



NEW MEXICO LEGISLATURE

REVENUE STABILIZATION AND TAX POLICY COMMITTEE

**2003
INTERIM REPORT**

Legislative Council Service
411 State Capitol
Santa Fe, New Mexico

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INTRODUCTION

Members of the Revenue Stabilization and Tax Policy Committee during the 2003 interim were:

Members

Sen. John Arthur Smith, Chair
Rep. Donald L. Whitaker, Vice Chair
Rep. Janice E. Arnold-Jones
Sen. Sue Wilson Beffort
Sen. Mark Boitano
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Sen. Joseph A. Fidel
Rep. Roberto "Bobby" J. Gonzales
Rep. George J. Hanosh
Sen. Timothy Z. Jennings
Rep. Ben Lujan
Sen. Roman M. Maes, III
Sen. William E. Sharer
Rep. Daniel P. Silva
Sen. H. Diane Snyder
Rep. Thomas C. Taylor
Rep. James G. Taylor

Designees

Sen. Ben D. Altamirano
Rep. William "Ed" Boykin
Rep. Donald Bratton
Sen. Joseph J. Carraro
Sen. Phil A. Griego
Rep. Irvin Harrison
Rep. Manuel G. Herrera
Sen. Stuart Ingle
Sen. Steve Komadina
Sen. Cisco McSorley
Rep. Andy Nunez
Sen. Leonard Lee Rawson
Rep. Debbie A. Rodella
Sen. Nancy Rodriguez
Rep. Henry Kiki Saavedra
Sen. Bernadette M. Sanchez
Rep. Joe M Stell
Rep. Don Tripp
Rep. Robert White

The 2003 interim marked the first time the committee had designees instead of advisory members. Designees attended meetings only when they were substituting for an absent member.

The Revenue Stabilization and Tax Policy Committee held three meetings in the 2003 interim. This abbreviated schedule was due to the overlap in membership and subject matter between the committee and the Blue Ribbon Tax Reform Commission (BRTRC). The BRTRC was created by statute in the 2003 legislative session. Members were appointed in April and the commission began twice-monthly meetings in May. It completed its work and issued a report in October 2003. A special session of the legislature was also held in October.

The committee's meetings concentrated on the fundamentals of the New Mexico tax system, and to some extent presentations mirrored those presented to the BRTRC. The committee had extensive testimony on the taxation of the extractive industries as compared to other states and on transportation priorities and funding.

At its final meeting, the committee voted to endorse 13 bills that had been presented to it during the interim. A chart with information on the bills and the names of committee members who sponsored the bills on behalf of the committee is included at the end of this report.

**APPROVED 2003
WORK PLAN, MEETING SCHEDULE AND BUDGET
for the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE**

WORK PLAN

The Revenue Stabilization and Tax Policy Committee (RSTPC) 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...".

Work Focus for 2003

Examination of New Mexico's Tax Structure

RSTPC plans to coordinate its agenda with that of the Blue Ribbon Tax Reform Commission, which was created by legislation passed in the 2003 session. The Blue Ribbon Tax Reform Commission is charged with examining New Mexico's tax system and developing recommendations for reform. The commission is to report to the governor and the legislature by September 1, 2003. It is anticipated that a special legislative session will be called by the governor to consider the results of the commission's study.

RSTPC's work focus for this interim will be designed to complement the work of the Blue Ribbon Tax Reform Commission and to prepare for the special legislative session on tax issues. Agendas will focus on an examination of current New Mexico tax structure and tax policy and highlighting areas in which change may be necessary to adapt to economic, demographic and technological trends. This interim will be a continuation of the work of the committee in the previous three interims. Two areas of particular emphasis this interim will be the taxation of extractive industries and fuel and road user taxes and fees.

Monitoring Implementation and Impacts of 2002 New Mexico and Federal Tax Legislation

The committee will follow up on the implementation and fiscal impacts of legislation from the 2002 session dealing with taxation and revenue matters. The committee will also review recently enacted federal taxation changes to assess the impact of these changes on state revenues.

Other Tax and Fiscal Matters

The committee may also:

- review and study local government revenue sources and trends and the balance of taxing authority, revenue sources and expenditures between the state and its local governments;
- monitor severance tax revenues, including revenue and bonding authority estimates, and management of bond appropriations and expenditures;
- review the investment policies and management of state permanent funds, as well as other state funds;
- review effectiveness of existing tax incentives designed to encourage economic development;
- review existing tax laws for technical correction, cleanup or amendment;
- conduct any other study or review of tax administration, tax laws, tax policy, public finance and revenue stabilization issues that the committee deems necessary;
- determine if there are benefits to the state in permitting the Taxation and Revenue Department to implement a process of offer and compromise or settlements of tax disputes that allow the state to receive taxes due and determine changes necessary to New Mexico law or its constitution to implement such a change; and
- review the New Mexico Taxpayer Bill of Rights and its implementation.

MEETING SCHEDULE

In addition to its initial meeting on June 11, 2003, the committee proposes the following meeting dates. All meetings will be held in the State Capitol in Santa Fe.

July 30-31
August 27-28
September 9-10
October 2-3
November 17-18

PROPOSED BUDGET

Committee Per Diem and Mileage:

One-day meeting in Santa Fe (June 11)	\$4,218
Two-day meeting in Santa Fe (July 30-31)	6,828
Two-day meeting in Santa Fe (August 27-28)	6,828
Two-day meeting in Santa Fe (September 9-10)	6,828
Two-day meeting in Santa Fe (October 2-3)	6,828
Two-day meeting in Santa Fe (November 17-18)	<u>6,828</u>

Approved Budget **\$30,000***

*This amount does not include the \$4,811 budget required for additional mileage for designees and possible additional travel day requests.

