more than \$6.2 billion to electric utilities and continues to pay between \$300 million and \$500 million annually for utilities to safely store spent fuel at reactor sites. Holtec International has applied to the Nuclear Regulatory Commission (NRC) to build a consolidated interim storage facility for spent nuclear fuel in southeastern New Mexico on land currently owned by the Eddy-Lea Energy Alliance. The storage facility will be designed to be safe, secure, retrievable and temporary. The facility will store spent nuclear fuel in welded canisters in below-ground vertical cement silos and will require no water. The facility will be designed to withstand any man-made or natural disaster without release of radioactive material. Holtec International applied for a license in March 2017 and expects a final decision in July 2020. Assuming the license is approved, construction will begin shortly after, and the facility will be ready to receive its first shipment in 2023.

Mr. Heaton discussed the work the Eddy-Lea Energy Alliance has done to attract Holtec to locate its storage facility in New Mexico. The alliance was formed through a joint powers agreement between Carlsbad, Hobbs and Eddy and Lea counties to collaborate in economic development efforts in the region. The alliance purchased 1,000 acres midway between Carlsbad and Hobbs, which seems to be an ideal location for an interim storage facility. The alliance issued a request for information from many companies, and Holtec was the clear winner, in terms of its safety record, long history in the nuclear industry, technical expertise and financial strength. The containers used to ship and store spent fuel consist of four layers of containment, which have been tested extensively by Sandia National Laboratories for road, rail and sea transport.

State and local governments will gain extra revenue from the facility, from GRT revenues from the estimated \$2.4 billion in construction costs, to the more than 100 full-time employees of

the facility. In addition, Holtec International anticipates making incentive payments to state and local governments based on its gross revenue.

Questions and comments from committee members included the following.

- Does New Mexico have any regulatory oversight regarding the permitting of the interim storage facility? Mr. Heaton said that the NRC has exclusive authority to license and regulate commercial storage facilities.
- Senator Jeff Steinborn has submitted a list of more than 60 questions to the governor regarding transportation, safety and regulatory issues of the proposed facility, but none have been addressed. The permitting process for the Holtec International facility has been very different from the permitting of the Waste Isolation Pilot Plant (WIPP). The state was involved in many aspects of permitting and regulating the storage of nuclear mixed waste at WIPP. In addition, transportation of spent nuclear fuel has a possible negative impact on the entire population of the state. Mr. Heaton said that transportation of the fuel is a separate issue from the permitting of the storage facility. The state will have a regulatory role during the transportation licensing process.
- The state does not have any regulatory or permitting role for the proposed Holtec facility because the NRC has exclusive jurisdiction over spent nuclear fuel and over private facilities. The WIPP facility is a government-run facility that stores mixed nuclear waste and is subject to some state regulatory authority. The state was involved in the development of the WIPP facility and continues to regulate some of its operations, but it is an entirely different kind of facility than what is being proposed by Holtec.
- There are many safety issues that need to be addressed before a nuclear storage facility is licensed.

Recess

The committee recessed at 4:51 p.m.

Tuesday, October 30

Reconvene

The committee was reconvened by Representative Jim R. Trujillo on Tuesday, October 30, at 9:04 a.m.

New Mexico Voices for Children (Voices): "Roadmap to a Stronger New Mexico"

James C. Jimenez, executive director, Voices; Amber Wallin, deputy director, Voices; and Kelly O'Donnell, Ph.D., O'Donnell Economics and Strategy, discussed with the committee strategies developed by Voices to ensure that all New Mexicans have a chance to succeed. Mr.

Jimenez began by discussing how New Mexico prioritizes its budgetary and revenue-raising processes in relation to children and families. Although the state spends much of its money on education, health, public safety and infrastructure, it does not raise enough revenue in taxes to fully support those needs. The state ranks the worst in the nation in childhood well-being and in educational outcomes, and more than one-fourth of the state's children experience food insecurity on a regular basis. Many series of tax cuts, dating back to 2003, have led to an unbalanced and inadequate revenue system that relies too much on the oil and gas industry and has created an inability to fund needed services. The tax cuts made New Mexico's tax system even more regressive than it was, left state coffers hundreds of millions of dollars short and did not create any new jobs in the state.

In 2008, the state General Fund budget was \$6.1 billion, which would be \$7.1 billion in inflation-adjusted dollars. The fiscal year 2019 General Fund budget is still only at \$6.3 billion. The boom-and-bust cycle in New Mexico seems perpetual, with a \$300 million shortfall in fiscal year 2017 and a projected \$1.2 billion surplus for fiscal year 2020. Almost all of today's surplus revenues can be attributed to the highly volatile oil and gas industry. New Mexico needs to reform its tax system, while at the same time shoring up reserve levels, addressing infrastructure needs, adding progressivity to the tax system, raising more revenue and spending prudently. New Mexico's current tax system fails three principles of tax policy: adequacy, sustainability and equity.

Voices' tax package proposal adds progressivity, reduces reliance on the oil and gas industry and raises more revenue to pay for vital public services. It proposes to make changes to the personal income tax (PIT), GRT and CIT systems. The proposal would repeal the net capital gains deduction in the PIT system and increase PIT rates for upper-income taxpayers. These changes would increase General Fund revenues by \$250 million. A new PIT child tax credit would also be enacted to offset some of the regressive federal income tax changes recently enacted. The proposal would also increase the working families tax credit and the low-income comprehensive tax credit. Together, these three credits would cost the state \$158 million and would assist those New Mexicans who most need it.

Voices proposes to reform the GRT system by closing loopholes, taxing internet sales and repealing ineffective tax incentives. But it strongly opposes imposing the GRT on food purchases because that would disproportionately impact low-income residents. The Supplemental Nutrition Assistance Program (SNAP) does not adequately cover low-income residents' food needs, and 80 percent of SNAP recipients exhaust their benefits within the first half of each month. Imposing the GRT on food purchases will hurt SNAP recipients. Nonprofit organizations should also continue to enjoy exemption from GRT taxation.

Voices would also like to see an increase in CIT rates and a requirement that multistate companies file combined or consolidated returns. This simple change, to make corporations pay their fair share in taxes, would raise \$125 million annually. In summary, Voices would like to

restore \$600 million in annual revenues and also spend \$300 million through targeted tax incentives to help New Mexico residents thrive.

Questions and comments from committee members included the following.

- The previous administration, of which two of the panelists were members, misled the legislature about the true cost of removing food from the GRT base. The result was a hemorrhaging of state revenues and the destruction of local tax bases. Mr. Jimenez said that hold harmless payments to local governments was not the only solution to the expected loss of local revenue. The legislature could have set a cap on state liability from enactment of the GRT deduction, and it could have improved the small cities and counties assistance formulas.
- The oil and gas industry is already heavily taxed. Any proposal to increase taxes on that industry will only exacerbate the state's reliance on revenues from the industry. Some of the current surplus should be used to rebuild roads in southeastern New Mexico, which are in very poor shape.
- Would Voices be amenable to legislation that repealed the deduction from GRT for food, except for people who hold SNAP cards? Mr. Jimenez said that it does not make sense to tax food in general. Many poor people are not enrolled in SNAP, and such a change would not help that population. However, he said that Voices is willing to listen to new ideas that may lead to a compromise.
- Local GRT rates rose dramatically after the deduction from gross receipts on food was enacted. Low-income people also buy non-food items and are forced to pay the GRT for those items.
- The legislature should not consider the current oil- and gas-related surplus as recurring revenue. That is what the Richardson Administration did in 2006, and the state very soon afterward lost hundreds of millions of dollars in recurring revenue.
- CIT revenues are almost irrelevant to the state budget, so focusing much attention on corporate taxation does not make any sense.
- How much money should the state infuse into the educational system? Mr. Jimenez said that only a portion of the \$1.2 billion in surplus revenue should be considered recurring. He estimated that the state's educational system could use an extra \$300 million annually.

Revenue Impacts of Legalizing Sports Betting in New Mexico

Representative Maestas; James Girard, economist, TRD; Rick Baugh, general manager, Sunland Park Racetrack and Casino (Sunland); Rich Baldwin, managing director, investment

banking, head of union gaming analytics, Union Gaming; Rob Oseland, chief operating officer, Paragon Gaming; and Scott Scanland, lobbyist, Sunland, discussed with the committee the possibilities of allowing sports betting in New Mexico after a recent decision by the U.S. Supreme Court declared unconstitutional the federal Professional and Amateur Sports Protection Act (PASPA). Representative Maestas said that when the court overturned PASPA, gaming tribes in New Mexico automatically became eligible to provide sports betting. New Mexico could create a sports betting authority in order to carefully regulate and profit from this growing industry. Tribes may eventually deem it in their interest to renegotiate the tribal gaming compacts to allow the state to engage in sports betting without jeopardizing revenue-sharing agreements with the state. Representative Maestas said that a bookmaker in a sports betting enterprise always earns money, and the state should be the entity earning that money if it legalizes sports betting.

Mr. Scanland introduced other members of the panel and explained that a New Mexico consortium of racinos commissioned Union Gaming to perform a study of the potential for licensing sports betting operations in the state. Mr. Baldwin discussed the Union Gaming study, which estimated the economic impacts that New Mexico could realize if sports betting were to be licensed by the state. The study concluded that if the state were to allow sports betting at the existing racinos, the racinos would earn over \$30 million more in net win, resulting in approximately \$8 million in state revenues from the gaming tax. In addition, more than \$114 million in indirect economic activity would occur from the increased gambling activity, and more than 1,000 new jobs would be created. If sports betting were to be expanded further, by allowing for mobile betting by residents, total net win could be increased by as much as \$61 million.

Mr. Oseland said that sports betting is a highly regulated gaming activity in Nevada. Paragon Gaming operates the largest sports booking center in the state, which has a huge economic impact in the area. Sports betting is a safe investment for the state to get involved with because revenue is essentially guaranteed.

Mr. Girard discussed the potential revenue impacts that allowing racinos to offer sports betting would have. The 2015 tribal-state compacts to allow gaming stipulate that any revenue sharing required of the tribes would terminate if the state were to allow any other form of Class III gaming other than what is currently allowed. If the state were to allow non-tribal sports betting, the state would lose approximately \$75 million in revenue sharing from the gaming tribes. Mr. Girard attempted to estimate additional revenue that the state would earn from the expansion of sports betting. Using a best-case scenario, with several assumptions about the scope of sports betting, keeping the current number of racinos in the state and assuming a mature market, the state could earn between \$5 million and \$20 million annually from the gaming tax, depending on the tax rate. The state could earn an additional \$4 million if the betting handle were also taxed. After subtracting the tribal revenue sharing, Mr. Girard said that no sports betting scenario would offset the losses from revenue sharing. However, Mr. Girard said that he did not attempt to factor in any economic development associated with the development of the sports betting industry.

Questions and comments from committee members included the following.

- If the state were to allow non-tribal sports betting, would the tribal-state gaming compacts terminate? Mr. Girard said that allowing sports betting would not be a violation of the compacts, but that the revenue-sharing requirement would terminate.
- Is any legislation to legalize sports betting being proposed for the upcoming legislative session? Representative Maestas said that he will not be pursuing any legislation. However, he said that he hopes that tribes will see it in their best interests to allow the state to engage in sports betting. He advocated that the state run its own sports betting authority instead of licensing private entities to engage in the activity. Whatever form of sports betting occurs, the state needs to prohibit sports betting via out-of-state locations, which will protect tribal and non-tribal entities in the state.
- Why should the state consider legalizing sports betting, when the losses from the current revenue sharing with gaming tribes will not be offset by other revenues? Mr. Baugh said that the TRD revenue estimate did not include any associated economic uplift from legalization, including hotels, food and beverage outlets and entertainment venues. This uplift from sports betting is measurable, as demonstrated in Nevada and the United Kingdom.
- Jeffrey S. Landers, chair, Gaming Control Board (GCB), was asked if the GCB has taken a position on whether the Pueblo of Santa Ana has the legal right to offer sports betting at its tribal casino. Mr. Landers said that the GCB is still researching that topic. There are two differing federal court rulings on what constitutes Class III gaming in regard to how tribal gaming compacts are negotiated. He said that the GCB will take a formal position on this issue, hopefully within the next month.
- The state should consider ending the revenue-sharing agreements with the gaming tribes and allow racinos to offer sports betting, as well as table games and other gaming activity. Perhaps this would offset the loss to the state from revenue sharing. The state should also let the federal government regulate the gaming tribes rather than keeping the contentious state regulatory regime in place.
- Gambling is designed to be addictive. The state should not be rushing toward the expansion of gambling.
- Tribes need to be involved in any expansion of gaming in the state.
- If the state were to allow sports betting, the tribal-state gaming compacts would still be in effect, including provisions limiting the number of gaming machines and licensed racinos.

Adjournment

There being no further business before the committee, the committee adjourned at 12:34 p.m.

Revised: November 15, 2018

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

**November 19, 2018
State Capitol, Room 322
Santa Fe**

Monday, November 19

- 9:00 a.m. (1) [Reporting Requirements for Tax Expenditures and Other Economic Development Incentives](#)
—Jon Clark, Chief Economist, Legislative Finance Committee
- 10:00 a.m. (2) [Local Election Act Transitional Provisions Regarding Property Tax Levies](#)
—Senator Daniel A. Ivey-Soto
- 11:00 a.m. (3) [Recommended Changes to the Insurance Premium Tax Act](#)
—John Monforte, Acting Secretary, Taxation and Revenue Department (TRD)
—Aysha Mora, Deputy Director, Audit and Compliance Division, TRD
—Samuel Peat, Tax Practitioner Liaison, TRD
- 12:00 noon **Lunch**
- 1:00 p.m. (4) [New Mexico Municipal League \(NMML\) Legislative Priorities](#)
—William F. Fulginiti, Executive Director, NMML
—Jim O'Neill, Consultant
- 2:00 p.m. (5) [New Mexico Counties \(NMC\) Legislative Priorities](#)
—Steve Kopelman, Executive Director, NMC
—Brian Moore, Lobbyist, NMC
- 3:00 p.m. (6) [Federal Rules on Income Taxation of New Mexico's Medical Cannabis Industry](#)
—Frank Crociata, Esq., Of Counsel, Gallagher & Kennedy, P.A.
- 4:00 p.m. (7) [The Renewable Energy Industry and Industrial Revenue Bonds in Rural New Mexico](#)
—Adam Renz, External Affairs and Government Relations Specialist, Pattern Energy Group, LP
- 5:00 p.m. **Adjourn**

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

**November 19, 2018
State Capitol, Room 322
Santa Fe**

The fifth meeting of the Revenue Stabilization and Tax Policy Committee for the 2018 interim was called to order by Representative Jim R. Trujillo, chair, on Monday, November 19, 2018, at 9:05 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Jim R. Trujillo, Chair
Sen. Carlos R. Cisneros, Vice Chair
Rep. Roberto "Bobby" J. Gonzales
Rep. Jason C. Harper
Sen. Gay G. Kernan
Rep. Antonio Maestas
Sen. Mark Moores
Sen. Clemente Sanchez
Sen. William E. Sharer
Rep. James R.J. Strickler
Rep. Carl Trujillo
Sen. James P. White
Sen. Peter Wirth

Designees

Sen. William F. Burt (attending as a guest)
Rep. Bill McCamley
Rep. Rod Montoya
Sen. Nancy Rodriguez
Sen. Bill Tallman (attending as a guest)

Absent

Rep. Sharon Clahchischilliage
Rep. Tim D. Lewis
Rep. Javier Martínez
Sen. George K. Munoz
Sen. John Arthur Smith

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

Staff

Pam Stokes, Staff Attorney, Legislative Council Service (LCS)

Ric Gaudet, Researcher, LCS

Sara Wiedmaier, Research Assistant, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Monday, November 19**Reporting Requirements for Tax Expenditures and Other Economic Development Incentives**

Jon Clark, chief economist, Legislative Finance Committee (LFC), discussed proposed legislation for the committee's consideration that would enact into law several tax-expenditure-related provisions. The bill would require the Taxation and Revenue Department (TRD) to produce an annual tax expenditure report listing the nature and cost of most deviations from taxation found in the state's tax laws; would require the TRD, the Economic Development Department (EDD) and the Workforce Solutions Department to provide information to state professional economists in order to evaluate economic development incentives; would require certain tax expenditure recipients to report on job creation and capital investment; and would make an appropriation to the LFC to assist it in performing dynamic evaluations of tax expenditures and other incentives. Any confidential information given to LFC economists by other agencies would be required to be maintained confidentially, and taxpayer data could only be released in the aggregate.

