

REVENUE STABILIZATION AND TAX POLICY COMMITTEE

2014 INTERIM FINAL REPORT



New Mexico
Legislative Council Service
Santa Fe, New Mexico
January 2015

REVENUE STABILIZATION AND TAX POLICY COMMITTEE
2014 INTERIM FINAL REPORT
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2014 INTERIM SUMMARY

REVENUE STABILIZATION AND TAX POLICY COMMITTEE 2014 SUMMARY

The Revenue Stabilization and Tax Policy Committee held six meetings in 2014. Bill endorsements were completed on the second day of the December meeting, at which five of the eight bills under consideration were endorsed.

The committee discussed and studied a variety of issues this year, from studying the tax base of the gross receipts tax to options for funding transportation infrastructure to tax issues facing local governments.

At the committee's organizational meeting, members heard a proposal for a comprehensive review of the state's gross receipts tax. The tax was created in the 1960s as a broad-based tax on business receipts, but the state and world have changed since then, and New Mexico businesses now face more competition. Lawmakers' general response to the new climate has been to relieve taxpayers on a piecemeal basis with various exemptions, deductions and other deviations from the tax base, which has decreased the base and increased the rate. A two-step process was proposed that would span two interims. The first stage occurred this interim, in which information was collected and assembled in a model that can be used to predict the outcome of various proposed changes to the tax. The Bureau of Business and Economic Research at the University of New Mexico developed the model, but noted that it had limitations, including that it is not dynamic and does not consider implications to local governments of proposed changes to the tax.

In the second stage of the comprehensive review of the gross receipts tax, which is to take place in the first half of 2015, policy and design questions would be addressed, as well as consideration of the implications to local governments of any proposed changes to the tax.

The committee held a joint meeting with the Transportation Infrastructure Revenue Subcommittee to discuss funding options for transportation infrastructure. Wyoming State Representative Michael K. Madden made a presentation discussing how that state raised its gas tax by 10 cents in 2013, including significant publicity efforts. North Dakota State Senator Ray Holmberg made a presentation on North Dakota's recent economic growth, most of which is due to an oil boom in the western part of the state. Rather than raise fuel tax rates, the North Dakota Legislature appropriated \$1.2 billion from the state's general fund to the state's highway fund specifically for projects in areas affected by oil and gas development.

The committee also heard a presentation on issues surrounding a lawsuit between the state and the City of Eunice, the outcome of which will have significant impact on the state, cities and counties. At issue is how the state will recoup money from a city or county when that city or county has received tax revenue it never should have received. In the suit, a taxpayer filed an amended return that resulted in a \$2.3 million overpayment to the City of Eunice, a substantial portion of the city's budget.

2014 Work Plan and Meeting Schedule

**2014 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE**

Members

Rep. Edward C. Sandoval, Chair
Sen. Carlos R. Cisneros, Vice Chair
Sen. Sue Wilson Beffort
Rep. Anna M. Crook
Rep. Brian F. Egolf, Jr.
Sen. Timothy M. Keller
Rep. Rodolpho "Rudy" S. Martinez
Sen. Mark Moores
Rep. Henry Kiki Saavedra
Sen. Clemente Sanchez
Sen. William E. Sharer
Sen. John Arthur Smith
Rep. James R.J. Strickler
Rep. Thomas C. Taylor
Sen. Lisa A. Torraco
Rep. Jim R. Trujillo
Sen. Peter Wirth
Rep. Bob Wooley

Designees

Rep. Donald E. Bratton
Sen. William F. Burt
Sen. Jacob R. Candelaria
Rep. Ernest H. Chavez
Rep. Miguel P. Garcia
Sen. Phil A. Griego
Rep. Jason C. Harper
Rep. Sandra D. Jeff
Sen. Gay G. Kernan
Rep. Tim D. Lewis
Rep. Bill McCamley
Sen. George K. Munoz
Rep. Paul A. Pacheco
Rep. Dennis J. Roch
Rep. Debbie A. Rodella
Sen. Nancy Rodriguez
Sen. John M. Sapien
Rep. Carl Trujillo
Rep. Luciano "Lucky" Varela
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 . . .".

A. In the 2014 interim, as time permits, the committee proposes to:

1. examine the tax code and all other taxes not compiled in the tax code and discuss each tax based on the contribution to state revenue made by each tax and the adherence of each tax to the sound tax policy principles of:

- (a) adequacy;
- (b) efficiency;
- (c) equity;
- (d) simplicity; and

(e) accountability;

2. review the effectiveness and value to the state of tax incentives, including progress on projects benefiting from tax incentives, and suggest changes to achieve state goals;

3. continue to examine exemptions, deductions and credits to determine the ability to report and track the effectiveness and value to the state of tax incentives;

4. evaluate recently enacted tax and revenue-related legislation in an effort to reduce ambiguity, mitigate unintended consequences and ameliorate deficiencies;

5. discuss the possibility of New Mexico being chosen as a location for the Tesla gigafactory, including economic incentives that New Mexico can offer and possible regulatory obstacles;

6. review the revenue status of the state, examine current revenue sources and discuss changes to revenue sources to ensure adequacy of revenue, including the effectiveness of Taxation and Revenue Department oversight and enforcement of tax collection;

7. review trends in state investment earnings, including trends in the balances of the Severance Tax Permanent Fund and the land grant permanent funds;

8. review the status of gaming within the state, including revenue received by the state from lottery gaming, Indian gaming and gaming conducted by racinos and fraternal and other organizations, and the progress of tribal-state gaming negotiations;

9. review tax laws that impact local governments, including hold harmless provisions, recent legislation affecting what were formally known as sole community providers and procedures for reducing distributions of local taxes to local governments due to overpayments to those local governments;

10. review the capital outlay process, the balances remaining in outstanding projects and the estimates of funds previously appropriated and available for future projects and discuss proposed changes to improve the process; and

11. determine legislative actions necessary to implement changes identified by committee members that will improve the tax system in New Mexico, including consideration of:

(a) increasing the working families tax credit;

(b) achieving revenue adequacy for the State Road Fund;

(c) addressing the limitation on property tax valuations and resulting property tax lightning;

(d) addressing property tax valuations of agricultural land;

(e) responding to congressional action to allow state taxation of remote sellers and internet sales; and

(f) formalizing procedures to provide more accurate and timely fiscal impact reports that might also provide dynamic scoring.

B. The committee will coordinate, as needed, with other committees regarding presentation of subject matter of common concern, including a joint meeting with the Transportation Infrastructure Revenue Subcommittee regarding sources of revenue for state transportation needs.

C. Upon approval by the New Mexico Legislative Council of a team of tax professionals to review the gross receipts tax (GRT), the committee will hear a report from the team on:

1. the contribution to state revenue of the GRT;
2. the cost and benefits of deductions and exemptions from the GRT;
3. the existing and future GRT base; and
4. recommendations to reform provisions of the Gross Receipts and Compensating Tax

Act.

**Revenue Stabilization and Tax Policy Committee
2014 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
June 6	Santa Fe, State Capitol, Room 307
*July 8-9	Farmington
**August 5-6	Santa Fe, State Capitol, Room 322 (August 5) and Room 307 (August 6)
September 29-30	Las Cruces
October 23-24	Santa Fe, State Capitol, Room 307
December 18-19	Santa Fe, State Capitol, Room 307

*Joint meeting with the Legislative Finance Committee on July 9.

**Joint meeting with the Transportation Infrastructure Revenue Subcommittee on August 5.

AGENDAS

Revised: June 5, 2014

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

**June 6, 2014
State Capitol, Room 307
Santa Fe**

Friday, June 6

- 10:00 a.m. **Call to Order**
—Representative Edward C. Sandoval, Chair
- 10:05 a.m. (1) **Post-Session Fiscal Report**
—David Abbey, Director, Legislative Finance Committee (LFC)
—Peter van Moorsel, Chief Economist, LFC
- 10:45 a.m. (2) **2014 Legislative Session: Budget and Tax Policy Update**
—Tom Clifford, Ph.D., Secretary, Department of Finance and
Administration
—Ryan Gleason, Tax Policy and Research Director, Taxation and
Revenue Department
- 11:30 a.m. (3) **Proposal for a Comprehensive Review of the Gross Receipts Tax**
—Jim O'Neill, Consultant
—Richard Anklam, President and Executive Director, New
Mexico Tax Research Institute
- 12:00 noon (4) **Updated Tax Deviation Report; Discussion of Work Plan and Meeting
Schedule**
—Pam Stokes, Staff Attorney, Legislative Council Service
- 12:30 p.m. **Adjourn**

Revised: July 1, 2014

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

**July 8-9, 2014
Zia Conference Center, Room 55400
Health & Human Performance Center
San Juan College
Farmington**

Tuesday, July 8

- 10:00 a.m. **Call to Order**
—Representative Edward C. Sandoval, Chair
- 10:05 a.m. (1) **Impacts and Issues of Trade Areas: Farmington and San Juan County**
—Tommy Roberts, Mayor, City of Farmington
—Rob Mayes, City Manager, City of Farmington
—Jack Fortner, Chair, San Juan County Commission
—Dr. Kim Carpenter, County Executive Officer, San Juan County
- 11:00 a.m. (2) **Impacts and Issues of Trade Areas: Gallup and McKinley County**
—Jackie McKinney, Mayor, City of Gallup
—George Kozeliski, Acting City Manager, City of Gallup
—Bruce Swingle, County Manager, McKinley County
- 12:00 noon **Lunch**
- 1:00 p.m. (3) **Fairness and Equity in State Tax Incentive Policies for Economic Development**
—Ed Flynn, Chief Operating Officer, International Wire Group
—Dr. David Schauer, Associate Professor of Economics and Finance,
University of Texas at El Paso
—Dr. Byron Schlomach, Director, Center for Economic Policy,
Goldwater Institute
- 2:00 p.m. (4) **Revised 2014 New Mexico Business Tax Competitiveness Study**
—Richard Anklam, President and Executive Director, New
Mexico Tax Research Institute (NMTRI)

3:00 p.m. (5) [Fiscal Impacts of Oil and Natural Gas Production in New Mexico](#)
—Richard Anklam, President and Executive Director, NMTRI

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

Wednesday, July 9

8:10 a.m. **Reconvene**
—Representative Edward C. Sandoval, Chair

8:15 a.m. **Joint meeting with the Legislative Finance Committee — To view agenda, go to:**
<http://www.nmlegis.gov/lcs/agendas/ALFCageJul09.14.pdf>

5:00 p.m. **Adjourn**

Revised: July 31, 2014

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

**August 5-6, 2014
State Capitol, Rooms 322 and 307
Santa Fe**

Tuesday, August 5 — Room 322

- 9:00 a.m. **Call to Order**
—Representative Edward C. Sandoval, Chair
- 9:05 a.m. (1) **State Land Office Annual Status and Revenue Update**
—Ray Powell, Commissioner of Public Lands
- 10:00 a.m. (2) **State Investment Council Annual Update**
—Steven K. Moise, State Investment Officer, State Investment
 Council (SIC)
—Vince Smith, Deputy State Investment Officer, SIC
- 11:00 a.m. (3) **Premium Tax Update**
—John Franchini, Superintendent of Insurance, Office of Superintendent
 of Insurance
- 12:00 noon **Lunch**
- 1:00 p.m. (4) **Laboratory Partnership with Small Business Tax Credit Annual Report**
—Belinda Snyder, Economic Development Program Manager, Los Alamos
 National Laboratory
—Genaro Montoya, New Mexico Small Business Assistance Program
 Manager, Sandia National Laboratories
- 2:00 p.m. (5) **Sources and Uses of State Capital Funding**
—Stephanie Schardin Clarke, Director, State Board of Finance
—Jimmy Rodriguez, Executive Capital Analyst, Department of
 Finance and Administration

- 3:00 p.m. (6) [Advancing Electric Vehicles in New Mexico](#)
—Tammy Fiebelkorn, New Mexico Representative, Southwest Energy Efficiency Project (SWEEP)
—Will Toor, Transportation Program Director, SWEEP
—Daniel Lorimier, Conservation Coordinator, Rio Grande Chapter of the Sierra Club

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

Wednesday, August 6 — Room 307 — Joint Meeting with Transportation Infrastructure Revenue Subcommittee

- 9:00 a.m. **Reconvene**
—Representative Edward C. Sandoval, Chair
—Representative Roberto "Bobby" J. Gonzales, Chair, Transportation Infrastructure Revenue Subcommittee
- 9:05 a.m. (7) [Federal Highway Trust Fund — Status of Congressional Action and the Implications for New Mexico's Highway Program Funding](#)
—Tom Church, Secretary, Department of Transportation (DOT)
- 10:00 a.m. (8) [Wyoming: An Approach for the Enacting of Comprehensive Response to Transportation Infrastructure](#)
—Wyoming State Representative Michael K. Madden, Chair, House Revenue Committee, Wyoming State House of Representatives
- 11:00 a.m. (9) [North Dakota: Meeting the Highway Funding Needs of an Oil Boom](#)
—North Dakota State Senator Ray Holmberg, Chair, Senate Appropriations Committee, North Dakota State Senate
- 12:00 noon (10) [New Mexico Highway Funding — Comparison Projections with Different Fee Structures](#)
—Clinton Turner, Chief Economist, DOT
- 1:00 p.m. **Adjourn**

Revised: September 26, 2014

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

**September 29-30, 2014
Golf Course Clubhouse, New Mexico State University
3000 Herb Wimberly Drive
Las Cruces**

Monday, September 29

- 10:00 a.m. **Call to Order**
—Representative Edward C. Sandoval, Chair
- 10:05 a.m. (1) **Welcoming Remarks**
—Dr. Garrey Carruthers, Former Governor of New Mexico; President, New Mexico State University
- 10:10 a.m. (2) **Revenue Forecast**
—Elisa Walker-Moran, Chief Economist, Taxation and Revenue Department (TRD)
—Leila Burrows, Chief Economist, Department of Finance and Administration
—Peter van Moorsel, Chief Economist, Legislative Finance Committee
- 12:00 noon **Lunch**
- 1:15 p.m. (3) **Annual Report — Locomotive Fuel Gross Receipts and Compensating Tax Deductions**
—Ryan Gleason, Director, Tax Policy and Research, TRD
—Barbara Brazil, Deputy Cabinet Secretary, Economic Development Department
- 2:00 p.m. (4) **Update on Gaming Compacts with the Federal Government**
—George Rivera, Governor, Pueblo of Pojoaque
—Steffani Cochran, Chief Legal Counsel, Pueblo of Pojoaque
- 2:45 p.m. (5) **Gaming — Revenue, Trends and Tribal-State Revenue Sharing**
—Frank A. Baca, General Counsel and Acting Executive Director, Gaming Control Board

3:30 p.m. (6) **Santa Teresa's Industrial Border Zone**
—Jerry Pacheco, President, Global Perspectives Integrated, Inc.; Vice
President, Border Industrial Association
—William Mattiace, Executive Director, New Mexico Border Authority
—Chuck McMahon, Director, Planning Department, Doña Ana County

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

Tuesday, September 30

9:00 a.m. **Reconvene**
—Representative Edward C. Sandoval, Chair

9:05 a.m. (7) **Overview and Tour of the Union Pacific (UP) Santa Teresa Facility**
—Jo Ellen Stock, Senior Director of State Issues, UP
—Fred O'Chesky, Lobbyist, UP

9:10 a.m. **Travel to UP Fueling Facility**
—8300 Airport Road, Santa Teresa

10:00 a.m. **Tour of UP Fueling Facility**

10:15 a.m. **Travel to UP Intermodal Facility**
—9050 Strauss Road, Santa Teresa

10:45 a.m. **Tour of UP Intermodal Facility**

11:00 a.m. **Travel to Golf Course Clubhouse**

12:00 noon **Adjourn**

Revised: October 22, 2014

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

**October 23-24, 2014
State Capitol, Room 307
Santa Fe**

Thursday, October 23

- 10:00 a.m. **Call to Order**
—Representative Edward C. Sandoval, Chair
- 10:05 a.m. (1) **Tax Policy Priorities — New Mexico Voices for Children**
—Bill Jordan, Senior Policy Advisor, Governmental Relations, New Mexico Voices for Children
- 11:00 a.m. (2) **Disaster Relief Workers Potential Tax Implications**
—Jerry Fuentes, President, Arizona-New Mexico Region, AT&T
- 12:00 noon **Lunch**
- 1:00 p.m. (3) **Proposed Changes to the Angel Investment Tax Credit**
—Tom Clifford, Secretary, Department of Finance and Administration
—John Chavez, President, New Mexico Angels
- 1:30 p.m. (4) **Proposed Changes to the Sustainable Building Tax Credit**
—Senator Peter Wirth
—Mark Duran, Executive Director, New Mexico Manufactured Housing Association
—John Garcia, Executive Vice President, Home Builders Association of Central New Mexico
—Steve Hale, President, Hale and Sun Construction, Inc.; Founding Member, Build Green NM
- 2:30 p.m. (5) **Valuation of Property in Taos County**
—Palemon Martinez, Secretary/Treasurer, Northern New Mexico Stockmen's Association; President, Taos Valley Acequia Association
—Clyde Ward, Vice President, New Mexico Association of Counties (NMAC); San Juan County Assessor
—Cesario Quintana, Director, Property Tax Division, Taxation and Revenue Department (TRD)

3:15 p.m. (6) **[Impact of Hold Harmless Reductions on Gallup](#)**
—Maryann Ustick, City Manager, Gallup
—Dick Minzner, Lobbyist

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

Friday, October 24

9:00 a.m. **Reconvene**
—Representative Edward C. Sandoval, Chair

9:05 a.m. (7) **[City of Eunice v. State of New Mexico Taxation and Revenue Department — Overview and Status Update](#)**
—Brad Odell, Chief Legal Counsel, TRD
—Bill Fulginiti, Executive Director, New Mexico Municipal League

10:00 a.m. (8) **[Home Rule Taxing Authority](#)**
—Bill Fulginiti, Executive Director, New Mexico Municipal League

10:15 a.m. (9) **[County Local Option Gross Receipts Taxes, Hospital Funding and Other County Legislative Priorities](#)**
—Steve Kopelman, Executive Director, NMAC
—Clyde Ward, Vice President, NMAC; San Juan County Assessor
—Gary Perez, Chair, NMAC Assessors Affiliate, Santa Fe County Chief Deputy Assessor
—Patrick Varela, Santa Fe County Treasurer
—Michael Gallagher, Lea County Manager

12:00 noon **Adjourn**

Revised: December 16, 2014

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

**December 18-19, 2014
State Capitol, Room 307
Santa Fe**

Thursday, December 18

- 10:00 a.m. **Call to Order**
—Representative Edward C. Sandoval, Chair
- 10:05 a.m. (1) **Revenue Forecast**
—Elisa Walker-Moran, Chief Economist, Taxation and Revenue
Department
—Leila Burrows, Chief Economist, Department of Finance and
Administration
—Peter van Moorsel, Chief Economist, Legislative Finance
Committee
- 12:00 noon **Lunch**
- 1:00 p.m. (2) **Gross Receipts Tax Base Study — Results and Next Steps**
—Dr. Lee A. Reynis, Bureau of Business and Economic Research,
University of New Mexico
—Richard Anklam, President and Executive Director, New Mexico Tax
Research Institute
—Jim O'Neill, Consultant
- 3:00 p.m. (3) **Retiree Program Solvency Report**
—Wayne Propst, Executive Director, Public Employees Retirement
Association
- 3:45 p.m. (4) **New Mexico Lottery Revenue Update and Legislative Lottery
Scholarship Fund Status**
—Glenn Walters, Deputy Cabinet Secretary, Higher Education
Department (*invited*)
—David Barden, Chief Executive Officer, New Mexico Lottery
- 4:30 p.m. (5) **Legislative Proposals**
—Exemptions from Reductions to Hold Harmless Distributions (.198361)

4:45 p.m. **Recess**

Friday, December 19

9:00 a.m. **Reconvene**
—Representative Edward C. Sandoval, Chair

9:05 a.m. (6) **Legislative Proposals (Continued)**
—Distributions or Transfers to Municipalities and Counties
 (.198081 and .198312)
—Allowing Local Governments to Tax Food (.198085)
—Delayed Discontinuation of a County's Obligation to Fund the
 Safety Net Care Pool Fund (.197929)
—County Treasurer Can Be Authorized to Accept Payments of
 Delinquent Taxes (.197746)
—Correcting Obvious Errors in a Property Tax Schedule (.197725)
—Changes to the County Industrial Revenue Bond Act
 (.198247 and .197869)
—Administrative Hearings Office Act (.197777)
—Gross Receipts Tax Deduction for Cybersecurity Devices (.198194)
—Agricultural Property Valuation (.197405)

12:00 noon **Adjourn**

MINUTES

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

**June 6, 2014
Room 307, State Capitol
Santa Fe**

The first meeting in 2014 of the Revenue Stabilization and Tax Policy Committee (RSTP) was called to order by Representative Edward C. Sandoval, chair, on Friday, June 6, 2014, at 10:01 a.m. in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Edward C. Sandoval, Chair
Sen. Carlos R. Cisneros, Vice Chair
Sen. Sue Wilson Beffort
Rep. Anna M. Crook
Rep. Rodolpho "Rudy" S. Martinez
Rep. Henry Kiki Saavedra
Sen. Clemente Sanchez
Sen. William E. Sharer
Sen. John Arthur Smith
Rep. James R.J. Strickler
Rep. Thomas C. Taylor
Rep. Jim R. Trujillo
Sen. Peter Wirth

Designees

Rep. Jason C. Harper
Rep. Luciano "Lucky" Varela

Absent

Rep. Brian F. Egolf, Jr.
Sen. Timothy M. Keller
Sen. Mark Moores
Sen. Lisa A. Torracco
Rep. Bob Wooley

Rep. Donald E. Bratton
Sen. William F. Burt
Sen. Jacob R. Candelaria
Rep. Ernest H. Chavez
Rep. Miguel P. Garcia
Sen. Phil A. Griego
Rep. Sandra D. Jeff
Sen. Gay G. Kernan
Rep. Tim D. Lewis
Rep. Bill McCamley
Sen. George K. Munoz
Rep. Paul A. Pacheco
Rep. Dennis J. Roch
Rep. Debbie A. Rodella
Sen. Nancy Rodriguez

Sen. John M. Sapien
Rep. Carl Trujillo
Sen. Pat Woods

Staff

Pam Stokes, Staff Attorney, Legislative Council Service (LCS)
Caela Baker, Staff Attorney, LCS
Amy Chavez-Romero, Assistant Director for Drafting Services, LCS
Michelle Jaschke, Researcher, LCS
Tessa Ryan, Staff Attorney, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Friday, June 6

Post-Session Fiscal Report

David Abbey, director, Legislative Finance Committee (LFC), and Peter van Moorsel, chief economist, LFC, updated the committee on the state's fiscal status. They turned the committee's attention to the state's most recent appropriations and to revenue trends and projections.

Mr. Abbey said that fiscal year (FY) 2015 general fund spending, as authorized by the General Appropriation Act of 2014, will reach the highest level in the state's history: \$6.16 billion, an increase of 4.6% from the previous fiscal year. The year's capital outlay appropriations, for which the challenge persists of getting projects to shovel-ready status so that money may be spent, total \$630.4 million. He discussed general fund recurring appropriations from FY 1989 through FY 2015, commenting that the growth rate in spending in the 20 years before FY 2009, 6.75%, was less sustainable than the current rate of 5.3%.

Mr. Abbey provided a snapshot of the state's spending since FY 2007. Following a recession-caused dip in revenues, the state had begun and continues to restore its programs. This year, much of the newly available revenue will be dedicated to strengthening state initiatives in areas such as early childhood development, education and health care. Most of the increase in FY 2015 general fund spending falls in the categories of public schools and higher education. Meanwhile, some FY 2015 spending will support across-the-board and targeted salary increases.

Mr. Abbey delineated the planned uses of some spending increases, namely, \$26 million for early childhood education, \$147.7 million for public schools and \$42.5 million for higher education. He noted that limitations in related infrastructure prevent rapid growth in the area of child care assistance and that there is a push to increase the rates of payment for child care services.

Remarking on the relationship of Medicaid to the state budget, Mr. Abbey highlighted some relevant state statistics and presented a graph showing the revenue sources and amounts associated with Medicaid spending in fiscal years 2009 through 2020. The state's general fund contributions to the program will gradually increase beginning in FY 2016.

Mr. Abbey reported on revenues in general and on the amount of state money held, and projected to be held, in reserve. To date, revenues, much of which are recurring, are higher than forecasted. This is in part because oil and gas production has increased. It is anticipated that the state's reserves will be 9.2% at the end of FY 2014 and 9% at the end of FY 2015. Mr. Abbey rebutted the opinion of some that 9% is too high by arguing that the somewhat-likely deficiency of approximately \$65 million for the Human Services Department (HSD) and a \$30 million special education maintenance-of-effort contingency justify setting the reserves at that level. He also noted the risks posed by recent cash reconciliation/accounting issues, low reliability of employment data, lottery scholarship program obligations and uncertainty in federal spending.