**TENTATIVE AGENDA
for the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE**

**June 11, 2003
Room 322, State Capitol**

Wednesday, June 11

- 10:00 a.m. CALL TO ORDER
 —Senator John Arthur Smith, Chair
- ADOPTION OF COMMITTEE WORK PLAN AND MEETING SCHEDULE
 —Staff
- 10:45 a.m. PRINCIPLES OF TAXATION
 —Jim Eads, Executive Director, New Mexico Tax Research Institute
- 12:00 noon LUNCH
- 1:30 p.m. OVERVIEW OF NEW MEXICO'S REVENUE SYSTEM
 —James Jimenez, Secretary of Finance and Administration
- 2:30 p.m. NEW MEXICO'S TAX SYSTEM — COMPARISON WITH OTHER STATES
 —Tom Clifford, Chief Economist, Taxation and Revenue Department
- 3:30 p.m. ADJOURNMENT

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

**June 11, 2003
Santa Fe**

On June 11, 2003, the first meeting of the Revenue Stabilization and Tax Policy Committee (RSTPC) for the 2003 interim was held in Room 322 of the State Capitol.

PRESENT

Sen. John Arthur Smith, Chair
Rep. Donald L. Whitaker, Vice Chair
Rep. Janice E. Arnold-Jones
Sen. Sue Wilson Beffort
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Rep. George J. Hanosh
Sen. Timothy Z. Jennings
Rep. Ben Lujan
Sen. Roman M. Maes, III
Sen. William E. Sharer
Rep. Daniel P. Silva
Rep. James G. Taylor

ABSENT

Sen. Mark Boitano
Sen. Joseph A. Fidel
Rep. Roberto "Bobby" J. Gonzales
Sen. H. Diane Snyder
Rep. Thomas C. Taylor

Designees

Rep. William "Ed" Boykin (*designee for Rep. Thomas C. Taylor*)
Rep. Henry Kiki Saavedra (*designee for Rep. Roberto "Bobby" J. Gonzales*)
Rep. Robert White

Staff

Cleo Griffith, Pam Ray, Amy Chavez and Cenissa Martinez

Guests

The guest list is in the meeting file.

The chair called the committee to order at 10:20 a.m. and summarized his approach to developing the agendas for the committee by focusing on identifying favorable and unfavorable tax policies, studying tax issues in other states and assisting the Blue Ribbon Tax Reform Commission (BRTRC) in gathering tax reform information.

INTRODUCTION

Cleo Griffith of the Legislative Council Service staff explained the circumstances under which a designee of the RSTPC should replace a member of the committee. She stated that to promote continuity, a designee used to replace a member at a committee meeting should be from the same political party and same legislative house. Ms. Griffith also introduced the proposed work plan to the committee and explained that RSTPC meetings will be coordinated with meetings of the BRTRC.

The committee's questions and comments addressed:

- the need to comprehensively study the tax systems of states when making comparisons between them;
- the addition to the work plan of a discussion of the potential for taxation of 501(c)(3) corporations that act as competitive corporations on a state level;
- preparation for the special session on tax issues; and
- the committee's need to study state taxation revenues lost due to competition with Indian reservations.

The committee adopted the work plan and added the study of competition with Indian reservations to the plan.

PRINCIPLES OF TAXATION

Jim Eads, executive director of the New Mexico Tax Research Institute, summarized the principles of tax policy promoted by the National Conference of State Legislatures. Mr. Eads discussed principles that emphasize the importance of a tax system that is complementary and reliable; promotes horizontal equity; is minimally regressive; facilitates taxpayer compliance; promotes fair, efficient and effective administration; is responsive to interstate and international economic competition; minimizes its involvement in spending decisions; is accountable to taxpayers; and promotes tax exporting in the tourism industry. Mr. Eads indicated that the principles might be used as a framework to evaluate tax legislation.

The committee's questions and comments addressed:

- whether private businesses that operate primarily to serve state government should be taxed by the state;
- tax compliance enforcement issues in other states;
- the costs and benefits of gross receipts tax pyramiding, including competitive disadvantages and revenue raised;
- whether tax decisions predominantly influence business decisions to locate in New Mexico;
- whether lower taxes attract businesses and ultimately improve economies;
- the importance of addressing fairness in a tax system;
- whether the model has taken into account the failures of tax systems in other states;
- the importance of solving water problems in addition to improving the tax system as a means to attract businesses to New Mexico;

- whether New Mexico should continue to rely on federal funding for state programs when considering tax reform issues; and
- whether 501(c)(3) corporations could be subject to state taxation.

OVERVIEW OF NEW MEXICO'S REVENUE SYSTEM

James Jimenez, secretary of finance and administration, presented to the committee an overview of New Mexico state finances. Mr. Jimenez presented several statistics, including the gross state product, taxable gross receipts, aggregate state personal income, federal funds and grants received and unemployment and job growth rates. He also provided an overview of the amounts of the various revenue sources that comprise the general fund and other state sources of funds. The committee also heard statistical information regarding disbursements from the general fund and the different programs for which they are expended.

Other topics discussed by Mr. Jimenez included finances of New Mexico counties and municipalities and funding for public schools. Mr. Jimenez additionally discussed various objective evaluations of the New Mexico tax system and the criteria used to rate it. The criteria include equity, efficiency, adequacy to pay for expenses, reasonable administrative expense, simplicity, the existence of a broad tax base and low rates. Future trends for the New Mexico tax system were also highlighted. They include the movement to harmonize New Mexico's tax system with the tax systems of other states and a reduction in income taxes, which ultimately might result in a greater dependence upon the gross receipts tax for state revenues. Increased dependence upon the gross receipts tax and the growth of the service sector indicate that taxing services under the gross receipts tax might reap benefits for the state.

The committee's questions and comments addressed:

- the percentages of gross receipts taxes that are collected by the state, municipalities and counties;
- the amount of revenue generated by the food tax;
- the percentage of government spending that is reinvested in business economies;
- the possibility that raising incomes statewide will reduce dependence upon federal grants;
- the necessity to use government facilities, such as the national labs, to attract businesses to the state;
- changes to the tax structure that can severely impact local government revenues;
- whether the administrative cost of the corporate income tax exceeds the revenues that the tax generates;
- whether the large reserves of some agencies should be considered when tax policy decisions are made; and
- whether improvements in the state health care system are feasible in light of the improvements that must be made to the tax system.