Questions and comments from committee members included the following.

- Why does the legislature need to enact legislation requiring the TRD to produce an annual tax expenditure report when the department has been producing such a report for several years? Mr. Clark said that legislation was passed by the legislature requiring the report but was vetoed by two different governors. The current executive order requiring the report could be rescinded at any time. A statute needs to be enacted to ensure that the report is produced in the future.
- How much do tax expenditures cost the state annually? Mr. Clark said that there is some disagreement over what should be classified as a tax expenditure, but an estimate of \$1.8 billion in foregone revenue is probably close to being accurate. There is also much overlap between existing tax expenditures, meaning that the repeal of one tax expenditure does not mean the total cost to the state will necessarily be reduced by the amount associated with the expenditure.

- Legislation vetoed in 2013 contained language that would have required inclusion of a discussion of unintended consequences of tax expenditures in the annual report. Mr. Clark said that if an unintended loophole is exploited by a taxpayer, the TRD and LFC do not want to advertise that loophole in the tax expenditure report for other taxpayers to exploit. Any discussion of unintended consequences needs to be done carefully.
- Will the requirement for Local Economic Development Act recipients to provide job creation data have a chilling effect in the recruitment of new companies? Mr. Clark said that the EDD already requires most companies to report those figures. Confidential company data will not be reported, he said.
- Many proposed tax increment development districts (TIDDs) have been controversial. Proposed TIDDs need to be evaluated thoroughly at the state and local level. Mr. Clark agreed and said that a recent state gross receipts tax (GRT) TIDD increment proposal required many months of evaluation by LFC and Department of Finance and Administration (DFA) staff.

Local Election Act Transitional Provisions Regarding Property Tax Levies

Senator Daniel A. Ivey-Soto discussed with the committee proposed legislation for the committee's consideration that would fix a problem created with the timing of property tax elections due to the enactment of the Local Election Act in 2018. The Local Election Act moved school district elections, which often include property tax levy questions, that usually have been held early in odd-numbered years to November of those years. The problem with that switch will occur in 2019 because the property tax rates for that calendar year are set by the DFA in September, before school district tax levy questions have been voted on. Proposed legislation to solve that timing glitch has been drafted that would allow the DFA to list two possible school district property tax rates for tax year 2019 for governmental entities that will have a tax levy question on the ballot in November 2019. When the election results are certified later that month, county treasurers will mail out final property tax bills to property owners.

Questions and comments from committee members included the following.

- Will the proposed legislation resolve the tax levy timing issue for most school districts? Senator Ivey-Soto said that the legislation will provide school districts with another option in addition to needing to call a special election earlier in 2019.
- If the Local Election Act had provided a one-year delay before its provisions took effect, the tax levy timing issue would not exist. Senator Ivey-Soto said that in 2017, when the legislature first passed the Local Election Act, a one-year delay was part of the bill. That legislation, however, was pocket vetoed by Governor Susana Martinez, and the 2018 legislation did not include the one-year delay.
- Can local governments use the proposed legislation to enact new tax levies? Senator Ivey-Soto said that the proposed bill, as written, only includes renewals of tax levies, but he said that he was not opposed to allowing the legislation to include new tax levies.

The committee unanimously endorsed the proposed legislation but with changes to include an emergency clause and to allow new tax levy impositions to be covered by the legislation.

Recommended Changes to the Insurance Premium Tax Act

John Monforte, acting secretary, TRD, discussed with the committee changes that the TRD is recommending to the newly enacted Insurance Premium Tax Act, which will move premium tax collection responsibility from the Office of Superintendent of Insurance (OSI) to the TRD beginning in 2020. The original impetus for the legislation came from a special audit in 2016, which found that many insurance companies had underpaid premium taxes by up to \$65 million and that taxpayer records were not always reconciled correctly. The legislation transferred all of the revenue-collecting responsibility of the premium tax and health insurance premium surtax to the TRD but did not give any auditing responsibility to the department. The law as enacted does not address any of the special audit findings and only allows the TRD to function as a revenue-processing agency.

The TRD recommends that the Insurance Premium Tax Act be governed by the Tax Administration Act (TAA), like the vast majority of other tax acts. This change will provide clear and consistent guidelines for multiple tax issues that are not addressed by current law, including taxpayer registration; return filing; payment methods and deadlines; return and revenue processing; audit assessment and abatement; collection; refund claims; managed audits; taxpayers' rights; confidentiality; fraud prevention; protest options and procedures; independent hearings for appeals; statutes of limitations; and taxpayer remedies. The TRD also recommends that new legislation clarify the definition of the tax base; require the OSI to share information with the TRD; create a new suspense fund managed by the TRD for tax collection and distribution; require certain tax payments to be made electronically; clarify the source of definitions for all terms that reference the New Mexico Insurance Code; modify confidentiality statutes in the TAA to enable current reciprocity provisions; and clarify the base for the New Mexico Medical Insurance Pool credit and require reporting of that credit.

Questions and comments from committee members included the following.

- One of the main reasons for moving the premium tax collection responsibility from the OSI to the TRD is so that the procedures and protections found in the TAA can be used. Why were the TAA provisions removed from the 2018 legislation? Acting Secretary Monforte said that the insurance industry was willing to have the revenue collection function moved to the TRD but did not want any other changes to the current system.
- How many new employees will the TRD need in order to properly administer the premium tax if the tax is included in the TAA? Acting Secretary Monforte said that the original estimate for the 2018 legislation was for 13 full-time-equivalent positions. The TRD will be able to provide an updated estimate once new legislation is drafted.

Agenda Change

The agenda for the committee was altered so that the medical cannabis item could be presented ahead of the New Mexico Municipal League (NMML) and New Mexico Counties (NMC) items.

Federal Rules on Income Taxation of New Mexico's Medical Cannabis Industry

Frank Crociata, Esq., of counsel, Gallagher & Kennedy, P.A.; and Robert Romero, lobbyist, Ultra Health, discussed with the committee proposed legislation for the committee's consideration that would decouple New Mexico's personal income tax (PIT) calculation to allow for the deduction of certain business expenses for lawfully operating medical cannabis businesses. The federal government allows certain business deductions, after the normal deductions for the cost of goods sold, on federal income tax returns. However, Congress in 1982 disallowed deductions from income for ordinary trade or business expenses for businesses engaged in trafficking of controlled substances. Since marijuana, pursuant to federal law, is still classified as a Schedule I controlled substance, medical cannabis businesses operating legally pursuant to state law are disallowed from deducting these expenses from their federal income tax returns. New Mexico's PIT system is based on federal adjusted gross income, which means that medical cannabis operations also cannot deduct those expenses from their PIT returns.

Senate Bill 228 (2018) would have allowed taxpayers that conduct lawful businesses pursuant to the laws of New Mexico to deduct from their PIT base income those expenses that would have been allowed to be deducted from federal income but for the operation of Section 280E of the federal Internal Revenue Code of 1986. Similar legislation could be considered during the upcoming legislative session.

Questions and comments from committee members included the following.

- Would the proposed legislation apply to legal recreational cannabis businesses if the state were to legalize that use of cannabis? Mr. Crociata said that any legal business involving cannabis would benefit from the legislation. He said that it would probably also apply to legal industrial hemp businesses.

NMML Legislative Priorities

William F. Fulginiti, executive director, NMML, and Jim O'Neill, consultant, NMML, discussed with the committee legislative priorities for New Mexico municipalities. The NMML is supporting six tax-related proposed bills.

- Consolidation of Local Option Municipal GRT Increments. The proposed bill would consolidate 10 statutory local option GRTs, most of which require dedication of the tax revenue to specific purposes, into general undedicated GRT increments.
- Imposition of the GRT on Food at Local Rates. The proposed bill would re-impose local option GRTs on food but keep intact the deduction for the state GRT.

- Modifying Distribution Adjustment Notification Threshold Calculations. The proposed bill would amend Section 7-1-6.15 NMSA 1978 to require the TRD to use a monthly average, rather than an annual average, to calculate the threshold amount under which the TRD is required to notify local governments of the adjustment.
- Modifying Distribution Adjustment Calculations. The proposed bill would amend Section 7-1-6.15 NMSA 1978 to change the calculation for various distribution adjustments to local governments.
- GRT and PIT Revenue Swap for Municipalities. The proposed bill would reduce distributions to municipalities attributable to GRT revenue and provide an equivalent distribution from money attributable to PIT revenue.
- Implementation of U.S. Supreme Court *South Dakota v. Wayfair, Inc.*, Decision. The proposed bill would ensure that local governments receive GRT revenue from the taxation of online vendors by requiring that most transactions be sourced at the location of the purchaser and also requiring third-party marketplace facilitators to collect and remit the GRT.

Mr. Fulginiti said that the NMML would also support legislation to increase the gasoline and special fuel excise tax rates.

Questions and comments from committee members included the following.

- When the legislature enacted the deduction from gross receipts for the purchase of food, the net result was that GRT rates across the state increased. Low-income individuals did not actually benefit from the change.
- When the legislature allowed local governments to enact hold harmless GRT increments, many local governments abused that authority and enacted all three one-eighth percent increments without actually needing the revenue. Providing more general purpose GRT increments may prove equally troubling.
- Legislation allowing general purpose GRT increments should have a threshold amount above which additional increments require voter approval.

Approval of Minutes

The minutes of the October 29-30 meeting of the committee were adopted, pending additional language to be inserted clarifying the different regulatory regimes for the publicly operated Waste Isolation Pilot Plant and the proposed privately operated interim nuclear storage facility in southeastern New Mexico.

NMC Legislative Priorities

Steve Kopelman, executive director, NMC, and Brian Moore, lobbyist, NMC, discussed with the committee the NMC's priorities for the upcoming legislative session. The priorities include:

- restoring funding to previous years' level of \$5 million to fund reimbursement to counties for incarcerating state prisoners, pursuant to the County Detention Facility Reimbursement Act;
- creating a line item in the annual general appropriation act and providing funding in fiscal year 2020 of \$750,000 to reimburse counties for transportation and extradition of state prisoners;
- creating a line item in the annual general appropriation act and providing funding in fiscal year 2020 of \$5 million to the Emergency Medical Services Fund and identifying a dedicated revenue stream for the fund;
- requiring the Human Services Department to provide comprehensive behavioral health services to adult and juvenile offenders in state and county detention facilities;
- being part of any tax reform effort to ensure that counties are treated equitably and that revenues to counties are not impacted negatively;
- moving the Fire Marshal Division out of the Public Regulation Commission (PRC) to ensure stability of services and adequate funding to local fire departments; and
- modifying the Forfeiture Act to provide that agencies storing abandoned or forfeited property can be compensated for their costs and to extend due process protections of the law to local DWI vehicle seizures.

Other legislative proposals supported by the NMC include legislation to close loopholes in the Whistleblower Protection Act related to notice requirements; to unify municipal and county industrial revenue bond (IRB) laws; and to increase per diem for local government employees.

Questions and comments from committee members included the following.

- The state has never reimbursed counties for carrying out extraditions of state prisoners.
- How is money distributed to counties from the County Detention Facility Reimbursement Fund? Mr. Kopelman said that 70 percent of the fund is distributed proportionally to counties, based on county prison population, and most of the remainder is distributed to small counties.

The Renewable Energy Industry and IRBs in Rural New Mexico

Adam Renz, external affairs and government relations specialist, Pattern Energy Group, LP (Pattern), discussed with the committee the renewable energy projects his company is installing in the state and how those projects are benefiting rural communities. Pattern is the largest renewable energy company in the state and is in the top 10 in the United States. The company supports communities in its project areas and respects the land and environment. Pattern is currently developing 3,000 megawatts (MW) of wind-generated electricity capacity on approximately 460,000 acres of land in Torrance, Lincoln and Guadalupe counties. The project is expected to be complete by the end of 2020 and will produce electricity for export to California.

Mr. Renz discussed the success of a wind energy project in the Village of Grady in Curry County. IRBs were issued to the company to exempt the development from property taxation, and the company committed to significant payments in lieu of taxes (PILTs) over the lifetime of the project. The company also donated \$150,000 to the Village of Grady and to the Grady Municipal School District. Pattern expects to remit more than \$30 million to the local community over 25 years from PILTs and other benefit programs. During the construction phase of the project, the company hired an average of 350 workers and, currently, employs 18 full-time workers to maintain the facilities.

Questions and comments from committee members included the following.

- Does Pattern support bonding requirements for decommissioning of renewable energy generation facilities? Mr. Renz said that Pattern would support legislation requiring bonding but would prefer that industry best practices be used as a basis for legislative requirements. Jeremy Turner, consultant, Pattern, and former director, New Mexico Renewable Energy Transmission Authority (RETA), said that all projects bonded by the RETA have decommissioning requirements, including remediation of land.
- How is the proposed SunZia Southwest Transmission Project progressing? John Ryan, consultant for the SunZia project, said that the project still has a few permits to finalize and that a new environmental assessment will be finished in a few months. The plan will then be resubmitted to the PRC. The first stage of the transmission line will be able to transmit 1,500 MW of electricity, and the second stage will carry either 1,500 MW or 3,000 MW, depending on the type of current used.
- Funding for the RETA, a very important economic development agency, has been vetoed for several years.
- Many rural electric cooperatives are being blocked from developing renewable energy facilities by outside entities.

Adjournment

There being no further business, the committee adjourned at 3:55 p.m.