On questioning, Mr. Abbey, Mr. van Moorsel and committee members addressed the following topics.

Highway maintenance and repair. A committee member remarked on the need for improvements in transportation infrastructure funding. Another committee member requested that, at the planned joint meeting of the RSTP and the Transportation Infrastructure Revenue Subcommittee, the LFC present options for overcoming challenges in transportation infrastructure funding. Options should include adjusting the percentage of severance tax revenue dedicated for other purposes and directing some of that revenue to transportation infrastructure development. A third committee member stressed the need for a long-term solution to the transportation-revenue problem and proposed that an increase in the fuel tax rate be part of it.

Oil and gas industry-driven revenues. A committee member cautioned against forecasting revenue from the oil and gas industry at high levels because of factors — such as the federal control over certain oil- and gas-rich lands and delays caused by the federal permitting process — that prevent revenues from reaching their full potential. Mr. Abbey responded that those forecasts were made conservatively.

Eligibility for subsidized child care. The Children, Youth and Families Department may adjust the poverty-based eligibility requirements for receiving child care, but the legislature has ultimate control over funding levels.

Jobs. A committee member expressed interest in hearing a report by the Workforce Solutions Department on the effects, both here and in other states, of cuts in funding for federal laboratories on private-contractor enterprise. Other committee members echoed the concern about job losses, particularly in the mining, oil and gas industries. One member added that there appears to be a disconnect between the jobs of the world-oriented future marketplace and the skills that people are being trained for today.

2014 Legislative Session: Budget and Tax Policy Update

Tom Clifford, secretary, Department of Finance and Administration (DFA), offered the committee information on current and projected revenues, on FY 2015 appropriations, on the targets of some new spending and on tax policies. Ryan Gleason, tax policy and research director, Taxation and Revenue Department (TRD), elaborated on Secretary Clifford's presentation by reviewing tax-related legislation passed in the 2014 regular session.

Secretary Clifford compared several revenue sources' original and revised forecasted growth levels, noting that the greatest discrepancy is in the category of oil and gas production. Like Mr. Abbey, he acknowledged the recent strength, but also the fickleness, of revenue generation from that industry. Secretary Clifford identified many of the risks affecting revenue projections that Mr. Abbey noted, including the HSD deficiency, the public employees' union lawsuit (for which, Secretary Clifford said, it appears that about two or three agencies will face a deficiency), cash reconciliation/accounting issues, future increases in state spending for Medicaid, the lottery scholarship program and federal spending cuts. He further pointed out that circumstances related to the tobacco settlement, uncertainty in tax liability (e.g., uncertainty caused by a lawsuit initiated by the City of Eunice) and the higher education funding formula threaten to alter revenue and spending projections.

Secretary Clifford commented on certain FY 2015 appropriations. In the area of economic development, money to continue implementation of the Local Economic Development Act increased significantly, which, according to Secretary Clifford, was an influential factor in Tesla's ongoing consideration of New Mexico as a state in which to build its planned factory. Moreover, funding to implement the Job Training Incentive Program has been established as recurring, and the budget for tourism advertising has increased. In the area of capital outlay, Secretary Clifford provided an overview of funding by project type and highlighted certain capital outlay-related developments, including some related to Executive Order 2013-006 (which pertained to audit and budget compliance).

Secretary Clifford noted several state initiatives effected in part by targeted spending, including public education reforms and improvements in the health care work force. He described legislative measures to improve the solvency of the lottery scholarship program, saying that more changes will be needed to prevent future shortfalls. He called the committee's attention to issues associated with safety net hospital funding and judicial pension solvency.

On the topic of tax policy, Secretary Clifford mentioned certain changes to law made in the most recent session: an extension to the net operating loss carry forward provision; an expansion of the aircraft parts and services deduction; and the creation of an aircraft sales deduction. He remarked on some topics that he said represent challenges in tax policy, including the burden imposed on small businesses, tax pyramiding, tax on remote sales, local gross receipts taxing options and the independence of hearing officers.

Mr. Gleason characterized the two aircraft-related provisions as narrowly targeted and added that the net operating loss measure will not have a fiscal impact for the first four years of its effectiveness. He remarked on two other tax-related pieces of legislation, the dialysis facility

services and the durable medical equipment deductions, and he elaborated on the Eunice lawsuit.

The case called into question whether the City of Eunice should be held harmless for a taxpayer's errors that resulted in what were later discovered to be erroneous distributions by the TRD to the city. The New Mexico Court of Appeals ruled that a one-year statute of limitations applied, and so the TRD could withhold from its future distributions to the city only the amount erroneously distributed in that period. Mr. Gleason reported that the TRD is deciding how to proceed and whether to propose legislation that would prevent a recurrence of similar situations.

On questioning, Secretary Clifford, Mr. Gleason and committee members addressed the following topics.

Tax reform. Secretary Clifford said that there have not been active discussions within the executive branch about tax reform. He added that the governor would most likely support a broadening of the tax base only if the corresponding rate decreased. A committee member stressed the importance of cooperation by executive branch agencies in providing information for the committee's planned comprehensive review of the gross receipts tax.

Reserves. The discrepancy between the LFC's and the DFA's reported reserve levels stems in large part from the differences in approach to handling the payments required by the public employees' union lawsuit court order.

High-wage jobs tax credit. Issues related to claims are being addressed by the TRD in its consultation with the Economic Development Department.

Eunice lawsuit. A committee member commented that rural communities like Eunice have a harder time maintaining stable revenue levels than larger ones do. The member requested information on the amounts of hold harmless payments to local governments.

Accuracy of predicting effect of tax proposals. A committee member pointed out that the TRD lacks the tools necessary for accurately predicting the revenue changes that proposed tax legislation would cause if implemented.

Higher education funding. A committee member commented that there appears to be wasteful spending in higher education and asked that the issue of that inefficiency be addressed.

Updated Tax Deviation Report; Discussion of Work Plan and Meeting Schedule

Ms. Stokes commented on a report, which was distributed to committee members, in which information about the state's tax credits, tax deductions, tax exemptions and other deviations from the tax structure is compiled. She said that the revised report is easier to read and better organized than the version from last year.

Ms. Stokes presented the committee's proposed work plan and meeting schedule for the 2014 interim. Members recommended the addition of some items and then adopted the plan.

Proposal for a Comprehensive Review of the Gross Receipts Tax

Richard Anklam, president and executive director, New Mexico Tax Research Institute, and Jim O'Neill, consultant, O'Neill Consulting LLC, elaborated on their proposal for work intended to identify ways to reform the general excise tax, commonly referred to as the gross receipts tax. They outlined the perceived problem and some possible solutions to it.

In sum, Mr. Anklam and Mr. O'Neill pointed out that the tax is incompatible with the modern economy. The tax was created in the 1960s as a broad-based tax on business receipts. But the state and world have changed since then; New Mexico sellers now face more competition. Lawmakers' general response to the new climate has been to relieve taxpayers on a piecemeal basis. That response has shrunken the tax base and increased the rate.

Mr. Anklam and Mr. O'Neill articulated two possible solutions, both of which would do away with the gross receipts tax. A turnover tax or a consumption tax could be implemented in its place.

The presenters proposed a two-step process that would span two interims. In the first stage, information would be collected and assembled in a useful form. In the second stage, policy and design questions would be addressed.

On questioning, Mr. Anklam, Mr. O'Neill and committee members addressed the following topics.

Costs of and expert involvement in the work. The costs of the work are not certain. More research involving the TRD would need to be conducted before developing a firm total. Experts would be used to validate findings and provide estimates on data that the TRD cannot provide. A committee member stressed that, because accuracy is essential, the project should include experts. Another stated the importance of legislators understanding how their policy choices will affect revenues. Upon a motion made and seconded, the committee authorized the chair and vice chair to speak for the committee in asking the New Mexico Legislative Council for money to pay for the project.

The broken tax system. A committee member remarked that, over time, special interests have lobbied for carve-outs from the original system, rendering it fractured. The state needs a system. Another committee member characterized the current system as regressive and urged that more progressivity become a feature. Further, in order to keep total revenue at a stable level, the entire tax code might need to be reformed. Other committee members recommended reevaluating the property tax along with other changes. Mr. Anklam responded that other taxes might also have to be considered for reform, but understanding more fully the gross receipts tax is an appropriate first step. Lastly, a committee member commented that protecting the state's permanent funds would reduce the amount in tax that people would be required to pay and would stabilize the fluctuation in revenues from the oil and gas industries.

There being no further business, the committee adjourned at 1:27 p.m.

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

**July 8-9, 2014
Zia Conference Center, Room 55400
Health & Human Performance Center
San Juan College
Farmington**

The second meeting in 2014 of the Revenue Stabilization and Tax Policy Committee (RSTP) was called to order by Representative Edward C. Sandoval, chair, on Tuesday, July 8, 2014, at 10:11 a.m. in Room 55400 of the Zia Conference Center of San Juan College in Farmington.

Present

Rep. Edward C. Sandoval, Chair
Sen. Carlos R. Cisneros, Vice Chair
Rep. Anna M. Crook
Rep. Rodolpho "Rudy" S. Martinez
Sen. Clemente Sanchez
Sen. William E. Sharer
Sen. John Arthur Smith
Rep. James R.J. Strickler
Rep. Thomas C. Taylor
Rep. Jim R. Trujillo
Rep. Bob Wooley

Absent

Sen. Sue Wilson Beffort
Rep. Brian F. Egolf, Jr.
Sen. Timothy M. Keller
Sen. Mark Moores
Rep. Henry Kiki Saavedra
Sen. Lisa A. Torracco
Sen. Peter Wirth

Designees

Rep. Donald E. Bratton (7/9, participating as a member of the Legislative Finance Committee (LFC))
Sen. William F. Burt
Sen. Nancy Rodriguez
Rep. Carl Trujillo (7/9, participating as a member of the LFC)
Rep. Luciano "Lucky" Varela (participating as a member of the LFC)

Sen. Jacob R. Candelaria
Rep. Ernest H. Chavez
Rep. Miguel P. Garcia
Sen. Phil A. Griego
Rep. Jason C. Harper
Rep. Sandra D. Jeff
Sen. Gay G. Kernan
Rep. Tim D. Lewis
Rep. Bill McCamley
Sen. George K. Munoz
Rep. Paul A. Pacheco
Rep. Dennis J. Roch
Rep. Debbie A. Rodella
Sen. John M. Sapien
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)
Amy Chavez-Romero, Assistant Director for Drafting Services, LCS
Michelle Jaschke, Researcher, LCS
Tessa Ryan, Staff Attorney, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Tuesday, July 8

Impacts and Issues of Trade Areas: Farmington and San Juan County

Tommy Roberts, mayor, City of Farmington, opened by inviting those present to visit area attractions and noting that several representatives from the City of Farmington were in attendance. Joining Mayor Roberts were Rob Mayes, city manager, City of Farmington, and Kim Carpenter, county executive officer, San Juan County. The three discussed commerce-related issues, including the tax base, trade and effects of the phase-out of hold harmless payments.

Mayor Roberts summarized the city's recent gross receipts tax (GRT) revenue history. He explained that the substantial decline in GRT revenue has been due in large part to the drop in price of natural gas and the resulting loss of jobs in that sector. Though it is hoped that the Mancos shale oil play will continue to fuel an increase in jobs and total GRT revenues, Mayor Roberts noted that GRT revenues still fall below the high-water mark reached in fiscal year (FY) 2009.

Mayor Roberts highlighted some of Farmington's attributes, particularly its status as a retail trade center for a large population that attracts nonresident spending. The federally defined trade area spans six New Mexico and Colorado counties and consists of over 220,000 people, but Mayor Roberts noted that the trade area can be considered larger than that. He added that the city's GRT rate is lower than that of area cities, giving Farmington a competitive edge in commerce. Because, on the whole, its residents favor a fiscally conservative government, Farmington has consistently elected to refrain from imposing several local option GRT increments.

Moving on to a discussion of the city's GRT rates and the effects of recently enacted changes to the hold harmless scheme, Mayor Roberts outlined several scenarios related to the city's taxing potential and the impending phase-out of hold harmless payments. He reviewed a chart showing hold harmless payments, which generally have increased steadily over time, to the city. He also illustrated the effect of a hypothetical implementation of the city's and county's exercise of their full hold harmless taxing authority. That implementation would raise the

current total GRT rate by more than 10% and make the area less commercially competitive. If the city implemented a one-eighth increment in FY 2016, the cumulative effect of that increase and the cumulative effect of the reduction in hold harmless payments would be reconciled, i.e., the city would break even in FY 2026. Mayor Roberts compared that to other break-even scenarios — a two-eighths increase and a three-eighths increase — and noted the points at which the net loss from the hold harmless phase-out would exceed the revenue gained through implementing the tax increments. Lastly, Mayor Roberts commented that factors such as a city's relative dependence on the GRT for revenue or its promise for future growth are more meaningful considerations than its size in determining how the law should treat cities disparately in the hold harmless scheme. He added that he supports the potential return of food and medicine to the GRT base and acknowledged that lawmakers face difficult decisions in this area in their attempts to reconcile divergent interests.

Mr. Carpenter began his address to the committee by identifying other representatives of San Juan County in the audience. He then provided an overview of the county's fiscal status. After revenues declined as a result of the economic slump and the recent removal of two power plants and two mines from the tax rolls, the county has striven to reduce its budget without cutting services. Mr. Carpenter expressed concern for other potential losses and encouragement by the possibility of a new clean-energy power plant's siting in the county. Mr. Carpenter added that the county is reluctant to impose new taxes, but the passage of recent state legislation — Senate Public Affairs Committee Substitute for Senate Bills 268 & 314 and Senate Finance Committee Substitute for Senate Bill 368, as amended (partial veto), 2014 (Chapter 79) (SB 268) — affecting what are formerly sole community provider hospitals applies pressure to do so.

On questioning, Mayor Roberts, Mr. Mayes, Mr. Carpenter and committee members addressed the following topic.

Economic development-related legislation and area economic development. Mayor Roberts said that the city has not yet thoroughly analyzed opportunities for economic development created by other laws but that it is trying to stimulate its economy by attracting more economic base jobs. Mr. Carpenter noted that inadequate infrastructure poses challenges for economic development; nevertheless, there has been a recent upswing in jobs and hiring. A committee member lamented the low accuracy of information about legislative proposals that often marks Taxation and Revenue Department fiscal impact reporting and that results in unforeseen revenue loss. The member also recommended that, given the high volatility associated with oil and gas-related revenue, policymakers whose governments depend heavily on that revenue diversify their income streams and act in fiscally responsible ways. Another committee member commented on the challenges for area economic development posed by federal laws and processes, such as in the area of rig permitting.

Impacts and Issues of Trade Areas: Gallup and McKinley County

Jackie McKinney, mayor, City of Gallup, George Kozeliski, acting city manager, City of Gallup, and Bruce Swingle, county manager, McKinley County, presented an economic profile of Gallup and McKinley County and the predicted effects of recently enacted hold harmless legislation.

Mayor McKinney discussed the Gallup trade area, its GRT rates and revenue, its hold harmless payments and the anticipated effects of enacting hold harmless tax increments. The trade area includes McKinley County and portions of Arizona, the Navajo Nation and the Pueblo of Zuni. Gallup has a high sales volume — approximately \$430 million annually — but only a little more than one-half of that is taxable. The city's GRT revenue has been, and is predicted to remain, flat. It receives about \$3.1 million in hold harmless payments and would lose much of that if it imposed the maximum hold harmless increment. Further, if it and McKinley County imposed the maximum tax allowed by the hold harmless scheme, then Gallup's tax rate would be the highest on the Interstate 40 corridor.

Mayor McKinney explained his reasons for believing that imposing that maximum increment would be problematic. First, the county has an inordinately high poverty rate and the lowest per capita income of any county in the state. It also receives many nonresident visitors who use but do not pay for services to the extent that residents do. Gallup also has a lot of crime and needs to maintain, if not increase, its police and fire-protection forces to manage crime and emergencies. Collectively, these conditions demand a high level of costly services that should not be reduced. Therefore, budget cuts are not an acceptable solution, nor is raising the GRT rate. If it were, the largely impoverished population and the local economy would be further stressed.

Mayor McKinney proposed a state-sponsored solution to Gallup's difficulty. The state could reinstate hold harmless payments for cities and counties that are characterized by disproportionately high poverty rates. Given that no other local government's size and poverty characteristics match those of Gallup and McKinley County, the solution could be tailored to assist only these governments, thereby avoiding excessive financial strain.

Mr. Swingle discussed McKinley County. McKinley County has a disproportionate share of the state's people living in poverty. Further, a majority of the county's land is nontaxable. Although the county receives some federal payments in lieu of taxes, it is not known whether the federal government will continue those payments. Mr. Swingle also talked about the county GRT rate and noted that, though it is not the highest in the state, it is higher than the corresponding tax rate of the Arizona county it competes with for retail trade. Most of the county's revenues are generated from the GRT. Mr. Swingle added that the county's economy has weakened in recent years. The number of business licenses, employees and employers have decreased. Because of competition with the neighboring Arizona county, the commission is reluctant to increase McKinley County's GRT rate.

On questioning, Mayor McKinney, Mr. Kozeliski, Mr. Swingle and committee members addressed the following topics.

Regional crime. Alcohol abuse fuels a lot of crime, and domestic violence is prevalent. Regional crime is further attributable to the intermittent influxes of people from outlying areas. A member pointed out that, conversely, such influxes are an economic boon.

Lost wealth in region. Federal sequestration and the recession have taken a heavy toll on the region, once widely believed — erroneously — to be home to a high number of wealthy people.

Fairness and Equity in State Tax Incentive Policies for Economic Development

Ed Flynn, chief operating officer, International Wire Group (IW), testified on his business's concern about the prospective siting of another bare copper wire manufacturing company in proximity to IW's facility in Santa Teresa. The concern centers on the state's and Dona Ana County's efforts to provide financial incentives for the competing company, CN Wire Corporation (CN Wire), to open that facility and the unfair business advantage for CN Wire that he said would result. Mr. Flynn was accompanied by Dr. David Schauer, associate professor of economics and finance, University of Texas at El Paso (UTEP), and Dr. Byron Schломach, director, Center for Economic Prosperity, Goldwater Institute.

Mr. Flynn described the situation, which he characterized as marked by unfairness in tax policy. He outlined the subsidies offered by the state and county to CN Wire, which include Local Economic Development Act (LEDA) funding, Job Training Incentive Program (JTIP) funding and tax abatement through industrial revenue bond (IRB) financing. These subsidies, if given, would be detrimental to IW's business by giving IW's direct competitor an unfair advantage over it. In response to recent developments, IW requested through a provision of law (Section 4-59-15 NMSA 1978) a reconsideration of the IRB issuance; Mr. Flynn said that IW wishes to get a full evidentiary hearing before the State Board of Finance. He continued by giving the background of IW's 2011 establishment in Santa Teresa, stressing that the company received no county or state subsidy in connection with the venture. IW, he said, has since saved and created jobs and made substantial investments.

Mr. Flynn testified that he believes that CN Wire failed to submit complete information in its application to receive benefits through the LEDA program. In the application, the company understated its business competition, he said, and the application was completed by a biased entity and within a confidential process that makes it difficult for existing companies to timely protest an applicant's receipt of benefits. When he expressed his concerns to the secretary of economic development, Mr. Flynn was told that IW could similarly capitalize on state-offered incentives by closing its facility and opening a new one, or it could apply for benefits through the JTIP, the high-wage jobs tax credit or both.

Mr. Flynn concluded by urging the committee to examine the laws that entice new businesses to locate in the state and the lack of protections for existing businesses — specifically, the law that provides recourse for a potentially injured party to challenge the issuance of county — but not municipal — IRBs. He remarked that tax incentives pick winners and losers and undermine free market enterprise, and he questioned the message that government sends when it helps certain businesses while putting at a competitive disadvantage others that make entirely private investments. Lastly, he drew the committee's attention to several public statements in support of IW's plight.

Dr. Schauer, who was hired by IW to conduct an economic impact analysis of CN Wire's planned project, described his analysis and conclusions and noted that those conclusions

represented his opinion, not that of UTEP. For his study, he used an input/output model to measure the likely economic effects relating to jobs, compensation and business volume. He studied the project's potential direct, indirect and induced effects and compared his results to those of the entity that CN Wire hired to help complete its applications for incentives.

Dr. Schauer argued that CN Wire's analysis relied on faulty assumptions that led to inflated conclusions about the project's economic effect on New Mexico. He pointed out that the company's proximity to El Paso would result in many of its workers living, and therefore spending much of their earnings, in Texas. Likewise, CN Wire would purchase much of its raw materials from Texas. He added that his analysis did not consider "substitution effects", which would further diminish the economic gain that New Mexico stands to reap.

Dr. Schlomach testified next, expressing the view that governments' direct subsidies and tax benefits for corporations are harmful for long-term prosperity. He argued that the long-term costs of such programs, which create market distortions, are higher than their short-term benefits. For one thing, unintended consequences could result from a government's giving. Further, such giving might send businesses the message that the location under consideration holds little appeal without the enticement. Lastly, it increases the burden on non-recipient entities, who must then shoulder the increased costs of infrastructure. Dr. Schlomach recommended that governments focus instead on creating a fair tax policy, a secure legal system and a sound infrastructure and that New Mexico end its tax incentive programs. He said that economies should be developed by helping businesses with permitting and by promoting the community.

On questioning, Mr. Flynn, Dr. Schauer, Dr. Schlomach and committee members addressed the following topics.

New Mexico's extricating itself from its tax system. Dr. Schlomach acknowledged a committee member's concern that, in the process of effecting broad tax reform, the state might harm the industries relying on existing benefits. He recommended that, were the state to undertake such reform, the state honor its existing commitments but repeal its tax incentive laws going forward. He added his opinion that most companies do not base their location decisions on tax benefits anyway, but rather more broadly on a state's overall policies.

IW's predicament and views. Mr. Flynn recommended that policymakers consider strengthening the LEDA application to more effectively solicit information about direct competition, which the legislature, in passing IRB laws, saw as being contrary to those laws' intended purposes. Dr. Schauer recommended that governments more assiduously collect complete answers to application questions and that they make their incentive award decisions based on complete data sets that accurately reveal the benefits of the award. A committee member commented that the state should actively seek a solution that is mutually agreeable to the companies. Another committee member recommended reconsidering laws related to IRBs. Mr. Flynn said that the State Board of Finance would meet next on July 15 but that an agenda had not yet been published, and so he did not know whether the issue would be addressed then.

Approval of Minutes

On a motion made and seconded, the minutes from the June 6, 2014 meeting were unanimously approved.

Revised 2014 New Mexico Business Tax Competitiveness Study

Richard Anklam, president and executive director, New Mexico Tax Research Institute (NMTRI), spoke about the findings of an updated report on the state's business tax competitiveness. He began by reviewing NMTRI-identified principles of good tax policy and describing the context of his presentation. The updated report was produced after Ernst & Young conducted a study of the 50 states and District of Columbia comparing the competitiveness of those entities' business taxes.

In the original study, Ernst & Young ranked New Mexico last for effective tax rate return on investment for a 30-year investment. Mr. Anklam stressed that the study was flawed in that it did not consider incentives or other factors contributing to a given business's site selection or overall cost, it used simple corporate income assumptions and it failed to overcome the difficulty of modeling New Mexico's GRT.

The NMTRI then commissioned Ernst & Young to conduct a follow-up study. In it, Ernst & Young compared New Mexico to eight other states, taking tax incentives into account, adding a rural location, adding industries and asking additional policy questions. The corresponding report stated that, without incentives, New Mexico's effective tax rate was the highest in all sectors. Mr. Anklam reviewed charts that illustrated in more detail how New Mexico compared with those other states in tax-specific areas. Mr. Anklam then pointed out that, with incentives considered, New Mexico's rankings in different areas were varied, though generally unfavorable. He reviewed charts that illustrate New Mexico's place among states by industry and investment type and a chart illustrating where, the study found, New Mexico would rank if particular tax policies were implemented.

Mr. Anklam said that some of those tax policies have been enacted in recent years. Namely, in 2012, lawmakers addressed the tax pyramiding issue by expanding the deductions for manufacturing inputs and construction services and by creating a new deduction for leasing equipment. Mr. Anklam highlighted New Mexico's ranks by industry after the implementation of that 2012 legislation. He pointed out that another policy had been adopted through passage of 2013 legislation, which, among other measures, phased in a reduced corporate income tax rate and allowed manufacturing companies to calculate their income tax using a single-weighted sales factor.

The NMTRI commissioned Ernst & Young in November 2013 to again analyze New Mexico's business tax competitiveness in light of these policy enactments and related changes in other states. Mr. Anklam reviewed the results, by sector and industry and before and after credits were considered, of that study. After credits were considered, New Mexico had the lowest effective tax rate for manufacturers but was less competitive outside of that sector. Meanwhile, its industry-specific rankings spanned a wide range.