COMPARISON OF NEW MEXICO'S TAX SYSTEM WITH OTHER STATES

Tom Clifford, chief economist of the Taxation and Revenue Department (TRD), presented a comparison of New Mexico's tax system with the tax systems of other states. Mr. Clifford discussed the impacts of the personal income tax cuts adopted by the 2003 legislature. He stated that if the tax cuts are assumed to be phased in by tax year 1999, then total personal income tax collections would have been about \$230 million lower.

Mr. Clifford also discussed the ability to raise revenues and the fiscal need of states as indicators of the comparative fiscal performance of the states. In fiscal year 1996, New Mexico had the seventh-lowest fiscal capacity among the 50 states. The state had the second-highest fiscal need the same year. This data indicates that New Mexico is in an unusual fiscal position because it faces high demands for public services and low resources in its tax base.

Mr. Clifford also presented data regarding the distribution of the tax burden among families with different levels of incomes and concluded that New Mexico's tax distribution is comparable to other states. The appeal of the tax system to businesses was also discussed. The 2002 Survival Index ranked New Mexico forty-seventh out of the 50 states and the District of Columbia in attractiveness to businesses. This ranking was based on factors such as personal income tax rates, capital gains tax rates, corporate income tax rates, state and property taxes as a percent of personal income, state and local gross receipts and sales taxes as a percent of personal income. Mr. Clifford compared New Mexico's state and local retail sales tax, gasoline tax, special fuel tax, motor vehicle excise tax, cigarette excise tax, beer excise tax, wine excise tax and spirits excise tax rates to the same taxes in other states.

Additional statistical tax information was provided to the committee, including "cheat sheet" tables that estimate the numerical effects of certain tax rate changes on tax revenues. Graphical and tabular estimates of different tax revenues collected by TRD were also presented. Mr. Clifford also distributed a handout that provided an overview of state and local taxes in New Mexico.

The committee's questions and comments addressed:

- the necessity to consider that other states have high sales taxes when comparing New Mexico's gross receipts tax system and its taxation of services to other states;
- the desire to improve the quality of empirical data regarding taxes and the possibility of networking with the New Mexico Tax Research Institute to obtain data;
- the necessity of taking into account New Mexico's low buying power when comparing New Mexico's gross receipts tax to the sales taxes of other states; and
- whether the state should distribute the gross receipts tax on a per capita basis.

ADJOURN

The meeting adjourned at 3:50 p.m.

**TENTATIVE AGENDA
for the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE**

**August 27-28, 2003
Room 307, State Capitol**

Wednesday, August 27

10:00 a.m. CALL TO ORDER

—Senator John Arthur Smith, Chairman

10:15 a.m. TRANSPORTATION ISSUES: STATUS REPORT AND FUNDING OPTIONS

—Rhonda Faught, Secretary of Transportation

—Department of Transportation Staff

12:00 noon LUNCH

1:30 p.m. TAXATION OF NEW MEXICO'S OIL AND NATURAL GAS INDUSTRY

—New Mexico Oil and Gas Association

—Industry Representatives

2:45 p.m. TAXATION OF NEW MEXICO'S MINING INDUSTRY

—New Mexico Mining Association

—Industry Representatives

4:00 p.m. RECESS

Thursday, August 28

9:00 a.m. CALL TO ORDER

—Representative Donald L. Whitaker, Vice Chairman

APPROVED WORK PLAN AND MEETING SCHEDULE

—Staff

9:30 a.m. COMPARISON OF STATE SEVERANCE TAXES

—Sam Flaim, Chief Economist, Department of Finance and Administration

PRESENTATION ON TAXATION OF NATURAL GAS

—Tom Clifford, Chief Economist, Taxation and Revenue Department

11:00 a.m. YEAR-END GENERAL FUND REVENUE REPORT

—James Jimenez, Secretary of Finance and Administration

—David Abbey, Director, Legislative Finance Committee

12:00 noon ADJOURNMENT

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

**August 27-28, 2003
Room 307, State Capitol**

The second meeting of the Revenue Stabilization and Tax Policy Committee (RSTPC) for the 2003 interim was called to order by Senator John Arthur Smith, chair, on Wednesday, August 27, 2003, at 10:15 a.m. in Room 307 of the State Capitol.

PRESENT

Sen. John Arthur Smith, Chair (8/27)
Rep. Donald L. Whitaker, Vice Chair
Rep. Janice E. Arnold-Jones (8/27)
Sen. Sue Wilson Beffort (8/27)
Sen. Mark Boitano
Rep. Anna Marie Crook (8/27)
Sen. Joseph A. Fidel
Rep. Roberto "Bobby" J. Gonzales
Rep. George J. Hanosh
Sen. Timothy Z. Jennings
Rep. Ben Lujan
Sen. Roman M. Maes, III
Sen. William E. Sharer
Rep. Daniel P. Silva
Sen. H. Diane Snyder

ABSENT

Rep. James G. Taylor
Rep. Thomas C. Taylor

Designees

Rep. William "Ed" Boykin (*designee for Rep. Thomas C. Taylor*)
Rep. Henry Kiki Saavedra (*designee for Rep. James G. Taylor*)
Rep. Robert White (*designee for Rep. Janice E. Arnold-Jones on 8/28*)

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

Staff

Cleo Griffith, Amy Chavez, Pam Ray and Cenissa Martinez

Guests

The guest list is in the meeting file.

Copies of all written testimony are in the meeting file.

Wednesday, August 27

TRANSPORTATION ISSUES: STATUS REPORT AND FUNDING OPTION

Rhonda Faught, secretary of transportation, presented an overview of transportation needs and priorities in New Mexico and discussed possible revenue sources for funding transportation projects.