Revised: December 14, 2018

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

**December 17-18, 2018
State Capitol, Room 322
Santa Fe**

Monday, December 17

- 9:00 a.m. (1) **Revenue Forecast**
—Jon Clark, Chief Economist, Legislative Finance Committee (LFC)
—Clinton Turner, Chief Economist, Department of Finance and
Administration
—John Monforte, Acting Secretary, Taxation and Revenue Department
(TRD)
- 12:00 noon **Lunch**
- 1:00 p.m. (2) **Permanent Fund Distributions: Who, What, How and Why**
—Dawn Iglesias, Economist, LFC
- 2:00 p.m. (3) **Retiree Programs Solvency Reports**
—Wayne Propst, Executive Director, Public Employees Retirement
Association
—Jan Goodwin, Executive Director, Educational Retirement Board
- 3:00 p.m. (4) **Tax Reform Scenarios**
—Jon Clark, Chief Economist, LFC
—Dawn Iglesias, Economist, LFC
- 5:00 p.m. **Recess**

Tuesday, December 18

- 9:00 a.m. (5) **Discussion of the High-Wage Jobs Tax Credit**
—Matthew Geisel, Secretary, Economic Development Department

- 9:30 a.m. (6) [Imposing a Registration Surcharge on Motor Vehicles to Fund Public Transit](#)
—Philo Shelton, President, New Mexico Transit Association; Director, Los Alamos County Public Works
—Anthony J. Mortillaro, Executive Director, North Central Regional Transit District
- 10:00 a.m. (7) [Proposed Amendments to the Administrative Hearings Office Act — .211470.3](#)
—Representative Jason C. Harper
—Senator Jacob R. Candelaria
- 10:30 a.m. (8) [Creating a Gross Receipts Tax Deduction for New Mexico Companies for Transporting Freight Within the State — .211035.2](#)
—Senator George K. Munoz
- 11:00 a.m. (9) [Applying the Provisions of the Tax Administration Act to the Insurance Premium Tax Act — .211311.1](#)
—John Monforte, Acting Secretary, TRD
—Aysha Mora, Deputy Director, Audit and Compliance Division, TRD
—Samuel Peat, Tax Practitioner Liaison, TRD
- 11:30 a.m. (10) [Tax Expenditure Reporting — .211545.3](#)
—Jon Clark, Chief Economist, LFC
- 12:00 noon **Adjourn**

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

**December 17-18, 2018
State Capitol, Room 322
Santa Fe**

The sixth meeting of the Revenue Stabilization and Tax Policy Committee for the 2018 interim was called to order by Representative Jim R. Trujillo, chair, on Monday, December 17, 2018, at 9:05 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

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

Absent

Rep. Sharon Clahchischilliage
Rep. Tim D. Lewis

Designees

Rep. Eliseo Lee Alcon
Sen. Pete Campos (attending as a guest 12/18)
Sen. Jacob R. Candelaria (attending as a guest
12/18)
Rep. Bill McCamley (attending as a guest
12/17)
Rep. Rod Montoya
Rep. Debbie A. Rodella (attending as a guest)
Sen. Bill Tallman (attending as a guest)

Rep. David E. Adkins
Rep. Cathrynn N. Brown
Sen. William F. Burt
Rep. Daymon Ely
Rep. Bealquin Bill Gomez
Rep. Patricia Roybal Caballero
Sen. Nancy Rodriguez
Rep. Angelica Rubio
Rep. Patricio Ruiloba
Rep. Tomás E. Salazar
Rep. Larry R. Scott
Rep. Nathan P. Small
Sen. Elizabeth "Liz" Stefanics
Rep. Candie G. Sweetser
Sen. Pat Woods

Guest Legislators

Sen. Howie C. Morales (12/17)

Sen. Linda M. Lopez (12/17)

Rep. Patricia A. Lundstrom (12/18)

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

Staff

Pam Stokes, Staff Attorney, Legislative Council Service (LCS)

Ric Gaudet, Researcher, LCS

Sara Wiedmaier, Research Assistant, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Minutes Approval

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

Monday, December 17**Revenue Forecast**

Jon Clark, chief economist, Legislative Finance Committee (LFC); Clinton Turner, chief economist, Department of Finance and Administration; and Lucinda Sydow, senior economist, Taxation and Revenue Department (TRD), presented the Consensus Revenue Estimating Group's (CREG) forecast. Mr. Turner began by saying that the December forecast was similar to the August 2018 forecast, except for a large increase in federal mineral leasing payments to the state and slightly lower severance tax and gross receipts tax (GRT) predictions due to lower oil prices. Fiscal year 2018 ended with 20-percent reserve levels, and fiscal year 2019 reserve levels are expected to reach 40 percent, not accounting for any potential mid-year new spending. New money for fiscal year 2020 is expected to be \$1.1 billion, but not all of that money can be considered recurring.

Mr. Turner said that due to the volatility of oil and gas revenues that account for most of the state's surplus, the state should target at least a 25-percent reserve level for fiscal year 2020 and even higher levels in future years. The state is very reliant on the oil and gas sector for revenues, and changes in global oil prices could cost the state hundreds of millions of dollars in a short period of time.

Ms. Sydow said that GRT revenues have been revised downward since the August estimate due to less drilling activity resulting from the lower price of oil. Oil price forecasts have fallen about 10 percent since the August estimate, and prices are expected to fluctuate between \$40.00 and \$60.00 per barrel in the next four fiscal years. Oil production growth is continuing, but that growth is beginning to slow. The industry is expected to continue to play a large role in state revenues for the foreseeable future. Although oil prices have fallen, they are not expected to decrease much more. Recent record federal bonus lease payments also demonstrate that the industry is continuing to invest in increasing production, which offsets somewhat the effects of lower oil prices.

Ms. Sydow identified several potential revenue issues that the legislature may need to consider during the 2019 session, including: implementing the *South Dakota v. Wayfair, Inc.* Supreme Court decision allowing for the taxation of internet commerce; impacts to the state from federal tax reform legislation; the impending transfer of the administration of the premium tax to the TRD; implications of a lawsuit filed by local governments about revenue distributions; possible modifications to the high-wage jobs tax credit (HWJTC); protest hearings being held by the Administrative Hearings Office (AHO) related to the GRT deduction for chemicals and reagents; and the film production tax credit backlog.

Mr. Clark discussed the economic forecast for the state, which indicates that employment has increased significantly during 2018. Initial employment data have, however, historically been revised downward once more reliable data are available, but the initial data still show that New Mexico's workforce is increasing, compared to levels over the last few years. The state's unemployment rate is currently at 4.6 percent.

The CREG has recently begun "stress-testing" important revenue sources to examine the fiscal impacts of potential changes in the energy sector. The group hypothesized four scenarios ranging from low oil prices and resulting lower GRT revenue to high oil prices and increased GRT revenue. For fiscal year 2020, the difference between the highest and lowest scenarios was more than \$2.5 billion and more than \$3 billion for fiscal year 2021. This testing demonstrates the highly volatile nature of much of the state's revenues and why the state needs larger reserves.

Questions and comments from committee members included the following.

- After several years of facing an economic downturn, New Mexico is finally realizing major revenue increases, but those increases could easily be wiped away if oil production declines. New Mexico needs to have a much higher reserve level than it currently has. Mr. Turner said that some oil-producing states have reserve levels of 85 percent. The transfer to the Tax Stabilization Reserve from excess oil and gas emergency school tax revenues is slowly increasing the state's reserve levels.
- How did the film production tax credit backlog become a problem? Mr. Clark said that the statute was designed to pay off large credits over three years. Once the annual

cap was established, balances from each year were carried forward and began accumulating. The estimated tax liability for the state from the backlog is more than \$200 million and will continue to grow. This is a fiscally imprudent policy because the liability of the state will continue to grow each year.

- If hydraulic fracturing is banned in New Mexico, the oil industry in the southeastern portion of the state will collapse, as will New Mexico's economy.
- What is the potential fiscal risk to the state of the chemicals and reagents GRT deduction? Mr. Clark said that the deduction is not separately reported, so it is difficult to get an exact figure. However, he said that \$150 million in denied deductions is currently under protest. That deduction appears to be being claimed in a new way, which could explain why claims are being denied and subsequently protested.
- Many oil wells have been drilled but not completed. How does that affect GRT revenues? Mr. Clark said that the drilling part of well construction typically accounts for about 50 percent of GRT revenue generated. As those wells are completed, more GRT revenue will be generated, but then the GRT revenue flow mostly stops at that point.
- How will changes to federal tax law affect New Mexico? Ms. Sydow said that the standard deduction for income taxpayers was increased while exemptions were eliminated. This means that taxpayers with many dependents will pay more personal income tax (PIT) to the state.

Permanent Fund Distributions: Who, What, How and Why

Dawn Iglesias, economist, LFC, discussed with the committee the state's permanent funds and the beneficiaries of those funds. The state has two primary permanent funds that provide recurring revenue streams for governmental operations: the Severance Tax Permanent Fund (STPF) and the Land Grant Permanent Fund (LGPF). The STPF consists of transfers made semiannually from the Severance Tax Bonding Fund (Bonding Fund) in excess of amounts needed to pay outstanding severance tax bonds. All severance taxes collected in the state, most of which are attributed to the oil and gas industry, are deposited into the Bonding Fund. The STPF has grown slowly over the past few decades, partially due to fluctuating oil production, but mostly due to limited transfers being made from the Bonding Fund to the STPF. Until recently, 95 percent of the bonding potential of the Bonding Fund was statutorily allotted, and the remaining five percent was often "swept" by the legislature to provide funding for various projects. The STPF has not grown very much in recent years from new deposits and has mostly relied on investment income for growth. However, in 2017, legislation was enacted modifying the calculation for bonding capacity and lowering the statutory bonding allotments to enable more revenue to be transferred to the STPF each year. The STPF currently has about \$5.1 billion

in assets and is expected to provide distributions to the General Fund of \$221 million in fiscal year 2019.

The LGPF is actually several trust funds, each belonging to designated beneficiaries, but is managed and invested by the State Investment Council as a single fund. Revenue generated from the State Land Office from nonrenewable sources on state trust land is deposited into the LGPF account associated with the beneficiary that owns the land. Every year, five percent of the five-year average of the corpus of the fund is distributed to the beneficiaries in the proportion that each fund bears to the total fund. The LGPF is one of the nation's largest sovereign wealth funds and is currently valued at \$17.4 billion.

In 2003, the voters approved an amendment to Article 12, Section 7 of the Constitution of New Mexico to permanently increase the annual distribution from the LGPF from 4.7 percent to five percent and to provide for additional distributions for 11 years, varying between .8 percent and .5 percent. In fiscal year 2017, the additional distributions ceased, and now the annual distribution rate is five percent. Ms. Iglesias noted that if the 2003 amendment had not been adopted, distributions from the LGPF at 4.7 percent would have been greater than the actual distribution level of five percent. The corpus of the fund has been diminished by the added distributions. If the distributions from the fund were to increase beginning in 2020 by an additional one percent, after 26 years the distribution amount generated from a six-percent level would be less than the distribution amount generated from a five-percent level. This demonstrates the importance of continuing to grow the corpus of the trust fund and not distributing too much money from the fund.

Questions and comments from committee members included the following.

- Northern New Mexico College was established by the Constitution of New Mexico in El Rito, but the college currently has almost all of its operations in Espanola. Does that mean the college is unable to receive a distribution from its portion of the LGPF? Ms. Iglesias said that if a LGPF beneficiary changes location, that change does not diminish its status as a beneficiary, according to a 1980 New Mexico Attorney General opinion.
- The money in the LGPF belongs to the beneficiaries and does not belong to the state. Congressional approval for a change in purpose may not be required for the addition of early childhood education as a use of the fund.
- "The most powerful force in the universe is compound interest", an aphorism supposedly attributed to Albert Einstein.

Retiree Solvency Reports

Jan Goodwin, executive director, Educational Retirement Board (ERB), and Wayne Propst, executive director, Public Employees Retirement Association (PERA), discussed with the

committee the solvency of the state's pension programs. Ms. Goodwin began by stating that the ERB is solvent and is on a path toward 100-percent sustainable actuarial funding, which is defined as equating the sum of contributions and investment income to the sum of benefits paid plus expenses. Since 2016, the ERB's funding period to reach a 100-percent funding level has increased to 84 years, mostly due to market downturns that impacted the corpus of the Educational Retirement Fund. The ERB has recently approved a plan to reduce the funding period to 30 years by increasing employer contributions for three years; modifying return-to-work provisions; requiring PERA retirees working for ERB employers to make contributions to the ERB fund; including substitute teachers who work the equivalent of a one-fourth full-time-equivalent position to be considered members of the system; creating a new membership tier for new employees with a reduction to the yearly multiplier for pension benefits; requiring new members to reach the age of 58 to be eligible for full pension benefits; excluding from final average salary calculations large increases in salary for members who make more than \$60,000 annually; and requesting an appropriation of \$248 million to offset both the contribution swaps made in 2010 to 2012 and the delay in increased employer contributions during the recent shortfall in state revenues. The ERB is not requesting an increase in employee contributions because members have shouldered much of the burden from recent ERB pension system changes. ERB members pay higher contribution rates than do PERA members and have a lower service credit multiplier and lower cost-of-living adjustments (COLAs).

Mr. Propst discussed the solvency of the PERA pension system, which has also witnessed a reduction in its funded ratio recently. New projections show the funded ratio of the combined PERA plans at only 74 percent by 2043. State general and municipal fire plans show significant declines in their funded ratio over the next 25 years. The PERA has developed a new solvency plan to be considered by the legislature that would: modify employer and employee contribution rates annually, depending on the actuarial funded ratio of the PERA pension system; suspend COLAs until 2022 and subsequently limit COLAs to members reaching a certain age threshold; and adjusting annual COLAs based on the federal consumer price index and based on the funding level of the pension system, capped at three percent. Employer contribution rate increases would vary from .5 percent above current rates to 1.75 percent, and employee contribution rate increases would vary from .5 percent to 1.5 percent. The PERA board is also requesting a one-time appropriation of \$200 million in order to increase the long-term funded ratio of the pension system by three percent.

Questions and comments from committee members included the following.

- The benefits for state employees amount to 56 percent of their salary. Mr. Propst said that New Mexico's retirement system is one of the most generous defined-benefit pension plans in the nation, but the plan also has high contribution rates.
- Young professionals today do not care if their employer offers a defined-benefit retirement plan. Ms. Goodwin said that national studies have shown that employees

like defined-benefit plans. Most Americans who have defined-contribution plans are not properly prepared for retirement.

- The structure of both retirement system boards needs to be modified to reduce the bias toward particular membership interest groups. Both boards should also be given the statutory authority to make changes to pension plans without the need to enact legislation every time a change needs to be made. Ms. Goodwin said that every board member of the ERB has a fiduciary duty to the health of the retirement system, which necessarily must override any particular interest of a member.

Tax Reform Scenarios

Mr. Clark and Ms. Iglesias discussed with the committee two hypothetical tax reform scenarios that were analyzed using the newly developed tax tool. The scenarios are nearly identical, except that one scenario eliminated the deduction of the purchase of food from gross receipts and the other scenario maintains that deduction. Both scenarios lower the GRT rate somewhat and make changes to many tax programs, resulting in a mostly revenue-neutral impact. Hypothetical changes to the tax system include:

- imposing the GRT or governmental GRT on all hospitals;
- taxing out-of-state online sales at the state rate and then imposing local GRT rates in two years by changing sourcing rules to be mostly destination based;
- aligning the motor vehicle excise tax with the now-lower GRT rate;
- broadening PIT brackets to provide a more gradually progressive tax structure and reducing taxes on low- and moderate-income families;
- adding a new top marginal PIT rate of 5.5 percent, or six percent for the scenario that maintains the food GRT deduction, and eliminating a portion of the capital gains deduction;
- ending the "hold harmless" distributions to local governments that were enacted to offset the impact of the food and medical GRT deductions;
- applying local government GRT rates to new local compensating taxes in order to equalize the rates and provide a new revenue stream for local governments;
- repealing nearly 30 tax expenditures to generate revenue and eliminate redundant and unused tax expenditures;
- increasing gasoline and special fuel excise tax rates for the benefit of state and local roads;

- increasing motor vehicle registration fees and imposing an additional registration fee on hybrid and electric vehicles to offset losses in gasoline tax revenue from the use of vehicles on roads in the state;
- gradually reducing the maximum rate of local government hold harmless GRT increments to one-eighth percent; and
- implementing market-based sourcing to calculate the sales factor for corporations filing corporate income tax returns.

Questions and comments from committee members included the following.

