NEW MEXICO LEGISLATURE

REVENUE STABILIZATION & TAX POLICY COMMITTE

2015 INTERIM FINAL REPORT

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TABLE OF CONTENTS

Interim Summary

Work Plan and Meeting Schedule

Agendas and Minutes

Endorsed Legislation

Interim summary

Revenue Stabilization and Tax Policy Committee
2015 Interim Summary

The Revenue Stabilization and Tax Policy Committee held six meetings in 2015. Bill endorsements were completed on the second day of the December meeting, at which three of the 10 bills under consideration were endorsed.

The committee discussed and reviewed a number of issues during the interim, including the desire to continue studying the possibility of tax reform, the economic impacts of various tax expenditures and industries and new developments in the administration of the tax code.

Of primary concern to the committee was the continuing desire to study the state's gross receipts tax and possible reform of New Mexico's tax system. In July, the committee heard an overview from Richard Anklam of the New Mexico Tax Research Institute, comparing New Mexico's tax structure to other states' tax structures. He stressed that comparing states' tax structures involves great complexity and requires a thorough understanding of context. Using superficial comparisons of one state's tax structure to other tax structures, he said, can lead to bad tax policy.

In October, the committee heard from two national tax policy experts, Matthew Gardner of the Institute on Taxation and Economic Policy and Joseph Henchman of the Tax Foundation, on their perspectives of New Mexico's gross receipts tax. Mr. Gardner explained that the principles of adequacy, sustainability, simplicity or transparency and competitiveness should be considered in addition to fairness. He also discussed the principle of neutrality, which requires that tax systems refrain from choosing winners and losers. Mr. Henchman said that an ideal tax base is one that includes a tax on all final purchases of goods and services, not on business inputs, but that there are no states that have achieved this ideal. Mr. Henchman explained that New Mexico may be ahead of other states in that it taxes services, broadening the base of the tax, and that other states are examining the possibility of imposing taxes on services since the national economy is becoming more service-oriented. In regard to tax reform, both Mr. Gardner and Mr. Henchman suggested that the legislature should focus on what objective it wants to achieve before deciding what the ideal tax system is for New Mexico.

At its final meeting, the committee heard a presentation from Colin Fenton of Blacklight Research, LLC, on the subject of trade and investment in oil and natural gas commodities. Mr. Fenton discussed many factors that affect the prices of oil and natural gas, including increased production and demand, the rise of solar and other renewables and other factors, including the effects of climate policy, China's economic distress, supply adjustments in Canada, Brazil and Norway, geopolitical struggles in the Middle East and Russia's ability to take the share made available by restricted United States crude exports in the region. On a positive note, Mr. Fenton stated that a congressional repeal of the 40-year ban on crude oil exports should help oil producers in New Mexico because of the quality of the oil and the political stability of the suppliers.

WORK PLAN AND MEETING SCHEDULE

2015 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

Members

Sen. Carlos R. Cisneros, Chair	Sen. George K. Munoz
Rep. Jason C. Harper, Vice Chair	Rep. Debbie A. Rodella
Sen. Ted Barela	Sen. Clemente Sanchez
Sen. Sue Wilson Beffort	Sen. William E. Sharer
Rep. David M. Gallegos	Sen. John Arthur Smith
Rep. Tim D. Lewis	Rep. James R.J. Strickler
Rep. Antonio Maestas	Rep. Carl Trujillo
Rep. Rod Montoya	Rep. Jim R. Trujillo
Sen. Mark Moores	Sen. Peter Wirth

Designees

Rep. David E. Adkins	Rep. Conrad James
Sen. William F. Burt	Sen. Gay G. Kernan
Sen. Jacob R. Candelaria	Rep. Stephanie Maez
Rep. Sharon Clahchischilliage	Rep. Javier Martinez
Sen. Lee S. Cotter	Rep. Bill McCamley
Rep. Randal S. Crowder	Sen. Nancy Rodriguez
Rep. Brian Egolf	Rep. Tomás E. Salazar
Rep. Miguel P. Garcia	Sen. John M. Sapien
Rep. Stephanie Garcia Richard	Rep. Jeff Steinborn
Rep. Bealquin Bill Gomez	Rep. James G. Townsend
Sen. Stuart Ingle	Sen. Pat Woods

Work Plan

The Revenue Stabilization and Tax Policy Committee is a statutorily created joint interim legislative committee. Pursuant to Section 2-16-3 NMSA 1978, the committee is directed to "examine the statutes, constitutional provisions, regulations and court decisions governing revenue stabilization and tax policy in New Mexico and recommend legislation or changes if any are found to be necessary . . . ". In the 2015 interim, as time permits, the committee will:

1. review the state's existing taxes and discuss possible changes and improvements to those taxes, with particular emphasis on the gross receipts tax, personal and corporate income taxes and consumption taxes;