Secretary Faught discussed the substantial state funding needed to carry out necessary highway and transportation projects and Department of Transportation (DOT) operations. She said she does not think there will be any additional federal funds available until after 2004, and pointed out that federal highway dollars must be matched by state funding, so even if New Mexico is successful in obtaining additional federal funding, state funding will need to be increased. She explained that federal funds are used for construction only, and may be used for maintenance of highways, or for operational items like salaries. She said the DOT already has over 400 vacancies because there is not funding for the salaries.

Secretary Faught summarized the administration's highway improvement program, known by the acronym GRIP, which stands for Governor Richardson's Investment Program. She displayed a map illustrating the different planning and priority levels for the projects in the program. She noted that the projects in red indicate roads and highways with a critical need for repair or maintenance. She explained that if these roads are not repaired soon, there is a risk of deterioration to the point that they will need to be completely rebuilt. She likened the situation to a house with a leaky roof. Fixing the small leaks is a relatively minor expense, but if the leaks are not attended to, eventually the entire roof needs to be replaced. She noted that bridges are in particularly bad shape and estimated that there is a critical need for \$90 million in repairs to bridges.

Secretary Faught discussed the public transit projects in GRIP, including commuter rail and park and ride projects. In response to questions, she said that the current Pojoaque park and ride project is being federally subsidized as part of the US 285 project. When that project is finished, state funding will be needed in order for the park and ride service to continue. She said that this need for a subsidy is common and she is unaware of any public transit project in the country that is able to pay for itself.

Secretary Faught answered questions from committee members about specific projects in the GRIP plan and about roads not included in the plan. She said GRIP only covers the most critical needs and said there are many more unmet needs.

There was discussion of the impact that large trucks have on highways and the need to be sure they are paying their share of road taxes. Secretary Faught said that one of these trucks is the equivalent of 38,000 passenger cars in terms of the damage it causes to highways. She discussed the problems with enforcement of taxes and overweight fees on interstate truck traffic, and said she feels it is important to address enforcement when considering increases in these fees. She noted that the Motor Transportation Division is in the Department of Public Safety, not the DOT. In response to questions, she said that in the majority of other states this enforcement is in a department of transportation.

Secretary Faught discussed with committee members the proposal of the Blue Ribbon Tax Reform Commission for a five-cents-per-gallon increase in the gasoline tax and a six-cents-per-gallon increase in the special fuels tax, and what this would mean in terms of increased State Road Fund revenues.

Robert Alcott, DOT staff, discussed problems with the trip tax and cab cards, and the evident abuse and avoidance of the tax by some trucking companies. He said the department is working with the Motor Transportation Division on this issue. There was discussion of possible solutions, including numbered cab cards assigned to single vehicles, and significant penalties for abuse.

Committee members commented on various topics, including the need to fund DOT salaries out of the general fund, rather than the State Road Fund; driver's license fees; and the unpopularity of gasoline tax increases.

The committee recessed for lunch at approximately 12:00 noon and reconvened at approximately 1:30 p.m.

TAXATION OF NEW MEXICO'S OIL AND NATURAL GAS INDUSTRY

Bob Gallagher, executive director of New Mexico Oil and Gas Association, presented an overview of the oil and gas drilling process. He discussed the various costs involved in production of oil and gas, noting that although a company can give average costs, the actual costs will vary for each well, depending on drilling costs, completion costs, operating costs and eventual plugging and abandonment costs.

Mr. Gallagher summarized the taxation of oil and gas by New Mexico. He noted that gross receipts tax is paid on equipment purchases and services. On oil and gas production, the following taxes are paid: the severance tax at 3.75 percent of the value of oil and gas when it is severed from the ground; the emergency school tax at 3.15 percent for crude oil and four percent for natural gas; the conservation tax at .0019 percent; the natural gas processors tax; state royalties; and federal leasing rents and royalties.

Mr. Gallagher and committee members discussed the negative effect of the federal endangered species protection requirements on the oil and gas industry in New Mexico.

Mr. Gallagher displayed charts comparing taxes on the oil and gas industry in New Mexico with those in other states, and concluded that New Mexico taxes are higher. It was pointed out by committee members that the chart does not include the ad valorem taxes paid by the industry, and those are significantly higher in other states.

TAXATION OF NEW MEXICO'S MINING INDUSTRY

David Waugh, president of the New Mexico Mining Association, and Mike Bowen, executive director of the New Mexico Mining Association, gave a presentation on taxation of the mining industry in New Mexico. Mr. Bowen reviewed the many uses of minerals in the modern economy and the increasing percentage of minerals being imported to the United States from other countries. He discussed the different minerals being mined in New Mexico and the areas of the state where these mining operations are occurring. He pointed out that in rural communities, mining operations have a large influence on the economy and employment. He described the operations of the companies that are conducting mining in New Mexico, the value of the products and the jobs created and the taxes paid.

Peter Finie of Vulcan Materials pointed out that the mining industry pays gross receipts tax, ad valorem tax, severance tax and processors tax in New Mexico, and asked the committee to consider fairer taxation of this industry.

In reply to questions from committee members, Tony Trujillo of Phelps Dodge Mining Company said that copper production in Silver City has been scaled down, but the company is still operating there. He said the problem of reduced production is due to world copper inventories being high and prices low.

In reply to questions, Mr. Bowen said Questa molybdenum mine production had declined in the past, but as prices rise and demand increases, the mine is producing more. In reply to a question about uranium mining, he said although there are uranium reserves, there is no uranium mining in New Mexico at this time due to the lack of a market.

There was discussion of the expense of complying with environmental regulations, which increases the cost of doing business. Mr. Bowen noted that since the adoption of the New Mexico Mining Act, no new mining permits have been issued in New Mexico. It was also noted that if a mine closes, it can be very difficult to get a permit to reopen because of environmental regulations.

Some committee members commented that it should be possible to protect the environment but make it easier to open new mines, and that the economic repercussions of the New Mexico Mining Act might not have been clear when it was passed in 1993.