- If the goal of the committee is to reduce the GRT rate, there are only 10 to 15 tax expenditures that would generate enough money to make any difference in the rate. The biggest tax expenditure currently in place is the food deduction, but eliminating that deduction is probably politically impossible.
- The GRT is a very regressive tax. In order to offset revenue losses by lowering the GRT rate, other tax programs will need to be modified. PIT rates are only nominally progressive, and changing the structure and top marginal PIT rate would be a good place for reform.
- Requiring combined reporting by corporations would be an easy revenue generator. Almost all states require combined reporting.

Recess

The committee recessed at 4:51 p.m.

Tuesday, December 18

The committee was reconvened on Tuesday, December 18, 2018, at 9:04 a.m. by Representative Jim R. Trujillo.

Discussion of the HWJTC

Jason Espinoza, KW Consulting, and Tim Nitti, president and CEO, New Mexico Partnership, discussed with the committee proposed changes to the HWJTC for consideration by the legislature. Until fiscal year 2012, the HWJTC was used by expanding companies with high-wage employees in the state to help offset some of the costs of the companies' expansion. The credit cost the state less than \$10 million annually, until some companies took advantage of statutory language to exploit the credit for unintended purposes. The cost of the credit increased each year, capping out at nearly \$63 million in fiscal year 2016. In 2016, the legislature closed the loophole in the credit and made it much more difficult for businesses to qualify for it. Since then, credit claims have plummeted, and there is uncertainty about whether the TRD will grant a

credit. The HWJTC has the potential to become the state's most important job-creation tool because it targets high-skill, high-wage jobs, but it needs some careful modifications to ensure that it works for the intended target.

The New Mexico Partnership, along with the Economic Development Department (EDD), is proposing to change the eligibility for the credit to match the requirements for companies to be eligible for funding from the job training incentive program. This will streamline the application process and properly target the companies that the credit was originally meant to serve. The proposal would also reduce the amount of time that the TRD has to either accept or deny an application; change the clawback provisions to allow for a company to receive the credit even though certain market forces that are out of the company's control make the company temporarily ineligible; reduce the amount of time in which an employer must fill a position from 48 weeks to 44 weeks, which allows for natural employee attrition and replacement; and deny the credit for only the period of time in which an employer does not meet the qualifications for the credit. The proposal would also reduce the amount of credit from 10 percent of an employee's wages to 8.5 percent and would extend the life of the credit to fiscal year 2029.

Questions and comments from committee members included the following.

- The HWJTC has been amended about 10 times since its enactment, either to expand its scope or to fix unintended consequences. It would be better for the state to eliminate all tax expenditures and then tax companies at much lower rates.
- What kinds of business would the credit apply to if the changes are made to the statutory language? Mr. Nitti said that it would apply to office-type situations, software development companies and bank service centers, for example. The credit would not apply to call centers unless those centers paid their employees high wages.
- How much will the changes cost the state? Mr. Clark said that the legislation is not finalized, but he estimated that the changes would not cost the state more than \$10 million annually. The proposal would make it somewhat easier to qualify for the credit. Mr. Nitti said that companies will not apply for the credit unless they have better certainty about receiving it. Current law and practices at the TRD make this credit very risky for businesses considering expansion or relocation to New Mexico.

Imposing a Registration Surcharge on Motor Vehicles to Fund Public Transit

Philo Shelton, president, New Mexico Transit Association, and director, Los Alamos County Public Works; Anthony J. Mortillaro, executive director, North Central Regional Transit District; and J.D. Bullington, lobbyist, presented proposals that would provide a revenue stream for public transit facilities and operations in the state. Mr. Shelton described various public transit systems in the state and how available federal funding is limited by the amount of matching funds that local agencies can provide. Annually, transit agencies experience a \$3

million shortfall. Most transit agencies have access to either a local GRT imposition, property tax revenues or occupancy tax revenues, which revenues can be used to leverage federal funding. But those funding sources are insufficient to meet the actual needs of the agencies. Most transit agencies in the state have unmet operational and capital needs and have expanded-service plans that cannot be implemented because of lack of funding.

Mr. Bullington presented four revenue options for the committee to consider:

- imposing an annual motor vehicle registration surcharge between \$15.00 and \$55.00 per motor vehicle, which would generate \$102 million for the State Road Fund and \$11 million for a newly created State Transit Fund;
- increasing the motor vehicle excise tax and motor registration fees, as proposed by some tax reform scenarios being considered by legislative committees, and diverting a small portion of that new revenue to the State Transit Fund;
- increasing the gasoline tax by six cents per gallon and distributing a portion of the increased revenue to the State Transit Fund and the remainder to the State Road Fund;
or
- increasing the weight distance tax identification permit fee to \$55.00 and dedicating a portion of the fee to the State Transit Fund.

Questions and comments from committee members included the following.

- There are no transit systems in southeastern New Mexico, and some roads in that area have more than 40,000 trucks traveling on them daily. Any tax or fee increase should be used exclusively to improve the state's highways.

Proposed Amendments to the Administrative Hearings Office Act

Representative Harper, Senator Candelaria and Brian VanDenzen, chief hearing officer, AHO, discussed proposed legislation for the committee's consideration that would make changes to the Administrative Hearings Office Act to make the hearings process better. The proposed legislation, which has been developed by accountants and other tax law experts across the state, would:

- implement a quicker resolution process, when possible, and allow more time for the AHO and TRD to resolve taxpayer issues for complex matters;
- allow for informal dispute resolution meetings if the formal hearing process by the AHO is not required;

- require the TRD to specify the issue involved with specificity to the AHO and to the taxpayer; and
- allow for enrolled agents for federal taxpayer purposes to represent taxpayers before the AHO.

Questions and comments from committee members included the following.

- What remedies are there if the TRD and AHO deadlines are not met? Mr. VanDenzen said that, currently, the TRD has 45 days to either resolve a protest or forward the protest to the AHO, and the AHO has 45 days to schedule a hearing. The proposed legislation would allow the TRD 180 days to have an informal resolution, and would give the AHO 90 days to schedule a hearing or set up a hearing process.

The committee unanimously endorsed the proposed legislation.

Creating a GRT Deduction for New Mexico Companies for Transporting Freight Within the State

Senator Munoz discussed proposed legislation that would allow a deduction from gross receipts for New Mexico trucking companies transporting freight within the state. Some large agricultural operations are required to pay the GRT on truckloads of produce being trucked to a warehouse for storage from a farm operation, and are then charged again for transporting the produce to retailers. The proposed legislation would allow these companies to not pay the GRT on the trucking service within the state. The legislation is intended to assist large green chile and pecan growers that need to ship their produce to various locations in the state for warehousing and distribution.

Questions and comments from committee members included the following.

- The proposed legislation might violate the Commerce Clause of the United States Constitution by unfairly giving a tax advantage to New Mexico trucking companies.

The committee, by a voice vote, declined to endorse the proposed legislation.

Applying the Provisions of the Tax Administration Act (TAA) to the Insurance Premium Tax Act

Samuel Peat, tax practitioner liaison, TRD, and Aysha Mora, deputy director, Audit and Compliance Division, TRD, discussed with the committee proposed legislation that would bring the provisions of the Insurance Premium Tax Act, enacted in 2018 but not yet effective, into the purview of the TAA. This would allow all of the procedural provisions of the TAA, including access to the AHO hearing process, to apply to the administration and collection of the premium tax. The legislation would also require the Office of Superintendent of Insurance to share information with the TRD to enable the department to verify and audit taxpayers. Finally, the

distributions of the premium tax and the health insurance premium surtax would be made through the Tax Administration Suspense Fund to the various entities and funds receiving the revenue.

The committee endorsed the proposed legislation unanimously.

Tax Expenditure Reporting

Mr. Clark discussed with the committee proposed legislation that would change certain tax expenditure laws. The legislation would:

- require recipients of state money pursuant to the Local Economic Development Act to report job creation and capital investment information;
- allow certain state professional economists access to taxpayer information provided by the TRD, with the same requirements to maintain confidentiality;
- require the TRD to prepare an annual tax expenditure report;
- require the EDD and the Workforce Solutions Department to provide tax-expenditure-related information to certain state professional economists; and
- appropriate money to allow the LFC to perform dynamic evaluation of tax expenditures and other economic development incentives.

Questions and comments from committee members included the following.

- Would the TRD be providing taxpayer data to the LFC? Mr. Clark said that only professional economists would be allowed to access taxpayer data, and those employees would face the same civil and criminal penalties for improper disclosure of data that TRD employees would face. Currently, the LFC has to request public records through the Inspection of Public Records Act just to get publicly available, non-confidential data.
- The legislature bought a tax tool for \$450,000 but is unable to use the tool effectively because the TRD does not allow access to the data needed to evaluate tax proposals. Mr. Clark said that some tax expenditures require that economists get access to individual taxpayer data in order to correctly evaluate a proposal. Any reporting on that evaluation, however, will need to aggregate data to protect taxpayer confidentiality.

The proposed legislation was endorsed by the committee, with two members opposed to the endorsement.

Adjournment

There being no further business, the committee adjourned for the 2018 interim at 10:44 a.m.

ENDORSED LEGISLATION

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HOUSE BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; APPLYING THE PROVISIONS OF THE TAX
ADMINISTRATION ACT TO THE INSURANCE PREMIUM TAX ACT; AMENDING,
REPEALING AND ENACTING SECTIONS OF THE NMSA.

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

SECTION 1. Section 7-1-2 NMSA 1978 (being Laws 1965,
Chapter 248, Section 2, as amended) is amended to read:

"7-1-2. **APPLICABILITY.**--The Tax Administration Act
applies to and governs:

A. the administration and enforcement of the
following taxes or tax acts as they now exist or may hereafter
be amended:

- (1) Income Tax Act;
- (2) Withholding Tax Act;
- (3) Venture Capital Investment Act;

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- 1 (4) Gross Receipts and Compensating Tax Act
2 and any state gross receipts tax;
- 3 (5) Liquor Excise Tax Act;
- 4 (6) Local Liquor Excise Tax Act;
- 5 (7) any municipal local option gross receipts
6 tax;
- 7 (8) any county local option gross receipts
8 tax;
- 9 (9) Special Fuels Supplier Tax Act;
- 10 (10) Gasoline Tax Act;
- 11 (11) petroleum products loading fee, which fee
12 shall be considered a tax for the purpose of the Tax
13 Administration Act;
- 14 (12) Alternative Fuel Tax Act;
- 15 (13) Cigarette Tax Act;
- 16 (14) Estate Tax Act;
- 17 (15) Railroad Car Company Tax Act;
- 18 (16) Investment Credit Act, rural job tax
19 credit, Laboratory Partnership with Small Business Tax Credit
20 Act, Technology Jobs and Research and Development Tax Credit
21 Act, Film Production Tax Credit Act, Affordable Housing Tax
22 Credit Act and high-wage jobs tax credit;
- 23 (17) Corporate Income and Franchise Tax Act;
- 24 (18) Uniform Division of Income for Tax
25 Purposes Act;

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1 (19) Multistate Tax Compact;
2 (20) Tobacco Products Tax Act; ~~and~~
3 (21) the telecommunications relay service
4 surcharge imposed by Section 63-9F-11 NMSA 1978, which
5 surcharge shall be considered a tax for the purposes of the Tax
6 Administration Act; and

7 (22) the Insurance Premium Tax Act;

8 B. the administration and enforcement of the
9 following taxes, surtaxes, advanced payments or tax acts as
10 they now exist or may hereafter be amended:

11 (1) Resources Excise Tax Act;
12 (2) Severance Tax Act;
13 (3) any severance surtax;
14 (4) Oil and Gas Severance Tax Act;
15 (5) Oil and Gas Conservation Tax Act;
16 (6) Oil and Gas Emergency School Tax Act;
17 (7) Oil and Gas Ad Valorem Production Tax Act;
18 (8) Natural Gas Processors Tax Act;
19 (9) Oil and Gas Production Equipment Ad
20 Valorem Tax Act;

21 (10) Copper Production Ad Valorem Tax Act;

22 (11) any advance payment required to be made
23 by any act specified in this subsection, which advance payment
24 shall be considered a tax for the purposes of the Tax
25 Administration Act;

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1 (12) Enhanced Oil Recovery Act;

2 (13) Natural Gas and Crude Oil Production

3 Incentive Act; and

4 (14) intergovernmental production tax credit
5 and intergovernmental production equipment tax credit;

6 C. the administration and enforcement of the
7 following taxes, surcharges, fees or acts as they now exist or
8 may hereafter be amended:

9 (1) Weight Distance Tax Act;

10 (2) the workers' compensation fee authorized
11 by Section 52-5-19 NMSA 1978, which fee shall be considered a
12 tax for purposes of the Tax Administration Act;

13 (3) Uniform Unclaimed Property Act (1995);

14 (4) 911 emergency surcharge and the network
15 and database surcharge, which surcharges shall be considered
16 taxes for purposes of the Tax Administration Act;

17 (5) the solid waste assessment fee authorized
18 by the Solid Waste Act, which fee shall be considered a tax for
19 purposes of the Tax Administration Act;

20 (6) the water conservation fee imposed by
21 Section 74-1-13 NMSA 1978, which fee shall be considered a tax
22 for the purposes of the Tax Administration Act; and

23 (7) the gaming tax imposed pursuant to the
24 Gaming Control Act; and

25 D. the administration and enforcement of all other

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1 laws, with respect to which the department is charged with
2 responsibilities pursuant to the Tax Administration Act, but
3 only to the extent that the other laws do not conflict with the
4 Tax Administration Act."

5 SECTION 2. A new section of the Tax Administration Act is
6 enacted to read:

7 "[NEW MATERIAL] DISTRIBUTION--PREMIUM TAX.--

8 A. A distribution pursuant to Section 7-1-6.1 NMSA
9 1978 shall be made to the law enforcement protection fund in an
10 amount equal to ten percent of the net receipts attributable to
11 the premium tax from life, general casualty and title insurance
12 business.

13 B. A distribution pursuant to Section 7-1-6.1 NMSA
14 1978 shall be made to the fire protection fund of the net
15 receipts attributable to the premium tax derived from property
16 and vehicle insurance business."

17 SECTION 3. A new section of the New Mexico Insurance Code
18 is enacted to read:

19 "[NEW MATERIAL] SUPERINTENDENT SHALL PROVIDE INFORMATION
20 TO THE TAXATION AND REVENUE DEPARTMENT NECESSARY TO ADMINISTER
21 THE INSURANCE PREMIUM TAX ACT.--The superintendent shall
22 provide to the taxation and revenue department information
23 regarding an insurer or plan subject to the Insurance Premium
24 Tax Act that is necessary to that department to administer the
25 provisions of the Insurance Premium Tax Act."

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SECTION 4. REPEAL.--Sections 7-40-8 and 7-40-9 NMSA 1978
(being Laws 2018, Chapter 57, Sections 8 and 9) are repealed.

SECTION 5. EFFECTIVE DATE.--The effective date of the
provisions of Sections 1 through 3 of this act is January 1,
2020.

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SENATE BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAX ADMINISTRATION; MODIFYING TERMS GOVERNING TAX-RELATED PROTESTS AND PROCEEDINGS AND THE ADMINISTRATIVE HEARINGS OFFICE.