On questioning, Mr. Anklam and committee members addressed the following topics.

Tax reform. A committee member commented that New Mexico's tax system is competitive, but complicated and poorly marketed, and that it picks winners and losers, making it unfair. Mr. Anklam suggested that, if policymakers wished to repeal incentives to make the system more equitable, incentives be carefully evaluated and reviewed so that policymakers would know which add net value to the state and might be worth preserving. He added that broad reform could be achieved incrementally so as not to significantly disrupt revenue streams. A committee member expressed the view that broad reform should be accomplished all at once but acknowledged that such an approach carries risk.

Comprehensive review of the GRT. Mr. Anklam described the status of a state tax study that he and Jim O'Neill, consultant, O'Neill Consulting LLC, have proposed conducting. He and Mr. O'Neill have been asked to produce a work plan, which would be available by the next meeting, and he would soon know better the costs of conducting the study. Much of the work would involve grasping the size of the tax base. To accomplish this, the two would collect publicly available information. To a lesser extent, they would need to rely on experts in related state agencies. Mr. Anklam said that after the fact-finding stage is complete, policymakers should take time to carefully mull options for reform.

Fiscal Impacts of Oil and Natural Gas Production in New Mexico

Mr. Anklam reported on the oil and natural gas industries' recent contributions to state revenue. He and Laird Graeser, primary research contractor, completed a preliminary study on the topic in February 2014. Mr. Anklam described the approach to answering the question ("How much does the oil and gas industry contribute to the state and local governments, schools, etc.?") as an objective, primarily data-driven attempt to quantify direct contributions to beneficiaries, not indirect contributions to the general economy. To gather information, Mr. Anklam and Mr. Graeser studied GRT, corporate income tax and personal income tax revenues associated with the North American Industrial Classification System's oil and gas codes. They also attempted to determine how much money from the oil and gas industries enters the Severance Tax Permanent Fund (STPF), the Land Grant Permanent Fund (LGPF) and other repositories.

Mr. Anklam summarized the results of the study. Revenue from the oil and gas industries constitutes a substantial portion of all revenue flowing to the STPF and the LGPF and a significant amount to the general fund and for public school, higher education and severance tax bond funding. He cautioned that, because oil and gas revenues are volatile and finite, it is particularly risky for the state to depend to such a large extent on them to replenish its general fund and support its local governments.

Mr. Anklam noted that the report is available on the NMTRI web site, that the first 32 pages, in particular, are helpful to read and that he welcomes readers' responses to it.

The committee recessed at 3:59 p.m.

Wednesday, July 9

The committee reconvened for a joint meeting with the LFC at 8:20 a.m. on Wednesday, July 9, 2014, with Representative Varela chairing the meeting.

Welcoming Remarks

Dr. Toni Hopper Pendergrass, president, San Juan College, welcomed the committees. She cited some statistics related to the college's population, summer enrollment and demographics. She thanked the legislature for its financial support of the new School of Energy, which she said would make important contributions to the state's economic development. Mr. Carpenter also welcomed the committees and gave a brief overview of the area.

Energy Economic Outlook

Dr. Helen Currie, senior economist, Conoco Phillips Corporation, presented on three main topics: economic fundamentals; the outlook for natural gas markets; and the outlook for oil markets. She said that advocacy for free trade was at the core of her message.

Economic Fundamentals

Dr. Currie characterized recent per capita gross domestic product levels as reflective of a long recovery from a long recession. She noted that there has been solid continuous economic growth, particularly in the U.S., fueled largely by the U.S. energy industry. Global income now exceeds pre-recession levels. Manufacturing in the U.S. has increased, in large part because of the growth in supply of North American gas and oil. That growth builds confidence in manufacturers that they can safely locate in the U.S.

Outlook for Natural Gas Markets

Much of the growth in energy production is attributable to shale gas, which returned the U.S. to its former place at the center of world energy markets, and the production scale of which had been unforeseen. The U.S. and Canada have enough shale resources to both meet their domestic demands and export a substantial amount without, according to industry experts, there being a substantial price increase. Much of the future shale growth will be concentrated in the eastern U.S. and western Canada. Dr. Currie noted that New Mexico will benefit from the increase in net exports to Mexico.

Dr. Currie reviewed charts showing that the greatest demand for U.S. natural gas between 2013 and 2020 is predicted to be in the liquefied natural gas exports sector and that the West South Central region of the U.S., because of its predicted energy-intensive manufacturing growth, will have the highest growth in demand for natural gas between 2013 and 2030. She noted that natural gas liquids are a key component in revitalizing the U.S. manufacturing sector and reviewed a map showing proposed natural gas liquefaction and export projects in North America. Natural gas liquids feedstocks are plentiful and more affordable, qualities that contribute to the revitalization of U.S. manufacturing and the U.S.'s 2012 shift from importer of liquefied petroleum gases to exporter.

Outlook for Oil Markets

Dr. Currie stated that the global demand for oil and heightened global economic activity support optimism for the U.S. in its role in oil markets. Growth in demand and supply disruptions has recently kept world oil prices relatively high, though a gradual decrease in price (due largely to the anticipated growth in U.S. production) in the next six years is predicted. U.S. tight oil supply has grown in the last several years to now constitute a significant portion of the global supply, and also in that time, there has been unexpected growth in U.S. crude oil production. Some reasons for the optimism for continued growth in U.S. tight oil production are that drilling has become more efficient and that upstream capital spending has grown. Dr. Currie noted that spending associated with the Permian Basin plays will increase oil and natural gas production and economic activity in southeastern New Mexico.

Dr. Currie moved on to a discussion of oil production and prices, gasoline prices and U.S. oil importation, exportation and refining. She reviewed charts showing the fluctuation of oil prices in the past five years and a chart showing the range of prices predicted for the next five years, noting that the breadth of that range is attributed to diverging viewpoints on whether the U.S. will limit its crude oil exports. U.S. oil production is projected to grow and could be relatively high by the end of this decade. Next, Dr. Currie reviewed a chart showing the past and projected delineation by type of U.S. crude oil imports. Importation of light, sour and medium crude imports is projected to decline, while that of heavy crude is likely to stay about the same. On the topic of gasoline prices, Dr. Currie said that they are determined by a global factor: international crude prices, which in turn is influenced by U.S. exports. She added that, if the ability to export crude oil is restricted, then crude oil production will fall. Dr. Currie concluded by highlighting some of the benefits for the U.S. of its crude oil exportation: lower gasoline prices; an improved economy and more jobs; less oil importation; increased governmental revenues; and a stronger geopolitical position.

On questioning, Dr. Currie and committee members addressed the following topics.

Keystone Pipeline. Dr. Currie questioned the judiciousness of delaying development of the most recent phase, XL, of the Keystone Pipeline project and commented that the industry is moving forward with production in spite of related setbacks. She said that if the XL phase were implemented, there would be no direct economic benefit to New Mexico, but rather to the Gulf Coast and the entire U.S.

Gasoline prices. A committee member asked for a list of actions that the legislature could take to help lower gasoline prices. Dr. Currie said that states could play a role in influencing gasoline prices by supporting the campaign to encourage oil exports. She qualified her statement by saying that, while more U.S. exports can lower prices by increasing supply, many other factors influence world oil prices; thus, U.S. export levels and the price of gasoline do not necessarily correspond. Further, although it can take between one and two years for gasoline prices to respond to changes in the level of exports, markets react quickly to large-scale global crises.

Big Brothers Big Sisters (BBBS) of New Mexico — Funding Issue

Chris Garcia, chief executive officer (CEO), BBBS of San Juan County, and Angela Reed-Padilla, CEO, BBBS of Central New Mexico, thanked the legislature for its commitments to appropriating money for the services that BBBS provides and then discussed a funding problem that BBBS is experiencing. In FY 2014, money appropriated for one-on-one mentoring services was not used because of contract and billing issues. BBBS suffered from that lack of funding. Recently, the Department of Finance and Administration (DFA) has again not dispersed money to BBBS. As a result, said Ms. Garcia, BBBS has found it difficult to provide services to a population in critical need. Ms. Reed-Padilla added that the organization's many attempts to reach someone from the DFA and the Governor's Office to discuss the issue have been unsuccessful. A committee member remarked that similar funding problems have been occurring in other parts of the state. David Abbey, director, LFC, recommended that BBBS write a letter to the DFA, with the chairs of the committees copied, explaining BBBS's concern. He added that he would attempt to discuss the issue with the secretary of finance and administration.

Update on Sole Community Provider Federal Compliance

Brent Earnest, deputy secretary, Human Services Department (HSD), Steve Kopelman, director, New Mexico Association of Counties, Jeff Dye, New Mexico Hospital Association (NMHA), Mike Phillips, chief strategy officer, San Juan Regional Medical Center (SJRMC), and Mr. Carpenter presented on issues related to the transition from the hospital-funding Sole Community Provider Program (SCP) to the Safety Net Care Pool Program (SNCP).

Deputy Secretary Earnest provided some history of the issue and context for the discussion. Under the SCP, certain hospitals (those that were the main or only provider of hospital services in their areas or that served as the primary point of access for patients unable to pay for treatment) received federally matched funding for offering certain services. Counties, not the state, paid into the program. The SCP ended at the end of 2012. Under the SNCP, which began on January 1, 2014, less federal money is available, a fact that prompted stakeholders, including the HSD, counties and hospitals to explore and negotiate ways to fill the funding gap.

SB 268 was designed to bring the state into federal compliance with the SNCP and to help fill the program funding gap. Under the new law, affected counties must contribute an amount equal to one-twelfth of their county GRT revenue each year. That amount is less than what counties previously paid for the program. Because of a foreseen deficit in program funding, the state appropriated \$9 million for the program. Nonetheless, there remains a \$10 million to \$12 million funding gap for calendar year (CY) 2014 and anticipated future funding gaps, which need to be addressed. Deputy Secretary Earnest reviewed tables that show program-related expenditures and revenues in FY 2013, those estimated during the legislative session for CY 2014 and updated estimates for 2014. He explained that the revised estimates' increases are attributed to rate increases and Medicaid expansion.

Mr. Kopelman offered additional information and his organization's perspective. The law also provides that certain counties, within a three-year time frame, may impose a one-twelfth or a one-sixteenth GRT increment. As passed by the legislature, SB 268 included a three-year sunset on the county-contribution requirement. The governor vetoed that provision. The NMAC

is very concerned about the fiscal implications of that veto. If it remains, counties will be obligated to pay substantially more over time than originally contemplated. This will further stress their budgets, which are already strained by statutory requirements to provide for populations that do not contribute to the revenue stream. Mr. Kopelman commented that the SNCP changes work well in some counties, but not others; among counties, the ratio of program expenditure to revenue is inconsistent.

Mr. Kopelman reviewed some materials provided to the committees: a resolution of the NMAC Detention Administrators Affiliate and charts showing the taxing authorities granted to counties and the counties' exercise of those authorities. Mr. Kopelman asked the committees to increase the appropriation, which has recently fallen below its original level, that reimburses counties for their costs of maintaining detention centers. He also noted that there are 19 different GRTs and 41 increments that counties may impose. Many, like the County Quality of Life GRT, have been implemented seldom or not at all. Often, counties forgo the opportunity to impose increments out of concern for raising the total GRT rate and deterring sales activity or because the laws' provisions are too narrowly drawn. Mr. Kopelman recommended that the committees consider removing counties from the SNCP scheme, which, he argued, is more of a state-based program than the SCP, since it involves Medicaid, a federal program administered by the state. He also said that counties would benefit from tax reform, were lawmakers to scrutinize tax incentives and simplify the system.

Mr. Dye expressed the view that hospitals are moving toward stability. Nonetheless, more work remains to be done, and the NMHA is committed to working with other stakeholders toward a funding solution. He noted that: hospitals are not receiving the quarterly payments that they once did; the federal definition of "uncompensated care" limits the federal match potential and exacerbates hospitals' financial hardship; many smaller hospitals, especially those that are unaffiliated, are at the highest financial risk; and, although Medicaid expansion will help the situation, its effects will not offset other losses. Mr. Dye stressed the need for a funding solution.

Mr. Carpenter testified on the effects for San Juan County of recent developments in hospital funding. He said that the funding gap could have grave consequences for human life. He added that the county's indigent program is bankrupt and that the county can no longer meet its obligations to reimburse medical providers (even at a reduced rate), pay into related funds and pay for inmate medical care. To cope, the county is pursuing cost-control options, including making cuts to providers and reducing services, in spite of having a large population of people in need. Mr. Carpenter stressed that the veto will strain the county.

Mr. Phillips testified that hospitals like the SJRMC must adjust to receiving less money than they did under the SCP and that they are challenged by the inadequacy of funding for uncompensated care.

On questioning, Deputy Secretary Earnest, Mr. Kopelman, Mr. Dye, Mr. Carpenter, Mr. Phillips and committee members addressed the following topics.

Efforts toward finding and implementing a funding solution. The NMAC has taken no formal position on how it wishes to address outstanding issues in the coming session. Although pursuing litigation is a possible recourse, the NMAC would like to discuss with the governor and legislative leadership a solution before 2015. Several committee members urged the stakeholders to strive to reach a mutually accepted solution and not present multiple bills that address the issue. Mr. Dye said that the NMHA is willing to work with the HSD and the LFC.

Problems with the SB 268 line-item veto. Several members questioned the constitutionality of the sunset-provision veto. One also articulated a problem it presents for counties: the authority to tax is limited, but the requirement to pay is not. Moreover, the sunset was inserted into the bill because of uncertainty surrounding the related effects of federal health care reform and Medicaid expansion; it was intended to delay definitive action until there was an opportunity to evaluate the changing situation.

Views about SB 268, as it passed through the legislature. One member commented that SB 268 was not supportable because it did not treat all counties equally; some larger counties were exempted from the contribution requirement. Other members commented that they supported SB 268 because they were told that it was acceptable to counties. Members of the panel responded that, in the course of the legislative process, the original bill had changed in ways that were not agreed to.

County involvement in program funding scheme. Several members expressed the view that, since the state has imposed the requirement that counties provide care, the state should be responsible for paying for that care.

Issues with quarterly payments to hospitals. In response to a member's complaint that some hospitals are cash-strapped from not having received their quarterly payments from the state, Deputy Secretary Earnest said that the HSD is processing applications, which were recently received, for the payments and is striving for uniformity in their handling.

Overview of the Oil and Gas Industry in the San Juan Basin

T. Greg Merrion, president, Merrion Oil and Gas, Jason Sandel, executive vice president, Aztec Well Services, and Tim Smith, senior reservoir engineer, San Juan Basin, Encana Corporation, participated on a panel representing oil and gas producers. Dr. Thomas W. Engler, dean of engineering, New Mexico Institute of Mining and Technology, Jami Bailey, director, Oil Conservation Division (OCD), Energy, Minerals and Natural Resources Department, and Jeri Sullivan Graham, Chemical Diagnostics and Engineering Group, Los Alamos National Laboratory (LANL), participated on a panel focusing on regulatory issues.

David Martin, secretary of energy, minerals and natural resources, introduced the discussion with an overview of the oil and gas industry in New Mexico. He outlined some key employment and economic data related to the industry, highlighting the percentage (about 31%) of contributions from the industry to the general fund. In the last six years, oil production has constituted an increasing share of the total contributions from the oil and gas industry to the general fund. Secretary Martin reviewed a chart showing, over the last decade, the production value in dollars of oil production, gas production and the two combined. Through other

graphics, he pointed out the production value to counties of the oil and gas industry and oil- and gas-derived revenues to counties. Secretary Martin finished by drawing the committees' attention to charts showing, over the last decades, the general stabilization of natural gas production and prices and the dramatic increase in crude oil production and noting that it is unknown when oil production will level off.

Producer Panel

Mr. Merrion discussed the Mancos shale play and oil and gas production in the San Juan Basin. About 10 years ago, the combination of hydraulic fracturing and horizontal well drilling technologies replaced that of vertical well drilling, spurring a natural gas production boom. Mr. Merrion reviewed illustrations of: the shale plays in the U.S.; Mancos shale plays; a cross-section of the San Juan Basin; and Mancos oil, wet gas and dry gas windows. He said that the deepest part of the San Juan Basin contains dry natural gas, while the shallow part of it contains wet natural gas and a shallower part of it contains oil. About 5% of the nation's natural gas comes from the San Juan Basin. Mr. Merrion reviewed charts showing: the 11 rigs running in the San Juan Basin; crude oil settlement prices; and natural gas settlement prices. He concluded by making the following points about the Mancos shale play: the first "sweetspot" in the Mancos shale play has been identified, and it is believed that more exist; drilling activity is increasing; drilling and completion techniques for mining oil and gas from shale are being honed; federal and tribal, but not state, permitting is slow; the limited refining capacity could present market problems; four area Indian reservations appear to have the potential for energy extraction; and development is still in its nascent stage.

Mr. Sandel began his presentation by introducing the committees to several of his company's employees, who were in the audience, and stressing that the oil and gas industry supports many people's livelihoods by creating and sustaining well-paying jobs. He offered a brief background of his family's 50-year old company, noting in particular its substantial growth between 1999 and 2008; its recession-induced contraction; its recent expansion and near-return to 2008 employment levels; and its commitment to providing employee benefits. Mr. Sandel reviewed charts showing the rig count in New Mexico and the San Juan area and said that most of the industry's recovery has occurred in the southeast part of the state. The production declines have reduced Farmington's and Aztec's GRT revenue by about 25%. Mr. Sandel said that most future energy development in the region will be in oil, not natural gas. He finished by listing some challenges for the industry in the region, which include: inadequacy of transportation infrastructure; slowdowns in getting federal permits; the availability of a competent work force; and New Mexico-based companies' access to capital.

Mr. Smith presented the committees with illustrations of the Gallup and Mancos oil fairways and a cross-section of a horizontally drilled well, and he talked about Encana's activity in New Mexico. The company was the first in the San Juan Basin to drill an oil well. Encana has over 60 horizontal wells, a \$350 million investment and a working interest in 176,000 net acres. It employs what Mr. Smith characterized as responsible practices, including using a closed-loop drilling system, voluntarily sampling ground water, minimizing air emissions, using multi-well pads and attempting to reuse produced water. Mr. Smith referenced some challenges for resource extraction that Encana faces: permitting delays, interference from federal rulemaking processes, oil price fluctuations, the availability of services (such as water and sand)

and take-away capacity (i.e., transportation). He highlighted some of the economic and community benefits that the company brings to the northwest part of the state in particular, including investments, taxes, royalties and support of community institutions.

Regulatory Panel

Dr. Engler gave an overview of hydraulic fracturing (which he defined as "the injection primarily of water and sand under high pressure into the producing formation, [which creates] fissures in the rock that allows a pathway for oil and gas to migrate to the wellbore") in New Mexico. He compared modern extraction techniques with those from the past, which were effective but hazardous, and explained how fresh water around the drill site is protected. Steel casing and cement form a barrier between the well and the drinking water aquifer. Dr. Engler noted that, unlike some states, New Mexico has an agency regulating well construction and integrity. He continued by identifying the composition of frac fluid as all but .5% water and sand, with that .5% being chemicals, the disclosure of which is required by state and federal law, that are commonly used in the home. Addressing the topic of water use in the Mancos/Gallup horizontal well play, Dr. Engler compared 2013 water-use levels to annual ground water withdrawals from the upper Colorado River Basin of New Mexico: 137 acre-feet for the former, and about 4,000 acre-feet for the latter. Compared to other energy-production methods, the amount of water used to produce deep shale natural gas is relatively low. Dr. Engler listed some measures taken to mitigate water use, including using nitrogen foam, recycling and exploring the use of deep, brackish saline water. Dr. Engler ended his presentation by describing the industry's New Mexico-based production and its effects on employment and state revenue.

Ms. Bailey reviewed the OCD's mission and administrative structure. She highlighted the industry's active well counts in the state (as of June, over 27,000 oil wells and over 28,000 gas wells) and state production totals (in 2013, 99.6 million barrels of oil and 1.22 trillion cubic feet of gas). In 2008, there were about the same number of oil and gas wells, but in 2013, the number of oil wells exceeded that of gas by a multiple of about eight to one. The total number of wells in those years is approximately equal. Ms. Bailey reviewed charts showing gas production levels in the state over the last 44 years and noted a spike, concentrated in southeast New Mexico and attributed to horizontal drilling, of oil production. Gas production, historically, has been concentrated in northwest New Mexico. Ms. Bailey shifted to the topic of administrative performance and actions, saying that the OCD faces difficulties with employee recruitment and retention. She reviewed some of the regulatory actions that the OCD has taken, which include amending the pit rule and promulgating the horizontal well rule and the hydraulic fracturing disclosure rule, and OCD duties, plans and goals. The OCD plans to make requirements of the acid gas injection rule more uniform, amend the produced water use and reuse rule and simplify the surface water management facilities rule. Ms. Bailey said that the OCD aims to increase staff, treat stakeholders more fairly and improve transparency in all actions. In closing, she encouraged the committees to learn more through web-based OCD resources.

Ms. Sullivan Graham spoke about brackish water use and produced water recycling, noting first the nexus between water and energy: each is required to produce the other. Drought recurrence has become the norm in New Mexico, she said, which means that planning is needed. To conduct some of this planning, a task force on drought, chaired by the state engineer, was

formed; it undertook a recoverable water initiative that is being pursued by two subcommittees and work groups: one focused on brackish water and the other on produced water. The brackish water work group consists of specialists from the public and private sectors. That group identified some key challenges in using brackish water: availability, cost, infrastructure, investment, risk perception, environmental sustainability, legal impediments and inter-entity cooperation. Ms. Sullivan Graham then described the group's planned next steps, which are to gather appropriate data, coordinate with other entities and seek out resources. She then turned to the topic of produced water, which is regulated as a waste but can provide a consistent, stable source of water. She described what is needed to reuse produced water — infrastructure and treatments — and identified some steps in reaching the goal of its reuse: adapting state regulations; building infrastructure; exchanging information; and measuring results, benefits and impacts. Ms. Sullivan Graham continued by mentioning two other major efforts under way to explore the water-energy nexus: a U.S. Department of Energy Water Energy Tech Team and its development of a Water Energy Program plan; and a LANL and Sandia National Laboratories Southwest Energy-Water Challenges and Strategy meeting.

On questioning, the panels and committee members addressed the following topics.

Transportation infrastructure. The roads in southeast New Mexico are deteriorating from heavy use brought on by the energy boom there. As a result, there are more traffic accidents. Tom Church, secretary of transportation, who was in the audience, responded by saying that not enough money is available to pay for that area's and northeast New Mexico's needed road projects. He added that impending shortfalls in federal and state road funding will further exacerbate the problem. A committee member commented that, since much severance tax revenue derives from southeast New Mexico, more of that revenue should be appropriated there. Several members expressed the view that the transportation-infrastructure problem is acute, that solutions should be explored and that one or more of those solutions should be pursued.

The future of oil and gas extraction techniques. Mr. Merrion commented that the technologies for mining hydrocarbons from source rock have improved and will probably continue to become more effective. Mr. Smith asserted that those technologies will improve.

Intrastate oil shipping. A committee member requested more information about the safety measures in place for shipping crude oil throughout the state.

Aquifer and fresh water depletion. Ms. Sullivan Graham reported that, in some parts of the state, water from aquifers has declined precipitously despite years of rainfall because extraction has exceeded recharge. Water supplies might be supplemented with brackish water, but only if that water is treatable.

There being no further business, the RSTP adjourned at 3:58 p.m.

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

August 5-6, 2014
State Capitol, Rooms 322 and 307
Santa Fe

The third meeting in 2014 of the Revenue Stabilization and Tax Policy Committee (RSTP) was called to order by Senator Carlos R. Cisneros, vice chair, on Tuesday, August 5, 2014, at 9:16 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Edward C. Sandoval, Chair
Sen. Carlos R. Cisneros, Vice Chair
Rep. Anna M. Crook
Rep. Brian F. Egolf, Jr.
Rep. Rodolpho "Rudy" S. Martinez
Sen. Clemente Sanchez
Sen. John Arthur Smith
Rep. James R.J. Strickler (8/6)
Rep. Thomas C. Taylor
Rep. Jim R. Trujillo
Sen. Peter Wirth
Rep. Bob Wooley

Designees

Sen. William F. Burt
Rep. Ernest H. Chavez (8/6, participating as
a member of the Transportation
Infrastructure Revenue Subcommittee
(TRANS))
Rep. Jason C. Harper
Sen. Nancy Rodriguez
Rep. Luciano "Lucky" Varela

Absent

Sen. Sue Wilson Beffort
Sen. Timothy M. Keller
Sen. Mark Moores
Rep. Henry Kiki Saavedra
Sen. William E. Sharer
Sen. Lisa A. Torraco

Rep. Donald E. Bratton
Sen. Jacob R. Candelaria
Rep. Miguel P. Garcia
Sen. Phil A. Griego
Rep. Sandra D. Jeff
Sen. Gay G. Kernan
Rep. Tim D. Lewis
Rep. Bill McCamley
Sen. George K. Munoz
Rep. Paul A. Pacheco
Rep. Dennis J. Roch
Rep. Debbie A. Rodella
Sen. John M. Sapien
Rep. Carl Trujillo
Sen. Pat Woods

Guest Legislator

Rep. Cathrynn N. Brown (8/5) (8/6,
participating as a member of the TRANS)

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

Staff

Pam Stokes, Staff Attorney, Legislative Council Service (LCS)
Amy Chavez-Romero, Assistant Director for Drafting Services, LCS
Carolyn Peck, Intern, LCS
Tessa Ryan, Staff Attorney, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Tuesday, August 5 — Room 322**State Land Office (SLO) Annual Status and Revenue Update**

Ray Powell, commissioner of public lands, reviewed the SLO's mission, objectives and priorities; discussed revenue figures and projections; described some of the partnerships that the SLO has recently entered into; and highlighted some of the SLO's areas of focus.