Mr. Waugh said he believes that New Mexico has lots of undeveloped mineral resources, but exploration companies will invest in states where they will be able to operate at reasonable costs, and New Mexico is not one of those states.

The meeting recessed for the day at approximately 4:30 p.m.

Thursday, August 28

The meeting was reconvened at 9:15 a.m. by Vice Chairman Whitaker.

APPROVED WORK PLAN AND MEETING SCHEDULE

Staff presented the committee work plan and meeting schedule as approved by the Legislative Council.

COMPARISON OF STATE PRODUCTION TAXES ON OIL AND GAS

Sam Flaim, chief economist for the Department of Finance and Administration, presented a report comparing severance taxes in New Mexico with those in neighboring states. Mr. Flaim discussed the many economic factors besides taxes that affect production costs, and noted that tax burden is only one item that determines New Mexico's attractiveness as an investment opportunity for oil and gas producers. After reviewing the charts in his report examining the effective tax rates of the neighboring states from several perspectives, Mr. Flaim concluded that New Mexico's severance taxes are neither excessively punitive nor excessively generous. He discouraged changing the taxes without adequate study because uncertainty makes investment decisions more difficult for the producers, and said the best tax strategy is to guarantee producers a good rate of return on their investment.

In response to questions, Mr. Flaim said he thinks that the taxes should not be so high as to discourage continued production. Mr. Flaim said New Mexico taxes in relation to other states are functionally equivalent and fine for the long term. Some committee members commented that Mr. Flaim's charts failed to take into account the tax credits that New Mexico gives, thus making the New Mexico rate look high and not accurately reflecting the effective rate.

There was discussion of the need for New Mexico producers to have better access to premium markets and the need to get a better share of federal royalties.

PRESENTATION ON TAXATION OF OIL AND NATURAL GAS

Tom Clifford, chief economist for the TRD, presented a history of New Mexico oil and gas severance taxes and an analysis of the effect of converting the tax on natural gas to a unit rate, rather than a percentage of price.

There was discussion of the large share that oil and gas revenues contribute to New Mexico's general fund. Mr. Clifford agreed that he thinks the percentage is higher than in other states, and agreed that this is a very important industry in New Mexico's economy.

In reply to questions, Deborah Seligman of the New Mexico Oil and Gas Association said that there are 700 producing companies in New Mexico with a work force of approximately 19,000.

There was discussion of the possible benefits of a new pipeline being built to allow New Mexico to reach other markets, and who would bear the cost of building a pipeline.

Several committee members commented that it is the total cost of bringing the product to market, and not just the tax rate, that the industry considers. Comparisons between states are very difficult because of the many variables.

YEAR-END GENERAL FUND REVENUE REPORT

James Jimenez, secretary of finance and administration, presented the general fund consensus revenue estimates. He explained that this is an abbreviated outlook, for fiscal years (FY) 2003 through 2005 only, rather than the customary in depth five-year estimate. He said this is because the Blue Ribbon Tax Reform Commission may be recommending modifications to the tax system that would need to be taken into account; because the stimulative effects of the recent cut in personal income tax rates have not had time to take effect; and because the executive branch is undertaking initiatives to realize cost savings in state government that should be taken into account in longer term forecasts.

Mr. Jimenez said New Mexico's revenues are in better fiscal shape than other states due to permanent fund earnings, high reserve balances, federal spending and higher oil and gas prices. He said recurring revenue in FY 04 is expected to be higher than previous estimates mainly due to higher oil and gas prices and a distribution from the tobacco settlement fund.

David Abbey, director of the Legislative Finance Committee (LFC), presented a report on the economic and revenue outlook. He noted that although the bottom line of revenue estimates worked out for FY 03, there were huge gaps in certain sectors. Personal income tax revenues were \$60 million short, but this was offset by a \$42 million gain in resource taxes. He said this is a dangerous pattern for the long term: strength in volatile revenue sources, but weakness in the bread and butter sources. He cautioned against treating the gains due to oil and gas revenues as recurring revenue.

A committee member questioned the inclusion in the general fund forecast of \$65 million from the constitutional amendment changing permanent fund revenue distribution, because that additional money was earmarked as new money for school reform. Mr. Abbey said that the new money will go to the common school funds, which are part of the general fund, and although the money will be added to school funding, it is hard to determine how much of an increase it will be over what would otherwise have been allocated to schools.

In reply to questions as to when a full five-year revenue estimate will be available, Mr. Jimenez said this will be presented to the LFC in October.

ADJOURN

The meeting adjourned at 12:10 p.m.

**TENTATIVE AGENDA
for the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE**

**November 17-18, 2003
Room 322, State Capitol**

Monday, November 17

- 10:00 a.m. **CALL TO ORDER**
 —Senator John Arthur Smith, Chairman
- NEW MEXICO ASSOCIATION OF COUNTIES LEGISLATIVE PRIORITIES**
 —Sam Montoya, Executive Director
- 11:15 a.m. **ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
PROPOSED LEGISLATION ON CLEAN ENERGY**
 —Craig O'Hare, Special Assistant for Renewable Energy, Energy, Minerals and
 Natural Resources Department
- 12:00 noon **LUNCH**
- 1:30 p.m. **PROPOSED COMPENSATING TAX DEDUCTION FOR EQUIPMENT
TESTED AT WHITE SANDS MISSILE RANGE**
 —Representative Terry T. Marquardt
 —Representatives of White Sands Missile Range
- 2:15 p.m. **NEW MEXICO MUNICIPAL LEAGUE LEGISLATIVE PRIORITIES**
 —William F. Fulginiti, Executive Director, New Mexico Municipal League
- 3:00 p.m. **PROPOSAL TO EXPAND GROSS RECEIPTS TAX DEDUCTION FOR
COLLEGE TEXTBOOKS**
 —Marco Gonzales, Lobbyist, College Bookstores of America
- 3:45 p.m. **PROPOSED TAX CREDIT FOR DISPOSAL OF PRODUCED WATER**
 —Marc Christensen, Director of Special Communications, Public Service
 Company of New Mexico
 —John Gillis, Lobbyist, Public Service Company of New Mexico
- 4:30 p.m. **RECESS**

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

**November 17-18, 2003
Room 322, State Capitol**

The third and final meeting of the Revenue Stabilization and Tax Policy Committee (RSTPC) for the 2003 interim was called to order by Senator John Arthur Smith, chair, on Monday, November 17, 2003, at 10:15 a.m. in Room 322 of the State Capitol.