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

SECTION 1. Section 7-1-16 NMSA 1978 (being Laws 1965, Chapter 248, Section 19, as amended) is amended to read:

"7-1-16. DELINQUENT TAXPAYER.--

A. Except as provided in Subsection D of this section, ~~[any]~~ a taxpayer to whom taxes have been assessed as provided ~~[in]~~ by Section 7-1-17 NMSA 1978 or upon whom demand for payment has been made as provided ~~[in]~~ by Section 7-1-63 NMSA 1978 who does not ~~[within ninety days after the date of assessment or demand for payment]~~ timely protest the assessment or demand for payment as provided by Section

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1 7-1-24 NMSA 1978 or furnish security for payment as provided by
2 Section 7-1-54 NMSA 1978 [~~becomes~~] is a delinquent taxpayer and
3 remains such until:

4 (1) payment of the total amount of all such
5 taxes is made;

6 (2) security is furnished for payment; or

7 (3) no part of the assessment remains
8 unabated.

9 B. [~~Any~~] A taxpayer who fails to provide security
10 as required by Subsection D of Section 7-1-54 NMSA 1978 [~~shall~~
11 ~~be deemed to be~~] is a delinquent taxpayer.

12 C. A taxpayer is a delinquent taxpayer if [~~a~~] the
13 taxpayer files a protest as provided [~~in~~] by Section 7-1-24
14 NMSA 1978 [~~the taxpayer nevertheless becomes a delinquent~~
15 ~~taxpayer upon failure of the taxpayer to appear~~] and fails, in
16 person or by authorized representative, to appear at the
17 hearing set or [~~upon failure~~] fails to perfect an appeal from
18 [~~any~~] a decision or part [~~thereof~~] of a decision adverse to the
19 taxpayer to the next higher appellate level, as provided in
20 that section, unless the taxpayer makes payment of the total
21 amount of all taxes assessed and remaining unabated or
22 furnishes security for payment.

23 D. A taxpayer [~~does~~] is not [~~become~~] a delinquent
24 taxpayer if the taxpayer has been issued an assessment as a
25 result of a managed audit but is still within the allowed time

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1 period to pay the tax due as specified in Paragraph (4) of
2 Subsection A of Section 7-1-67 NMSA 1978."

3 SECTION 2. Section 7-1-17 NMSA 1978 (being Laws 1965,
4 Chapter 248, Section 20, as amended) is amended to read:

5 "7-1-17. ASSESSMENT OF TAX--NOTICE--PRESUMPTION OF
6 CORRECTNESS.--

7 A. If the secretary or the secretary's delegate
8 determines that a taxpayer is liable for taxes in excess of
9 twenty-five dollars (\$25.00) that are due and that have not
10 been previously assessed to the taxpayer, the secretary or the
11 secretary's delegate shall promptly assess the amount thereof
12 to the taxpayer.

13 [~~B. Assessments of tax are~~] Such an assessment is
14 effective when:

15 (1) [~~when a return of~~] a taxpayer [~~is received~~
16 ~~by~~] files a return with the department showing a liability for
17 taxes;

18 (2) [~~when a document denominated "notice of~~
19 ~~assessment of taxes", issued in the name of the secretary, is~~
20 ~~mailed or delivered in person~~] the department, by certified
21 United States mail, mails to the taxpayer against whom the
22 liability for tax is asserted [~~stating the nature and amount of~~
23 ~~the taxes assertedly owed by the taxpayer to the state,~~
24 ~~demanding of the taxpayer the immediate~~] a document titled
25 "notice of assessment of taxes" and a demand for payment [~~of~~

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1 ~~the taxes and briefly informing the taxpayer of the remedies~~
2 ~~available to the taxpayer]; or~~

3 (3) ~~[when]~~ an effective jeopardy assessment is
4 made as provided in the Tax Administration Act.

5 B. In making a notice of assessment of taxes and
6 demand for payment under Paragraphs (2) and (3) of Subsection A
7 of this section, the department shall:

8 (1) issue the notice and demand in the name of
9 the secretary to the taxpayer;

10 (2) state the type and amount of taxes the
11 department asserts are owed by the taxpayer;

12 (3) demand that the taxpayer immediately pay
13 the taxes;

14 (4) briefly inform the taxpayer of remedies
15 available to the taxpayer; and

16 (5) state the grounds for assessments.

17 C. If, within twenty-five days after the department
18 sends a notice of assessment of taxes and demand for payment
19 under this section, a taxpayer fails to accept delivery of the
20 mailing, a duplicate notice sent by first-class United States
21 mail to the taxpayer's last known address constitutes
22 sufficient notice to the taxpayer of the assessment.

23 [~~G.—Any~~] D. An assessment of taxes or demand for
24 payment made by the department is presumed to be correct.

25 [~~D.—When taxes have been assessed to any taxpayer~~

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1 ~~and remain unpaid]~~ E. The secretary or the secretary's
2 delegate may demand payment of unpaid taxes assessed to a
3 taxpayer at any time except as provided otherwise by Section
4 7-1-19 NMSA 1978."

5 SECTION 3. Section 7-1-23 NMSA 1978 (being Laws 1965,
6 Chapter 248, Section 25, as amended) is amended to read:

7 "7-1-23. DISPUTING LIABILITIES--ELECTION OF REMEDIES.--
8 [~~Any~~] A taxpayer [~~must elect to~~] may dispute the taxpayer's
9 liability for [~~the payment of~~] taxes [~~either~~] only by
10 protesting the assessment [~~thereof~~] of taxes as provided in
11 Section 7-1-24 NMSA 1978 without making payment [~~of the~~
12 ~~disputed tax liability~~] or by claiming a refund [~~thereof~~] as
13 provided in Section 7-1-26 NMSA 1978 after making payment of
14 the [~~disputed tax liability~~] taxes the department asserts are
15 owed. The pursuit of one of the two remedies [~~described~~
16 ~~herein~~] constitutes an unconditional waiver of the right to
17 pursue the other."

18 SECTION 4. Section 7-1-24 NMSA 1978 (being Laws 1965,
19 Chapter 248, Section 26, as amended) is amended to read:

20 "7-1-24. DISPUTING LIABILITIES--ADMINISTRATIVE PROTEST.--

21 A. A taxpayer may dispute:

22 (1) the assessment to the taxpayer of any
23 amount of tax;

24 (2) the application to the taxpayer of any
25 provision of the Tax Administration Act except the issuance of

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1 a subpoena or summons; or

2 (3) the denial of or failure either to allow
3 or to deny a:

4 (a) tax credit [or rebate] application
5 or claim;

6 (b) rebate; or

7 ~~[(b)]~~ (c) claim for refund made in
8 accordance with Section 7-1-26 NMSA 1978.

9 B. The taxpayer may dispute a matter described in
10 Subsection A of this section by filing with the secretary a
11 written protest ~~[Every protest shall identify]~~ that:

12 (1) identifies the taxpayer and the tax
13 credit, rebate, property or provision of the Tax Administration
14 Act involved; ~~[and state]~~

15 (2) states the grounds ~~[for the taxpayer's~~
16 ~~protest and the affirmative relief requested. The statement of~~
17 ~~grounds for protest shall specify individual grounds upon]~~ on
18 which the protest is based and summarizes evidence supporting
19 each ground asserted; ~~[provided that the]~~ and

20 (3) states the affirmative relief requested.

21 C. A taxpayer may supplement [the] a statement made
22 by the taxpayer in accordance with Paragraphs (2) and (3) of
23 Subsection B of this section at any time prior to ten days
24 before the hearing conducted on the protest ~~[pursuant to the~~
25 ~~provisions of]~~ in accordance with the Administrative Hearings

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1 Office Act or, if a scheduling order has been issued, in
2 accordance with the scheduling order. The secretary may, in
3 appropriate cases, provide for an informal conference before a
4 hearing of the protest is set by the administrative hearings
5 office or before acting on a claim for refund.

6 ~~[G.]~~ D. In the case of an assessment of tax by the
7 department, a taxpayer may file a protest ~~[may be filed]~~ of the
8 assessment:

9 (1) without making payment of the amount
10 assessed ~~[provided that, if only a portion of the assessment is~~
11 ~~in dispute, any unprotested amounts of tax, interest or penalty~~
12 ~~shall be paid, or, if applicable, an installment agreement~~
13 ~~pursuant to Section 7-1-21 NMSA 1978 shall be entered into for~~
14 ~~the unprotested amounts, on or before the due date for the~~
15 ~~protest.~~

16 ~~D. A protest by a taxpayer shall be filed]; and~~

17 (2) within ninety days ~~[of]~~ after:

18 (a) the date of the mailing to ~~[or~~
19 ~~service upon]~~ the taxpayer by the department of the notice of
20 assessment ~~[or]~~ and demand for payment as provided in Paragraph
21 (2) of Subsection A or in Subsection E of Section 7-1-17 NMSA
22 1978;

23 (b) the mailing of the other peremptory
24 notice or demand ~~[the date of mailing or filing a return];~~

25 (c) the date of the application to the

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1 taxpayer of the applicable provision of the Tax Administration
2 Act; or

3 (d) the date of denial of a claim
4 pursuant to Section 7-1-26 NMSA 1978 or the last date upon
5 which the department was required to take action on the claim
6 but failed to take action.

7 E. If a taxpayer fails to timely protest ~~[to a~~
8 ~~notice of]~~ an assessment ~~[is not filed within the time~~
9 ~~required]~~ of tax, penalty or interest:

10 (1) the amount of tax ~~[determined to be due]~~
11 assessed and not protested becomes final;

12 (2) the taxpayer is deemed to have waived ~~[and~~
13 ~~abandoned]~~ the right to ~~[question the amount of tax determined~~
14 ~~to be due]~~ protest the assessment, unless the taxpayer pays the
15 tax and claims a refund of the tax pursuant to Section
16 7-1-26 NMSA 1978; and

17 (3) the secretary may proceed to enforce
18 collection of ~~[any]~~ the tax if the taxpayer is delinquent
19 ~~[within the meaning of]~~ as defined by Section 7-1-16 NMSA 1978.

20 ~~[F. The fact that the department did not mail the~~
21 ~~assessment or other peremptory notice or demand by certified or~~
22 ~~registered mail or otherwise demand and receive acknowledgment~~
23 ~~of receipt by the taxpayer shall not be deemed to demonstrate~~
24 ~~the taxpayer's inability to protest within the required time.~~

25 ~~G. No proceedings]~~ F. A proceeding other than

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1 ~~[those]~~ one to enforce collection of an amount assessed as tax
2 and to protect the interest of the state by injunction, as
3 provided ~~[in]~~ by Sections 7-1-31, 7-1-33, 7-1-34, 7-1-40,
4 7-1-53, 7-1-56 and 7-1-58 NMSA 1978, ~~[are]~~ is not stayed by
5 timely filing of a protest ~~[pursuant to the provisions of]~~ in
6 accordance with this section.

7 ~~[H.]~~ G. Nothing in this section shall be construed
8 to authorize a criminal proceeding or to authorize an
9 administrative protest of the issuance of a subpoena or
10 summons."

11 SECTION 5. Section 7-1-26 NMSA 1978 (being Laws 1965,
12 Chapter 248, Section 28, as amended) is amended to read:

13 "7-1-26. DISPUTING LIABILITIES--CLAIM FOR CREDIT, REBATE
14 OR REFUND.--

15 A. A person who believes that an amount of tax has
16 been paid by or withheld from that person in excess of that for
17 which the person was liable, who has been denied ~~[any]~~ a credit
18 or rebate claimed or who claims a prior right to property in
19 the possession of the department pursuant to a levy made under
20 authority of Sections 7-1-31 through 7-1-34 NMSA 1978 may claim
21 a refund by directing to the secretary, within the time
22 ~~[limited by the provisions of]~~ limitations provided by
23 Subsections E and F ~~[and G]~~ of this section, a written claim
24 for refund ~~[At the time the written claim is submitted]~~ that,
25 except as provided in Subsection ~~[K]~~ J of this section, [~~a~~

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1 ~~refund claim shall include~~ includes:

2 (1) the taxpayer's name, address and
3 identification number;

4 (2) the type of tax for which a refund is
5 being claimed, the credit or rebate denied or the property
6 levied upon;

7 (3) the sum of money or other property being
8 claimed;

9 (4) with respect to a refund, the period for
10 which overpayment was made;

11 (5) a brief statement of the facts and the law
12 on which the claim is based, which may be referred to as the
13 "basis for the refund" ~~[which shall include documentation that~~
14 ~~substantiates the written claim and supports the taxpayer's~~
15 ~~basis for the refund]~~; and

16 (6) if applicable, a copy of an amended return
17 for each tax period for which the refund is claimed.

18 B. A claim for refund that meets the requirements
19 of Subsection A of this section ~~[shall be]~~ and that is filed
20 within the time limitations provided by Subsections E and F of
21 this section is deemed to be properly before the department for
22 consideration, regardless of whether the department requests
23 additional documentation after receipt of the claim for refund.
24 ~~[provided that the claim for refund is filed within the time~~
25 ~~limitations provided in Subsections F and G of this section.~~

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1 ~~C. If the department requests additional relevant~~
2 ~~documentation from a taxpayer who has submitted a claim for~~
3 ~~refund, the claim for refund will not be considered complete~~
4 ~~until the taxpayer provides the requested documentation. The~~
5 ~~provisions of Paragraph (2) of Subsection D of this section and~~
6 ~~of Section 7-1-68 NMSA 1978 do not apply until a refund claim~~
7 ~~is complete.~~

8 ~~D.]~~ C. The secretary or the secretary's delegate
9 may allow the claim in whole or in part or may deny the claim.
10 If the:

11 (1) claim is denied in whole or in part in
12 writing, ~~[no]~~ the person shall not refile the denied claim,
13 ~~[may be refiled with respect to that which was denied]~~ but the
14 person, within ninety days after either the mailing or delivery
15 of the denial of all or any part of the claim, may elect to
16 pursue only one ~~[but not more than one]~~ of the remedies
17 provided in Subsection ~~[E]~~ D of this section; and

18 (2) department has neither granted nor denied
19 any portion of a complete claim for refund within one hundred
20 eighty days ~~[of the date]~~ after the claim was mailed or
21 otherwise delivered to the department, the person may elect to
22 treat the claim as denied and elect to pursue one ~~[but not more~~
23 ~~than one]~~ of the remedies provided in Subsection D of this
24 section.

25 ~~[E.]~~ D. A person may elect to pursue ~~[no more than]~~

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1 only one of the remedies provided in [~~Paragraphs (1) and (2)~~
2 ~~of~~] this subsection. A person who timely pursues more than one
3 remedy [~~shall be~~] is deemed to have elected the first [~~remedy~~
4 ~~invoked~~]. The person may:

5 (1) direct to the secretary, pursuant to the
6 provisions of Section 7-1-24 NMSA 1978, a written protest that
7 [~~shall set~~] sets forth:

8 (a) the circumstances of: 1) an alleged
9 overpayment; 2) a denied credit; 3) a denied rebate; or 4) a
10 denial of a prior right to property levied upon by the
11 department;

12 (b) an allegation that, because of that
13 overpayment or denial, the state is indebted to the taxpayer
14 for a specified amount, including any allowed interest, or for
15 the property;

16 (c) [~~demanding~~] a demand for the refund
17 to the taxpayer of that amount or that property; and

18 (d) [~~reciting~~] a recitation of the facts
19 of the claim for refund; or

20 (2) commence a civil action in the district
21 court for Santa Fe county by filing a complaint setting forth
22 the circumstance of the claimed overpayment, denied credit or
23 rebate or denial of a prior right to property levied upon by
24 the department alleging that on account thereof the state is
25 indebted to the plaintiff in the amount or property stated,

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1 together with any interest allowable, demanding the refund to
2 the plaintiff of that amount or property and reciting the facts
3 of the claim for refund. The plaintiff or the secretary may
4 appeal from any final decision or order of the district court
5 to the court of appeals.