2. receive recommendations from nationally known tax experts on how the state can improve its tax system, specifically in regard to the gross receipts tax;

3. discuss possible reform of the gross receipts tax and analyze the impact such reform may have on other taxes imposed by the state and local governments;

4. review tax laws that affect local governments, including hold harmless provisions, and discuss possible reform of local option gross receipts taxes that may reduce the complexity and deficiencies of those taxes for local governments;

5. receive a report from the State Auditor regarding unspent funds in government accounts;

6. review the effectiveness and value of tax incentives and continue to examine the state's ability to report and track the effectiveness of tax incentives;

7. discuss the costs and benefits of tax incentives for renewable energy and electric utility infrastructure;

8. review trends in state investment earnings, including trends in the balances of the Severance Tax Permanent Fund and the Land Grant Permanent Fund;

9. 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;

10. review the capital outlay process and the balances remaining in outstanding projects and discuss proposed changes to improve the process; and

11. determine legislative actions necessary to implement changes that will improve the state's tax system.

Revenue Stabilization and Tax Policy Committee
2015 Approved Meeting Schedule

Date	Location
June 17	Santa Fe, State Capitol, Room 322
July 22-23	Santa Fe, State Capitol, Room 321
August 13-14	Santa Fe, State Capitol, Room 322
September 8-9	Santa Fe, State Capitol, Room 322
October 13-14	Santa Fe, State Capitol, Room 322
December 15-16	Santa Fe, State Capitol, Room 322

AGENDAS AND MINUTES

Revised: June 12, 2015

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

June 17, 2015
State Capitol, Room 322
Santa Fe

Wednesday, June 17

10:00 a.m.		**Call to Order** —Senator Carlos R. Cisneros, Chair
10:05 a.m.	(1)	**Post-Session Fiscal Report** —David Abbey, Director, Legislative Finance Committee
10:45 a.m.	(2)	**Budget and Tax Policy Update: 2015 Regular and First Special Sessions** —Leila Burrows Kleats, Chief Economist, Department of Finance and Administration (DFA) —Michael Marcelli, Director, State Budget Division, DFA —Elisa Walker-Moran, Chief Economist, Taxation and Revenue Department (TRD) —TBA, Tax Policy Director, TRD
11:30 a.m.	(3)	**Discussion of Work Plan and Meeting Schedule** —Pam Stokes, Staff Attorney, Legislative Council Service
12:00 noon		**Adjourn**

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

June 17, 2015
State Capitol, Room 322
Santa Fe

The first meeting of the Revenue Stabilization and Tax Policy Committee for the 2015 interim was called to order by Senator Carlos R. Cisneros, chair, on Wednesday, June 17, 2015, at 10:15 a.m. in Room 322 of the State Capitol in Santa Fe.

Present
Sen. Carlos R. Cisneros, Chair
Rep. Jason C. Harper, Vice Chair
Sen. Ted Barela
Sen. Sue Wilson Beffort
Rep. Tim D. Lewis
Rep. Antonio Maestas
Rep. Rod Montoya
Sen. Mark Moores
Sen. George K. Munoz
Rep. Debbie A. Rodella
Sen. Clemente Sanchez
Rep. James R.J. Strickler
Rep. Carl Trujillo
Rep. Jim R. Trujillo

Absent
Rep. David M. Gallegos
Sen. William E. Sharer
Sen. John Arthur Smith
Sen. Peter Wirth

Designees
Rep. Sharon Clahchischilliage
Sen. Lee S. Cotter
Rep. Bill McCamley
Sen. Nancy Rodriguez

Rep. David E. Adkins
Sen. William F. Burt
Sen. Jacob R. Candelaria
Rep. Randal S. Crowder
Rep. Brian Egolf
Rep. Miguel P. Garcia
Rep. Stephanie Garcia Richard
Rep. Bealquin Bill Gomez
Sen. Stuart Ingle
Rep. Conrad James
Sen. Gay G. Kernan
Rep. Stephanie Maez
Rep. Javier Martinez

Rep. Tomás E. Salazar
Sen. John M. Sapien
Rep. Jeff Steinborn
Rep. James G. Townsend
Sen. Pat Woods

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

Guests
The guest list is in the meeting file.

Handouts
Handouts and other written testimony are in the meeting file.

Wednesday, June 17

Post-Session Fiscal Report
David Abbey, director, Legislative Finance Committee (LFC), introduced a new staff member, Abraham Sanogo, economist, LFC. Mr. Abbey presented the LFC's fiscal overview and outlook and provided the committee with the LFC's post-session review. Mr. Abbey stated that last year, in the midst of dropping oil prices, New Mexico experienced a sharp decline in revenue. By December, "new money" had fallen to about $140 million. Mr. Abbey presented charts that compared oil and natural gas prices, including actual data through the current date and estimated prices through the next fiscal year. He noted that oil prices appear to be within range of a $56.00 per barrel price point cap. He also stated that premiums on natural gas have reached a high of $1.00 per thousand cubic feet and directed the committee's attention to a forecast of New Mexico natural gas prices within the LFC's post-session review.