The vast majority of the state trust land-generated revenue, which the SLO strives to maximize, supports education. The SLO is focused on, among other things, hiring staff with the professional skills to bolster that effort.

Fiscal year (FY) 2014 marked a record in revenue — almost \$817 million — generated by state trust lands. That figure topped the previous fiscal year's revenue total by more than \$140 million. It is estimated that, due to factors influencing the world markets for oil and gas, total FY 2015 revenue will drop marginally to approximately \$802 million. In large part, the recent and projected increases over past years are attributed to oil and gas production in the Permian Basin. Meanwhile, lease sales have continued to generate moderate income, and income from royalties has increased markedly since FY 2010. The SLO continues its efforts to make the state a leader in renewable energy production. Revenue from renewable energy sources has also grown.

Commissioner Powell closed by mentioning some of the partnerships that the SLO has entered into and by cautioning that revenue levels could buck recent trends and fall unexpectedly as a result of a drop in the market price of oil and gas.

On questioning, committee members, Commissioner Powell and SLO staff members in the audience (Greg Bloom, assistant commissioner for mineral resources, Elaine Olah, assistant commissioner, Administrative Services Division, Don Britt, assistant commissioner for commercial resources, and Harry Relkin, general counsel) addressed the following topics.

Revenue estimates. Estimates of revenue from oil and gas production on state lands are conservative and based on a moderate view of anticipated oil and gas production. Anticipated changes in production levels in the Permian Basin were considered in determining the estimates. A member requested more information on revenues from coal-related rentals and royalties, particularly those in the northwest corner of the state.

Oil and Natural Gas Administration and Revenue Database (ONGARD). Some improvements have been made to the ONGARD system, a database that tracks oil and gas production, taxes and royalties, which is considered antiquated. A recent appropriation helped to stabilize ONGARD. The SLO is exploring the possibility of a custom-designed replacement.

Renewable energy revenue source classification. Revenues from solar and wind production are not categorized separately in the chart on page 16 of the handout but, rather, are accounted for in the "Business Leases" category because of challenges involving the ONGARD system and its coding limitations. A member remarked that it seems odd that these are not separately categorized, given the heavy emphasis on development in that sector.

Renewable energy and military bases. A member cautioned that, as happened in a case recently, renewable energy production companies' projects could interfere with the federal Department of Defense's (DoD's) operations. Thus, it is important for those companies to engage with the DoD prior to undertaking such a project. Commissioner Powell responded that the SLO has a good relationship with the DoD and that the SLO encourages companies to communicate proactively with the DoD in such cases.

Revenue from renewable energy sources. Leases for renewable energy project lands are drafted to require payment of a base rent that escalates over time in proportion to the amount of gross revenue earned on electricity production. Revenue from renewable energy leases goes to state land maintenance. In some cases, Federal Energy Regulatory Commission requirements are delaying the realization of revenue from renewable energy sources.

Wind farm-produced energy. As wind farms become more established, data about wind-based energy production become more refined. The SLO works with wind farm companies to gather these data. Commissioner Powell offered to provide maps showing the areas in the state with wind farms.

State land revenues and education spending. Amidst the debate over whether the land grant permanent funds (LGPFS) should be tapped for spending on early childhood education, the SLO took the stance that a sensible way to decrease future penal-system spending is to take the preventive measure of investing in early childhood education. The SLO recognizes the importance of maintaining the strength of the LGPFS, which are replenished by impermanent

revenue sources. The SLO thus sought an appropriation for the purpose of studying the viability of generating more revenue for early childhood education by acquiring certain federal lands, but that appropriation was line-item vetoed. The SLO intends to continue its pursuit of identifying alternatives to tapping the LGPFs. A member encouraged the SLO to consider ways around a potential veto and to involve the committee in its efforts at finding an alternative source of revenue for early childhood education. Another member commented that the return on investment related to early childhood education is high and that recent gains on the LGPFs' investments make spending in that area more justifiable.

Revenue and job creation from intellectual capital. The SLO is exploring opportunities to augment revenue and jobs by increasing the number of intellectual capital enterprises, which have the potential to yield high returns on investment on state trust lands. The SLO is encouraging the State Investment Council (SIC) to invest in New Mexico companies wishing to locate on state lands in ways that mitigate loss if a company fails.

SIC Annual Update

Steven K. Moise, state investment officer, SIC, and Vince Smith, deputy state investment officer, SIC, updated the committee on FY 2014 investment performance and on the effects that contributions and distributions have had on the permanent funds, and they gave an overview of the private equity investment program (PEIP).

FY 2014 marked a record year in earnings and distributions. The sum of all funds reached a record high of over \$19.8 billion at the end of FY 2014. Strong investment performance will translate to record-high distributions from the LGPFs (\$596 million) and the Severance Tax Permanent Fund (STPF) (\$182.7 million) in FY 2015. It is projected that \$845 million from the LGPFs and the STPF will be distributed in FY 2016. With fund growth comes greater distribution benefits.

Net assets under SIC management have grown considerably since 2000. Since January 2014, there was an all-fund net gain of over \$1 billion. Aside from market-related factors and a restructured portfolio (which was rid of some risky investments), some of this growth is attributed to the hiring of new managers and consultants. The optimism associated with this growth is tempered somewhat by relatively weak returns associated with the STPF, whose asset inflows are relatively low. Further, long-term investment returns lag behind the 7.5% annual target. This lag has prompted an interest in altering the portfolio to shift away from capital gains (traditional public markets) and toward overseas investments and real assets (private markets). The outcome of an upcoming general election vote on the issue of raising the maximum allowed for international investments will determine in part the degree of this shift.

Mr. Moise reviewed highlights of the four permanent funds. The LGPFs' value is strong due largely to robust revenue from oil and gas royalties, and there are even odds that such value will remain constant or increase in the next 50 years. The STPF's value is below the 2007 high-water mark, in part because of a high distribution rate and inconsistency in statutorily controlled revenue inflows. The Tobacco Settlement Permanent Fund has not received a contribution since FY 2008 because money has been diverted for other uses, and a court order reduced the corpus

by \$8.2 million. The Water Trust Fund has not received a contribution since FY 2007, and there is a greater than 50% chance that the fund will be depleted by 2035.

Mr. Moise and Mr. Smith also reported that the SIC is engaging in a tri-annual asset allocation study and in strategic planning, making progress through the legal system in recovering money that was lost due to improper dealings, refining its committees to improve expertise and adding staff to its compliance program, a measure that helps to control risk by institutionalizing best practices for operation.

The SIC is cautiously optimistic about the performance of the PEIP, which has as its primary goals job creation and market-rate returns. Returns have improved significantly since 2004. From 1993 to 2004, the average rate of return was -18.1%, and since 2004, that average was 4.4%. Though this performance is not robust compared with that of the whole SIC portfolio, it is considered strong performance for its asset class. The SIC diligently monitors the PEIP, for which Sun Mountain Capital functions as a program advisor.

On questioning, Mr. Moise, Mr. Smith and committee members addressed the following topics.

Changes to statutory-based severance tax bonding capacity. The SIC has been working on minor changes to House Bill 146 introduced in the 2014 regular session, which was intended to sustain the STPF. A committee member encouraged the SIC to bring that draft legislation to the committee when it is ready.

Distributions from the STPF. A member commented that, in contrast to the way endowments are typically managed, the STPF has a fixed rate of return. With other endowments, boards usually decide that rate based on the amount earned over time on investments. Another member responded that it is prudent for there not to be flexibility in rate-of-return decision-making because of the inclination to increase the rate during times of fiscal hardship — a move that would stunt the fund. Mr. Moise said that the rate of return is a policy decision that the SIC does not attempt to influence. He added that New Mexico's rate of 5.5% of the five previous years' average market value (which will change to 5%) is at the high end of the generally accepted rate of 3% to 5% and that the value of the STPF today is approximately equivalent, when accounting for inflation, to its projected value in 50 years, which spreads the risk of loss approximately equally among generations. A member remarked that five years seems too short a span to use in determining the distribution amount.

A member commented that the function of the STPF (which should not be considered a "rainy-day" fund whose purpose is to provide short-term relief in times of fiscal hardship) is to stabilize revenue flow and make it more predictable. But that function is at odds with the nature of the oil and gas industry, from which the STPF derives the bulk of its value, given that revenues from oil and gas taxes fluctuate. Further, it is projected that the ratio of young to old residents in New Mexico in 2030 will be approximately even, which will intensify the need for stability.

Other. Members also commented that there should be more public awareness through media attention paid to large transfers, like the one made recently, to the STPF and that the 4.4% rate of return associated with private equity investments is poor when looked at in relation to the 7% target for other investments. In response to a member's request, Mr. Moise said that the SIC will try to provide information on how sponge bonds are issued and how that issuance is controlled.

Premium Tax Update

John Franchini, superintendent of insurance, introduced members of the Office of Superintendent of Insurance (OSI) staff who were in the audience. He then outlined the sources and uses of insurance-related revenue and aspects of insurance-related taxes.

The OSI collects approximately \$200 million each year, mostly from taxes levied on insurance companies that write policies in the state. Approximately 95% of that total is used for OSI operations or is transferred to the general fund, the Fire Protection Fund, the Law Enforcement Protection Fund, the Public Election Fund (to which transfers ended on July 1, 2014) or the Carrie Tingley Crippled Children's Hospital Program Fund. Other revenue derives largely from licensing fees. Insurance premium taxes are levied on insurance companies, health management organizations, Mexican casualty companies, nonprofit health care plans, prepaid dental plans, property bail bond agents, purchasing groups, risk retention groups, self-insureds and title insurance companies. For insurance premiums, the tax rate is 3.003%. A surtax increases the rate on health insurance premiums to 4.003%, which is one of the highest in the nation. Deductions and credits may reduce the amount of tax owed. Certain insurance premiums, which are government-related, are exempted from the tax. By law, only the insurance premium tax and property taxes may be levied on taxpayers liable for taxes pursuant to provisions of the New Mexico Insurance Code.

At present, premium taxes and surtaxes are paid quarterly; Superintendent Franchini indicated that legislative efforts will be made to change the payment and collection schedule to improve ease. If an overpayment of a fee, license, penalty or tax is made, the superintendent may authorize a refund of the overpaid amount if the refund is requested within three years of the overpayment. Alternatively, the amount of overpayment on a premium tax may be requested within three years as a credit toward premium tax owed. The OSI intends to seek a legislative change to this three-year provision.

Superintendent Franchini reviewed a flow chart showing premium tax and surtax collections and distributions, a table showing the history of revenues from 2010 to the present and a table showing revenue collections and distributions for FY 2011 to FY 2014. The amount of OSI-related revenue deposited to the general fund increased by over \$8 million from FY 2013 to FY 2014. Superintendent Franchini also reviewed tables illustrating premium taxes collected and New Mexico Medical Insurance Pool (MIP) credits; he commented that changes resulting from federal health insurance reform will eventually make the MIP obsolete, but the pool cannot yet cease to exist because some recipients of its funds are in ongoing treatment.

Superintendent Franchini closed by reviewing areas of law that will be proposed for change. The committee will be asked to endorse those proposals.

Public Comment

Two representatives of organizations raised concerns about the well-being of children in New Mexico.

Miguel Gomez, policy director, St. Joseph Community Health, spoke about the importance of focusing state spending to decrease the teen birth rate and the dropout rate and to improve overall child well-being. Mr. Gomez argued that the state has enough money in the LGPFs to support early childhood education and that if money is invested in children's education, the state will have more revenue generated by that educated group to offset the future costs associated with the state's aging population. Mr. Gomez testified that representatives from the SIC refused his request for a meeting to discuss the fiscal implications of withdrawing more from the LGPFs for early childhood education. He also expressed doubt that the state's buying federal lands, in accord with the SLO proposal, would generate substantial revenue. To the contrary, he said, buying land to help subsidize corporations — as happened in the case of Mesa del Sol — imposes a burden on the state.

Bill Jordan, senior policy advisor, New Mexico Voices for Children, remarked on the record growth of the LGPFs and said that if the measure to annually spend 1.5% of the LGPFs on early childhood education that was proposed in 2011 had passed, the funds' balance would be \$13.6 billion, as compared with the current balance of \$14 billion. Mr. Jordan stressed the poor status of New Mexico's children and the state's consistently low rankings among states in measures of child well-being. He closed by saying that the return on investment in a child is 16% over that child's life, which is higher than the return realized by the LGPFs' current investments.

Laboratory Partnership with Small Business Tax Credit Annual Report

Belinda Snyder, economic development program manager, Los Alamos National Laboratory (LANL), and Genaro Montoya, New Mexico small business assistance program manager, Sandia National Laboratories (SNL), spoke about the New Mexico Small Business Assistance (SBA) Program. Bill Watts, owner, Data Center Transitions, Inc., testified on the help he received through the program to launch his small business.

Mr. Montoya said that the SBA Program, which is administered by the Taxation and Revenue Department (TRD) and is based on a partnership among LANL, SNL and small business owners, addresses a wide range of small business needs. The program supports projects based in urban and rural parts of the state. After a small business receives program assistance, a third party conducts an economic impact survey of the project. Through that data collection, it has been determined that 2,195 businesses have been helped and that the two laboratories have provided \$39 million worth of technical assistance to small businesses.

Ms. Snyder added that the program aims to broaden the range of business types that it serves. At present, most of the businesses helped through the program are in the following industries: agriculture; oil and gas; renewable energy; manufacturing; and high technology.

Mr. Watts, recipient of the "Honorable Speaker Ben Luján Award for Small Business Excellence" for demonstrating the greatest economic impact of any business that participated in the program in 2013, described his business and how the program helped it. Data Center Transitions, Inc., builds enclosures for computer systems and has designed a lift to move fully loaded server cabinets from one place to another. Robotics engineers at SNL helped him develop a way to use devices to more safely lift the equipment.

Approval of Minutes

On a motion made and seconded, the minutes from the July 8-9, 2014 meeting were unanimously approved.

Sources and Uses of State Capital Funding

Stephanie Schardin Clarke, director, State Board of Finance (BoF), and Jimmy Rodriguez, executive capital analyst, Capital Outlay Bureau, Department of Finance and Administration (DFA), informed the committee about the sources and uses of state capital funding. They began by providing overviews of the general obligation (GO) and the severance tax bond (STB) programs. Constitution-based provisions related to the GO bond program cap the principal amount of outstanding bonds, which generate money for projects approved through the legislative process and that are usually for higher education infrastructure, at 1% of the statewide assessed property value. In the GO bond program, bond issuance is subject to voter approval. Meanwhile, the STB program allows for the issuance of senior STBs and supplemental STBs. Senior STBs, which are earmarked for various capital projects, including capital outlay and tribal, colonias and water infrastructure, may be issued to the point at which debt service can be paid with 50% of the prior fiscal year's Severance Tax Bonding Fund (STBF) revenue. Supplemental STBs, which are earmarked for public school capital projects, may be issued to the point at which debt service can be paid with 45% of that revenue.

Ms. Schardin Clarke highlighted the volatility of revenues to the STBF. Bonding capacity is determined in a way that somewhat accounts for and responds to that volatility, but distributions from the STPF remain somewhat inconsistent. She next presented a detailed table of the actual and forecasted sources and uses of money in the two bonding programs and a chart (on page seven of the presentation handout) showing a breakdown of those uses for the three most recent fiscal years.

Mr. Rodriguez discussed infrastructure capital improvement plans (ICIPs), which are five-year plans developed by state agencies and local entities that establish priorities for capital projects, and the deadlines of those plans' submission. He reviewed a pie chart illustrating the proportion of ICIP capital project requests for 2015 by type. The three categories with the most requests (as illustrated on page nine of the handout) are: 1) public schools, charter schools and special schools; 2) public buildings and equipment; and 3) highways, roads and bridges. Ms. Schardin Clarke directed the committee's attention to the discrepancies between the pie charts on

pages seven and nine, pointing out that the amount of actual funding for projects does not correspond in proportion with identified project needs.

On questioning, Ms. Schardin Clarke, Mr. Rodriguez and committee members addressed the following topics.

Bond types and sales. The process for GO bond sales differs from that for STB sales. The sale of short-term notes involves the services of advisors, underwriters, counsel and consultants. These services, for which the state pays fees, are secured through contracts. For all bond sales, the determination of type of bond sold for a particular purpose is influenced by federally established parameters and project duration and use. While awaiting expenditure, bond proceeds are invested in a way that allows ample liquidity. By law, the BoF may not refrain from issuing bonds for an authorized project if it meets certain requirements or from exceeding the capacity for bond issuance as that capacity is determined by the BoF and the state treasurer.

STBs for state highway projects. State highway projects could be funded: 1) through the capital outlay bill, which would require no amendment to the Severance Tax Bonding Act (STBA); or 2) by carving out a portion of state revenues, which would require amending the STBA.

Committee member requests. The presenters agreed to help a member with a concern about a particular project. A member requested county-by-county information on property valuation that collectively determines the amount equivalent to 1% of statewide assessed property value. Ms. Schardin Clarke responded that the Local Government Division of the DFA is an appropriate source for that information.

Advancing Electric Vehicles (EVs) in New Mexico

Tammy Fiebelkorn, New Mexico representative, Southwest Energy Efficiency Project (SWEET), Will Toor, transportation program director, SWEET, and Daniel Lorimier, conservation coordinator, Rio Grande Chapter of the Sierra Club, constituted a panel that discussed policies to encourage EV ownership and use in the state.

Mr. Lorimier explained that EVs do not run partially on gasoline like plug-in hybrid vehicles do but, rather, entirely on battery power. EV drivers thus save on fuel costs; these savings, he said, are invested in other areas of the economy. There is a corresponding reduction in pollution associated with EVs. New Mexico's rate of sale and use of EVs and its rate of increase of sales is lower than those of surrounding states and nationally. Moreover, there are fewer public charging stations in New Mexico than in surrounding states. In large part, these differences are attributable to differing levels of state promotion of EVs.

Ms. Fiebelkorn and Mr. Toor reviewed provisions of proposed legislation that the panel supports, which include an annual fee, a capped tax credit for EV sales and a capped credit for commercial charging station sales. The annual fee would be \$30.00 per year. The tax credit for a purchase of an EV would be \$2,500, and the credit for establishing a charging station would be 30% of the cost of the charger up to \$3,000, or up to \$5,000 for a solar charger. Mr. Lorimier

reviewed the benefits and estimated fiscal impact of the proposed legislation, if implemented. Because of the higher cost of EVs, the state would receive more in excise taxes than on comparable conventional vehicles. Further, the state would realize benefits in the form of residents receiving federal tax credits, residents' savings on fuel, investment in charging stations, increased sales of EVs, reduced air pollution and payment in congruence to conventional-vehicle drivers for road maintenance.

On questioning, Ms. Fiebelkorn, Mr. Lorimier, Mr. Toor and committee members addressed the following topics.

Calculation of the proposed annual fee. The proposed fee was calculated using estimates of what drivers of the most fuel-efficient vehicles currently pay, on average, in gasoline taxes each year.

Proposed legislation. A member remarked that passing this legislation would send a positive signal to Tesla, which is considering the state for its planned EV-battery manufacturing plant, that the state supports the purchase and use of EVs. Another member suggested that the EV-sale credit be transferable, so that the buyer could assign it to the dealer and offset the up-front cost of purchase.

Resale of EVs. Members commented that the proposed credit would not necessarily apply to EV leases nor encourage the resale of EVs because only the original buyer would be able to take advantage of the credit.

Environmental costs of EVs. A member commented that there are high environmental costs, such as hazardous chemical use and pollution, associated with manufacturing EV batteries and that those costs should be considered along with the benefits of the new technology.

The committee recessed at 3:57 p.m.

Wednesday, August 6 — Room 307

The committee reconvened for a joint meeting with the TRANS on Wednesday, August 6, 2014, with Representative Roberto "Bobby" J. Gonzales chairing the meeting.

Status of Congressional Action on the Federal Highway Trust Fund (HTF) and Implications for New Mexico's Highway Program Funding

Tom Church, secretary, Department of Transportation (DOT), stated that there had been differing House and Senate proposals in Congress for funding the federal HTF. However, Congress had been able to pass a bill that funds the HTF through May 2015. However, he indicated, this is a relatively short-term solution. Secretary Church stated that if Congress does not craft long-term funding legislation before June 2015, New Mexico will have to cut back on its road spending. Secretary Church stated that the DOT has not yet taken any drastic steps regarding reducing spending. Rather, the DOT has been able to move \$12 million within DOT programs to use for striping, signage and overlays throughout the state.

In the following discussion, Secretary Church raised two concerns about how the federal process affects DOT programs. First, the DOT uses federal funding to help service debt, and there is a major payment due in June 2015. If Congress has not passed a long-term funding bill for the HTF by that date, a large portion of the DOT's state funding will have to be redirected to debt service. Second, the lack of certainty in federal funding is affecting the DOT's planning process. The DOT may not begin designing projects until funding for the project is identified. The standard planning and design process takes three years, and the funding issue creates a delay in road projects. He noted that one way to shorten the process is to use design-build techniques, but those must be authorized by the legislature on a project-by-project basis.

At this point, Senator Ron Griggs proffered a concept for dedicating additional state funds to New Mexico's road construction and other public infrastructure needs. He suggested that \$100 million of annual severance tax bond revenues for each of the next four years could be directed toward statewide construction programs. In the concept he raised, two years of this funding would be dedicated to state roads and one year each would be directed to public building construction and to water projects. In the ensuing discussion, RSTP and TRANS members raised questions about how projects would be prioritized. A separate issue raised by a committee member was whether the proposal was large enough to address the problem. It was noted that the DOT has a much larger shortfall in funding than would be covered by the proposal, including a "debt-cliff" payment due at the end of 2025.

Wyoming: An Approach for Enacting a Comprehensive Response to Transportation Funding

Wyoming State Representative Michael K. Madden, chair, House Revenue Committee, Wyoming State House of Representatives, began by comparing Wyoming's and New Mexico's transportation funding and financing. Representative Madden noted that New Mexico and Wyoming have comparatively low vehicle fuel taxes, which he referred to as user fees. Also, the transportation departments in both states have been rated nationally within the top five for cost efficiency. (See the Reason Foundation report, handout 2A.) Further, both states supplement their fuel tax revenue for road construction programs. Wyoming supplements with mineral royalties and commercial trucking registration fees; New Mexico relies on a weight-distance tax instead.

Representative Madden then described some ideas that were successful in Wyoming for increasing fuel taxes. First, he argued that fuel taxes are fair user fees; if one does not use the roads, one does not pay the fuel tax that pays for their maintenance or construction. Second, well-constructed and well-maintained roads save money in the long run by reducing damage to vehicles. Finally, he noted that fuel tax is typically a set fee per gallon, unlike a sales tax, which is a percentage of the cost. He argued that raising a fuel tax allows competing vendors to adjust the sale cost according to their own business plans. He was of the opinion that the fuel tax increase enacted by Wyoming resulted in a much lower increase in cost to the consumer than if it had been a sales tax.

Representative Madden next explained the process for how fuel tax legislation was promoted in Wyoming. Representative Madden stressed that timing can be very important for a public discussion regarding fuel taxes. The legislative leadership in Wyoming had been supporting a variety of legislation to increase road funding for several years, but without much success. The effort gained momentum when a coalition of taxpayer and industry groups in Wyoming started publicly supporting the idea of raising the fuel tax. Representative Madden believes the coalition's efforts influenced public opinion. (See handouts 2B, 2C and 2D for publications by the Wyoming coalition.)

Representative Madden explained that even with favorable public dialogue, the effort required an intensive communication effort by Wyoming's legislative leadership to keep in contact with the governor and with each individual legislator. Evidently, the effort did not get strong support from Wyoming's governor; Representative Madden stressed that the request to Wyoming's governor was simply not to veto the legislation should it pass the legislature.