6 ~~[F-]~~ E. Except as otherwise provided in Subsection
7 ~~[G]~~ F of this section, ~~[no]~~ a credit or refund of any amount
8 may be allowed or made to ~~[any]~~ a person ~~[unless as the result~~
9 ~~of a claim made by that person as provided in this section]:~~

10 (1) only within three years ~~[of]~~ after the end
11 of the calendar year in which:

12 (a) the payment was originally due or
13 the overpayment resulted from an assessment by the department
14 ~~[pursuant to]~~ as provided in Section 7-1-17 NMSA 1978,
15 whichever is later;

16 (b) the final determination of value
17 occurs with respect to any overpayment that resulted from a
18 disapproval by any agency of the United States or the state of
19 New Mexico or any court of increase in value of a product
20 subject to taxation under the Oil and Gas Severance Tax Act,
21 the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency
22 School Tax Act, the Oil and Gas Ad Valorem Production Tax Act
23 or the Natural Gas Processors Tax Act;

24 (c) property was levied upon ~~[pursuant~~
25 ~~to the provisions of]~~ as provided in the Tax Administration

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1 Act; or

2 (d) an overpayment of New Mexico tax
3 resulted from: 1) an internal revenue service audit adjustment
4 or a federal refund paid due to an adjustment of an audit by
5 the internal revenue service or an amended federal return; or
6 2) ~~[making a change]~~ the amendment to a federal return for
7 which federal approval is required by the Internal Revenue
8 Code;

9 (2) ~~[when an amount]~~ in the case of a denial
10 of a claim for credit under ~~[the provisions of]~~ the Investment
11 Credit Act, Laboratory Partnership with Small Business Tax
12 Credit Act or Technology Jobs and Research and Development Tax
13 Credit Act or for the rural job tax credit ~~[pursuant to]~~
14 provided by Section 7-2E-1.1 NMSA 1978 or similar credit, ~~[has~~
15 ~~been denied, the taxpayer may claim a refund of the credit no~~
16 ~~later than]~~ only within one year after the date of the denial;

17 (3) ~~[when]~~ in the case of a taxpayer under
18 audit by the department who has signed a waiver of the
19 limitation on assessments on or after July 1, 1993 ~~[pursuant~~
20 ~~to]~~ under Subsection F of Section 7-1-18 NMSA 1978, ~~[the~~
21 ~~taxpayer may file a claim]~~ only for a refund of the same tax
22 paid for the same period for which the waiver was given, and
23 only until a date one year after the later of the date of the
24 mailing of an assessment issued pursuant to the audit, the date
25 of the mailing of final audit findings to the taxpayer or the

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1 date a proceeding is begun in court by the department with
2 respect to the same tax and the same period;

3 (4) [~~if~~] in the case of a payment of an amount
4 of tax [~~was~~] not made within three years of the end of the
5 calendar year in which the original due date of the tax or date
6 of the assessment of the department occurred, only for a claim
7 for refund of that amount of tax [~~can be made~~] and only within
8 one year of the date on which the tax was paid; or

9 (5) [~~when~~] in the case of a taxpayer who has
10 been assessed a tax on or after July 1, 1993 under Subsection
11 B, C or D of Section 7-1-18 NMSA 1978 and [~~when the~~] an
12 assessment that applies to a period ending at least three years
13 prior to the beginning of the year in which the assessment was
14 made, [~~the taxpayer may claim~~] only for a refund for the same
15 tax for the period of the assessment or for any period
16 following that period within one year of the date of the
17 assessment unless a longer period for claiming a refund is
18 provided in this section.

19 [~~G. No~~] F. The department shall not allow or make
20 a credit or refund [~~shall be allowed or made~~] to [~~any~~] a person
21 claiming a refund of gasoline tax under Section 7-13-11 NMSA
22 1978 unless:

23 (1) notice of the destruction of the gasoline
24 was given to the department within thirty days of the actual
25 destruction; [~~and~~]

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1 (2) the claim for refund is made within six
2 months of the date of destruction; ~~[No credit or refund shall~~
3 ~~be allowed or made to any person claiming a refund of gasoline~~
4 ~~tax under Section 7-13-17 NMSA 1978 unless]~~

5 (3) the refund is claimed within six months of
6 the date of purchase of the gasoline; and

7 (4) the gasoline has been used at the time the
8 claim for refund is made.

9 ~~[H.]~~ G. If, as a result of an audit by the
10 department or a managed audit covering multiple periods, an
11 overpayment of tax is found in any period under the audit and
12 if the taxpayer files a claim for refund for the overpayments
13 identified in the audit, that overpayment may be credited
14 against an underpayment of the same tax found in another period
15 under audit pursuant to Section 7-1-29 NMSA 1978. ~~[provided~~
16 ~~that the taxpayer files a claim for refund for the overpayments~~
17 ~~identified in the audit~~

18 ~~I. Any]~~ H. A refund of tax paid under any tax or
19 tax act administered under Subsection B of Section 7-1-2 NMSA
20 1978 may be made, at the discretion of the department, in the
21 form of credit against future tax payments if future tax
22 liabilities in an amount at least equal to the credit amount
23 reasonably may be expected to become due.

24 ~~[J.]~~ I. For the purposes of this section, "oil and
25 gas tax return" means a return reporting tax due with respect

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1 to oil, natural gas, liquid hydrocarbons, carbon dioxide,
2 helium or nonhydrocarbon gas pursuant to the Oil and Gas
3 Severance Tax Act, the Oil and Gas Conservation Tax Act, the
4 Oil and Gas Emergency School Tax Act, the Oil and Gas Ad
5 Valorem Production Tax Act, the Natural Gas Processors Tax Act
6 or the Oil and Gas Production Equipment Ad Valorem Tax Act.

7 ~~[K-]~~ J. The filing of a fully completed original
8 income tax return, corporate income tax return, corporate
9 income and franchise tax return, estate tax return or special
10 fuel excise tax return that shows a balance due the taxpayer or
11 a fully completed amended income tax return, an amended
12 corporate income tax return, an amended corporate income and
13 franchise tax return, an amended estate tax return, an amended
14 special fuel excise tax return or an amended oil and gas tax
15 return that shows a lesser tax liability than the original
16 return constitutes the filing of a claim for refund for the
17 difference in tax due shown on the original and amended
18 returns."

19 **SECTION 6.** Section 7-1-29 NMSA 1978 (being Laws 1965,
20 Chapter 248, Section 31, as amended) is amended to read:

21 "7-1-29. **AUTHORITY TO MAKE REFUNDS OR CREDITS.--**

22 A. In response to a claim for refund, credit or
23 rebate made as provided in Section 7-1-26 NMSA 1978, but before
24 a court acquires jurisdiction of the matter, the secretary or
25 the secretary's delegate may authorize payment to a person in

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1 the amount of the credit or rebate claimed or refund an
2 overpayment of tax determined by the secretary or the
3 secretary's delegate to have been erroneously made by the
4 person, together with allowable interest. A payment of a
5 credit rebate claimed or a refund of tax and interest
6 erroneously paid amounting to twenty thousand dollars (\$20,000)
7 or more shall be made with the prior approval of the attorney
8 general, except that the secretary or the secretary's delegate
9 may make refunds with respect to the Oil and Gas Severance Tax
10 Act, the Oil and Gas Conservation Tax Act, the Oil and Gas
11 Emergency School Tax Act, the Oil and Gas Ad Valorem Production
12 Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas
13 Production Equipment Ad Valorem Tax Act, Section 7-13-17 NMSA
14 1978 and the Cigarette Tax Act without the prior approval of
15 the attorney general regardless of the amount.

16 B. Pursuant to the final order of the district
17 court, the court of appeals, the supreme court of New Mexico or
18 a federal court, from which order, appeal or review is not
19 successfully taken, adjudging that a person has properly
20 claimed a credit or rebate or made an overpayment of tax, the
21 secretary shall authorize the payment to the person of the
22 amount thereof.

23 C. In the discretion of the secretary, any amount
24 of credit or rebate to be paid or tax to be refunded may be
25 offset against any amount of tax for which the person due to

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1 receive the credit, rebate payment or refund is liable. The
2 secretary or the secretary's delegate shall give notice to the
3 taxpayer that the credit, rebate payment or refund will be made
4 in this manner, and the taxpayer shall be entitled to interest
5 pursuant to Section 7-1-68 NMSA 1978 until the tax liability is
6 credited with the credit, rebate or refund amount.

7 D. In an audit by the department or a managed audit
8 covering multiple reporting periods in which both underpayments
9 and overpayments of a tax have been made in different reporting
10 periods, the department shall credit the tax overpayments
11 against the underpayments, provided that the taxpayer files a
12 claim for refund of the overpayments. An overpayment shall be
13 applied as a credit first to the earliest underpayment and then
14 to succeeding underpayments. An underpayment of tax to which
15 an overpayment is credited pursuant to this section shall be
16 deemed paid in the period in which the overpayment was made or
17 the period to which the overpayment was credited against an
18 underpayment, whichever is later. If the overpayments credited
19 pursuant to this section exceed the underpayments of a tax, the
20 amount of the net overpayment for the periods covered in the
21 audit shall be refunded to the taxpayer.

22 E. When a taxpayer makes a payment identified to a
23 particular return or assessment, and the department determines
24 that the payment exceeds the amount due pursuant to that return
25 or assessment, the secretary may apply the excess to the

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1 taxpayer's other liabilities pursuant to the tax acts to which
2 the return or assessment applies, without requiring the
3 taxpayer to file a claim for a refund. The liability to which
4 an overpayment is applied pursuant to this section shall be
5 deemed paid in the period in which the overpayment was made or
6 the period to which the overpayment was applied, whichever is
7 later.

8 F. If the department determines, upon review of an
9 original or amended income tax return, corporate income and
10 franchise tax return, estate tax return, special fuels excise
11 tax return or oil and gas tax return, that there has been an
12 overpayment of tax for the taxable period to which the return
13 or amended return relates in excess of the amount due to be
14 refunded to the taxpayer [~~pursuant to the provisions of~~] under
15 Subsection [~~K~~] J of Section 7-1-26 NMSA 1978, the department
16 may refund that excess amount to the taxpayer without requiring
17 the taxpayer to file a refund claim.

18 G. Records of refunds and credits made in excess of
19 ten thousand dollars (\$10,000) shall be available for
20 inspection by the public. The department shall keep such
21 records for a minimum of three years from the date of the
22 refund or credit.

23 H. In response to a timely refund claim pursuant to
24 Section 7-1-26 NMSA 1978 and notwithstanding any other
25 provision of the Tax Administration Act, the secretary or the

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1 secretary's delegate may refund or credit a portion of an
2 assessment of tax paid, including applicable penalties and
3 interest representing the amount of tax previously paid by
4 another person on behalf of the taxpayer on the same
5 transaction, provided that the requirements of equitable
6 recoupment are met. For purposes of this subsection, the
7 refund claim may be filed by the taxpayer to whom the
8 assessment was issued or by another person who claims to have
9 previously paid the tax on behalf of the taxpayer. Prior to
10 granting the refund or credit, the secretary may require a
11 waiver of all rights to claim a refund or credit of the tax
12 previously paid by another person paying a tax on behalf of the
13 taxpayer."

14 SECTION 7. Section 7-1-29.1 NMSA 1978 (being Laws 2003,
15 Chapter 398, Section 12, as amended) is amended to read:

16 "7-1-29.1. AWARDING OF COSTS AND FEES.--

17 A. In ~~[any]~~ an administrative proceeding or court
18 proceeding ~~[that is]~~ brought by or against ~~[the]~~ a taxpayer ~~[on~~
19 ~~or after July 1, 2003]~~ and conducted in connection with the
20 determination, collection or refund of ~~[any]~~ a tax or the
21 interest or penalty for a tax governed by ~~[the provisions of]~~
22 the Tax Administration Act, the taxpayer shall be awarded a
23 judgment or a settlement for reasonable administrative costs or
24 reasonable litigation costs incurred in connection with ~~[an~~
25 ~~administrative]~~ the proceeding ~~[with the department or the~~

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1 ~~administrative hearings office or reasonable litigation costs~~
2 ~~incurred in connection with a court proceeding]~~ if the taxpayer
3 is the prevailing party.

4 B. As used in this section:

5 (1) "administrative proceeding" means any
6 procedure or other action before the department or the
7 administrative hearings office;

8 (2) "court proceeding" means any civil action
9 brought in state district court;

10 (3) "reasonable administrative costs" means:

11 (a) any administrative fees or similar
12 charges imposed by the department or the administrative
13 hearings office; and

14 (b) actual charges for: 1) filing fees,
15 court reporter fees, service of process fees and similar
16 expenses; 2) the services of expert witnesses; 3) any study,
17 analysis, report, test or project reasonably necessary for the
18 preparation of the party's case; and 4) fees and costs paid or
19 incurred for the services in connection with the proceeding of
20 attorneys or of certified public accountants who are authorized
21 to practice in the context of an administrative proceeding; and

22 (4) "reasonable litigation costs" means:

23 (a) reasonable court costs; and

24 (b) actual charges for: 1) filing fees,
25 court reporter fees, service of process fees and similar

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1 expenses; 2) the services of expert witnesses; 3) any study,
2 analysis, report, test or project reasonably necessary for the
3 preparation of the party's case; and 4) fees and costs paid or
4 incurred for the services of attorneys in connection with the
5 proceeding.

6 C. For purposes of this section:

7 (1) the taxpayer is the prevailing party if
8 the taxpayer has:

9 (a) substantially prevailed with respect
10 to the amount in controversy; or

11 (b) substantially prevailed with respect
12 to most of the issues involved in the case or the most
13 significant issue or set of issues involved in the case;

14 (2) the taxpayer ~~[shall]~~ is not ~~[be treated~~
15 ~~as]~~ the prevailing party if ~~[prior to July 1, 2015, the~~
16 ~~department establishes or, on or after July 1, 2015]~~ the
17 ~~[hearing officer]~~ administrative hearings office finds that the
18 position of the department in the proceeding was based upon a
19 reasonable application of the law to the facts of the case.
20 For purposes of this paragraph, the position of the department
21 shall be presumed not to be based upon a reasonable application
22 of the law to the facts of the case if:

23 (a) the department did not follow
24 applicable published guidance in the proceeding; or

25 (b) the assessment giving rise to the

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1 proceeding is not supported by substantial evidence determined
2 at the time of the issuance of the assessment;

3 (3) as used in Subparagraph (a) of Paragraph
4 (2) of this subsection, "applicable published guidance" means:

5 (a) department or administrative
6 hearings office regulations, information releases,
7 instructions, notices, technical advice memoranda and
8 announcements; and

9 (b) private letter rulings and letters
10 issued by the department to the taxpayer; and

11 (4) the determination of whether the taxpayer
12 is the prevailing party and the amount of reasonable litigation
13 costs or reasonable administrative costs shall be made by
14 agreement of the parties or:

15 (a) in the case [~~where the final~~
16 ~~determination with respect to the tax, interest or penalty is~~
17 ~~made in~~] of an administrative proceeding, by the hearing
18 officer; or

19 (b) in the case [~~where the final~~
20 ~~determination is made by the~~] of a court proceeding, by the
21 court.