From the LFC's post-session review, Mr. Abbey presented various New Mexico labor market and income data, including measurements of wage, salary and personal income growth. He also presented a general fund financial summary that took into account the General Appropriation Act of 2015 and special appropriations that passed during the 2015 special session and compared reserves as a percentage of recurring appropriations using audited, actual data for fiscal year (FY) 2014 and February estimates for FY 2015 and FY 2016. For FY 2014, general fund reserves accounted for 10.8% of recurring appropriations, while it is estimated that general fund reserves will account for 8% of recurring appropriations in FY 2015 and 7.5% in FY 2016. Mr. Abbey noted that while a target for general fund reserves is usually about 10% of recurring appropriations, it is possible that updated revenue estimates for FY 2016 could reflect an amount closer to that target.

Mr. Abbey provided some highlights with respect to certain items contained in the General Appropriation Act of 2015, including that:

- state funding for the state equalization guarantee will increase in FY 2016 to $27 million, or by 1.1%, from the previous fiscal year;
- the FY 2016 appropriation for the Higher Education Department is 1.1% higher than the appropriation from the previous fiscal year;
- the FY 2016 general fund appropriation for the Human Services Department has risen by .4% from the previous fiscal year, to $3.8 million;
- the appropriation for Medicaid included $20.8 million from tobacco settlement revenue; and
- the general fund appropriation for the Children, Youth and Families Department increased $8.3 million, most of which will be provided to the department's protective services program.

Mr. Abbey also provided an overview of special and supplemental appropriations contained in the General Appropriation Act of 2015, including:

- $37.5 million for Local Economic Development Act projects;
- $5.5 million for the Job Training Incentive Program;
- $4 million from the Consumer Settlement Fund of the Office of the Attorney General for water-related litigation; and
- $5.5 million to replenish the Higher Education Endowment Fund.

Mr. Abbey presented the committee with the LFC's general fund revenue tracking report, indicating that, for the current fiscal year, revenues are about 2% higher than the Consensus Revenue Estimating Group's previous estimates due to a strength in oil and gas revenues; increased corporate income tax collections; and repayments of credits related to assessments to insurers for costs of the New Mexico Medical Insurance Pool.

Questions and comments from committee members followed. A committee member inquired about the current price of oil. Mr. Abbey responded and estimated that the price was about $56.00 or $57.00 per barrel.

A committee member asked about the general fund reserve balance estimated for the 2016 legislative session. Mr. Abbey responded that the current estimate of 8% reflects the LFC's revenue estimates in February, in addition to appropriations made through the General Appropriation Act of 2015 and supplemental appropriations made during the 2015 special session. He noted that updated revenue estimates for FY 2016 would be available in August and December. He mentioned the possibility that upcoming revenue estimates could reflect general fund reserve balances of 10%, if current revenue trends continue.

A committee member asked why New Mexico's spending on Medicaid seemed to be low, compared to spending levels of other states. Mr. Abbey stated that New Mexico receives a higher match from the federal government because it is one of the top five poorest states. He also stated that New Mexico's Medicaid participation rates are among the highest in the nation. The LFC has scheduled a hearing regarding Centennial Care and Medicaid costs later in the month.

A committee member inquired about the sufficiency of a supplemental appropriation made during the special session for the Administrative Office of the Courts (AOC). Mr. Abbey indicated that the AOC received a supplemental appropriation of $300,000. He added that by using that appropriation, in addition to budget adjustment requests and savings, the AOC would have sufficient funding for the remainder of FY 2015.

Committee members briefly discussed other topics with Mr. Abbey, including: funding with respect to early childhood programs, special education programs and drug courts; forecasts for oil and gas prices and production; and the effects of tax credits on revenues. Committee members also asked questions about the reversion balances presented as part of general fund consensus revenue estimates. Mr. Abbey indicated that the reported reversion balances were mostly attributable to reversions from public schools, a Medicaid reversion and unspent personal services and benefits budgets of state agencies. He added that there have recently been modest increases in hiring among state agencies, and thus, the reversion amounts might decrease in the future.