Representative Madden then summarized Wyoming's experience over the past year since raising its fuel tax rate. Representative Madden expressed his opinion that the results over the past year have mitigated unfounded fears about raising the rate. Further, revenues from fuel taxes have been higher than projections. He explained that the greater revenues stemmed from two processes: 1) retail businesses with multiple locations across state lines had been internalizing the lower fuel fees in Wyoming but charging similar prices at all their locations; and 2) the fuel tax payment rules for commercial truckers under the International Fuel Tax Agreement, commonly referred to as IFTA, had been depressing commercial fuel sales in Wyoming although its fuel tax was significantly lower than in neighboring states.

During the discussion concluding his presentation, Representative Madden expanded upon two distinctions between Wyoming and New Mexico. Unlike New Mexico, Wyoming does not bond for any road construction or maintenance. This limited some of the options for road financing. Conversely, Wyoming has a constitutional provision requiring that fuel taxes be spent on roads. Representative Madden indicated that this provision was helpful in gaining public support for the fuel tax legislation.

Representative Madden also noted that Wyoming used to have a weight-distance tax as New Mexico currently does. Wyoming's trucking industry lobbied the legislature to switch to higher vehicle registration fees because complying with the weight-distance tax was too cumbersome for truckers. He remarked that New Mexico may have to drastically increase its commercial truck registration fee in order to make the same change and keep it revenue-neutral.

As a final note, Representative Madden remarked that Wyoming's alternative for needed road funds would have been to use general fund money. He argued that using general fund money for roads would have given an unfair benefit to tourists, cross-border commuters and other road users who do not pay taxes into general fund.

North Dakota: Meeting the Highway Funding Needs of an Oil Boom

North Dakota State Senator Ray Holmberg, chair, Senate Appropriations Committee, North Dakota State Senate, began his presentation by describing North Dakota's recent economic growth. North Dakota has ranked first in the United States in personal income growth in three of the last four years. An oil boom in the western part of the state has been responsible for much of the growth. The oil industry accounts for 15% of the work force in North Dakota and about 30% of all wages paid. The state is producing approximately one million barrels of oil a day. Senator Holmberg cited a Moody's analysis that transportation infrastructure health will ultimately decide how long North Dakota can continue to grow.

Senator Holmberg proceeded to explain that North Dakotans are historically averse to raising tax rates and have resisted efforts to raise rates during the recent growth, reasoning that tax revenues are high enough to fund the state's needs already. Rather than raise fuel tax rates, the North Dakota Legislature appropriated \$1.2 billion from the state's general fund to the state's highway fund specifically for projects in areas affected by oil and gas development. Senator Holmberg stated that the appropriation was one of the first things the legislature did. He noted that this was important because permafrost conditions impose time limits during North Dakota's construction season.

Senator Holmberg told the RSTP and TRANS members that appropriating from the general fund had been a challenge. The North Dakota Legislature had not diverted funds from the general fund to the highway fund before, so legislators were reluctant to do so for the first time. Legislators were also reluctant to earmark funds for certain geographic areas, thinking that doing so could be a slippery slope toward dictating how the North Dakota transportation department spends its appropriations. Further, there was a concern that appropriating from the general fund would also encourage other groups to lobby for special interest appropriations in the future.

During a general discussion following these remarks, Senator Holmberg explained that, unlike New Mexico, North Dakota does not have a highway commission. It simply has a secretary of transportation, appointed by the governor, who administers North Dakota's transportation department.

Senator Holmberg also expounded on some of the challenges of having an oil boom. On the one hand, North Dakota has had such a large increase in state revenues that the legislature has had to create mechanisms to protect some revenues as a hedge against future downturns. The state has created a Legacy Fund that receives 30% of all tax revenue derived from oil and natural gas extraction. The legislature may not appropriate from the fund until 2017, and it may only do so after that with a two-thirds' vote. On a negative note, the oil boom has created some problems for retirees in oil-producing counties because the cost of living has increased.

Responding to questions from a committee member about oil development, Senator Holmberg explained that North Dakota had developed a compact with one of its oil-producing Native American tribes regarding production regulations and that this helped drive on-reservation oil development. He responded to a question about the proposed Keystone pipeline,

saying it would be helpful in getting North Dakota's oil to market. He noted that the alternative is to use freight rail.

New Mexico Highway Funding — Comparison Projections with Different Fee Structures

Secretary Church and Clinton Turner, chief economist, DOT, began by explaining to the RSTP and TRANS that the State Road Fund is supported by four revenue streams: (1) a gasoline tax; (2) vehicle registration fees; (3) a diesel fuel tax; and (4) a weight-distance fee. The first two taxes/fees are paid mostly by families, and the last two are paid mostly by the commercial trucking industry in New Mexico.

Secretary Church and Mr. Turner then directed the members' attention to the handout they provided, which shows how increases in different tax rates and fees would affect the State Road Fund. Mr. Turner stated that one-cent increases in the gasoline and diesel taxes would increase revenues by \$8.7 million and \$5 million, respectively. Increasing vehicle registration taxes by 10% would increase revenues by \$7.8 million, and increasing the weight-distance tax by 10% would increase revenues by \$8 million. Additionally, Secretary Church pointed out that abolishing the weight-distance tax would require raising vehicle registration fees to around \$3,000 a year in order to remain revenue-neutral.

After these opening remarks, Secretary Church gave an overview of the DOT's financial status. He said the indications are that federal funding will remain flat and that state road revenues will increase 2% in the current fiscal year. With those funding limits in mind, he pointed out that 19% of the DOT's annual budget is dedicated to debt service. Therefore, the DOT's focus has of necessity been on maintaining roads rather than building new ones. It would require major new funding to allow for new construction.

Delving into the debt issue, Secretary Church explained that the DOT's total debt is \$1.9 billion, including principal and interest. A complicating issue is that a significant portion of the debt is in the form of a floating interest rate on the bonds issued for the Rail Runner, he noted. He said it would require a \$109 penalty payment to reconfigure the floating rate into a fixed rate.

Regarding the weight-distance fees, Secretary Church reported that the DOT has formed a working group with the Department of Public Safety and the Taxation and Revenue Department to investigate compliance issues with the weight-distance and oversize-truck payments. The group plans on bringing a recommendation to the next legislative session.

There being no further business, the RSTP adjourned at 12:48 p.m.

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

September 29-30, 2014
Golf Course Clubhouse, New Mexico State University
3000 Herb Wimberly Drive
Las Cruces

The fourth meeting in 2014 of the Revenue Stabilization and Tax Policy Committee (RSTP) was called to order by Representative Edward C. Sandoval, chair, on Monday, September 29, 2014, at 10:15 a.m. at the Golf Course Clubhouse of New Mexico State University (NMSU) in Las Cruces.

Present

Rep. Edward C. Sandoval, Chair
Sen. Carlos R. Cisneros, Vice Chair
Rep. Anna M. Crook
Rep. Rodolpho "Rudy" S. Martinez
Sen. Clemente Sanchez (9/29)
Sen. John Arthur Smith
Rep. James R.J. Strickler (9/29)
Rep. Thomas C. Taylor
Rep. Jim R. Trujillo

Designees

Sen. William F. Burt (9/29)
Sen. Jacob R. Candelaria (9/29)
Rep. Jason C. Harper (9/30)
Rep. Bill McCamley
Sen. Nancy Rodriguez (9/29)

Absent

Sen. Sue Wilson Beffort
Rep. Brian F. Egolf, Jr.
Sen. Timothy M. Keller
Sen. Mark Moores
Rep. Henry Kiki Saavedra
Sen. William E. Sharer
Sen. Lisa A. Torracco
Sen. Peter Wirth
Rep. Bob Wooley

Rep. Donald E. Bratton
Rep. Ernest H. Chavez
Rep. Miguel P. Garcia
Sen. Phil A. Griego
Rep. Sandra D. Jeff
Sen. Gay G. Kernan
Rep. Tim D. Lewis
Sen. George K. Munoz
Rep. Paul A. Pacheco
Rep. Dennis J. Roch
Rep. Debbie A. Rodella
Sen. John M. Sapien
Rep. Carl Trujillo
Rep. Luciano "Lucky" Varela
Sen. Pat Woods

Guest Legislators

Rep. Phillip M. Archuleta (9/29)

Rep. Jason C. Harper (9/29)

Rep. W. Ken Martinez (9/29)

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

Staff

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

Amy Chavez-Romero, Assistant Director for Drafting Services, LCS

Carolyn Peck, Intern, LCS

Tessa Ryan, Staff Attorney, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Monday, September 29

Welcoming Remarks

Dr. Garrey Carruthers, former governor of New Mexico and current president of NMSU, who was accompanied by Sharon Jones, chief of staff, NMSU, welcomed the committee to the NMSU campus and talked about several of the university's notable programmatic and capital projects, namely: turf installation at Aggie Memorial Stadium; the Burrell College of Osteopathic Medicine, a completely private enterprise, which, if accredited, will have a groundbreaking early next year; a community park with a jogging track and exercise stations; renovation of the Coca Cola weightlifting facility; construction of a spiritual center near student residences; renovation of the baseball field, which will feature covered seating; establishment of the Domenici Institute for Public Policy; construction of an undergraduate learning and study center; safety improvements to the gymnasium; Heritage Farm, an agricultural demonstration site focused on the production of cotton, chile, pecans and wine; and McFie Circle, an area near the center of campus that will feature a park. President Carruthers thanked committee members for their part in appropriating money to support the funding of several of the projects.

When solicited by a committee member for thoughts about the recent discussion surrounding tax reform and tax-based economic development, President Carruthers responded that accountability and effectiveness are key principles for improving the state of the state through the tax code. He asserted that economic development tax programs should be routinely scrutinized for effectiveness. When asked for an opinion on other matters affecting the state, President Carruthers responded that the road-funding issue is vexing but should be handled regionally, as has been done in the border region, and that existing workers' compensation laws, which he worked on and signed when he was governor and have since become model legislation for the country, should not be amended dramatically.

Revenue Forecast

Demesia Padilla, secretary of taxation and revenue, offered an update, summarized as follows, on topics of recent interest affecting the Taxation and Revenue Department (TRD).

- In the lawsuit between the City of Eunice and the TRD, the TRD petitioned the New Mexico Supreme Court for a reconsideration of its denial of *certiorari*.
- Prompted by complaints that fiscal impact reports associated with tax-related bills often inaccurately predict the fiscal effects of proposed measures, the TRD examined the situation and determined that North American Industry Classification System-code reporting is partly to blame. That is, although some companies can be classified under more than one code, they report under only one and meet the statutory requirement. The TRD is working to address the issue.
- In response to local governments' requests for better tax-related data, the TRD produces RP 500 reports, which are available online. Generally, those reports outline tax distributions to local governments. (Two samples of the report were distributed to the committee: one like those available online and one of the type not available online, which a local government may request and which provides information about particular corporate taxpayers.)
- Corporate income tax estimated payments have decreased, but compensating tax payments have grown. This trend suggests that corporate investment in equipment is on the rise, which in turn suggests that businesses are expanding.

Leila Burrows Kleats, chief economist, Department of Finance and Administration (DFA), Peter van Moorsel, chief economist, Legislative Finance Committee (LFC), and Elisa Walker-Moran, chief economist, TRD, members of the Consensus Revenue Estimating Group (CREG), updated the committee on general fund (GF) revenue history, projections and risks, commenting in particular on the U.S. economic outlook, New Mexico employment, the gross receipts and compensating tax (GRT) base, oil and gas prices, energy markets and the budget for capital projects.

Ms. Walker-Moran gave an overview of the CREG's recent work. She highlighted August 2014 revisions to the December 2013 recurring revenue estimates, all of which were increases. Those increases were largely due to current and anticipated strength in the oil and gas industries. December's estimate of fiscal year (FY) 2014 revenue was \$146 million below the August estimate, and the group projects that there will be approximately \$285 million of "new money" for recurring appropriations in the FY 2016 budget cycle. Ms. Walker-Moran referred to charts and tables that illustrate the steady, generally consistent increase over time in taxable gross receipts (TGRs). All sectors' TGRs have grown over the past five years, but the largest increase is associated with the oil and gas industries. Of the highest TGR-producing manufacturing subsectors, petroleum refineries are generating revenue at a level that marks the greatest recent increase.

Ms. Walker-Moran also highlighted the CREG's revisions for other major taxes: those on insurance premiums, liquor and personal income. The predicted effects of federal health care

law implementation influenced revenue projections associated with the insurance premiums tax. The group predicts that liquor excise tax revenues will be steady but that recent legislative changes to related distribution schemes will decrease inflows to the GF by about \$19 million during the years that the changes are in effect. It is expected that personal income tax (PIT) revenue for FY 2014 will be higher than had been forecasted in December.

Ms. Burrows Kleats resumed the presentation. FY 2015 estimated revenue is \$56 million more than previously forecasted; the new revenue total represents 3.9% growth. In general, the national economy, as measured by employment, unemployment, the housing market, consumer confidence, interest rates and credit burdens, is improving. This optimism is tempered in part by federal fiscal austerity, the lack of spending growth and risks associated with interest rates and international trade. Ms. Burrows Kleats reviewed a graph showing the general improvement forecasted in statewide private and public employment and a table showing that New Mexico had 4,600 more jobs in August than in the previous August. She continued by saying that, at 41%, corporations in the service industry constitute the bulk of the GRT base. The most rapid growth of that base is associated with the mining industry and the manufacturing industry. Although down from a peak of 15% of the GRT base, there has been recent growth in the percentage of the base associated with the construction industry. New Mexico oil prices and gas prices increased in FY 2014, but they have dropped in recent months; the change will decrease revenue to the GF. Oil production has doubled since 2009, and growth, though at a slower rate, is expected. Meanwhile, gas production has stabilized and is expected to remain flat. Lastly, the total severance tax bond (STB) bonding capacity for FY 2015 is \$577.3 million; \$347.7 million of the total is designated for senior STB projects and \$229.6 million for supplemental STB projects.

Mr. van Moorsel concluded the panel's formal presentation by discussing areas of uncertainty and risk that could significantly affect GF revenues and by elaborating on the GF balance. Notable areas of uncertainty include insurance premiums tax collection levels, earnings on state balances and tribal revenue-sharing. As factors affecting these issues become clearer, revenue estimates will be refined. Mr. van Moorsel noted that, because of uncertainty surrounding revenue associated with economic development-focused tax programs, the group uses a conservative approach to revenue estimation associated with them. He continued by mentioning the risks — both those posing favorable and those posing unfavorable potential consequences — surrounding: state and local government budget conditions; the economic recovery; federal reserve interest rates; federal health care reform; the Eunice lawsuit; the cost of tax credits; the tobacco settlement; the special education maintenance-of-effort issue; and a prior deficiency in Medicaid funding. Further, at about \$670 million, or 11.3% of the budget for recurring appropriations, GF reserves exceed the LFC's target level of 10%.

On questioning, the panel elaborated on some of the risks it noted — citing, for some risks, the revenue figure associated with it. The panel and committee members discussed those and other topics as follows.

Risks and revenue estimates. Mr. van Moorsel indicated that the most recent revenue estimates reflect some of the identified risks, such as those related to tribal revenue sharing.

Others, such as the Eunice lawsuit (aspects of which Secretary Padilla summarized) and changes in oil and gas prices, cannot yet be quantified and are not reflected in the group's calculations. Secretary Padilla stated that the TRD is calculating distributions to local governments as it did before the Eunice lawsuit. She suggested that it is unlikely that the proposed federal Marketplace Fairness Act, whose enactment would increase state revenue, will pass in the near future. Mr. van Moorsel reported that work on the state cash-reconciliation issue is still underway and that the high-wage jobs tax credit has been amended to align more closely with its intended purpose. Ms. Burrows Kleats said that oil is being produced at such a high rate that the main barrier to greater production is transportation. A committee member asserted that the state is overly reliant on the oil and gas industries for its revenue.

TRD administration. A member observed that much tax expertise at the TRD, considered essential to providing high-quality, accurate reporting, is lost to retirement and the private sector. Secretary Padilla attested that, in her tenure: (1) the TRD went from having vacancies in all but one economist position to having no vacancies in those positions; and (2) the department's rating by a national state tax organization improved. She described the TRD's efforts to attract and retain competent professionals, stressed the importance of investing in ongoing training and remarked that making the TRD's Protest Office independent of the TRD would further improve the TRD rating. She cited reasons that the TRD employs economists, which include that department employees have privileged access to information that influences revenue estimates.

Requests for more information. Ms. Burrows Kleats offered to supply more detailed data related to the pie charts on page five of her handout. Mr. van Moorsel agreed to supply the figure representing the FY 2014 deposit to the corpus of the Severance Tax Permanent Fund.

Annual Report — Locomotive Fuel GRT Deductions

Barbara Brazil, deputy secretary of economic development, and Ryan Gleason, director, tax policy and research, TRD, reported on the locomotive fuel GRT deductions.

Ms. Brazil began by providing some context for her portion of the presentation and an overview of the locomotive fuel deductions. By law, a legislative review of the deductions is required every six years beginning in 2019. The deductions were enacted in 2011 and amended in 2013. The 2013 amendment expanded the list of investment types that qualify a common carrier for the deduction. The Economic Development Department's role in the program is to certify qualifying taxpayers, promulgate rules for issuance of certificates of eligibility and track the number of jobs resulting from the incentive. Ms. Brazil reported that Union Pacific Railroad (UP) and the BNSF Railway Company (BNSF) have satisfied the investment requirements. She expounded on some of the companies' characteristics that relate to New Mexico and the deductions.

UP occupies a 2,200-acre site in the Santa Teresa industrial park and has invested more than \$350 million in its facility. The facility's construction, which took place between mid-2011 and mid-2014, created 1,311 temporary jobs. It became fully operational in April 2014, and as of June 30, 2014, 406 permanent jobs have been created. Of those, 251 are UP employee jobs

and 155 of them are contractor jobs. Ms. Brazil remarked on what she characterized as the region's explosive growth, in which UP played a key role.

Ms. Brazil next cited facts about BNSF's presence and investments in the state and noted that the BNSF fact sheet distributed to members contains recently updated information. BNSF recently increased its payroll and the number of its employees in the state. Its operating revenue increased from 2012 to 2013, and the company made capital improvements beyond what were required for the deduction. Ms. Brazil closed by saying that, as one of the largest private employers in Clovis and Belen and having a strong presence in Albuquerque and Gallup, BNSF also has the potential to develop in the state's southern region. A committee member commented that the fuel deductions have improved development in McKinley County.

Mr. Gleason followed with a report on the value of the locomotive fuel deductions. UP has deducted \$9.8 million, and BNSF has deducted \$5.3 million, from their respective GRT liabilities. Mr. Gleason stressed that the amounts represent high value to the companies but not lost revenue to the state. Were it not for the incentives, the companies would not have purchased — and therefore paid taxes on — fuel in New Mexico. Mr. Gleason continued by reporting that, based on data supplied by the Workforce Solutions Department and on certain assumptions, the TRD estimates that \$1,578,706 was collected in PIT revenue during the three years of construction. He noted that GRT revenue generated by employee spending was not considered in the TRD's calculation of economic effect.

On questioning, Ms. Brazil, Mr. Gleason and committee members addressed the following topics.

Employees' state residence and New Mexico's economy. A committee member expressed the concern that if the companies' jobs are held by Texans, then most of the payroll is probably being spent in Texas and not generating GRT revenue. Mr. Gleason replied that including in the criteria for the deductions that employees be New Mexicans might not be feasible and that the transfer of some payroll spending to Texas is inevitable. Fred Ochesky, lobbyist, UP, who was in the audience, testified that seven out of every 10 UP subcontractors working on construction were based in New Mexico. Further, he said, although initially many employees commuted from El Paso, increasingly they are settling in New Mexico. Several members contributed their impressions and knowledge of the situation, including that: (1) part of the development strategy was to build affordable housing in the area in order to expand the New Mexico-taxpaying population base, but the 2008 economic downturn stymied that development; and (2) there is much two-way, cross-border spending, which produces an exchange between economies that can be considered healthy for the region.

Reporting on the deductions; GRT reform. A committee member requested more quantitative reporting on the deductions, which were acknowledged to have a generally positive net effect. Mr. Gleason indicated that the stated goal for the report to be delivered in 2019 is to have a refined understanding of the deductions' full fiscal effect, taking business development, payroll and housing development into account. Ms. Brazil added that the factors and data considered in the analysis are being determined. A member commented that in the effort to

broaden the tax base as part of proposed GRT reform, incentives like the locomotive fuel deductions, which are clearly effective, should be preserved. To know which should be preserved, an effective method of measuring whether a given incentive yields such a gain is needed.

Update on Gaming Compacts with the Federal Government

George Rivera, governor of the Pueblo of Pojoaque, and Steffani Cochran, chief legal counsel, Pueblo of Pojoaque, summarized the status of the Pueblo of Pojoaque's efforts to enter into a new casino gaming compact with the state. The presenters provided a handout consisting of formal remarks outlining the pueblo's position on the matter and a handout with information about gaming industry trends, comparisons among states of their laws and gaming revenue and a comparison among New Mexico casinos of net-win figures.

Governor Rivera reported that, after attempting through nearly two years of negotiations with representatives of the New Mexico Office of the Governor for a new tribal-state gaming compact, the pueblo is pursuing an alternative course called secretarial procedures, in which the pueblo would work with the U.S. Department of the Interior to establish a new gaming compact. The pueblo's existing contract was entered into in 2001 and will expire in 2015. Meanwhile, the state has sued to challenge the lawfulness of, and prevent the pueblo from pursuing, the secretarial-procedures course.

Governor Rivera commented on: (1) the recent statewide and nationwide leveling and, in some cases, decline, in gaming revenue; (2) the challenges presented by market saturation; (3) the Pueblo of Pojoaque casino's contributions to the regional and state economies; and (4) the disagreement between the pueblo and the Gaming Control Board (GCB) on the correct tax treatment of free-play offerings, a question that was submitted to the state auditor for his review and response. Governor Rivera expressed his hope that the legislature or, perhaps, a new governor would consider the situation with the awareness that the pueblo is not an out-of-state corporation asking for a tax break, but rather a permanent in-state business that improves the state's economy and helps to pay for many public services.

On questioning, Governor Rivera, Ms. Cochran and committee members addressed the following topics.

State-tribal relations. A member expressed disappointment that the pueblo's negotiations with the New Mexico Office of the Governor failed and that the pueblo has had to resort to pursuing the secretarial-procedures course. The member remarked that the primary intent of the Indian Gaming Regulatory Act (IGRA) was to enrich economic development of the tribes, not the states. The member went on to question the propriety of the state deriving any revenue from Indian gaming and observed that the opportunity for the state to successfully negotiate with other tribes whose compacts will expire soon is diminishing.

Secretarial procedures and IGRA. Ms. Cochran indicated that one issue being addressed in the lawsuit is whether IGRA gives the U.S. secretary of the interior the authority to have established the secretarial procedures. Governor Rivera said that if the courts rule in favor of the

state, the pueblo's next step would depend on the nature of the ruling. He added that the suit poses the risk that a court rules against the validity of all revenue sharing.

Gaming — Revenue, Trends and Tribal-State Revenue Sharing

Frank A. Baca, general counsel and acting executive director, GCB, reported on gaming trends and levels of historical and projected gaming-derived state revenue. After a period of flattening, there has been a slight increase in all gaming-derived revenue to the GF. Nevertheless, it is expected to decrease slightly from FY 2014 to FY 2015. The racetrack net take, or total amount wagered less jackpots paid, has vacillated since FY 2008 on a generally downward course. Tribal gaming revenue levels, meanwhile, have been edging up, but data suggest that they will decline slightly, with the market having reached a saturation point. Mr. Baca reviewed charts and tables showing: (1) the comparison among tribal net win, racetrack net take, racetrack taxes paid and revenue share paid; (2) the effect of gaming on horse racing; (3) the projection that revenue from nontribal gaming will remain approximately at its FY 2014 level; and (4) the projected estimates of FY 2015 gaming-derived revenue.

Mr. Baca also discussed the GCB's operations and budget. After a general decline, the GCB's budget recently increased. Mr. Baca reviewed charts showing: (1) the relationship between the operating budget and gaming revenue to the GF; (2) the number of inspections and citations in the past seven fiscal years; and (3) the level of activity by the GCB's Audit and Compliance Division. He noted that adequate staffing promotes compliance, and he reported that a statutorily required central system — which monitors nontribal gaming machines for tax and other regulatory purposes, and which, he said, promotes fairness and integrity — is installed and operating.

Mr. Baca closed by underscoring the saturation in the gaming market, a condition that tamps revenue growth. He noted that gaming establishments are proliferating on local, national and global levels and that other governments that collect revenue from gaming are similarly experiencing the effects of saturation.

On questioning, Mr. Baca and committee members addressed the following topics.

Tax treatment and accounting of free play. Mr. Baca acknowledged the dispute between the GCB and tribes over the tax treatment of free play and indicated that disputed amounts are not publicly disclosed because of confidentiality requirements. A member expressed dissatisfaction at that lack of transparency. Mr. Baca also explained that in Nevada courts, the issue of free play has been litigated and ruled on in favor of the state. Given that New Mexico's gaming regulations are similar to those in Nevada and other gaming states, there is support for the position that its regulation is appropriate.