PRESENT

Sen. John Arthur Smith, Chair
Rep. Donald L. Whitaker, Vice Chair
Rep. Janice E. Arnold-Jones
Sen. Sue Wilson Beffort
Sen. Mark Boitano
Sen. Carlos R. Cisneros
Rep. Anna Marie Crook (11/17)
Sen. Joseph A. Fidel
Rep. Roberto "Bobby" J. Gonzales
Rep. George J. Hanosh
Rep. Ben Lujan
Sen. Roman M. Maes, III
Rep. Daniel P. Silva
Sen. H. Diane Snyder
Rep. Thomas C. Taylor

ABSENT

Sen. Timothy Z. Jennings
Sen. William E. Sharer
Rep. James G. Taylor

Designees

Sen. Joseph J. Carraro (*designee for Sen. William E. Sharer*)
Sen. Phil A. Griego (*designee for Sen. Timothy Z. Jennings*)

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

Staff

Cleo Griffith
Amy Chavez
Pam Ray
Cenissa Martinez

Guests

The guest list is in the meeting file.

Copies of all written testimony are in the meeting file.

Monday, November 17

NEW MEXICO ASSOCIATION OF COUNTIES LEGISLATIVE PRIORITIES

Sam Montoya, executive director of the New Mexico Association of Counties, summarized the association's priorities for the upcoming legislative session and presented bill drafts proposing to restructure county local option gross receipts taxes and to authorize all counties to impose the local liquor excise tax.

Mr. Montoya said the proposed changes to county local option gross receipts taxes include the following: authorizing all counties to impose an additional one-sixteenth percent gross receipts tax to be used for general purposes; expanding authorization for the county correctional facilities gross receipts tax to include all counties; expanding the authorized uses of the county correctional facilities gross receipts tax to include operational purposes; removing the 10-year imposition limit in the county correctional gross receipts tax, the county fire protection excise tax and the county emergency communication and medical services tax; and modifying the voter approval requirements in several local option gross receipts taxes.

In discussion, committee members noted that many counties are having difficulty meeting revenue needs for the operational costs of jails, especially in the area of transportation of prisoners. There are also increasing needs for courtrooms and office space for district attorneys as prosecutions increase. Committee members characterized these demands as "unfunded mandates" resulting from changes in state statutes. Several committee members commented that the proposed expansion of the county correctional facilities gross receipts tax would help counties address these needs. Senator Snyder expressed concern that allowing the tax to be used for operational expenses might jeopardize jail construction funding.

In discussion of the proposed modification to voter approval requirements in several taxes, Mr. Montoya pointed out that there would still be "negative referendum" provisions, allowing voters to petition to force a vote on approval of the tax.

In discussion of the proposal to allow all counties to impose the local liquor excise tax, committee members commented on McKinley County's experience with the tax and the desire of other counties to have this additional source of revenue to fund alcohol treatment.

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT PROPOSED LEGISLATION ON CLEAN ENERGY

Craig O'Hare, special assistant for renewable energy at the Energy, Minerals and Natural Resources Department, presented legislation to exempt alternative fuel vehicles from the motor vehicle excise tax. He noted that this legislation was adopted as a recommendation of the Blue Ribbon Tax Reform Commission (BRTRC) and Governor Richardson had specifically supported it in his campaign.

Mr. O'Hare said that the goal of the legislation is to provide an incentive to consumers to purchase clean energy vehicles. In response to questions, Mr. O'Hare said that gas-electric hybrids are the type of vehicle that will most likely qualify for the exemption. He said that there are very few privately owned compressed natural gas vehicles due to the limited fuel sources.

Representative Hanosh raised concerns about businesses bringing in fleets of cars purchased out of state to be titled in New Mexico for the sole purpose of avoiding the motor vehicle excise tax. Mr. O'Hare said this issue could be addressed.

In reply to concerns about the unpredictability of the future fiscal impact of this proposal, Mr. O'Hare said the committee could limit eligibility to gas-electric hybrid vehicles.

The committee recessed for lunch from 12:15 p.m. to 1:45 p.m.

PROPOSED COMPENSATING TAX DEDUCTION FOR EQUIPMENT TESTED AT WHITE SANDS MISSILE RANGE

Sal Rodriguez, chief engineer at the United States Air Force office at White Sands Missile Range, and Representative Terry T. Marquardt presented proposed legislation to provide a compensating tax deduction for certain equipment brought to New Mexico to be tested at White Sands Missile Range.

Mr. Rodriguez explained that this bill is aimed at test projects performed at White Sands for the United States government. In the past, the federal government retained ownership of the equipment being tested, and the use of the equipment in New Mexico was not subject to compensating tax because of the exemption for the federal government. However, the federal government has changed its procedures and the contractor performing the test is now considered the owner of the equipment, and the Taxation and Revenue Department (TRD) has said the use of the equipment in New Mexico is subject to compensating tax. Because of the high value of the equipment being tested, the tax is a significant amount and is a disincentive for contractors to use White Sands as a testing site. As a result, New Mexico is losing very valuable testing projects to other states. Mr. Rodriguez said Boeing has already moved one large test project from White Sands to California because of the added cost of the tax. Boeing has indicated that this project and others could be moved back to New Mexico if this tax deduction is enacted.