Budget and Tax Policy Update: 2015 Regular and First Special Sessions

Elisa Walker-Moran, chief economist, Taxation and Revenue Department (TRD), provided a handout that summarizes tax-related legislation that passed during the 2015 regular and special sessions. Legislation that passed during the regular session made:

- two changes to existing gross receipts tax deductions by expanding one pertaining to administration and accounting services and extending the duration of another for military acquisitions;
- six changes to income taxes, including creating a new sustainable building tax credit that can be taken against personal or corporate income tax liability; extending eligibility for a personal income tax credit for national guard members to all national guard members who are activated for overseas service; giving taxpayers the option to contribute their personal income tax refunds to senior citizens programs or to spay and neuter programs for dogs and cats; and significant changes to the film production tax credit; and
- six changes to the Tax Administration Act, including allowing the TRD to serve warrants of levy upon financial institutions electronically; reconciling two amendments made to the liquor excise tax distribution in the 2014 legislative session; permitting the TRD to provide the New Mexico Finance Authority with information on municipal and county gross receipts tax collections; new procedures for adjusting

certain distributions and transfers to municipalities and counties; and moving the functions of the Hearings Bureau of the TRD to a new, independent administrative hearing office, which is administratively attached to the Department of Finance and Administration (DFA).

The tax package that passed during the special session included:

- allowing the TRD to reveal tax return information to an authorized representative of a local government of another state, if the local government is responsible for administering the tax laws of that state;
- extending the angel investment credit and increasing the amount of the credit to 25% of $250,000 and the annual cap to $2 million;
- creating a personal income tax deduction for unreimbursed or uncompensated medical expenses;
- allowing corporate filers that file electronically until the thirtieth of the month to file and pay;
- providing a corporation that is a headquarters operation the option to use a single sales factor in apportioning its corporate income to the state;
- extending a gross receipts tax deduction for trade support companies;
- creating a gross receipts tax deduction for the sale of goods and services to the federal Department of Defense if the sales are related to directed energy or satellites;
- amending the Technology Jobs Tax Credit Act to create the Technology Jobs and Research and Development Tax Credit Act to include credits for certain qualified research and development businesses, but preclude credits from being claimed against local option gross receipts taxes; and
- creating a mechanism to allow a refund of a petroleum products loading fee paid on petroleum products previously loaded from sources other than refineries or pipeline terminals, for ultimate loading into certain transportation vehicles.

Leila Burrows Kleats, chief economist, DFA, provided an overview of economic trends in New Mexico. She indicated that the employment percentage in New Mexico had increased by 1.3% in the last 12 months, which approximates the average, long-term growth rate. She highlighted recent growth among industries such as education, health care, leisure and hospitality and professional services. She also indicated that the effects of federal sequestration are diminishing. Ms. Burrows Kleats stated that taxable gross receipts have risen by 7.6%, with broad-based growth across most industries.

Ms. Burrows Kleats said that oil production has increased, while natural gas production has remained flat. However, oil rig counts have fallen in New Mexico since July, from about 90 to 45. Drilling permits decreased by 16% in FY 2015. Ms. Burrows Kleats indicated that over the long term, slower production will likely support price growth in energy markets.

Ms. Burrows Kleats provided the committee with a general fund financial summary. She reported that reserves for FY 2016 are projected to be 7.3% of recurring appropriations, which falls below a prudent target of 10%. Ms. Burrows Kleats additionally reported that revenues from gross receipts taxes and corporate income taxes have increased and that, while oil and gas revenues were stronger than expected at the beginning of the year, they have since fallen substantially.

Next, Ms. Burrows Kleats briefly summarized a number of revenue measures passed and signed as a result of the 2015 regular and special sessions. In addition to some of the legislation previously summarized by Ms. Walker-Moran, Ms. Burrows Kleats discussed provisions from legislation that will increase distributions to the Severance Tax Permanent Fund. She also mentioned changes resulting from the 2015 state-tribal compact.

Michael Marcelli, director, State Budget Division, DFA, provided an overview of state spending. He presented a chart showing general fund recurring appropriations from FY 2007 through the current fiscal year. He highlighted that recurring general fund appropriations have steadily increased from FY 2012 through FY 2015, at around 4% per year. However, it is expected that spending growth in FY 2016 will be constrained by a decline in oil and gas revenues.

Mr. Marcelli also presented charts showing relative appropriations and budget growth for the government branches and for various executive agencies. Mr. Marcelli highlighted FY 2016 increases in public education funding, including a 1.3% increase in "above the line" funding and a 6.2% increase in "below the line" funding. He stated that over $8 million for recurring programs in "below the line" spending comes from non-recurring cash balances. Mr. Marcelli also discussed how appropriations of $27.9 million would be used for information technology systems for various executive agencies and for the judiciary. Mr. Marcelli noted that in FY 2016, a number of balances from certain funds will be used for specific programs or operational needs and that over $55 million from those balances will need to be replaced in FY 2017.

Mr. Marcelli concluded his presentation with an overview of the capital outlay bill, which passed during the 2015 special session and was signed by the governor. He highlighted that the legislation contains total appropriations of $295 million.