Tax treatment of gaming establishments. A member pointed out, as a distinction between tribal gaming enterprises and racetracks, that tribes use gaming revenue for public works and services, unlike the private owners of racetracks; the member suggested that the distinction should be considered when developing related tax policy. Another member remarked that, in light of the recent trend to reduce the tax burden of businesses, tribal gaming enterprises are an

anomaly. Mr. Baca responded that, historically, taxation of gaming served as a check on what was widely considered to be an immoral activity.

Santa Teresa's Industrial Border Zone

Jerry Pacheco, president, Global Perspectives Integrated, Inc., and vice president, Border Industrial Association, William Mattiace, executive director, Border Authority (BA), and Chuck McMahon, director, Planning Department, Dona Ana County, discussed the Santa Teresa-area border zone.

Mr. Pacheco explained causes of recent growth in the region. Many conditions affecting U.S.-Mexico trade have improved, and the Mexican economy is improving. Much of the expansion is attributed to Midwest companies moving closer to the border to tighten their supply chains. Exportation of products to Mexico from New Mexico has grown substantially; most of those products, which are intended for assembly in maquiladoras, originate in the Santa Teresa-Las Cruces corridor. Mr. Pacheco emphasized that these trends present an opportunity for New Mexico to continue to develop in its Mexican-border region.

Mr. Pacheco continued by describing development over the past two decades — and changes to law that he believes will promote continued development — in the Santa Teresa area. Previously, there was a high vacancy rate of commercial buildings; now, there is 99% occupancy accompanied by business expansion, state funding for water and wastewater projects, a solid business recruitment pipeline and a high job-growth rate. Notable companies in the region are Foxconn, a large computer-assembly plant that will soon move to San Jeronimo and take advantage of a new customs preclearance program, and UP. Mr. Pacheco proposed that, to foster continued development, the state: (1) appropriate money to improve the roads in the region; and (2) expand the overweight border commercial zone to encompass the UP intermodal facility.

Mr. Mattiace gave an overview of the BA vision, mission and organization and projects in which the BA is involved. Those projects include: (1) construction of a southbound road extending from Pete Domenici Highway to the border that would separate cars from commercial trucks to improve the flow of traffic; (2) a study to develop flood-control infrastructure in the Columbus area; (3) road improvements in Columbus; and (4) a \$1.2 million rail feasibility study, for which the BA is the fiscal agent.

Mr. McMahon concluded the presentation by underscoring the tremendous development that has occurred in the region and the potential for development that still exists. He indicated that Dona Ana County is a grantee in the U.S. foreign trade-zone program, which encourages local economic development by relaxing duty requirements for foreign merchandise. Mr. McMahon reviewed the San Jeronimo/Santa Teresa master plan (noting the international importance of the region's development), limitations in the area's transportation network (noting the costs of some improvements, if undertaken) and some infrastructure improvements that have been made (noting that some housing and air-related developments are in progress).

On questioning, the panel and committee addressed the following topics.

Foreign driver's licenses. Mr. Mattiace offered to supply information about whether Mexican citizens' driver's licenses and insurance are valid outside of the border zone.

Regional growth and infrastructure. A member commented that a visit to the Santa Teresa region makes palpable the economic boom. The member expressed hope that growth is being controlled responsibly and that the challenges of paying for necessary infrastructure will be overcome. Mr. McMahon said that expanding the airport to increase personal aircraft activity and cargo activity would require infrastructure investments.

Approval of Minutes

On a motion made and seconded, the minutes from the August 5-6, 2014 RSTP meeting were unanimously approved.

The committee recessed at 4:20 p.m.

Tuesday, September 30

The committee reconvened at 9:00 a.m. for a tour of the UP facility, fueling facility and intermodal facility in Santa Teresa.

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

**October 23-24, 2014
State Capitol, Room 307
Santa Fe**

The fifth meeting in 2014 of the Revenue Stabilization and Tax Policy Committee (RSTP) was called to order by Representative Edward C. Sandoval, chair, on Thursday, October 23, 2014, at 10:02 a.m. in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Edward C. Sandoval, Chair
Sen. Carlos R. Cisneros, Vice Chair
Sen. Sue Wilson Beffort (10/23)
Rep. Anna M. Crook
Rep. Brian F. Egolf, Jr. (10/23)
Sen. Clemente Sanchez
Sen. William E. Sharer
Sen. John Arthur Smith
Rep. James R.J. Strickler
Rep. Thomas C. Taylor
Rep. Jim R. Trujillo
Sen. Peter Wirth
Rep. Bob Wooley

Designees

Rep. Jason C. Harper (10/23)
Sen. Nancy Rodriguez
Rep. Carl Trujillo

Absent

Sen. Timothy M. Keller
Rep. Rodolpho "Rudy" S. Martinez
Sen. Mark Moores
Rep. Henry Kiki Saavedra
Sen. Lisa A. Torracco

Rep. Donald E. Bratton
Sen. William F. Burt
Sen. Jacob R. Candelaria
Rep. Ernest H. Chavez
Rep. Miguel P. Garcia
Sen. Phil A. Griego
Rep. Sandra D. Jeff
Sen. Gay G. Kernan
Rep. Tim D. Lewis
Rep. Bill McCamley
Sen. George K. Munoz
Rep. Paul A. Pacheco
Rep. Dennis J. Roch
Rep. Debbie A. Rodella
Sen. John M. Sapien

Rep. Luciano "Lucky" Varela
Sen. Pat Woods

Guest Legislator

Rep. Patricia A. Lundstrom (10/23)

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

Staff

Pam Stokes, Staff Attorney, Legislative Council Service (LCS)
Amy Chavez-Romero, Assistant Director for Drafting Services, LCS
Carolyn Peck, Intern, LCS
Tessa Ryan, Staff Attorney, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Thursday, October 23

Tax Policy Priorities — New Mexico Voices for Children (VFC)

James Jimenez, director of policy, research and advocacy integration, VFC, and Bill Jordan, senior policy advisor/governmental relations, VFC, articulated VFC's recommendations for change in tax policy.

Mr. Jimenez asserted that some features of New Mexico's economy are stagnant and out of balance. He emphasized the role of consumer spending in economic growth and posited that putting money into the hands of low-income wage earners can quickly spur that growth. Two programs that, he said, accomplish this objective are the federal Earned Income Tax Credit (EITC) and the state Working Families Tax Credit (WFTC). He remarked that New Mexico's state and local tax systems are regressive in that the lowest 60% of its taxpayers pay in taxes more than double, as a percentage of their income, that of the top 1% of taxpayers.

Mr. Jordan continued the presentation by stressing that there is great income inequality in the state and by discussing measures that VFC supports for closing the income gap and improving the economy. He urged that the state adopt an economic development-based tax policy that strengthens families, many of whose well-being has been hit hard by the recession. He said that increasing the WFTC from 10% of the EITC to 15% would help to achieve the ends sought. To pay for that measure, estimated to cost approximately \$25 million, Mr. Jordan proposed that the state pursue one or more of the following: 1) require all corporate income tax (CIT) payers to calculate their taxes using the combined reporting method; 2) increase the personal income tax (PIT) rate to 5.9% for higher-income earners; 3) tax internet sales; and 4) repeal the net capital gain deduction. Mr. Jordan submitted that several of the principles of good

tax policy, including adequacy, equity and accountability, are insufficiently realized, and that the legislature should adopt a tax expenditure budget. Further, it should be more fiscally responsible by refraining from: cutting taxes if the cuts are unlikely to create jobs; raising the gross receipts tax rate; and reimposing the tax on food and medical services. Rather, he said, the state should invest in economy-improving infrastructure and its residents' ability to contribute to the economy.

The committee received handouts from the presenters, which included a report on the WFTC and, for each member, a customized sheet profiling WFTC-related statistics for that member's district.

On questioning, Mr. Jimenez, Mr. Jordan, Amber Wallin, research and policy analyst, VFC, who was in the audience, and committee members addressed the following topics.

Disparity between low- and high-income earners. Ms. Wallin clarified that the graph on page seven of the presentation handout represents data on state and local — not federal — taxes and includes property, gross receipts and income taxes. Some members commented that: 1) the graph portrays skewed information in that it fails to account for federal taxes paid; if it did, it would probably reveal that high-income earners pay in all taxes a greater percentage of their earnings than is currently depicted; 2) the graph fails to account for the public benefits that low-income earners receive, which offset the taxes that they pay; and 3) if the information were presented as amounts of taxes paid, rather than as ratios of tax paid to income earned, then one would see that the top earners pay the bulk of tax revenues — such a presentation would demonstrate that higher-income earners should be valued, not vilified or discouraged from making money. Another member argued that the state should enact measures to promote an increase in the number of wealthy residents, since those taxpayers generate the most tax revenue.

A member posited that, if the tax base were broadened and the gross receipts tax (GRT) rate drastically reduced, low-income earners would pay less in taxes than is shown in the graph. Mr. Jordan responded that such a measure, if pursued, should be coupled with the enactment of a progressive PIT scheme to offset the measure's inherently regressive effect. The member acknowledged that the system would still be regressive but countered that it would be less regressive than it is now. Several members stressed the importance of garnering widespread (i.e., bipartisan, executive, legislative and public) support for minimizing preferential tax treatment, broadening the GRT base and lowering the GRT rate.

A member criticized aspects of the presentation as having been delivered in a way that fosters discord between the rich and the poor. Mr. Jimenez demurred and expressed support for the concept of a proportional tax rate in which all taxes and benefits were factored into the tax rate calculations.

Measures to improve the welfare of low-income earners. A member articulated the policymaking challenge in overcoming the situation in which: 1) some persons' income from public benefits and work is considerably higher than that from work alone; and 2) there is no institutional incentive for those persons to earn incomes at a level high enough to no longer

qualify for those benefits. Another member lauded the principle behind programs like that which expand supplemental food program participants' purchasing power at farmers' markets.

The CIT and the PIT. A member maintained that the criticism mounted against lowering the CIT rate is misplaced, first because the CIT generates such a small proportion of the state's revenues as to be relatively insignificant, and second because, if a stated goal were to generate more tax revenue from businesses, then raising the CIT is not an effective way to accomplish the goal, given that it is advantageous for businesses to organize so that their owners pay PIT, not CIT, on business earnings. A member pointed out that, because of this business organization advantage, raising the PIT rate would increase the burden on small business owners, such as farmers. The member added that the potential effect on competition with neighboring states should be considered if the PIT scheme is to be modified. Another member advised that stakeholders allow time before expecting to see the results of recent tax measures enacted to increase business activity and indicated that there has been private-sector job creation in the member's district since the time that one of those measures, reduction of the CIT rate, took effect.

Job growth. A member commented on the state's poor job growth and the need to focus on job creation. Mr. Jimenez responded that no measure will swiftly create jobs, but that broadening the GRT tax base and lowering its rate, directing money to those who will spend it quickly, using existing tools like bonds to invest in infrastructure and investing in the work force will, in time, improve the welfare of many.

Information requests. Members requested: 1) tax-specific detail on the percentages of income each stratum depicted on page seven of the handout pays; and 2) information on the effectiveness of the EITC, which is said to be effective because it rewards work and reduces reliance on safety net programs.

Disaster Relief Workers Potential Tax Implications

Jerry Fuentes, president, Arizona-New Mexico Region, AT&T, outlined impediments to disaster recovery and a proposed legislative measure to address the issue. According to the Federal Emergency Management Agency, there have been 191 major weather-related disasters in the U.S. since 2010. After a major disaster in which infrastructure is damaged, companies like AT&T set out to quickly restore their services. But state regulatory requirements can slow the restoration of services in cases where out-of-state workers must be brought in to reinforce the efforts of in-state employees. For instance, many employees are deterred by the requirement to file a state tax return on the income earned in their nonresident state, and those who are willing to come are sometimes delayed by licensing and registration processes.

Mr. Fuentes proposed a remedy in which businesses that provide critical infrastructure (like communications, water, electricity and sewage systems) and their temporarily in-state employees would be exempted from certain legal requirements when they are restoring that infrastructure after a disaster declared by a high-level public official. Namely, those employees would neither be required to file state income tax returns nor comply with state licensing and registration requirements, and the company would not owe property tax during the recovery

period on equipment brought in. Mr. Fuentes closed by naming states that have enacted or are considering enacting similar measures and by underscoring that the proposed measure would benefit infrastructure companies, their employees and the public that relies on critical infrastructure.

On questioning, Mr. Fuentes and committee members addressed the following topics.

Problem scale. Mr. Fuentes testified that no recent disaster in New Mexico has required the use of AT&T's out-of-state resources, but that the measure is being pursued as a prospective concern. He also testified that AT&T exhausts its in-state resources for disaster response before it taps out-of-state supports and that it would continue that practice. A member commented that it seems that the opportunity for work, coupled with incentives that a company could offer, would outweigh the burden associated with taxpaying obligations. Mr. Fuentes responded that, in spite of added incentives, employees have refused to go out of state in these situations because they are deterred by income-tax-paying obligations and that those employees have union protections that permit them to decline to do the out-of-state work.

Fiscal effect. Mr. Fuentes said that the fiscal effect of the measure is hard to forecast because of variables and uncertainties, such as the timing of a disaster and whether out-of-state resources would be needed. He added that other states that have enacted or are considering enacting the measure have found a neutral or positive net effect.

Adoption of the measure. A member characterized the measure as a simple method for improving the fitness of companies to respond to disasters; Mr. Fuentes agreed, adding that AT&T will always respond to disasters as fast as it can, but it might do so more slowly in the absence of this legislation. Mr. Fuentes said that he would pursue in the upcoming session the passage of legislation addressing the issues he encapsulated. Joe Menapace, a lobbyist who was in the audience, added that a sponsor for the legislation is being sought.

Proposed Changes to the Angel Investment Tax Credit (AIC)

Minda McGonagle, state director, National Federation of Independent Business, defined "angel investor" and described both what angel investors do and the changes that a bill, which last year was introduced but did not pass, would have made to the AIC. Angel investors are retired entrepreneurs or executives, and some are former recipients of angel investments. They offer wisdom and support to budding entrepreneurs and help to bridge the gap in funding between the seed and venture capital levels. The bill, which is planned to be introduced in the coming session, would: 1) increase the aggregate cap of the AIC from \$750,000 to \$2 million; 2) per claimant and year, increase from \$100,000 to \$250,000 the maximum amount of, and increase from two to five the number of investments qualifying for, the credit; 3) increase from three to five the number of carry-forward years; and 4) extend the credit's sunset for eight years, to 2024. Ms. McGonagle promoted the AIC as helping to make capital available to a variety of companies and as instrumental in keeping young New Mexicans in the state.

Tom Clifford, secretary of finance and administration and a member of the panel, pointed out that the credit helps to reduce the risk exposure of investors who scrutinize and cull

investments; in this sense, the public can leverage and benefit from private activity. He briefly reviewed portions of last year's AIC bill (distributed to the committee) that is planned for reintroduction and said that, if enacted, it would broaden the base of eligible investors and, to align with the credit's federal corollary, modify the definition of "qualified activity". Secretary Clifford referred briefly to a scholarly article (distributed to the committee) whose authors, after examining the correlation between state AIC programs and the rate of business creation, reported a positive finding.

J.T. Michelson, board chair, New Mexico Angels (NMA), who also sat on the panel, thanked committee members on behalf of NMA members for their part in offering the credit. He depicted the legislation as capable of providing a net gain for the state, in-state companies and investors. That is, it helps the state make strides in economic development, induces investors to prefer investing in New Mexico companies over out-of-state companies and reduces investors' tax obligations.

On questioning, Secretary Clifford and Representative Jane E. Powdrell-Culbert, who participated on the panel, provided some data on angel investment activity in the state. Committee members and the panel, which also included Juan Torres, financial development, Economic Development Department (EDD), addressed the following topics.

Definition of "qualified research". Secretary Clifford said that changing the new definition of "qualified research" would make the state scheme more uniform with the federal scheme and reduce confusion.

AIC and rural New Mexico. A member expressed concern that programs like the AIC are underutilized in rural areas. Secretary Clifford responded that the AIC's provisions could be adjusted to give greater incentive to investments made in those areas. Mr. Torres commented that the EDD has initiated a rural economic development council to look at such issues and is implementing ways to address rural areas' economic development needs. Ms. McGonagle said that her organization is sensitive to the needs of rural businesses and would like to see statewide success in the angel investment arena.

Proposed Changes to the Sustainable Building Tax Credit (SBTC)

Senator Wirth and Representative Carl Trujillo provided some context for a presentation by Mark Duran, executive director, New Mexico Manufactured Housing Association, John Garcia, executive vice president, Home Builders Association of Central New Mexico, and Steve Hale, president, Hale and Sun Construction, Inc., and program director, Build Green NM, on the SBTC. Senator Wirth said that the SBTC was enacted in 2007, capped at \$10 million and originally set to expire in 2013. It was extended for three years. Representative Carl Trujillo added that measures like the SBTC promote water conservation and are part of a trend that has observable results.

Mr. Garcia talked about energy-efficient homebuilding and the SBTC. New Mexico ranks high among states in measures of green-built homes. The Energy Conservation and Management Division of the Energy, Minerals and Natural Resources Department administers

the program, which he said has been effective at increasing the number of green-built homes. Those homes cost more to build than their non-green counterparts but produce savings over time and are less environmentally detrimental. The demand for the credit exceeds the amount available to be taken, and there is a backlog of applications. Mr. Garcia reviewed amounts of the average credit for various types of projects and homes and noted that, in spite of market conditions being poor, 74% of all new homes built in the Albuquerque metropolitan area in 2013 were green-built.

Referring to a handout on homebuilding energy efficiency, Mr. Hale reviewed some technical aspects of the energy-efficiency home rating system. Mr. Duran reported on the effect that the credit has had on manufactured homebuyers, remarking that many rural residents benefit from it. Senator Wirth reported that various interest groups are developing related legislation that will have broad-based support.

On questioning, a committee member raised the point that the value of programs like this should be weighed against the need for the state revenues that they cause to be foregone and then questioned whether the credit causes the construction of green-built homes. Mr. Garcia responded that, generally, builders would not build green-built homes in the absence of the credit. Mr. Hale added that the credit's exhaustion has caused builders to reduce green homebuilding. In response to a member request, Mr. Garcia indicated that he would provide the committee with data on SBTC-related job creation.

Valuation of Property in Taos County

Cesario Quintana, director, Property Tax Division, Taxation and Revenue Department (TRD); Palemon Martinez, secretary/treasurer, Northern New Mexico Stockmen's Association, and president, Taos Valley Acequia Association; Toby Martinez, a Taos property owner; and Clyde Ward, vice president, New Mexico Association of Counties (NMAC), and San Juan County assessor, formed a panel that reported on issues concerning taxation of property in Taos County.

Mr. Quintana gave background on the situation. In 2011, it was determined that many properties in Taos County needed to be reappraised. The Taos County assessor, the Taos County manager and representatives from the Local Government Division of the Department of Finance and Administration and from the Property Tax Division of the TRD entered an agreement outlining provisions to conduct the appraisals. In 2012, the assessor's office began that work, which included mailing letters to taxpayers whose property the office believed was inappropriately classified as agricultural and taxed at a lower rate. The letters outlined relevant law and notified recipients of the opportunity to bring their properties into compliance with the law. Consequently, in 2013, many properties were removed from the agricultural special method of valuation. Mr. Quintana cited statistics relevant to the undertaking, reviewed several of the legal provisions that apply to reappraisal, classification and taxation of agricultural property and mentioned the exemptions available to certain taxpayers. He directed the committee's attention to photographs of properties taken during property inspections, many of which supported the conclusion that the agricultural classification was appropriate and many of which supported the opposite conclusion.

Stressing the importance of preserving agricultural heritage and production in the face of long-term drought, Toby Martinez referred to maps showing the recent loss of grazing land across New Mexico and a letter from the Taos Farm Service Agency County Committee that requests the Taos County assessor to exercise lenience in reclassifying properties as non-agricultural. Toby Martinez described the problem of drought forcing people to reduce or discontinue their agricultural operations and the efforts of local leaders and property owners to address the corresponding tax reclassification situation, including its effects on elderly property owners who are unfit to continue their agricultural operations. Mr. Ward echoed those comments and underscored the need for a solution that incorporates fairness and objectivity in property classification.

On questioning, a committee member commented on the desire for a bill that would redress the situation in a balanced way and that will be in the best interest of the state as a whole. Another member commented on factors that beset property taxation: the widespread inadequacy of resources devoted to county assessor offices and the potentially high turnover rate in, resulting from the political nature of, the assessor position.

Approval of Minutes

On a motion made and seconded, the minutes from the September 29-30, 2014 RSTP meeting were unanimously approved.

Impact of Hold Harmless Reductions in Gallup

Dick Minzner, lobbyist for the City of Gallup, and Maryann Ustick, city manager, Gallup, talked about the anticipated effects on Gallup of House Bill (HB) 641, as that bill was enacted in 2013. Mr. Minzner supplied relevant background: after food and medical services were removed from taxation, a hold harmless scheme, in which the state compensated local governments for their losses of that revenue, was implemented. Some provisions of HB 641 altered the hold harmless distribution scheme by phasing out the distributions for certain local governments. HB 641 also contained measures that were intended to improve the economic climate and increase governments' revenues; namely, it decreased the CIT rate and gave local governments the authority to impose a new GRT increment. Those measures, it was thought, would offset the hold harmless distribution reductions.

Mr. Minzner argued that some changes made by HB 641 will harm Gallup, which is one of the governments whose hold harmless distributions will diminish. Gallup has the highest poverty rate in the state, greater-than-average social needs, a high crime rate and a relatively stagnant economy. Together, these conditions make it difficult for its taxpayers to shoulder an increase in the already-high GRT rate, difficult for the city to cut services in an effort to save money and unlikely that the measures in HB 641 that are intended to stimulate the economy will have that effect in Gallup. Moreover, because Gallup's revenue growth rate is so slow, it is expected that the phaseout will result in negative revenue growth.

Mr. Minzner presented two proposed legislative remedies for the financial harm that it is expected will fall on Gallup as a result of HB 641. First, the legislature, in recognizing the city's and McKinley County's extraordinary hardships, could make an exception from the current hold

harmless scheme for governments like them. Second, the legislature could adopt a "deferred phaseout" plan that would address the needs of affected governments that experience slow GRT revenue growth.

Under the deferred phaseout plan, the hold harmless distribution amount would be calculated using the measure of GRT revenue growth, and there would be a buffer to safeguard against a reduced distribution for a local government that experienced slow GRT revenue growth. Mr. Minzner indicated that there are many variables — such as eligibility of governments and the threshold for growth — that the legislature could consider in designing the measure.

In closing, Mr. Minzner acknowledged the widespread distaste for government actions that make special exceptions among cases that are alike but then posited that cases that are different should be treated differently. He referred to tables in the handout that illustrate the differences among hold-harmless-affected governments in their relative reliance on the distributions. Ms. Ustick made the points that the impending hold harmless reductions put Gallup in the difficult position of either raising taxes or cutting services and that the fiscal health of cities like Gallup affects the health of the entire state. A legislator whose district includes Gallup told the committee that, if the city imposed the new increment, the GRT rate there would exceed 9%.

On questioning, Mr. Minzner and committee members addressed the following topics.

Fiscal effects. Mr. Minzner indicated that, under existing hold harmless reduction provisions, Gallup will lose about \$200,000 per year in the first stage. If Gallup were, as proposed by the first option, exempted from the existing scheme, that would be the approximate cost of the exemption to the state. But if the second proposal (offering relief to slow-revenue-growth governments) were adopted, then it would cost the state approximately \$1.5 million to \$2 million per year. A member remarked that the state's high costs under the existing scheme cut into education spending. The member proposed a partial remedy of reimposing the GRT on foods that aggravate health problems.

Hold harmless phaseout. A member expressed favor for a proposal that would provide relief to any local government that met certain conditions, rather than creating a locality-specific exception. In response to a request for more proposal detail, Mr. Minzner indicated that, generally, a government's GRT revenue base would be determined in a particular year, and then growth would be measured against that base. The distribution would not be withheld if the government's GRT revenue fell below a threshold percentage for year-over-year growth.

The committee recessed at 4:15 p.m.

Friday, October 24

The committee reconvened at 9:13 a.m. on Friday, October 24, 2014, with Representative Sandoval chairing the meeting.

***City of Eunice v. State of New Mexico Taxation and Revenue Department* — Overview and Status Update**

Brad Odell, chief legal counsel, TRD, Ryan Gleason, tax policy and research director, TRD, Bill Fulginiti, executive director, New Mexico Municipal League, and Johnnie "Matt" White, mayor, City of Eunice, composed a panel that reported on issues surrounding the lawsuit between the state and the City of Eunice.