Representative Marquardt and Mr. Rodriguez stressed that New Mexico has the scientists, research personnel and infrastructure needed for these projects, and years of technical expertise. These give New Mexico an advantage over other states in competing for these projects, but the compensating tax issue is destroying that advantage. The shift of projects out of New Mexico will mean the loss of high-paying jobs for scientists and research personnel. Representative Marquardt pointed out that the legislation has been narrowly drafted to apply to limited situations. He said the fiscal impact to the state will be positive due to the economic development these projects generate. It is not accurate to

say there is a negative fiscal impact due to the lost tax, because without the deduction, the projects will not come to New Mexico and there will be nothing to tax.

Several committee members spoke in favor of the proposed legislation, noting that the compensating tax problem could mean the loss of many future projects, and the resulting loss of opportunity to develop high-paying jobs.

NEW MEXICO MUNICIPAL LEAGUE LEGISLATIVE PRIORITIES

William F. Fulginiti, executive director of the New Mexico Municipal League, discussed the league's revenue-related legislative priorities. He said that the priorities are aimed at diversifying and stabilizing municipal revenue sources. The specific legislative measures proposed by the league are: creating a municipal compensating tax and local option compensating taxes similar to the municipal gross receipts tax and local option gross receipts taxes; increasing the small cities distribution amounts; increasing municipal fees for registration of motor vehicles; and trading a portion of the existing distribution to municipalities of state gross receipts tax revenue for a similar amount of income tax revenue.

PROPOSAL TO EXPAND GROSS RECEIPTS TAX DEDUCTION FOR COLLEGE TEXTBOOKS

Mr. Marco Gonzales, representing College Bookstores of America, presented a proposal for legislation to extend an existing gross receipts tax exemption for required textbooks and materials sold to college students to include those sold by private bookstores. Mr. Gonzales said the existing exemption is for required textbooks and materials sold to a student at a post-secondary educational institution if the sale is by a college or university bookstore that is owned by the educational institution or is located on its campus. It is only the privately owned, off-campus bookstores that must pay the gross receipts tax. Mr. Gonzales said this distinction is inherently unfair and anti-competitive, and College Bookstores of America is only asking to be treated equally with the other bookstores. He requested that the existing exemption be amended to include sales by privately owned bookstores.

Committee members generally agreed that the present law gives university bookstores an unfair advantage. Some committee members raised concerns that the existing exemption might be too broadly worded. Although the intent of the law was to remove the tax on books, the exemption extends to "textbooks and other materials required for courses". It was suggested that a student could claim that expensive items never intended to be exempted, such as computers, were required for a course. It was also suggested that this exemption should be changed to a deduction, to enhance compliance with the specific limits of the statute and tracking of its use by the TRD.

PROPOSED TAX CREDIT FOR DISPOSAL OF PRODUCED WATER

Marc Christensen, director of special communications for the Public Service Company of New Mexico (PNM), and John Gillis, lobbyist for PNM, presented a proposal for a tax credit for the cleaning of produced water and its disposal through its use in the generation of electricity. They distributed a written summary of the proposal

and draft legislation, and noted that the legislation had previously been endorsed by the interim Water and Natural Resources Committee.

In response to questions from committee members, Mr. Christensen explained the polluted character of the water that is produced in the drilling process; the usual procedure of reinjecting the wastewater deep into the ground; and the proposed process for cleaning and reusing the water. He stressed that the cleaning and reuse of the water will be a benefit to the state because it means that PNM will be using this cleaned produced water in its power generation, rather than depleting ground water resources.

Mr. Christensen said PNM will need to construct facilities to collect the produced water and transport it by pipeline to the San Juan generating station, where it will be treated and then used in power generation. This will be an expensive project and the tax credit will make it a financially feasible option for PNM. The tax credit being proposed is for \$1,000 per acre-foot of treated produced water used in power generation, with a cap of \$3 million per year.

In response to a question about the source of the water that PNM uses now at the San Juan generation station, Mr. Gillis said PNM does not have its own water rights, but leases the water it uses now.

The meeting recessed for the day at 4:45 p.m.

Tuesday, November 18

Chairman Smith reconvened the meeting at 9:15 a.m.

REVIEW OF BLUE RIBBON TAX REFORM COMMISSION REPORT

The meeting began with a discussion of the report and recommendations of the BRTRC, which had completed its work the previous month and was in the process of distributing its final report and recommendations. Committee members were provided with a copy of the report.

TAXATION AND REVENUE DEPARTMENT PROPOSED LEGISLATION

Richard Anklam, assistant secretary and director of tax policy at TRD, presented six bill drafts the department is requesting for the upcoming legislative session.

Bill #1 consists of technical revisions to the Corporate Income and Franchise Tax Act.

Bill #2 amends the various severance taxes to add helium to the list of natural resources subject to severance tax.

Bill #3 contains reforms to the Tax Administration Act agreed upon by the department and representatives of the business community. This legislation was developed in BRTRC discussions and meetings and was endorsed by the commission. Mr. Anklam said this bill also contains the model legislation authorizing the TRD to

participate on behalf of New Mexico in the negotiations on the Streamlined Sales Tax Project.

Several committee members commented that the Streamlined Sales Tax Project model legislation had created some concern in the special session the previous month because of what appeared to be mandatory language about New Mexico accepting tax changes advocated by the Streamlined Sales Tax Project. Mr. Anklam said the sole intent of the legislation is to authorize participation in the project, and New Mexico will retain the right to decide whether or not it wants to amend its tax laws to comply. He said the department could investigate modifying the wording of the model legislation to address this concern.

Bill #4 modifies Property Tax Code provisions dealing with the sale of real estate for delinquent taxes. Committee members questioned the wording of various sections of the bill, and Steven Yergey and Darryl Lujan of TRD's Property Tax Division agreed to minor revisions to clarify the intended meaning.

At the request of Benito Martinez, Santa Fe County assessor, the committee agreed to consider another property tax bill, which was numbered Bill #4A. Mr. Martinez said the major purpose of this bill is to correct an error made in 2003 legislation that established the requirement that the sales price of residential real property be disclosed to county assessors. The text of the 2003 bill inadvertently omitted the word "residential", although it appeared in the title of the bill. Mr. Martinez's proposed legislation would add "residential" to the wording of the statute to make it clear that the disclosure requirement does not apply to other types of property. The proposed legislation also clarifies the procedural requirements related to disclosure of the sales price. Mr. Yergey and Mr. Lujan indicated that the department was in agreement with the proposed changes.