Comments and questions from committee members followed. Committee members generally discussed the purposes of various tax credits and the effect of expansion of certain credits.

Committee members also inquired about where mining revenues would fit into the latest revenue estimates. Ms. Burrows Kleats indicated that mining revenues for minerals, such as potash, copper and coal, were encompassed in oil and gas revenue estimates.

Committee members inquired about the DFA's progress in reconciling data for use in production of a comprehensive annual financial report and appropriations for software toward that purpose. Mr. Marcelli indicated that last year, $1 million was used toward that purpose and $4 million is appropriated this year. In response to a question about the effect of new Governmental Accounting Standards Board reporting requirements on state agencies and the possible effect on bond ratings, Mr. Marcelli stated that bond rating agencies might take into account current conditions, under which sufficient reserves exist to cover contingencies.

A committee member asked about the possible effects of declining populations on revenue estimates. While DFA staff indicated that the DFA uses a four-year window with respect to population estimates, staff said that they would look further into this issue.

Work Plan and Meeting Schedule

Ms. Stokes presented the committee's proposed work plan and meeting schedule for the 2015 interim. Committee members provided suggestions for topics to be addressed by the committee during the interim, including topics addressing tax amnesty, tax credits for small businesses and revenues from oil and gas. The committee adopted the work plan and meeting schedule.

Adjournment

There being no further business before the committee, the Revenue Stabilization and Tax Policy Committee adjourned at approximately 12:15 p.m.

Revised: July 22, 2015

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

July 22-23, 2015
State Capitol, Room 322
Santa Fe

Wednesday, July 22

10:00 a.m. (1) **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. (2) **The Economic Impact of the Arts and Cultural Industries**
—Veronica Gonzales, Secretary, Cultural Affairs Department
—Jeff Mitchell, Director, Bureau of Business and Economic Research, University of New Mexico

12:00 noon **Lunch**

1:15 p.m. (3) **New Mexico Small Business Development Center: Providing Economic Development Assistance to Small Businesses**
—Russell Wyrick, State Director, New Mexico Small Business Development Center

2:00 p.m. (4) **Report of the State Auditor on Unspent Fund Balances**
—Timothy Keller, State Auditor
—Ruby Ann M. Esquibel, Government Accountability Officer, Office of the State Auditor

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

Thursday, July 23

9:00 a.m. (5) **2014 Tax Expenditure Report**
—Demesia Padilla, Secretary, Taxation and Revenue Department (TRD)
—Frank Crociata, Tax Policy Director, TRD

10:00 a.m. (6) **Comparing New Mexico's Tax Structure to Other States: An Overview**
—Richard Anklam, President and Executive Director, New Mexico Tax Research Institute (NMTRI)

11:00 a.m. (7) **Single Sales Factor Income Apportionment Option for Headquarters Operations**
—Suzanne Bruckner, CPA, Shareholder, Sutin, Thayer & Browne
—Richard Anklam, President and Executive Director, NMTRI
—Jason Espinoza, President, New Mexico Association of Commerce and Industry

12:00 noon **Adjourn**

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

July 22-23, 2015
State Capitol, Room 322
Santa Fe

The second meeting of the Revenue Stabilization and Tax Policy Committee (RSTP) for the 2015 interim was called to order by Senator Carlos R. Cisneros, chair, on Wednesday, July 22, 2015, at 10:08 a.m. in Room 322 of the State Capitol in Santa Fe.

Present
Sen. Carlos R. Cisneros, Chair
Sen. Ted Barela
Sen. Sue Wilson Beffort
Rep. David M. Gallegos
Rep. Tim D. Lewis
Rep. Antonio Maestas
Rep. Rod Montoya
Sen. George K. Munoz (7/23)
Sen. Clemente Sanchez (7/22)
Sen. William E. Sharer
Sen. John Arthur Smith
Rep. James R.J. Strickler
Rep. Carl Trujillo
Rep. Jim R. Trujillo
Sen. Peter Wirth

Absent
Rep. Jason C. Harper, Vice Chair
Sen. Mark Moores
Rep. Debbie A. Rodella

Designees
Sen. William F. Burt
Rep. Randal S. Crowder
Rep. Conrad James
Rep. Bill McCamley
Sen. Nancy Rodriguez (7/23)

Rep. David E. Adkins
Sen. Jacob R. Candelaria
Rep. Sharon Clahchischilliage
Sen. Lee S. Cotter
Rep. Brian Egolf
Rep. Miguel P. Garcia
Rep. Stephanie Garcia Richard
Rep. Bealquin Bill Gomez
Sen. Stuart Ingle
Sen. Gay G. Kernan
Rep. Stephanie Maez

Rep. Javier Martinez
Rep. Tomás E. Salazar
Sen. John M. Sapien
Rep. Jeff Steinborn
Rep. James G. Townsend
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
Rebecca Griego, Records Officer, 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.