Mr. Odell briefed the committee on the lawsuit. Over the course of several years, a Lea County taxpayer filed GRT returns as though the taxpayer were located in the Lea County city of Eunice. After discovering that its true location was outside of the municipal boundary and that it had therefore overpaid taxes, the taxpayer filed amended returns, and the TRD refunded the amount to be repaid. Then the TRD, which collects and distributes local governments' shares of GRT revenues, determined that — under its interpretation of the law — approximately \$2.3 million had been wrongly distributed to, and was to be repaid through the withholding of future distributions from, Eunice. Aware that the withholding would pose a hardship to the city, the TRD attempted to negotiate a payment arrangement. Rather than agreeing to such an arrangement, the city sued the state. The district court ruled, and the court of appeals affirmed, that the state was barred from going back more than one year in collecting from the city the amount that, based on the taxpayer's mistake, it owed. The state filed with the New Mexico Supreme Court a writ of *certiorari*, which was denied, and then it filed a motion for rehearing. The New Mexico Supreme Court granted the motion, and the case is pending before that court.

Mayor White responded as follows: the TRD seeks from the city, in all, a \$2.3 million repayment through a GRT distribution withholding; the TRD withheld all of the city's GRT distributions in January; the city tried working with the TRD; the amount sought represents a substantial portion of the city's budget; the city would have to lay off about six or seven workers to cope with the \$2.3 million withholding; and the city formulates its budgets based on the amount of GRT revenue that it has received in the past approximately two years. Mr. Fulginiti referenced a comparable distribution problem with Artesia that occurred in the early 1980s and that served as the impetus for the current distribution scheme. He argued that the scheme was designed to protect small cities by imposing a time limitation on retroactive GRT calculations and corresponding distribution withholdings; specifically, under this scheme, a city absorbs the loss of no more than 23 months' worth of subsequently discovered incorrect distributions, while the state absorbs the remainder. Without such protection, Mr. Fulginiti indicated, situations like that in *Eunice* can have dramatic effects on cities.

On questioning, the panel and committee members addressed the following topics:

Facts pertinent to Eunice's situation. Mayor White indicated that the size of the subsequently discovered excess distribution, which Mr. Odell indicated was based largely or in full on one taxpayer's miscalculations, did not seem excessive to city personnel because there were five years of similarly sized distributions, and the anomaly was widely attributed to the oil boom. He indicated that the taxpayer whose mistake triggered the dispute is a business in the nuclear industry that was new to the area. Mr. Gleason indicated that the GRT rate in Eunice is 7.1%, and Michael Gallagher, manager, Lea County, who was in the audience, indicated that the

GRT rate in the unincorporated parts of Lea County is 5.5%.

Availability of tax information; legislative reforms. A member who is a former mayor commented that the tax system lacks helpful tools for cities, in that the TRD is restricted from providing information important to cities' financial planning. Mr. Odell acknowledged the difficulty that cities sometimes face and indicated that the TRD is planning to pursue legislation that would: 1) make available more tax-related information — beyond the names of taxpayers, which it already provides — to local governments; and 2) lighten the burden on those entities when situations like that in Eunice arise.

A member remarked that, although the taxpayer is culpable for the mistake, the mistake's negative repercussion falls on taxpayers at large. Mr. Odell elaborated, saying that, of the \$2.3 million that the TRD is seeking, Eunice would owe approximately \$120,000 under the terms of the court decision, if that decision stands; he affirmed that the difference in amounts would be a cost borne statewide. Another member expressed the impression that Eunice's receipt of such a sizeable mistaken distribution was a perverse result and recommended that the period in which a taxpayer may amend its returns be shortened. Another member submitted that taxpayers who report incorrectly should be more liable for their mistakes than they are under the current scheme.

Home Rule Taxing Authority

Mr. Fulginiti spoke briefly about an initiative that would give home-rule municipalities more latitude to design their tax structures than the law currently allows. A committee member expressed support for greater home-rule municipality autonomy and remarked that, if granted that autonomy, the elected bodies that alter city tax structures would be deterred from abusing their power because they would remain accountable to voters. Another member commented that New Mexico's home-rule laws are more restrictive than those of other states and that some cities could govern themselves more efficiently if given greater leeway.

County Local Option Gross Receipts Taxes, Hospital Funding and Other County Legislative Priorities

Steve Kopelman, executive director, NMAC, Mr. Ward, Mr. Gallagher, Patrick Varela, treasurer, Santa Fe County, and Gary Perez, chair, NMAC Assessors Affiliate, and chief deputy assessor, Santa Fe County, comprised a panel that addressed tax-related legislative measures identified by the NMAC Board of Directors as priorities for counties. Mr. Kopelman, Mr. Varela, Mr. Perez and Mr. Gallagher reported on these measures, and committee members responded, as follows. Bill drafts associated with the item on tax roll corrections and the item on delinquent property tax payments were distributed to the committee.

Safety Net Care Pool (SNCP)

Mr. Kopelman testified that the NMAC advocates for the addition of a sunset clause, which would curtail counties' funding obligations, to existing SNCP provisions. The 2014 SNCP-implementing legislation contained such a clause, which was a compromise reached through difficult negotiations between stakeholders, but it was vetoed. The NMAC-endorsed measure would add one year to the original sunset date to better time it with the expiration of the

Medicaid waiver, so that the effects of health care reform and Medicaid expansion could be better known before further changes to SNCP laws are made. Legislation has not yet been developed, but stakeholders are engaged in fruitful negotiations. A member encouraged those stakeholders to reach consensus in time to pass related legislation in the next session. Another member questioned the constitutionality of the veto but submitted that a legislative resolution would be preferred to a court resolution.

Tax Roll Corrections

Mr. Perez summarized a measure that would allow a county treasurer to correct certain obvious errors in the tax schedule after the county assessor has delivered the schedule to the treasurer. Mr. Perez asserted that the measure, in addition to improving clarity in the statute on the subject, would save time and money and potentially avert the need to correct such errors in court.

Delinquent Property Tax Payments

Mr. Varela described a measure that would assign county treasurers, in lieu of the TRD, responsibility for accepting delinquent property tax payments. He attested that, if implemented, the measure would improve the ability of treasurers' offices to provide information often requested by delinquent taxpayers.

Job Creation and Industrial Revenue Bond (IRB) Act Changes

Mr. Gallagher outlined a measure that would expand the types of projects eligible for county-issued IRBs, thereby giving counties more discretion in designing tax-relief packages; remove the ability of an existing competitor company to protest the issuance of county IRBs; and, at a county's discretion, exempt certain "ingredients" of construction from the GRT. Mr. Gallagher argued that the protest provision detrimentally stalls IRB issuance and is arbitrarily absent from the corresponding municipality IRB law. A member cautioned that such a loosening of conditions should be scrutinized, as a county not as well-off as Lea County, which Mr. Gallagher represents, could be harmed by actions permitted by the proposed amendments.

County Option Gross Receipts Taxes

Mr. Kopelman said that the NMAC board has approved in concept an initiative to simplify the county option GRT structure, which he characterized as extremely disjointed. He said that the measure would reduce counties' potential taxing authority by consolidating some of the options and, for some options, loosening restrictions on permitted use. Mr. Kopelman assured the committee that, under the proposed changes, a county commission would still be accountable to voters and bound by the law, and that there would continue to be checks on abuse.

Senator Cisneros encouraged the presenters to bring in December any legislation related to the measures to the committee for its consideration and potential endorsement.

Adjournment

There being no further business, the RSTP adjourned at 11:15 a.m.

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

December 18-19, 2014
State Capitol, Room 307
Santa Fe

The sixth meeting in 2014 of the Revenue Stabilization and Tax Policy Committee (RSTP) was called to order by Representative Edward C. Sandoval, chair, on Thursday, December 18, 2014, at 10:05 a.m. in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Edward C. Sandoval, Chair
Sen. Carlos R. Cisneros, Vice Chair
Rep. Anna M. Crook
Rep. Brian F. Egolf, Jr.
Sen. Timothy M. Keller (12/18)
Rep. Rodolpho "Rudy" S. Martinez
Sen. Mark Moores
Sen. Clemente Sanchez
Sen. William E. Sharer
Sen. John Arthur Smith
Rep. James R.J. Strickler
Rep. Thomas C. Taylor
Rep. Jim R. Trujillo
Sen. Peter Wirth
Rep. Bob Wooley

Designees

Sen. Gay G. Kernan (12/18)
Rep. Debbie A. Rodella (12/18)
Sen. Nancy Rodriguez (12/19)
Rep. Luciano "Lucky" Varela (12/18)

Absent

Sen. Sue Wilson Beffort
Rep. Henry Kiki Saavedra
Sen. Lisa A. Torracco

Rep. Donald E. Bratton
Sen. William F. Burt
Sen. Jacob R. Candelaria
Rep. Ernest H. Chavez
Rep. Miguel P. Garcia
Sen. Phil A. Griego
Rep. Jason C. Harper
Rep. Sandra D. Jeff
Rep. Tim D. Lewis
Rep. Bill McCamley
Sen. George K. Munoz
Rep. Paul A. Pacheco
Rep. Dennis J. Roch

Sen. John M. Sapien
Rep. Carl Trujillo
Sen. Pat Woods

Guest Legislators

Rep. Roberto "Bobby" J. Gonzales
Sen. Cisco McSorley (12/19)

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

Minutes Approval

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

Staff

Pam Stokes, Staff Attorney, Legislative Council Service (LCS)
Amy Chavez-Romero, Assistant Director for Drafting Services, LCS
Carolyn Peck, Intern, LCS
Tessa Ryan, Staff Attorney, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Thursday, December 18

Revenue Forecast

Leila Burrows Kleats, chief economist, Department of Finance and Administration (DFA), Elisa Walker-Moran, chief economist, Taxation and Revenue Department (TRD), and Peter van Moorsel, chief economist, Legislative Finance Committee (LFC), presented the Consensus Revenue Estimating Group's (CREG's) revised forecast of general fund (GF) revenue.

Ms. Burrows Kleats summarized outlooks of the national economy, energy markets and New Mexico oil and gas production; provided an update of the New Mexico economy and its gross receipts base growth; and gave an overview of the capital budget. According to Moody's Analytics, the national economy is expanding in a sustainable way. Factors related to employment, interest rates and oil prices are fueling that growth, which could be tempered by situations unveiling internationally. Nonetheless, it is predicted that domestic expansion will continue. Meanwhile, the state's employment growth is close to the long-term average, and more growth is expected in fiscal years (FYs) 2015 and 2016, particularly in the services and construction sectors. Mining of oil and gas and manufacturing are the two categories showing the most gross receipts base growth, though the growth rate of mining is expected to wane. Recent decreases in global oil prices will slow, but not arrest, oil production; production in New

Mexico, which increased sharply since 2009, will in turn slow and cause a decline in GF revenue. Meanwhile, there is \$320 million in senior severance tax bond capacity and \$183 million in supplemental severance tax bond capacity for capital projects.

Ms. Walker-Moran continued by summarizing the CREG's revisions and reporting on revenue from major sales taxes and on risks to the forecast. Since August, recurring revenue has been revised down — largely due to flagging oil and gas receipts — by \$120 million for FY 2015 and \$144 million for FY 2016. "New money", or the increase from FY 2015 in recurring revenue, is estimated to be \$141 million. Taxable gross receipts have shown a consistent pattern of growth, and over the last five years, most of that growth has occurred in the mining and extraction sector. Revenue from the compensating tax, which is considered a volatile source of revenue, peaked in FY 2014. Meanwhile, revenue from the insurance premium tax has been revised downward to reflect uncertainty surrounding federal health reform, and revenue trends related to cigarettes, tobacco products, liquor and personal and corporate income are relatively stable. The resolution of matters such as the lawsuit between the state and the City of Eunice, gaming compacts between the state and tribes and high-wage jobs tax credit protests could significantly affect revenue levels.

Mr. van Moorsel elaborated on the GF financial summaries and on matters being watched for their potential to disrupt revenue flows. Namely — and in addition to those that Ms. Walker-Moran discussed — issues related to energy markets, federal sequestration, certain tax credits, the tobacco settlement and federal special education allocations could reduce the GF balance. Mr. van Moorsel noted that the LFC's December 2014 revenue estimate for FY 2015 differs from the DFA figure because of differences in the treatment of a potential \$60.2 Medicaid deficiency, and he commented on the GF reserves, including the low likelihood of the tobacco settlement matter unfolding in time to affect FY 2015 revenue levels.

On questioning, the panel and committee members addressed the following topics.

Eunice lawsuit. Ms. Walker-Moran said that, if the City of Eunice prevails and the resulting law were applied in all cases of distribution to local governments, the state would owe approximately \$20 million per year.

Tobacco settlement and e-cigarettes. A member endorsed the idea of increasing revenue by taxing e-cigarettes at the same rate as traditional cigarettes, arguing that the measure would improve fairness and allow the state to capture revenue from traditional-cigarette smokers who are trying to quit by switching to e-cigarettes. Mr. van Moorsel indicated that the revenue that would be derived from the passage of such a law is not accounted for in the financial summary.

Capital outlay projects. The \$25 million in capacity for projects in the "authorized but unissued" category, Ms. Burrows Kleats said, is money dedicated to projects that, in the year that the legislature authorized them, were not ready to proceed. She indicated that she would provide detailed information on those projects.

Oil and gas production and effects on revenue. Mr. van Moorsel said that the effect on

gross receipts tax (GRT) revenue levels of factors related to oil and gas production — including the drop in gas prices and the slowdown in drilling — is difficult to quantify. He added that the price of natural gas also declined since the time the CREG arrived at its most recent estimation of average price. In response to a comment that the predicted average price of \$71.00 per barrel of oil for FY 2015 seems high, Ms. Burrows Kleats indicated that the figure is computed as an average for the year, periods of which had relatively high prices and that, in the time since the figure was computed, the price of oil dropped. Members expressed the views that: 1) foreign and domestic policies are such that the state is vulnerable to drastic drops in demand for oil, which would have grave consequences for revenue stability and potentially zero out the "new money" balance; 2) 1980s- and 1990s-era history of sluggish demand for domestic oil should teach that the oil revenue situation demands heavy scrutiny, and the state should identify and prepare for the worst-case scenario; 3) "new money" should not be considered available for spending until it materializes; 4) volatility in oil and gas revenue is a key reason that a 10% reserve level is prudent; and 5) rather than succumb to the pressure to endorse revenue-destabilizing tax incentives, lawmakers should focus on improving revenue stability for the sake of, in particular, the education system.

Recent corporate income tax (CIT) rate reductions. Ms. Walker-Moran reported that the fully phased-in CIT rate reductions will cost the state approximately \$140 million per year. A member expressed skepticism that the state is adequately advertising the rate reduction to attract out-of-state businesses and encourage business expansion. David Abbey, director, LFC, who was in the audience, responded that the LFC is recommending appropriating to the New Mexico Partnership, the state's business recruitment and expansion arm, \$500,000 more than it previously received. The increase, he said, should bolster the state's efforts to publicize the reduced rates.

Tax expenditure report. Ms. Walker-Moran reported that the tax expenditure report that had originally been scheduled for presentation at the meeting is awaiting the governor's approval. She added that much effort was made to fill gaps in the previous report.

Information requests. Members requested, and Ms. Walker-Moran agreed to provide, additional information on GRT and personal income tax (PIT) revenue derived from arts, culture and entertainment sources, given that, although the statewide figure is relatively insignificant, much of this type of revenue is generated in places like Santa Fe. A member requested information on the fiscal effect of the state's 2010 GRT rate increase.

Farewell to Departing Committee Members

Senator Cisneros recognized the RSTP members who will soon leave the legislature — Representatives Crook, Martinez, Taylor and Sandoval and Senator Keller — and thanked them for their service to the committee. He read and presented a certificate to Representative Sandoval. Several members added their words of commendation for the departing members.

GRT Base Study — Results and Next Steps

Lee A. Reynis, Bureau of Business and Economic Research (BBER), University of New Mexico, Richard Anklam, president and executive director, New Mexico Tax Research Institute

(TRI), and Jim O'Neill, consultant, updated the committee on the status of a study to predict the effects of hypothetical alternatives to the existing GRT system. Mr. Anklam opened by describing the context for the study. Legislation sponsored in 2013 by Senator Sharer and Representative Taylor inspired a conversation about the possibility of reforming the tax system by imposing on a grossly expanded tax base (i.e., one that included income and intermediate transactions) a rate much lower than that of the existing GRT; Mr. Anklam noted the importance of having an accurate assessment of the lowest rate that could be applied without compromising adequacy.

Ms. Reynis described the approach for developing a tool to model patterns and then predict the outcome of various changes to the existing system. The IMPLAN input-output model was chosen because of its wide, inter-industry acceptance and its accessibility to the BBER. Researchers compared IMPLAN data with data from other sources to gauge the IMPLAN data's accuracy; the researchers determined that IMPLAN data reasonably represented New Mexico's economy in 2012, the most recent year that could be tested.

Culling various data sources and using the model, researchers then estimated the total annual GRT revenues, exemptions and deductions. Their estimate for total output less exemptions (i.e., total gross receipts) was approximately \$105 billion, nearly equal to the TRD's corresponding figure of \$105.1 billion. Meanwhile, the researchers' model estimated exemptions to be \$66 billion, deductions to be \$82.3 billion and taxable gross receipts to be \$50.1 billion. The latter figure differed by \$800 million from that of the TRD (\$49.3 billion).

Ms. Reynis went on to outline the researchers' findings from having employed the model in the context of Senator Sharer's and Representative Taylor's proposal. Researchers estimated that, if implemented, the measure would yield \$5.3 billion in GF revenues. After deducting amounts distributed to municipalities, that figure exceeds by approximately \$1.24 billion the amount of revenue, \$3.63 billion, that it would need to replace. Mr. O'Neill noted that the rate proposed by the 2013 legislation, 2.125%, would yield more revenue than needed to ensure adequacy.

Ms. Reynis highlighted some limitations of the model and analysis. The model is neither dynamic nor able to adequately capture separate transactions, and the analysis did not adequately consider the implications as they relate to local governments, the governmental GRT, federal tax deductibility or the redistribution of income likely to occur.

Mr. Anklam closed by underscoring the viability of the model, but also by admonishing that, before the state overhauls its tax system, it should verify the study's results using a second study. He stressed that the research did not include a consideration of the effects of the proposal — which would most likely vary widely — on local governments but mentioned that those effects could be studied.

On questioning, the panel and committee members addressed the following topics about tax reform.

Continued thought and study. Several members and the presenters stressed the importance of continuing to study the implications of various tax reform proposals and to refine an understanding of a given proposal's collateral effects. A member, commenting that creativity in the political process is stifled because unpopular measures are discouraged from being introduced, encouraged policymakers to strive to explore a multitude of options and determine how to effect reform — not focus on the weaknesses of a given proposal.

Additional considerations. Members offered their responses to the presentation as follows: 1) though there will always be people who neglect to pay taxes they owe, a lower rate would improve compliance by tempering the incentive to evade the tax; less evasion would enrich revenues; 2) if the tax rate were very low, the issue of pyramiding and the burden on service providers who face out-of-state competition for sales would diminish; 3) stability in the tax system is paramount; 4) the current situation is such that taxpayers without a lobbyist to advocate for their interests pay a disproportionate share in taxes; any reforms should incorporate adequate progressivity; and 5) reform should be undertaken in a unified, bold and swift manner, not incrementally. In response to a member's suggestion that, to better understand the implications of a particular reform measure, the state require certain taxpayers to file an information return, Mr. O'Neill said that Maryland's effort to pursue such an initiative was unsuccessful because there was no penalty for not completing a return, and the exercise was not taken seriously enough by those who did submit one.

Specific proposals. Members suggested approaches to tax reform, should it advance, as follows: 1) to ensure revenue adequacy, a higher-than-needed tax rate could be established, with the excess revenue dedicated to the State Road Fund; 2) to honor previously made commitments to businesses, many of which rely on existing tax incentive programs, CIT rebates could be provided — alternatively, or additionally, the CIT rate could be reduced; 3) to keep local governments whole, they could be made to receive a portion of gross revenues — alternatively, or additionally, they could be given more opportunity to tax; 4) to offset the negative effects of tax reform on lower-income residents, the PIT rate could be lowered and made more progressive — alternatively, it could be required that only the top 10% pay the PIT; and 5) the new laws could contain provisions that are triggered if revenue levels miss established targets.

Retiree Program Solvency Report

Wayne Propst, executive director, Public Employees Retirement Association (PERA), introduced several PERA board members who were in attendance and then reported on the solvency of the PERA pension program. Mr. Propst reviewed FY 2014 actuarial valuation results overall and by major plan category. The year marked an increase in the funded ratios of all plan categories except municipal fire, which remained at its previous level. For all plans combined, the funded ratio was 75.8%.

Mr. Propst reviewed the 30-year solvency projections overall and for individual plans. Since 2012, the 30-year projected funded ratio has improved dramatically. Reform legislation and good investments have helped to lift the baseline projection for the 2043 funded ratio from where it stood in 2012, 29%, to the 2014 value of 133%. Mr. Propst noted that, if calculated today, the figure would be closer to 111% because of a decline in investment value. Given such

economic volatility, he remarked, the PERA urges caution in assuming that the program is on a path of long-term stability. He also remarked that the judicial and magistrate plans are difficult to model and predict because there are relatively few participants in each.

Mr. Propst reviewed: the average annual pensions and ages at retirement for all plans and by plan; lifetime pension accruals for selected programs; and selected PERA statistics. For all plans, the average annual pension is \$27,900, and the average retirement age is 58.3 years. The PERA has almost 50,000 active members, almost 34,000 retirees and beneficiaries, 334 participating employers, 31 plans, two benefit tiers and net assets of approximately \$14.5 billion. Mr. Propst remarked that the general increase in retirement frequency is consistent with population demographics.

Mr. Propst closed by articulating the PERA's request that, to allow for a developed understanding of the effects of recent changes, no major legislative changes be enacted for five years. This request will be embodied in a memorial that will be introduced in the next session.

On questioning, Mr. Propst and committee members addressed the following topics.

Albuquerque police. Mr. Propst explained that, recently, the Albuquerque City Council increased the salary cap for veteran police officers. The measure, intended to keep those members in the police force, has the effect of increasing the overall unfunded liability, given that pension benefits are partly calculated using final average salary. Members expressed concern that other local governments might emulate Albuquerque, causing a strain on solvency. Mr. Propst indicated that the Investments and Pensions Oversight Committee requested that a letter addressing the concern be sent to the City of Albuquerque.

Return to work. A member asked whether the legislative measure intended to increase the incentive for public safety workers to remain active in their positions adequately addresses the concern of return-to-work proponents. Mr. Propst testified that, though there have been informal discussions on the topic, the board, which recognizes the importance of experience in police forces, has heard no formal request to consider allowing retired employees to simultaneously collect a pension and a salary from PERA-connected sources. He reiterated the PERA's plea that the legislature postpone making any major changes to the system until it is better understood what those changes should be.

Cost-of-living adjustments (COLA); solvency. A member expressed the preference for a variable COLA in the pension system, explaining that no increase or a fixed percentage increase can cause problems. Another member remarked on the positive effect of improved pension solvency on the state's bond ratings.

Approval of Minutes

On a motion made and seconded, the minutes from the October 23-24, 2014 RSTP meeting were unanimously approved.

New Mexico Lottery Revenue Update and Lottery Tuition Fund Status

Glenn Walters, deputy cabinet secretary, Higher Education Department (HED), gave a presentation on the lottery scholarship program and Lottery Tuition Fund, and David Barden, chief executive officer, New Mexico Lottery Authority, gave a presentation on lottery programming and revenues.

Mr. Walters provided background on the lottery program, highlighted the status of the fund and discussed program participation and scholarship eligibility. The fund balance at the end of FY 2014 was approximately \$12.5 million, less than the balance of approximately \$18.8 million at the beginning of that year. Participation in the program has increased steadily since its inception but recently leveled off. Most of the tuition funding goes to research institutions, where approximately half of the students at those institutions are on the lottery scholarship. Referring to a table in the handout, Mr. Walters pointed out that recipients of the scholarship have a higher rate of college completion than non-recipients. He highlighted changes to eligibility that were implemented in the past year, namely, that the credit-hour requirement for most students was raised. Mr. Walters concluded by saying that it is hard to predict whether lottery revenue will be adequate to cover the tuition of qualifying students, but that such data will be available in early March.

Mr. Barden opened by saying that in the lottery context, too, accurately predicting key data is challenging. He reviewed lottery revenues from the end of October 2013 to that date in 2014; discussed game-related changes that were made to increase revenue; compared FY 2014 revenue figures with those in the FY 2015 budget; reviewed aspects of the FY 2007 through FY 2014 budgets; broke down the distribution of revenue in FY 2014, remarking that the amount distributed to the Lottery Tuition Fund met the minimum 30% requirement; discussed the authority's expense management, through which cost-savings measures have been implemented; and discussed aspects of individual games. He concluded by recognizing that the complexion of prospective lottery players is changing and underscoring the need to adapt to the changes.