Bill #5 amends many sections of the Motor Vehicle Code and the Commercial Driver's License Act. Several of the provisions are required by the federal Patriot Act; others are changes recommended by the department. Commission members questioned the necessity for some of the changes, and Mr. Anklam explained the department's position.

Bill #6 amends statutes relating to tax fraud and creates tax fraud enforcement powers in the department. Some members expressed concern that the new provisions were overly broad.

ADOPTION OF COMMITTEE RECOMMENDATIONS FOR LEGISLATION

The committee then voted on each of the legislative proposals for which committee endorsement had been requested. Charts indicating the legislation proposed for adoption and those approved for adoption are included at the end of these minutes.

Bill #1, amending the Corporate Income and Franchise Tax Act, was adopted on a voice vote with no negative votes.

Bill #2, amending severance taxes to include helium, was adopted on a voice vote, with five members voting against adoption (Senators Beffort, Boitano, Cisneros, Maes and Snyder).

Bill #3, amending the Tax Administration Act, was adopted on a voice vote with one member voting against adoption (Senator Maes).

Bill #4, amending various provisions of the Property Tax Code, was adopted with changes agreed to during the committee's discussion of the bill and with the addition of the changes to the sales price disclosure requirements contained in Bill #4A. Senators Boitano, Beffort, Carraro and Snyder and Representative Thomas C. Taylor voted against adoption.

The committee voted to split Bill #5 into two separate bills, one containing the provisions required by the federal Patriot Act, and the other containing the remaining provisions. Both of the bills were approved by voice vote.

Bill #6, amending provisions relating to tax fraud, was not adopted by the committee. Representative Lujan voted in favor of adoption.

Bill #7, extending the local liquor excise tax to all counties, received no recommendation.

Bill #8, amending and expanding county local option gross receipts taxes, was adopted on a voice vote with Senators Beffort, Boitano and Snyder voting against adoption.

Bill #9, providing an exemption from motor vehicle excise tax for alternative energy vehicles, was adopted with the change that it only apply to gas-electric hybrids. Senators Beffort, Boitano and Snyder and Representative Hanosh voted against adoption.

Bill #10, providing a compensating tax deduction for certain equipment tested at White Sands Missile Range, was adopted on a voice vote.

Bill #11, creating a local option compensating tax, was adopted on a voice vote.

Bill #12, exchanging part of the municipal distribution of gross receipts tax for a distribution of income tax, received no recommendation. Representative Thomas C. Taylor voted for adoption.

Bill #13, increasing municipal motor vehicle administrative service fees, was adopted on a voice vote. Senator Boitano voted against adoption.

Bill #14, increasing the amount of distributions under the Small Cities Assistance Act, was adopted on a voice vote.

Bill #15, extending the gross receipts tax exemption for college textbooks to

private bookstores, received no recommendation. Senators Beffort, Boitano, Smith and Snyder and Representative Thomas C. Taylor voted in favor of adoption.

Bill #16, providing a tax credit for the use of produced water in electricity generation, was adopted on a voice vote.

ADJOURN

The committee adjourned at approximately 1:15 p.m.

PROPOSED RSTPC LEGISLATION 2003 INTERIM

#	PROPOSED BY	TOPIC	BILL ID
1	Taxation and Revenue Department	Corporate income tax	148797.1
2	Taxation and Revenue Department	Helium subject to severance taxes	148798.1
3	Taxation and Revenue Department	Administrative reforms	148799.1
4	Taxation and Revenue Department	Property Tax Code	148768.1
5	Taxation and Revenue Department	Motor Vehicle Code	148774.1
6	Taxation and Revenue Department	Tax fraud	148795.1
7	New Mexico Assoc of Counties	Local liquor excise tax	148438.2
8	New Mexico Assoc of Counties	Revise county local option taxes	148647.3
9	EMNRD	Clean energy vehicles tax exemption	148796.1
10	White Sands Missile Range	Compensating tax deduction	148807.1
11	New Mexico Municipal League	Local option compensating tax	148411.1
12	New Mexico Municipal League	Change municipal distribution	143935.1
13	New Mexico Municipal League	Motor vehicle admin service fees	144482.1
14	New Mexico Municipal League	Small cities assistance	148806.1
15	College Bookstores of America	College textbook grt deduction	handout
16	PNM	Tax credit for using produced water	148619.1

APPROVED RSTPC LEGISLATION 2003 INTERIM

ASSIGNED TO	#	PROPOSED BY	TOPIC	BILL ID
Rep. Whitaker	1	Taxation and Revenue Dept	Corporate income tax	148797
Rep. Whitaker	2	Taxation and Revenue Dept	Helium subject to severance taxes	148798
Rep. Whitaker	3	Taxation and Revenue Dept	Administrative reforms	148799
Rep. Lujan & Sen. Smith	4	Taxation and Revenue Dept	Property Tax Code	148768
Sen. Snyder	5A	Taxation and Revenue Dept	Motor Vehicle Code - fedl mandates	149036
Rep. T. Taylor	5B	Taxation and Revenue Dept	Motor Vehicle Code - remainder	149037
Rep. Gonzales & Sen. Cisneros	8	NM Assoc of Counties	Revise county local option taxes	149029 149591
Sen. Cisneros	9	EMNRD	Clean energy vehicle tax exemption	148796
Rep. Whitaker	10	White Sands Missile Range	Compensating tax deduction	148807
Rep. T. Taylor & Sen. Smith	11	NM Municipal League	Local option compensating tax	149044 149642
Rep. Hanosh & Sen. Smith	13	NM Municipal League	Motor vehicle admin service fees	149043 149593
Sen. Fidel	14	NM Municipal League	Small cities assistance	148806
Rep. Silva	16	PNM	Tax credit for using produced water	149606