Wednesday, July 22

State Investment Council (SIC) Annual Update
Steven K. Moise, state investment officer, SIC, and Vince Smith, deputy state investment officer, SIC, made a presentation, summarized as follows, on: the state permanent funds' fiscal year (FY) 2015 and the SIC's general investment strategy; the effects on fund health of certain contributions and distributions; and the private equity investment program. Charles Wollman, communications director, SIC, who was in the audience, contributed periodically to the presentation.

FY 2015 investment performance; investment strategy. Compared with previous fiscal years' ends, the SIC-managed funds' combined balance reached a record high at the end of FY 2015 of nearly $20.6 billion. The Land Grant Permanent Fund's (LGPF's) balance was $14.8 billion, the Severance Tax Permanent Fund's (STPF's) balance was $4.7 billion, the Tobacco Settlement Permanent Fund's balance was $216.4 million and the Water Trust Fund's balance was $43.3 million. The investments in that period yielded a 3.6% return — short of the target 7.5%, but factored into a three-year average of 10.6%.

The SIC continues studying its asset allocation and shifting to a more diversified portfolio. The portfolio includes more income-producing real assets and, as allowed by a 2014 constitutional amendment, more international investments. At 18% of the SIC's portfolio, international investments represent a smaller portion of the portfolio as compared with most of the SIC's peers' funds.

Contributions to and distributions from the funds. At about $849.3 million, distributions for FY 2016 from the LGPF and the STPF also surpass previous records. The land grant beneficiaries' distributions totaled almost $656 million. The severance tax distribution to the general fund is nearly $194 million.

The SIC strives to make possible the provision to future generations of fund benefits in equal or greater proportion to current levels. Investment returns, inflows and distribution rates most affect the amounts of annual distribution from the two major funds.

The SIC projects that FY 2017 distributions from the two funds will decrease slightly to $845 million but that distributions will then rise. The dip is largely due to the future expiration of a provision that increased the LGPF distribution rate.

The STPF is in relatively poor, albeit improving, health. Of the $486 million in severance tax revenue collected in FY 2015, only about $97.00 was transferred to the fund's corpus. Since 15 years ago, and when adjusted for inflation, the STPF has lost value. STPF distribution rate increases have hampered the fund's growth, as illustrated by the LGPF's increasing share of the SIC-managed funds' combined balance. However, an enacted legislative measure from the last regular session (House Bill (HB) 236) to gradually decrease STPF bonding capacity will increase annual inflows to the fund and relax swings in its annual inflow levels. Yet even with that measure, there is only about a 25% chance that the fund will maintain its economic value 50 years from now. To increase those odds to 50%, the state would have to increase inflows to the fund or the SIC would have to make, and be successful in, riskier investments.

The private equity investment program. New Mexico law allows investment of up to 9% of the STPF in venture-based private equity. Believing it prudent, the SIC has set a 5% target for investment of money in this program, whose secondary mission is job creation. Prior to 2004, the investments had a negative return. Returns then began to improve significantly. Since 2004, returns have averaged 4.7%.

<u>Questions and Discussion</u>

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

Inflows to the STPF. The changes enacted through HB 236 will, among other things, reduce volatility in the levels of inflow to the STPF and stimulate the fund's growth through the power of compounding interest. Some members articulated the economic and job-creation value of spending money that would otherwise be deposited into the fund. Mr. Moise responded that the SIC refrains from influencing policy on matters such as the proportion of STPF distribution to inflow, but is willing to suggest other possible sources of revenue for capital projects. He also said that increasing inflows to the fund is probably the most effective way to improve the chance that the fund will maintain its value 50 years from now. A member commented that, when the state was required under the *Zuni* lawsuit to increase capital spending, policymakers had to choose between increasing taxes or increasing severance tax bonding capacity. At that time, there was little political will to increase taxes.

The private equity investment program and international investments. Mr. Moise explained that the SIC has not exercised its power to invest the maximum allowed into the private equity investment program because the SIC is wary of jeopardizing that program's rate of return; the SIC strives to balance the goal of job creation with responsible investment. The SIC believes that its ability to make more international investments will prove beneficial.

Projected STPF value. The SIC's 50-year model for real economic value reflects variables that include changes in the population, changes in the number of taxpayers and the potential for periods of recession. Mr. Moise responded that, in addition to incorporating projected economic information into its model, the SIC applies that information to its asset allocation decisions. A member remarked that the SIC should consider as part of its inter-generational equity goal relieving the future financial burden on the aging population.

SIC staff. The SIC has 25 of its 32 authorized full-time positions filled and plans to fill some of its vacancies. The SIC employs consultants at the state and national levels to manage its investing needs. The broad range of its investments requires specialized expertise that those consultants provide. Those consultants, the SIC staff and SIC members provide many levels of investment review.