22 D. An order granting or denying in whole or in part
23 an award for:

24 (1) reasonable litigation costs [~~pursuant to~~
25 ~~Subsection A of~~] under this section in a court proceeding may

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1 be incorporated as a part of the court's decision or judgment
2 [~~in the court proceeding~~] and [~~shall be~~] are subject to appeal
3 in the same manner as the decision or judgment [~~A decision or~~
4 ~~order granting or denying in whole or in part an award for~~];
5 and

6 (2) reasonable administrative costs [~~pursuant~~
7 ~~to Subsection A of~~] under this section [~~by a hearing officer~~
8 ~~shall be~~] in an administrative proceeding are reviewable in the
9 same manner as a decision of [~~a hearing officer~~] the
10 administrative hearings office.

11 E. [~~No~~] An agreement for or award of reasonable
12 administrative costs or reasonable litigation costs in any
13 administrative proceeding or court proceeding [~~pursuant to~~
14 ~~Subsection A of~~] under this section shall not exceed the lesser
15 of twenty percent of the amount of the settlement or judgment
16 or [~~fifty thousand dollars (\$50,000). A taxpayer awarded~~
17 ~~administrative litigation costs pursuant to this section may~~
18 ~~not receive an award of attorney fees pursuant to Subsection D~~
19 ~~of Section 7-1-25 NMSA 1978~~] seventy-five thousand dollars
20 (\$75,000).

21 F. The department shall annually report to the
22 legislative finance committee and the revenue stabilization and
23 tax policy committee on the costs it incurs under this
24 section."

25 SECTION 8. Section 7-1-39 NMSA 1978 (being Laws 1965,

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1 Chapter 248, Section 41, as amended) is amended to read:

2 "7-1-39. RELEASE OR EXTINGUISHMENT OF LIEN--LIMITATION ON
3 ACTIONS TO ENFORCE LIEN.--

4 A. When any substantial part of the amount of tax
5 due from a taxpayer is paid, the department shall immediately
6 file, in the same county in which a notice of lien was filed,
7 and in the same records, a document completely or partially
8 releasing the lien. The county clerk to whom such a document
9 is presented shall record it without charge.

10 B. The department may file, in the same county as
11 the notice of lien was filed, a document releasing or partially
12 releasing any lien filed in accordance with Section 7-1-38 NMSA
13 1978 when the filing of the lien was premature or did not
14 follow requirements of law or when release or partial release
15 would facilitate collection of taxes due. The county clerk to
16 whom the document is presented shall record it without charge.

17 C. [~~In all cases when~~] After the filing of a notice
18 of lien for taxes, penalties and interest [~~has been filed~~]
19 under Section 7-1-38 NMSA 1978 and [~~a period of~~] once ten years
20 [~~has~~] have passed from the date of assessment of the last of
21 the assessments of taxes, penalties and interest covered by the
22 lien, [~~was filed~~] as shown on the notice of lien:

23 (1) the liened taxes, penalties and interest
24 [~~for which the lien is claimed shall be~~] are conclusively
25 presumed to have been paid; [~~and~~]

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1 (2) the lien for those taxes is [~~thereby~~]
2 extinguished;

3 (3) no action shall be brought to enforce [~~any~~
4 ~~lien extinguished in accordance with this subsection~~] the lien;
5 and

6 (4) at the request of the liened taxpayer, the
7 department shall immediately file a release of lien in the
8 county in which the notice of lien was filed."

9 SECTION 9. Section 7-1-61 NMSA 1978 (being Laws 1965,
10 Chapter 248, Section 62, as amended) is amended to read:

11 "7-1-61. DUTY OF SUCCESSOR IN BUSINESS.--

12 A. [~~As used in~~] For the purposes of Sections 7-1-61
13 through 7-1-63 NMSA 1978:

14 (1) a person liable for tax transfers a
15 business if that person transfers all or substantially all of
16 the tangible and intangible property used in the operation of
17 that business to another person; and

18 (2) "tax" means the amount of tax due,
19 including penalties and interest, [~~imposed by provisions of the~~
20 ~~taxes or~~] as provided by the tax acts set forth in Subsections
21 A and B of Section 7-1-2 NMSA 1978, except the Income Tax Act.

22 B. The tangible and intangible property used in
23 [~~any~~] a business remains subject to liability for payment of
24 the tax due on account of that business to the extent stated
25 [~~herein~~] in this section, even though the business changes

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1 hands.

2 C. If any person liable for any amount of tax from
3 operating a business transfers that business to a successor,
4 the successor shall place in a trust account sufficient money
5 from the purchase price or other source to cover such amount of
6 tax until the secretary or secretary's delegate issues a
7 certificate stating that no amount is due, or the successor
8 shall pay over the amount due to the department upon proper
9 demand for, or assessment of, that amount due by the
10 secretary."

11 SECTION 10. Section 7-1-63 NMSA 1978 (being Laws 1965,
12 Chapter 248, Section 64, as amended) is amended to read:

13 "7-1-63. ASSESSMENT OF TAX DUE--APPLICATION OF PAYMENT.--

14 A. If, after [~~any~~] a business is transferred to a
15 successor, any tax from operating the business for which the
16 [~~former owner~~] transferor is liable remains due, the successor
17 shall pay the amount due within thirty days after the transfer.
18 If the successor fails to pay within thirty days of the date
19 notice provided for in Section 7-1-62 NMSA 1978 was mailed or
20 if a certificate was not requested, the department shall assess
21 the successor the amount due.

22 B. Upon the payment of the amount due from the
23 amount placed in a trust account as provided by Subsection C of
24 Section 7-1-61 NMSA 1978, the balance, if any, remaining may be
25 released to the [~~former owner~~] transferor or otherwise lawfully

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1 disposed of. The [~~former owner~~] transferor shall be credited
2 with the payment of tax.

3 C. A successor may discharge an assessment made
4 pursuant to this section by paying to the department the full
5 value of the transferred tangible and intangible property. The
6 successor shall remain liable for the amount assessed, however,
7 until the amount is paid if:

8 (1) the business has been transferred to evade
9 or defeat any tax;

10 (2) the transfer of the business amounts to a
11 de facto merger, consolidation or mere continuation of the
12 transferor's business; or

13 (3) the successor has assumed the tax
14 liability."

15 SECTION 11. Section 7-1B-1 NMSA 1978 (being Laws 2015,
16 Chapter 73, Section 1) is amended to read:

17 "7-1B-1. SHORT TITLE.--~~[Sections 1 through 9 of this act]~~
18 Chapter 7, Article 1B NMSA 1978 may be cited as the
19 "Administrative Hearings Office Act"."

20 SECTION 12. Section 7-1B-6 NMSA 1978 (being Laws 2015,
21 Chapter 73, Section 6) is amended to read:

22 "7-1B-6. HEARING OFFICER CODE OF CONDUCT--INDEPENDENCE.--

23 A. The chief hearing officer shall:

24 (1) adopt and promulgate a hearing officer
25 code of conduct; and

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1 (2) [~~periodically~~] annually, evaluate each
2 hearing officer's performance for competency, efficiency and
3 professional demeanor in accord with relevant legal standards
4 and the hearing officer code of conduct, including through the
5 use of a survey of practitioners who appear before the hearing
6 officer.

7 B. The chief hearing officer shall ensure that each
8 hearing officer has decisional independence; however, the chief
9 hearing officer may:

10 (1) consult with a hearing officer about a
11 genuine question of law; and

12 (2) review with a hearing officer any issue on
13 appeal addressed by a court of this state.

14 C. The administrative hearings office shall:

15 (1) hear all tax protests [~~pursuant to the~~
16 ~~provisions of~~] under the Tax Administration Act;

17 (2) hear property tax protests [~~pursuant to~~
18 ~~the provisions of~~] under the Property Tax Code;

19 (3) hear all certificate-denial protests
20 [~~pursuant to the provisions of~~] under Section 13-1-22 NMSA
21 1978;

22 (4) conduct all adjudicatory hearings
23 [~~pursuant to~~] under the Motor Vehicle Code;

24 (5) conduct all driver's license revocation
25 hearings [~~pursuant to the provisions of~~] under the Implied

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1 Consent Act;

2 (6) make and preserve a complete record of all
3 proceedings; and

4 (7) maintain confidentiality regarding
5 taxpayer information as required by ~~[the provisions of]~~ Section
6 7-1-8 NMSA 1978.

7 D. In hearings conducted ~~[pursuant to]~~ in
8 accordance with the Tax Administration Act, Section 13-1-22
9 NMSA 1978 and the Motor Vehicle Code:

10 (1) the Rules of Evidence do not apply. The
11 hearing officer may require reasonable substantiation of
12 statements or records tendered, the accuracy or truth of which
13 is in reasonable doubt, to rule on the admissibility of
14 evidence. A taxpayer or the taxation and revenue department
15 may request a written ruling on a contested question of
16 evidence in a matter in which the taxpayer has filed a written
17 protest and for which that protest is pending. The
18 administrative hearings office shall issue a copy of its
19 written ruling to the ~~[taxation and revenue]~~ department at the
20 time the ruling is issued to the taxpayer;

21 (2) the Rules of Civil Procedure for the
22 District Courts do not apply. The hearing officer shall
23 conduct a hearing to allow the ample and fair presentation of
24 complaints and defenses. The hearing officer shall hear
25 arguments, permit discovery, entertain and dispose of motions,

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1 require written expositions of the case as the circumstances
2 justify and render a decision in accordance with the law and
3 the evidence presented and admitted. A taxpayer or the
4 taxation and revenue department may request a written ruling on
5 a contested question of procedure in a matter in which the
6 taxpayer has filed a written protest and for which that protest
7 is pending. The administrative hearings office shall issue a
8 copy of its written ruling to the [~~taxation and revenue~~]
9 department at the time the ruling is issued to the taxpayer;
10 and

11 (3) the hearing officer may administer oaths
12 and issue subpoenas for the attendance of witnesses and the
13 production of relevant books and papers, and for hearings
14 conducted for a license suspension [~~pursuant to~~] under Section
15 66-5-30 NMSA 1978, the hearing officer may require a
16 reexamination of the licensee."

17 **SECTION 13.** Section 7-1B-8 NMSA 1978 (being Laws 2015,
18 Chapter 73, Section 8) is amended to read:

19 "7-1B-8. TAX PROTESTS--PROCEDURES.--

20 A. Upon timely receipt of a tax protest filed
21 [~~pursuant to~~] in accordance with the provisions of Section
22 7-1-24 NMSA 1978, the taxation and revenue department shall
23 promptly acknowledge the protest by letter to the protesting
24 taxpayer or the taxpayer's representative. If the department
25 determines that the protest [~~is~~] has not been filed in

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1 accordance with ~~[the provisions of]~~ that section [7-1-24 NMSA
2 1978], the department shall inform the taxpayer of the
3 deficiency and provide the taxpayer, within twenty-one days of
4 the taxpayer being informed, the opportunity to correct it.
5 ~~[Within forty-five days after receipt of a protest filed~~
6 ~~pursuant to the provisions of Section 7-1-24 NMSA 1978 that has~~
7 ~~not been resolved, the taxation and revenue department shall~~
8 ~~request from the administrative hearings office a hearing and~~
9 ~~shall send to the office a copy of the protest. The chief~~
10 ~~hearing officer shall promptly designate a hearing officer and~~
11 ~~shall set a date for a hearing to take place within ninety days~~
12 ~~after receipt of a protest filed pursuant to Section 7-1-24~~
13 ~~NMSA 1978.]~~ A determination by the department that a protest
14 has not been filed in accordance with that section may be
15 protested by the taxpayer.

16 B. Prior to the taxation and revenue department
17 requesting a formal hearing, at the taxpayer's written request,
18 the department shall meet with the taxpayer or the taxpayer's
19 representative in an informal conference to attempt in good
20 faith to resolve the disputed issues at protest. The
21 department shall hold the informal conference within sixty days
22 of the date the department received the taxpayer's written
23 request for an informal conference. Within thirty days of the
24 date of the informal conference, the department shall provide a
25 written report to the taxpayer that discusses a response to the

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1 taxpayer's protest and the issues at the informal conference,
2 including a detailed description of the legal and factual bases
3 supporting the department's position beyond an assertion of the
4 presumption of correctness and a summary of the good faith
5 efforts made as part of the informal conference process,
6 including any issues that were resolved and an articulation of
7 the remaining disputed issues at protest. The department shall
8 articulate its position in detail on the disputed matters.

9 C. Within one hundred eighty days after the receipt
10 of a protest filed in accordance with Section 7-1-24 NMSA 1978
11 that has not been resolved, the taxation and revenue department
12 shall request from the administrative hearings office a hearing
13 and shall send to the office a copy of the protest, a detailed
14 description of the legal and factual bases supporting the
15 department's position beyond an assertion of the presumption of
16 correctness and a summary of the good faith efforts made as
17 part of the informal conference process, including any issues
18 that were resolved and an articulation of the remaining
19 disputed issues at protest. The department may amend its
20 detailed statement of position up until ten days before the
21 scheduled hearing or other deadline specified in a controlling
22 scheduling order. The hearing shall be limited to the grounds
23 provided in the taxpayer's protest letter and in the
24 department's statement of position.

25 D. The chief hearing officer shall promptly

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1 designate a hearing officer and shall set a date for a hearing
2 to take place within ninety days of receipt of the protest.
3 The chief hearing officer shall not reassign a hearing officer
4 to a case without giving the department and the taxpayer notice
5 of that reassignment at least fourteen days before the hearing.
6 If the chief hearing officer reassigns a hearing officer to a
7 case, the taxpayer may, within seven days before the hearing,
8 exercise once the peremptory right to disqualify the hearing
9 officer; otherwise, the taxpayer may, at least thirty days
10 before the hearing, exercise the peremptory right to disqualify
11 the hearing officer designated to conduct the hearing.

12 E. The administrative hearings office shall rule on
13 a dispositive motion, including a motion for summary judgment,
14 a motion for partial summary judgment or a motion to dismiss,
15 filed by the department or the taxpayer at least thirty days
16 before the hearing.

17 ~~[B-]~~ F. A taxpayer may appear at the hearing on the
18 taxpayer's own behalf or may be represented by a bona fide
19 employee, an attorney, a certified public accountant, an
20 employee of a law firm or certified public accounting firm
21 whose authorization by the taxpayer to appear is evidenced in
22 writing or ~~[with respect only to tax imposed pursuant to the~~
23 ~~Income Tax Act, a person who is]~~ an enrolled agent ~~[for federal~~
24 ~~income tax purposes]~~. If the taxation and revenue department
25 and the taxpayer agree, the hearing may be conducted via

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1 videoconference. At the beginning of the hearing, the hearing
2 officer shall inform the taxpayer of the taxpayer's right to
3 representation. The taxpayer shall decide which party presents
4 its case first at the hearing and shall provide written notice
5 to the department and the administrative hearings office of the
6 taxpayer's decision no later than fifteen days prior to the
7 hearing. If the taxpayer fails to provide written notice, the
8 taxpayer shall present the taxpayer's case first. A hearing
9 shall ~~not~~ be ~~open~~ closed to the public except upon request
10 of the taxpayer. A hearing officer may postpone or continue a
11 hearing at the hearing officer's discretion. As used in this
12 subsection, "enrolled agent" means a federally licensed tax
13 practitioner with unlimited rights to represent taxpayers
14 before the internal revenue service.

15 ~~[G.]~~ G. Within thirty days after the hearing, the
16 hearing officer shall inform the taxation and revenue
17 department and the taxpayer in writing of the decision and,
18 ~~[pursuant to the provisions of]~~ in accordance with Section
19 7-1-25 NMSA 1978, of the aggrieved party's right to, and the
20 requirements for perfection of, an appeal from the decision to
21 the court of appeals and of the consequences of a failure to
22 appeal. The written decision shall embody:

23 (1) an order granting or denying the relief
24 requested or granting or denying a part of the relief
25 requested, as appropriate; and

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1 (2) findings of fact and law and a thorough
2 discussion of the reasoning used to support the order with
3 citations to the record and applicable law.