On questioning, the presenters and committee members addressed the following topics.

Deficiency appropriation to the HED. Mr. Walters reported that the HED is requesting a deficiency appropriation of \$11 million to reconcile an accounting mistake.

Scholarship receipt. Mr. Walters explained that a higher proportion of students at four-year institutions receive the scholarship than students at community colleges in part because the proportion of older adult students, who do not qualify for it, is higher at community colleges.

Market changes. Mr. Barden asserted that cutting prize amounts would result in less inflow to the Lottery Tuition Fund because it would discourage people from playing. He added that, increasing prize amounts, thereby potentially causing the opposite effect, would require legislative initiative. In response to a member's comment that profits should be optimized, Mr. Barden identified measures, such as hiring an in-house animator and trimming commissions to retailers, that the authority has taken to cut its expenses.

Information request. A member, commenting that a graduation requirement of more than 120 credits seems unnecessarily high, requested of the HED information on the barriers to graduation within four years.

Legislative Proposals

The committee heard presentations on legislative proposals that were embodied in draft legislation, copies of which were distributed to the committee. Several presenters requested that the committee consider for endorsement their proposals.

Exemptions from Reductions to Hold-Harmless Distributions

Dick Minzner, lobbyist for the City of Gallup, recapitulated a proposal, the details of which he had presented at the previous meeting, to prevent the harm that he said would befall Gallup should the impending hold-harmless distribution phaseout continue as scheduled. The bill accompanying his proposal would: 1) for qualifying cities and counties that have less than 1% annual growth in their GRT base, freeze the automatic reduction in hold-harmless distributions until revenue growth reaches that level; and 2) enact that provision, but raise the threshold to 2%, for local governments with a greater-than-30% poverty rate. Mr. Minzner noted that Gallup and McKinley County were formerly the only two local governments that would fall in the second category, but some others have recently entered the class.

In response to the presentation, a committee member argued that: the legislation implementing the hold-harmless phaseout was intended to reduce the cost to the state of those distributions and dedicate those savings to education; education is important for combating poverty; and the legislation was designed to, and does, allow adequate time for local governments to adjust to the changes.

A motion was made, but not seconded, to endorse the bill, and no vote was taken.

The committee recessed at 5:00 p.m.

Friday, December 19

The committee reconvened at 9:15 a.m. on Friday, December 19, 2014, with Representative Sandoval chairing the meeting.

Legislative Proposals (Continued)

Distributions or Transfers to Municipalities and Counties

Demesia Padilla, secretary, TRD, Bill Fulginiti, executive director, New Mexico Municipal League (NMML), and Mr. O'Neill briefed the committee on the status of efforts between the TRD and the NMML to address issues raised in the *Eunice* case; i.e., the recovery of distributions made to local governments after business taxpayers within the boundaries of those local governments make large tax refund claims. Secretary Padilla indicated that the parties involved in the discussion had not yet arrived at an agreement that was embodied by legislation to propose to the committee but that the TRD was continuing to work with the NMML and other stakeholders to find an administratively feasible solution. In response to a question from a

committee member, Secretary Padilla stated that there might be concerns with making offers of compromise to municipalities but that the approach could be explored.

Allowing Local Governments to Tax Food

Mr. Fulginiti presented proposed legislation to, among other measures, reinstate the municipal portion of the GRT on food. Committee members responded with the following comments: 1) the desire to further alter the GRT system, as this would do, highlights the downside of the 2013 tax package; that is, the original measure introduced complexity in taxation that, because local governments' needs vary so widely, calls for further complexity to accommodate that wide range of needs; 2) despite local governments' complaints that the impending reduction in hold-harmless distributions will be devastating, evidence has not shown that the three-eighths tax option contained in the 2013 legislation will not offset the harm complained of; 3) the timing of local governments' authorization to impose the three-eighths tax option is inappropriate, given that certain governments have imposed the tax and collected that revenue before their hold-harmless distribution reductions begin; and 4) for the sake of low-income taxpayers, it would be better to offer relief to local governments by reducing other tax expenditures than it would to reimpose a tax on food.

Delayed Discontinuation of a County's Obligation to Fund the Safety Net Care Pool Fund

Senator Rodriguez, Clyde Ward, vice president, New Mexico Association of Counties (NMAC), and Steve Kopelman, executive director, NMAC, proposed for endorsement a bill, whose concept had been discussed at a previous meeting, that would curtail the otherwise perpetual requirement of counties to contribute one-twelfth of a percent of taxable gross receipts to the Safety Net Care Pool Fund. Mr. Kopelman said that the enacted bill would end, beginning on December 31, 2018, the contribution requirement, and he noted that key stakeholders were agreeable to the bill's terms. Senator Rodriguez added that a date of discontinuation was a crucial, but vetoed, component of the 2014 enacted legislation that this bill would amend, that the governor has expressed support for the reinsertion of an end date and that the timing will allow for an assessment of the effects of Medicaid expansion.

On a motion made and seconded, the committee endorsed the bill with no opposition.

County Treasurer Can Be Authorized to Accept Payments of Delinquent Taxes

Mr. Ward encapsulated a proposal that clarifies that county treasurers may collect payments made pursuant to installment agreements to resolve tax delinquencies if the treasurer is designated as an agent of the TRD. Mr. Ward remarked that the measure would improve accountability and have relatively minor consequences, most of which would be in Bernalillo County. In response to a question by a committee member, he said that a representative of the TRD indicated that the TRD would not oppose the bill. A member praised the measure in saying that it would reduce bureaucracy and ease the burden on taxpayers.

On a motion made and seconded, the committee endorsed the bill with no opposition.

Correcting Obvious Errors in a Property Tax Schedule

Mr. Ward presented a bill that would allow county treasurers to correct certain obvious,

county-assessor-made errors that otherwise would have to be corrected by taxpayers in district court. He gave as an example of such an error the accidental deletion of a veterans' exemption and noted that the measure would help taxpayers.

On a motion made and seconded, the committee endorsed the bill with no opposition.

Changes to the County Industrial Revenue Bond (IRB) Act

Mr. Kopelman presented two bills that relate to county IRBs. The first would, by repealing a section of law, discontinue the ability of a business to delay the issuance of county IRBs for a new business project by seeking a State Board of Finance determination on the question of whether the prospective business would compete with the existing, nearby business. He noted that the ability, provided in the County IRB Act, of an existing business to petition against a bond issuance is not granted in the corollary municipal IRB Act and that the provision can have fatal implications for time-sensitive projects. A member commented that the legislature should not interfere with competition among businesses. Responding to a question, Mr. Kopelman said that he was not aware of any situation, other than that involving a wire manufacturer in Santa Teresa, in which the provision has been an issue.

On a motion made and seconded, the committee endorsed the bill with five members voting in opposition.

The second bill would make eligible for funding through IRB proceeds projects related to the extraction phase of mining or energy development and projects related to housing development. In response to members' questions, Mr. Kopelman said that: 1) though the provisions of the measure would apply to all counties, the impetus for its proposal was the housing shortage in the southeast region; 2) if developed through the IRB scheme, housing would not be subject to property taxes; 3) some counties can control housing through zoning, but they otherwise do not have economic development tools to develop housing; and 4) if a lessee defaulted on the obligation to make payments on a property, the county would own, and probably try to sell, the property. Mr. Ward added that the measure was intended to encourage the development of apartment complexes, not single-family residences, at market, not low-income, rates and that several programs to assist low-income housing development exist. Members made the following remarks: 1) to include housing as an eligible project seems incongruent with the intent of the IRB Act, which was to encourage industrial expansion; 2) the proposal's application to the entire state could have unintended consequences; 3) the proposal's advancement of natural resource extraction is objectionable; and 4) outstanding questions about the proposal remain.

On a motion made and seconded, the committee voted to not endorse the bill.

Administrative Hearings Office Act

Senator Candelaria, Mr. Anklam and Jason Espinoza, vice president, government affairs, Association of Commerce and Industry (ACI), presented proposed legislation that would make independent the hearings office currently attached to the TRD and, according to Senator Candelaria, in so doing, offer more fairness to businesses and individuals. The draft legislation,

he said, was the product of collaboration among the Department of Finance and Administration, ACI and TRI. Mr. Espinoza added that the TRD participated in the work, and he remarked that: 1) the legislation preserves recently adopted reforms prompted by recommendations of the Council on State Taxation (COST); 2) the COST would review the draft to determine what score the state would receive were the legislation enacted; and 3) much of the draft constitutes updates to references. Mr. Anklam noted the trend among states to make tax protest offices independent, and he said that the measure would have no budget impact and not meaningfully change the current process for protests. He added that the legislation, with respect to the chief hearing officer, was modeled closely on the American Bar Association's model for administrative tribunals.

The committee sought clarification on related points and voiced some concerns about the proposal. Mr. Anklam briefly reviewed the history of initiatives to adopt similar measures and explained the legal recourse of taxpayers who wish to protest their assessment. Secretary Padilla, who was in the audience, provided some data on the existing hearings office. A member expressed reservations about the proposal's provisions to: allow the governor to appoint the chief hearing officer; and make inapplicable to hearings the rules of evidence and of civil procedure, given the high (arbitrary and capricious) standard of review at the appeals level. The member articulated a preference for more independence, akin to that for the superintendent of insurance, in the process for selecting the chief hearing officer. Regarding the member's second concern, Senator Candelaria countered that applying formal rules of procedure at the administrative hearing level would dramatically increase the costs to parties involved and would defeat the purpose of the quasi-judicial administrative law process, which offers more efficiency than the process of district courts.

No motion was made to endorse the bill.

GRT Deduction for Cybersecurity Devices

Senator Cisneros, Ceidlihd Creech, director, Portal Locks LLC, and Pete Berry, director of operations, Portal Locks LLC, presented a proposal to create a GRT deduction for cybersecurity devices. Ms. Creech described Portal Locks as a woman-owned small business that manufactures devices to protect computers from cyber attacks. Mr. Berry indicated that the company wishes to manufacture its devices exclusively in Questa, in part because of the recent mine closing there that has left many residents without work.

On questioning, Mr. Berry reported that the company is in its start-up phase and is bearing a heavy initial cost burden, but that when the company becomes more self-sufficient, it would willingly pay a fair share in taxes. Senator Cisneros indicated that the Job Training Incentive Program could help in equipping the existing work force with the skills required by the new work. A member added that the Taos branch of the University of New Mexico has offered to help facilitate that skills development. Ms. Creech concluded by saying that the company was initially planning to build a plant in Texas, but the revision prompted the company to seek from New Mexico tax treatment that would, in effect, be similar to that in Texas.

On a motion made and seconded, the committee endorsed the bill with one member voting in opposition.

Agricultural Property Valuation

Senator Cisneros presented, and Representative Gonzales gave input on, proposed legislation that would make changes to the special method of valuation in property taxation for agricultural properties, an issue that has surfaced in Taos and that was the subject of a presentation at the previous meeting. He said that the legislation would also apply the special method to land used for large-scale gardening. He reminded the committee that, under the current law, many taxpayers' properties have undergone radical increases in valuation due to their declassification as agricultural, which in many cases was caused by the effects of drought and the ensuing infeasibility of continuing to put land to agricultural use. He added that, if the matter were left unaddressed, it would eventually become a statewide issue. Representative Gonzales commented that the legislation represents the culmination of much work and community involvement, and he emphasized the importance of working toward a solution, even if that progress is incremental. Senator Cisneros said that part of his goal in giving the presentation was to solicit recommendations for changes in the draft.

Committee members responded with their reactions to the proposal. Namely, they argued that: 1) the issue might be more appropriately addressed at a local level, given that its statewide application might have unintended consequences; further, more training and resources should be provided to county assessors' offices; 2) if the measure were enacted, taxpayers — particularly those in urban areas — might abuse the leniency it offers; 3) importing the United States Forest Service's definition of "livestock" is inappropriate in this context; and 4) the agricultural classification should be tied to agricultural production. In response to a comment, Mr. Ward spoke briefly about having met with the federal secretary of agriculture on the issue and said it is difficult to draw a line between agricultural and non-agricultural use for assessment purposes and that some states have abandoned that approach in this context.

Adjournment

There being no further business, the RSTP adjourned at 11:52 a.m.

ENDORSED LEGISLATION

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; DISCONTINUING A COUNTY'S OBLIGATION TO DEDICATE AN AMOUNT EQUAL TO A GROSS RECEIPTS TAX RATE OF ONE-TWELFTH PERCENT TO THE SAFETY NET CARE POOL FUND AFTER DECEMBER 31, 2018.

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

SECTION 1. Section 27-5-6.2 NMSA 1978 (being Laws 2014, Chapter 79, Section 16) is amended to read:

"27-5-6.2. TRANSFER TO SAFETY NET CARE POOL FUND.--

A. A county shall, by ordinance to be effective July 1, 2014 through December 31, 2018, dedicate to the safety net care pool fund an amount equal to a gross receipts tax rate of one-twelfth percent applied to the taxable gross receipts reported during the prior fiscal year by persons engaging in business in the county. For purposes of this subsection, a

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1 county may use public funds from any existing authorized
2 revenue source of the county.

3 B. A county enacting an ordinance pursuant to
4 Subsection A of this section shall transfer to the safety net
5 care pool fund by the last day of March, June, September and
6 December of each year through December 31, 2018 an amount equal
7 to one-fourth of the county's payment to the safety net care
8 pool fund."

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO PROPERTY TAXATION; CLARIFYING THAT THE TAXATION AND REVENUE DEPARTMENT'S AUTHORIZATION OF A COUNTY TREASURER TO ACCEPT PAYMENTS RELATED TO DELINQUENT PROPERTY TAXES INCLUDES PAYMENTS PURSUANT TO AN INSTALLMENT AGREEMENT.

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

SECTION 1. Section 7-38-62 NMSA 1978 (being Laws 1973, Chapter 258, Section 102, as amended) is amended to read:

"7-38-62. AUTHORITY OF DEPARTMENT TO COLLECT DELINQUENT PROPERTY TAXES AFTER RECEIPT OF TAX DELINQUENCY LIST--ALLOWING AN AUTHORIZED COUNTY TREASURER TO ACT AS AN AGENT OF THE DEPARTMENT--USE OF PENALTIES, INTEREST AND COSTS.--

A. After the receipt of the tax delinquency list, the department has the responsibility and exclusive authority to take all action necessary to collect delinquent taxes shown

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1 on the list. This authority includes bringing collection
2 actions in the district courts based upon the personal
3 liability of the property owner for taxes as well as the
4 actions authorized in the Property Tax Code for proceeding
5 against the property subject to the tax for collection of
6 delinquent taxes.

7 B. Payment of delinquent taxes listed and any
8 penalty, interest or costs due in connection with those taxes
9 shall be made to the department if occurring after the receipt
10 by the department of the tax delinquency list; however, the
11 department may authorize county treasurers to act as its agents
12 in accepting payments of taxes, penalties, interest or costs
13 due to the department, including payments made pursuant to an
14 installment agreement authorized by Section 7-38-68 NMSA 1978.

15 C. Penalties, interest and costs due received by
16 the department [~~under~~] pursuant to Subsection B of this section
17 shall be retained by the department for use, subject to
18 appropriation by the legislature, in the administration of the
19 Property Tax Code."

20 **SECTION 2. EFFECTIVE DATE.**--The effective date of the
21 provisions of this act is July 1, 2015.

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HOUSE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; DESIGNATING AUTHORITY TO MAKE CERTAIN
CHANGES IN THE PROPERTY TAX SCHEDULE; EXPANDING THE GROUNDS FOR
WHICH A PROPERTY OWNER MAY REQUEST A CHANGE TO THE PROPERTY TAX
SCHEDULE.

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

SECTION 1. Section 7-38-77 NMSA 1978 (being Laws 1973,
Chapter 258, Section 117, as amended) is amended to read:

"7-38-77. AUTHORITY TO MAKE CHANGES IN PROPERTY TAX
SCHEDULE AFTER ITS DELIVERY TO THE COUNTY TREASURER.--

A. After delivery of the property tax schedule to
the county treasurer, the amounts shown on the schedule as
taxes due and other information on the schedule shall not be
changed except:

~~[A.]~~ (1) by the county treasurer to correct

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1 obvious [~~clerical~~] errors in
2 [~~(1) the name or address of the property owner~~
3 ~~or other persons shown on the schedule;~~
4 ~~(2) the description of the property subject to~~
5 ~~property taxation; or~~
6 ~~(3)] the mathematical computation of taxes;~~
7 (2) by the county treasurer to correct obvious
8 errors by the county assessor in:
9 (a) the name or address of the property
10 owner or other persons shown on the schedule;
11 (b) the description of the property
12 subject to property taxation, even if the correction results in
13 a change in the amount shown on the schedule as taxes due;
14 (c) the data entry of the value of
15 property subject to property taxation by the county assessor;
16 or
17 (d) the application of eligible and
18 qualified exemptions;
19 [~~B-~~] (3) by the county treasurer to cancel
20 multiple valuations for property taxation purposes of the same
21 property in a single tax year, but only if:
22 [~~(1)]~~ (a) a taxpayer presents tax
23 receipts showing the payment of taxes by [~~him~~] the taxpayer for
24 any year in which multiple valuations for property taxation
25 purposes are claimed to have been made;

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underscoring material = new
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1 [~~2~~] (b) a taxpayer presents evidence
2 of [~~his~~] ownership of the property, satisfactory to the
3 treasurer, as of January 1 of the year in which multiple
4 valuations for property taxation purposes are claimed to have
5 been made; and

6 [~~3~~] (c) there is no dispute concerning
7 ownership of the property called to the attention of the
8 treasurer, and [~~he~~] the treasurer has no actual knowledge of
9 any dispute concerning ownership of the property;

10 [~~6~~] (4) by the county treasurer, to correct
11 the tax schedule so that it no longer contains personal
12 property that is deemed to be unlocatable, unidentifiable or
13 uncollectable, after thorough research with verification by the
14 county assessor or appraiser, with notification to the
15 department and the county clerk;

16 [~~D~~] (5) as a result of a protest, including a
17 claim for refund, in accordance with the Property Tax Code, of
18 values, classification, allocations of values determined for
19 property taxation purposes or a denial of a claim for an
20 exemption;

21 [~~E~~] (6) by the department or the order of a
22 court as a result of any proceeding by the department to
23 collect delinquent property taxes under the Property Tax Code;

24 [~~F~~] (7) by a court order entered in an action
25 commenced by a property owner under Section 7-38-78 NMSA 1978;

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1 [~~G.~~] (8) by the department as authorized under
2 Section 7-38-79 NMSA 1978;

3 [~~H.~~] (9) by the department of finance and
4 administration as authorized under Section 7-38-77.1 NMSA 1978;
5 or

6 [~~I.~~] (10) as specifically otherwise authorized
7 in the Property Tax Code.

8 B. As used in this section, "obvious errors" does
9 not include errors in the method used to determine the
10 valuation for, or a difference of opinion in the value of, the
11 property subject to property taxation."

12 SECTION 2. Section 7-38-78 NMSA 1978 (being Laws 1973,
13 Chapter 258, Section 118, as amended) is amended to read:

14 "7-38-78. ACTION BY PROPERTY OWNER IN DISTRICT COURT TO
15 CHANGE PROPERTY TAX SCHEDULE.--

16 A. After the delivery of the property tax schedule
17 to the county treasurer for a particular tax year, a property
18 owner may bring an action in the district court requesting a
19 change in the property tax schedule in connection with any
20 property listed on the schedule for property taxation in which
21 the owner claims an interest. The action shall be brought in
22 the district court for the county for which the property tax
23 schedule in question was prepared.

24 B. Actions brought under this section may not
25 directly challenge the value, classification, allocations of

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1 value determined for property taxation purposes [~~or~~], denial of
2 any exemption claimed [~~and must~~] or method used to determine
3 the valuation for the property subject to property taxation.

4 Actions brought under this section shall be founded on one or
5 more of the following grounds:

6 (1) errors in the name or address of the
7 property owner or other person shown on the schedule;

8 (2) errors in the description of the property
9 for property taxation purposes, even if the correction results
10 in a change in the amount shown on the schedule as taxes due;

11 (3) errors in the computation of taxes;

12 (4) errors in the property tax schedule
13 relating to the payment or nonpayment of taxes;

14 (5) multiple valuations for property taxation
15 purposes for a single tax year of the same property on the
16 property tax schedule; [~~or~~]

17 (6) errors in the rate of tax set for any
18 governmental unit in which the owner's property is located;

19 (7) obvious errors in the data entry of the
20 value of the property subject to property valuation by the
21 county assessor; or

22 (8) errors in the application of eligible and
23 qualified exemptions.

24 C. Actions brought under this section shall name
25 the county treasurer as defendant. [~~and, if the~~] An action

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1 [is] brought under Paragraph (6) of Subsection B of this
2 section, shall also name the secretary of finance and
3 administration as a defendant. An action brought under
4 Paragraph (7) or (8) of Subsection B of this section shall also
5 name the county assessor as a defendant."

6 SECTION 3. APPLICABILITY.--The provisions of this act
7 apply to taxable years beginning on or after January 1, 2016.

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

REPEALING THE SECTION OF LAW THAT ALLOWS A BUSINESS TO DELAY
THE ISSUANCE OF A COUNTY INDUSTRIAL REVENUE BOND FOR A PROPOSED
PROJECT BY FILING A COMPLAINT THAT THE PROPOSED PROJECT WOULD
COMPETE WITH THE COMPLAINING BUSINESS.

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

SECTION 1. REPEAL.--Section 4-59-15 NMSA 1978 (being Laws
1975, Chapter 286, Section 15) is repealed.

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; PROVIDING A GROSS RECEIPTS DEDUCTION FOR RECEIPTS FROM THE SALE OF CERTAIN CYBERSECURITY DEVICES.

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

SECTION 1. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"~~[NEW MATERIAL]~~ DEDUCTION--GROSS RECEIPTS--CYBERSECURITY DEVICES.--

A. Prior to July 1, 2025, receipts from the sale of a cybersecurity device that is a port locking device, a port monitoring device or a port monitoring software application may be deducted from gross receipts.

B. The purpose of the deduction provided by this section is to create jobs in the state in the field of cybersecurity by encouraging businesses that provide defensive

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1 barriers for protecting computer systems and networks to move
2 to New Mexico.

3 C. A taxpayer allowed a deduction pursuant to this
4 section shall report the amount of the deduction separately in
5 a manner required by the department.

6 D. The department shall compile an annual report on
7 the deduction provided by this section that shall include the
8 number of taxpayers that claimed the deduction, the aggregate
9 amount of deductions claimed and any other information
10 necessary to evaluate the effectiveness of the deduction.
11 Beginning in 2018 and every three years thereafter that the
12 deduction is in effect, the department shall compile and
13 present the annual reports to the revenue stabilization and tax
14 policy committee and the legislative finance committee with an
15 analysis of the effectiveness and cost of the deduction and
16 whether the deduction is performing the purpose for which it
17 was created.

18 E. For purposes of this section:

19 (1) "port locking device" means a physical
20 device that:

21 (a) is a lock that is inserted into and
22 blocks access to an open or unused port of a computer or
23 portable computer device;

24 (b) can be unlocked only with a unique
25 password; and

.198194.2

1 (c) meets the standards required by the
2 Federal Information Security Management Act of 2002, as that
3 act may be amended, for security categorization of federal
4 information and information systems and for minimum security
5 requirements for information and information systems supporting
6 federal agencies and risk-based processes;

7 (2) "port monitoring device" means a physical
8 device that:

9 (a) prevents unauthorized access to a
10 computer or portable computer device by monitoring a port of a
11 computer or portable computer device that is in use by a
12 removable media device;

13 (b) is a lock that is inserted into an
14 open or unused port of a computer or portable computer device
15 and can connect removable media to the computer or portable
16 computer device;

17 (c) will lock the port if the removable
18 media device is removed from the port without a password and
19 block the port from accepting any other removable media device;

20 (d) can be unlocked only with a unique
21 password; and

22 (e) meets the standards required by the
23 Federal Information Security Management Act of 2002, as that
24 act may be amended, for security categorization of federal
25 information and information systems and for minimum security

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1 requirements for information and information systems supporting
2 federal agencies and risk-based processes; and

3 (3) "port monitoring software application"
4 means a software application that can monitor all of the ports
5 on a network or individual computer or portable computer device
6 that can:

7 (a) disallow removable media when
8 connected to a computer or portable computer device through a
9 port;

10 (b) record the date, time, user,
11 computer and the name, manufacturer, serial number, file name
12 and size of the removable media;

13 (c) send notification when an
14 unauthorized removable media device is connected to a computer
15 or portable computer device; and

16 (d) meets the standards required by the
17 Federal Information Security Management Act of 2002, as that
18 act may be amended, for security categorization of federal
19 information and information systems and for minimum security
20 requirements for information and information systems supporting
21 federal agencies and risk-based processes."

22 SECTION 2. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2015.

25