The Economic Impact of the Arts and Cultural Industries

Veronica Gonzales, secretary of cultural affairs, and Jeff Mitchell, director, Bureau of Business and Economic Research (BBER), University of New Mexico, delivered a presentation on a recent study, the first of its kind, that examined the contributions of the arts and culture industries to the state's economy and that identified challenges to and opportunities for developing what is termed the "creative economy". The study was commissioned by the Cultural Affairs Department (CAD) and conducted by the BBER.

CAD overview. Secretary Gonzales named several of her staff who were in the audience and highlighted her department's mission, programs and achievements. The CAD focuses on cultural preservation and education to enhance quality of life and the economy. It operates eight museums, eight historic sites and programs in: arts services; history and archaeology preservation; library services; and program support. Through the CAD's programming, vast numbers of residents and tourists have been enriched by and educated in New Mexico art and culture.

Economic impact study. Secretary Gonzales cited some findings of and the department's response to the BBER study. New Mexico's art and culture industries contribute billions of dollars to the state's economy and support 76,780, or nearly one in 10, of its jobs. Further, these industries provide the intangible benefit of educating youths and preparing them for the work force.

Mr. Mitchell briefly introduced himself and the study. As an economist, he works with state and local agencies to offer a perspective on economic development, but not to advocate for any particular policy. The purpose of the study, he said, was to understand the direct and indirect impacts of the art and culture industries, which are rapidly growing worldwide.

Mr. Mitchell summarized the study's findings, including the creative economy's role in economic development, its scale, its employment types and geographic distribution, its potential growth areas and its fiscal impacts. A location's cultural profile, which influences entrepreneurship and the work force, has increasingly become a factor in its economic strength; locations with strong creative economies are growing the most. In New Mexico, the number of jobs associated with the creative economy, when defined to encompass a wide swath of areas, exceeds that in construction and manufacturing. The proportion of jobs in arts and culture to all other jobs is highest in the state's rural areas, namely in McKinley, Rio Arriba and Taos counties. The number of New Mexico's arts and culture jobs exceeds the national average by 3%. Comparatively, the state has a high concentration of its arts and culture jobs in cultural goods production and cultural goods distribution, but not in intellectual property. Of those three categories, intellectual property boasts the highest average wages. Lastly, the study found that spending on arts and culture at the local level runs a deficit, largely because of the high cost of libraries, but at the state level, there is a net return.

Future action. Secretary Gonzales characterized as critical windows of opportunity some action items that the CAD wishes to pursue. They include: 1) building cohesion within the arts and culture sector; 2) developing a web-based platform for networking among those associated with the sector; 3) increasing support for the New Mexico Arts grants program; 4) increasing cultural heritage tourism; 5) implementing a cultural collaborative initiative; 6) developing cross-agency partnerships with the tourism, public education and economic development departments; and 7) establishing and strengthening partnerships between Santa Fe and Albuquerque. Secretary Gonzales remarked that the creative economy, in which New Mexico is a leader, stands to change and grow. She asked for the committee's support for investing in the creative economy.

Mr. Mitchell stressed that New Mexico could more fully exploit its resources and characteristics to develop economically, through arts and culture initiatives, and to create long-lasting jobs. Moreover, he said, the world is changing in ways that make arts and culture an area ripe for growth, particularly in the subcategory of intellectual property. Ways to encourage that growth include: 1) establishing public-private partnerships around networking and business support; 2) emphasizing community-level capacity building; 3) emphasizing education; and 4) incorporating creative industries in economic policy. Catalysts, strategically targeted support, coordination, communication and engagement are key factors in those initiatives.

Questions and Discussion

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

Fiscal impact. Mr. Mitchell said that the model used to measure the creative economy's impact was based on static input-output measures. A member commented on the usefulness of employing a dynamic model to show more fully a given initiative's economic effects.

Interagency collaboration. Secretary Gonzales indicated that the CAD and the Economic Development Department (EDD) will continue discussions about collaborating to develop the creative economy. A member suggested that recent large-scale appropriations to implement the Local Economic Development Act be used in part for that development. Another member suggested that the secretaries of agencies best positioned to influence the creative economy's growth discuss ways to reduce bureaucratic barriers to business creation and expansion. Another member proposed that those key agencies work with business incubators to develop a plan for supporting businesses in the creative economy. Mr. Mitchell agreed that business incubators are well-positioned to stoke the creative economy by connecting entrepreneurs to marketing, financing and communication resources. Secretary Gonzales noted that the CAD has worked with the WESST business incubator in the creative economy context.