4 [~~D~~] H. A taxpayer with two or more protests
5 containing related issues may request that the protests be
6 combined and heard jointly. The hearing officer shall grant
7 the request to combine protests unless it would create an
8 unreasonable burden on the administrative hearings office or
9 the taxation and revenue department.

10 [~~E~~] I. Nothing in this section shall be construed
11 to authorize a criminal proceeding or to authorize an
12 administrative protest of the issuance of a subpoena or
13 summons."

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SENATE BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO ECONOMIC DEVELOPMENT INCENTIVES; REQUIRING
RECIPIENTS OF PUBLIC SUPPORT FROM THE STATE PURSUANT TO THE
LOCAL ECONOMIC DEVELOPMENT ACT TO REPORT JOB CREATION AND
CAPITAL INVESTMENT INFORMATION; AUTHORIZING THE REVEAL OF
TAXPAYER RETURN INFORMATION TO STATE PROFESSIONAL ECONOMISTS
FOR CERTAIN PURPOSES; IMPOSING A PENALTY ON A PERSON THAT
ATTEMPTS TO DIRECT OR COERCE A PERSON TO REVEAL CONFIDENTIAL
TAXPAYER RETURN INFORMATION; REQUIRING THE TAXATION AND REVENUE
DEPARTMENT TO COMPILE AND PRESENT A TAX EXPENDITURE BUDGET TO
THE GOVERNOR AND LEGISLATIVE COMMITTEES; REQUIRING THE ECONOMIC
DEVELOPMENT DEPARTMENT AND THE WORKFORCE SOLUTIONS DEPARTMENT
TO PROVIDE INFORMATION TO STATE PROFESSIONAL ECONOMISTS FOR
PURPOSES OF EVALUATING TAX EXPENDITURES AND OTHER ECONOMIC
DEVELOPMENT INCENTIVES; MAKING AN APPROPRIATION.

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

2 SECTION 1. A new section of the Local Economic
3 Development Act is enacted to read:

4 "[NEW MATERIAL] REPORTING REQUIREMENTS.--

5 A. A qualifying entity that receives public support
6 provided by the state to a local or regional government shall,
7 prior to April 1 of each year for five years following
8 receiving public support, report to the department the number
9 of new full-time economic base jobs created in the previous
10 calendar year, the total annual wages and salaries for those
11 jobs and any capital investments made in the previous calendar
12 year. Prior to August 1 of each year, the department shall
13 compile the annual reports and submit the compilation to the
14 legislative finance committee and the department of finance and
15 administration.

16 B. As used in this section, "new full-time economic
17 base job" means a job:

18 (1) that is primarily performed in New Mexico;

19 (2) that is held by an employee who is hired
20 to work an average of at least thirty-two hours per week for at
21 least forty-eight weeks per year;

22 (3) that is:

23 (a) involved, directly or in a
24 supervisory capacity, with the production of: 1) a service;
25 provided that the majority of the revenue generated from the

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1 service is from sources outside the state; or 2) tangible or
2 intangible personal property for sale; or

3 (b) held by an employee that is employed
4 at a regional, national or international headquarters operation
5 or at an operation that primarily provides services for other
6 operations of the qualifying entity that are located outside
7 the state;

8 (4) that is created as a direct result of the
9 public support provided by the state and that would not have
10 been created in the state but for the public support, as
11 determined by the qualifying entity; and

12 (5) that is not directly involved with natural
13 resources extraction or processing, on-site services where the
14 customer is present for the delivery of the service, retail,
15 construction or agriculture except for value-added processing
16 performed on agricultural products that would then be sold for
17 wholesale or retail consumption."

18 SECTION 2. Section 7-1-8 NMSA 1978 (being Laws 1965,
19 Chapter 248, Section 13, as amended) is amended to read:

20 "7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER
21 INFORMATION.--

22 A. It is unlawful for any person other than the
23 taxpayer to reveal to any other person the taxpayer's return or
24 return information, except as provided in Sections 7-1-8.1
25 through [~~7-1-8.11~~] 7-1-8.12 NMSA 1978.

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1 B. A return or return information revealed [~~under~~]
2 pursuant to Sections 7-1-8.1 through [~~7-1-8.11~~] 7-1-8.12 NMSA
3 1978:

4 (1) may only be revealed to a person
5 specifically authorized to receive the return or return
6 information and the employees, directors, officers and agents
7 of such person whose official duties or duties in the course of
8 their employment require the return or return information and
9 to an employee of the department;

10 (2) may only be revealed for the authorized
11 purpose and only to the extent necessary to perform that
12 authorized purpose;

13 (3) shall at all times be protected from being
14 revealed to an unauthorized person by physical, electronic or
15 any other safeguards specified by directive by the secretary;
16 and

17 (4) shall be returned to the secretary or the
18 secretary's delegate or destroyed as soon as it is no longer
19 required for the authorized purpose.

20 C. If any provision of Sections 7-1-8.1 through
21 [~~7-1-8.11~~] 7-1-8.12 NMSA 1978 requires that a return or return
22 information will only be revealed pursuant to a written
23 agreement between a person and the department, the written
24 agreement shall:

25 (1) list the name and position of any official

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1 or employee of the person to whom a return or return
2 information is authorized to be revealed under the provision;

3 (2) describe the specific purpose for which
4 the return or return information is to be used;

5 (3) describe the procedures and safeguards the
6 person has in place to ensure that the requirements of
7 Subsection B of this section are met; and

8 (4) provide for reimbursement to the
9 department for all costs incurred by the department in
10 supplying the returns or return information to, and
11 administering the agreement with, the person.

12 D. A return or return information that is lawfully
13 made public by an employee of the department or any other
14 person, or that is made public by the taxpayer, is not subject
15 to the provisions of this section once it is made public."

16 SECTION 3. A new Section 7-1-8.12 NMSA 1978 is enacted to
17 read:

18 "7-1-8.12. [NEW MATERIAL] INFORMATION THAT MAY BE
19 REVEALED TO STATE PROFESSIONAL ECONOMISTS OF THE LEGISLATIVE
20 FINANCE COMMITTEE AND THE DEPARTMENT OF FINANCE AND
21 ADMINISTRATION.--

22 A. An employee of the department may reveal to a
23 state professional economist return information for purposes
24 provided in this section.

25 B. Upon written request by a state professional

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1 economist, including by electronic means, the department shall
2 provide return information except that to which access is
3 prohibited by federal law. In cases where access is prohibited
4 by federal law, and upon an additional request by a state
5 professional economist, the department shall provide the
6 requested return information, redacting any prohibited
7 information.

8 C. If the information requested pursuant to
9 Subsection B of this section is available in an electronic
10 format, the information shall be provided in an editable
11 electronic format available for viewing and editing in software
12 available to the state professional economist.

13 D. The department shall provide visible and clearly
14 marked notification of confidential return information provided
15 to a state professional economist pursuant to this section. A
16 state professional economist shall not reveal such return
17 information unless the information is aggregated to at least
18 three businesses.

19 E. A state professional economist is prohibited
20 from requesting or using return information received pursuant
21 to this section for any purpose other than to:

- 22 (1) improve revenue tracking and forecasting;
23 (2) evaluate tax expenditures and economic
24 development incentives for effectiveness and efficiency or to
25 make recommendations regarding the continuance of such

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1 expenditures and incentives; and

2 (3) analyze potential issues of multiple
3 taxpayers' misreporting or underreporting.

4 F. As used in this section, "state professional
5 economist" means a professional economist who is an employee or
6 contractor of the legislative finance committee or the
7 department of finance and administration."

8 SECTION 4. Section 7-1-76 NMSA 1978 (being Laws 1965,
9 Chapter 248, Section 76, as amended) is amended to read:

10 "7-1-76. REVEALING INFORMATION CONCERNING TAXPAYERS--
11 ATTEMPTS TO DIRECT AN AUTHORIZED PERSON TO REVEAL TAXPAYER
12 INFORMATION--PENALTY.--

13 A. A person who reveals to another person any
14 return or return information that is prohibited from being
15 revealed pursuant to Section 7-1-8 NMSA 1978 or who uses a
16 return or return information for any purpose that is not
17 authorized by Sections 7-1-8 through [~~7-1-8.11~~] 7-1-8.12 NMSA
18 1978 is guilty of a misdemeanor and shall, upon conviction
19 thereof, be fined not more than one thousand dollars (\$1,000)
20 or imprisoned up to one year, or both, together with costs of
21 prosecution, and shall not be employed by the state for a
22 period of five years after the date of the conviction.

23 B. If a person who is authorized to receive a
24 return or return information receives a request from another
25 person who is not authorized to receive such information, the

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1 authorized person shall notify the requester in writing that
2 the information cannot be revealed pursuant to Section 7-1-8
3 NMSA 1978. If, after receiving the written notification, the
4 requester attempts to direct or coerce the authorized person to
5 provide the information, the requester is guilty of a
6 misdemeanor and shall, upon conviction thereof, be fined not
7 more than one thousand dollars (\$1,000) or imprisoned up to one
8 year, or both, together with costs of prosecution, and shall
9 not be employed by the state for a period of five years after
10 the date of the conviction."

11 SECTION 5. A new section of the Tax Administration Act is
12 enacted to read:

13 "[NEW MATERIAL] TAX EXPENDITURE BUDGET.--

14 A. No later than October 15 of each year, the
15 secretary shall compile and present a tax expenditure budget to
16 the governor, the revenue stabilization and tax policy
17 committee and the legislative finance committee.

18 B. A tax expenditure budget shall:

19 (1) detail the approximate costs in foregone
20 revenue from each tax expenditure that impacts the general fund
21 from the three years preceding the current fiscal year and the
22 current and upcoming fiscal years;

23 (2) identify each tax expenditure and the
24 expenditure's statutory basis, purpose, year of enactment and
25 date of amendment or repeal, if any; and

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1 (3) include the number of taxpayers that
2 claimed each tax expenditure.

3 C. The department is authorized to request from an
4 executive agency or a local government agency or official,
5 information necessary to complete the tax expenditure budget
6 required by this section. An agency or official shall comply
7 with a request made pursuant to this section by the department
8 as permitted by law.

9 D. As used in this section, "tax expenditure" means
10 a deduction, credit, exemption, exclusion, preferential tax
11 rate, subtraction or allowance that reduces tax liability, as
12 determined by the secretary in consultation with the
13 legislative finance committee and the department of finance and
14 administration."

15 SECTION 6. Section 9-15-10 NMSA 1978 (being Laws 1983,
16 Chapter 297, Section 10, as amended) is amended to read:

17 "9-15-10. ORGANIZATIONAL UNITS OF DEPARTMENT--POWERS AND
18 DUTIES SPECIFIED BY LAW--ACCESS TO INFORMATION.--

19 A. Those organizational units of the department and
20 the officers of those units specified by law shall have all of
21 the powers and duties enumerated in the specific laws involved.
22 However, the carrying out of those powers and duties shall be
23 subject to the direction and supervision of the secretary, and
24 [~~he~~] the secretary shall retain the final decision-making
25 authority and responsibility for the administration of any such

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1 laws as provided in Subsection B of Section 9-15-6 NMSA 1978.
2 The department shall have access to all records, data and
3 information of other state departments, agencies and
4 institutions, including its own organizational units, not
5 specifically held confidential by law. Except as provided in
6 Subsection B of this section, any information obtained by the
7 department that is proprietary technical information or related
8 to the possible relocation or expansion of a business shall be
9 deemed confidential and withheld from inspection pursuant to
10 the Inspection of Public Records Act.

11 B. Upon written request by a state professional
12 economist, including by electronic means, the department shall
13 provide all information obtained by the department that is
14 proprietary technical information or related to an actual or
15 possible relocation or expansion of a business. The state
16 professional economist is prohibited from requesting or using
17 this information for any purpose other than to evaluate tax
18 expenditures and economic development incentives for
19 effectiveness and efficiency or to make recommendations
20 regarding the continuance of such expenditures and incentives.

21 C. The department shall provide visible and clearly
22 marked notification of confidential information revealed
23 pursuant to Subsection B of this section. A state professional
24 economist shall not reveal such confidential information unless
25 the information is aggregated to at least three businesses.

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1 D. As used in this section, "state professional
2 economist" means a professional economist who is an employee or
3 contractor of the legislative finance committee, the department
4 of finance and administration or the taxation and revenue
5 department."

6 SECTION 7. Section 9-26-14 NMSA 1978 (being Laws 2007,
7 Chapter 200, Section 14) is amended to read:

8 "9-26-14. DISCLOSURE OF INFORMATION.--

9 A. To the extent permitted by federal law, upon the
10 written request of a corporation organized pursuant to the
11 Educational Assistance Act, the department shall furnish the
12 last known address and the date of that address of every person
13 certified to the department as being an absent obligor of an
14 educational debt that is due and owed to the corporation or
15 that the corporation has lawfully contracted to collect. The
16 corporation and its officers and employees shall use such
17 information only for the purpose of enforcing the educational
18 debt obligation of such absent obligors and shall not disclose
19 that information or use it for any other purpose.

20 B. To the extent permitted by federal law, upon
21 written request by a state professional economist, including by
22 electronic means, the department shall provide all information
23 related to labor data obtained by the department. The state
24 professional economist is prohibited from requesting or using
25 this information for any purpose other than to evaluate tax

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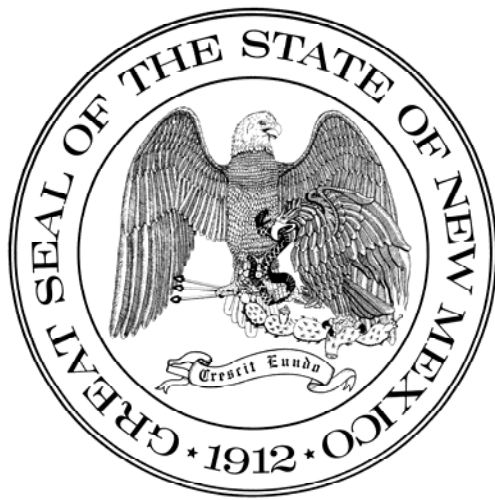
1 expenditures and economic development incentives for
2 effectiveness and efficiency or to make recommendations
3 regarding the continuance of such expenditures and incentives.

4 C. The department shall provide visible and clearly
5 marked notification of confidential information revealed
6 pursuant to Subsection B of this section. A state professional
7 economist shall not reveal such confidential information unless
8 the information is aggregated to at least three businesses.

9 D. As used in this section, "state professional
10 economist" means a professional economist who is an employee or
11 contractor of the legislative finance committee, the department
12 of finance and administration or the taxation and revenue
13 department."

14 **SECTION 8. APPROPRIATION.**--One hundred eighty-eight
15 thousand dollars (\$188,000) is appropriated from the general
16 fund to the legislative finance committee for expenditure in
17 fiscal year 2020 to assist the committee in evaluating tax
18 expenditures and other economic development incentives. Any
19 unexpended or unencumbered balance remaining at the end of
20 fiscal year 2020 shall revert to the general fund.

21 **SECTION 9. EFFECTIVE DATE.**--The effective date of the
22 provisions of this act is July 1, 2019.



LEGISLATIVE COUNCIL SERVICE
SANTA FE, NEW MEXICO