EDD and the creative economy. Wade Jackson, general counsel, EDD, who was in the audience, talked briefly about the cultural properties tax credit. A bill introduced in the last regular session would have increased the incentive for people to improve their cultural properties. After a member expressed interest in having the committee consider that bill for endorsement, Senator Cisneros requested staff to ask Jon Barela, secretary of economic development, to present the legislation at a future meeting.

Expressions of support for arts and culture. Several members expressed appreciation that arts and culture are increasingly recognized as significant drivers of economic development, not simply a pastime for the well-to-do. Some members highlighted arts and cultural institutions and events in their districts, praising their contributions to the local economies and quality of life.

New Mexico Small Business Development Center (SBDC): Providing Economic Development Assistance to Small Businesses

Russell Wyrick, state director, SBDC, gave an overview of his program as follows. The SBDC, the state's only nationally accredited business assistance program, operates through 19 regional centers, seven procurement technical assistance program centers and the International Business Accelerator in Santa Teresa. The SBDC receives funding from the state and from a federal Small Business Administration grant. Its procurement technical assistance program also receives money from the federal Defense Logistics Agency. Through one-on-one, no-cost training, the SBDC enables budding and existing entrepreneurs to establish and grow businesses. The SBDC actively reaches out to potential clients to offer its services. It connects its clients to advanced research tools to enhance their success.

Outcomes. The SBDC uses an economic impact verification system to measure its results. Since its inception in 1989, the program has helped clients create and retain nearly 27,000 jobs. It has helped clients start thousands of businesses, secure millions in federal prime- and sub-contract awards and secure millions in loans and equity.

Current return on investment and potential SBDC growth. The state currently spends $4.4 million on the SBDC. This money leverages over $1.1 million in federal grants and generates about $9.5 million in tax revenue, or $2.14 for every dollar invested in the program. Also for every dollar invested, $5.40 flows into the state from federal contracts. The vast majority — 92% — of the International Business Accelerator's budget is derived from the SBDC.

The annual state investment in the SBDC has decreased by $653,700 since FY 2009. To adjust to its reduced appropriations, the SBDC has laid off staff, reduced its rural outreach and cut back on staff professional development. The SBDC estimates that the decrease corresponds to an annual loss of almost $1.4 million in state tax revenue. An increase in the state's current investment in the SBDC would improve the state's international trade, tax revenue and ability to promote business growth.

Questions and Discussion

On questioning, the committee and Mr. Wyrick addressed the following topic.

Services and job creation. The SBDC provides customized services to its clients. It identifies a client's needs and coaches the client through the process of business creation or growth. The SBDC's services include helping clients secure capital for infrastructure. Its efforts result in job creation in each of the state's 33 counties. Mr. Wyrick encouraged committee members to contact their local SBDCs if the centers can be of help. At a member's request, Mr. Wyrick agreed to share a database that lists the number of clients in each county with whom the SBDC has had contact.

Report of the State Auditor on Unspent Fund Balances

Timothy Keller, state auditor, and Ruby Ann M. Esquibel, government accountability officer, Office of the State Auditor (OSA), presented as follows on a report released by the OSA in March titled "Money on the Sidelines: Report on Unspent Fund Balances, Fiscal Year 2014".

Overview of the OSA. State Auditor Keller began by explaining that the OSA primarily audits or oversees the audits — which number over 900 — of the state and its political subdivisions. Most of those audits are conducted by contracted firms approved by the state auditor. The OSA also conducts some forensic audits and, to a limited degree, performance audits. It plays a role in regulating the accounting industry. To accomplish these major functions, the office is divided into several divisions headed by the state auditor, an elected official whose office is constitutionally created. An alternative set of audit rules, "agreed upon procedures", applies to small political subdivisions. That alternative allows for accountability at a lower financial cost. In general, the OSA has set out to: improve compliance among the entities it oversees; financially and otherwise support entities that struggle to comply with the audit requirement; cause a reduction in the number of findings in audited entities' audits; and address chronic issues in those entities' accounting practices.

Special investigations. The OSA's Special Investigations Division curbs governmental fraud, waste and abuse. The OSA's fraud hotline helps the office detect fraudulent activity. Most fraud made known to the OSA is discovered through tips, including those routed through the hotline, and some fraud is made known through audits. State Auditor Keller spoke briefly about certain special investigations currently under way.

Government Accountability Office (GAO). To address waste and financial issues and to improve the performance of the state and local governments, the GAO examines audited financial statements of audited entities, including those entities' revenues and expenditures and compliance with the conditions of federal funding. With a focus on transparency, the GAO analyzes those entities' financial practices and the return on their investments.

New Mexico's financial health. State Auditor Keller explained some basic accounting terms to provide a basis for better understanding a report on New Mexico's financial health. A government audit is a process in which an auditor examines the financial statements of an entity to determine the degree, if any, of material misstatements. The auditor then issues an opinion. Opinions fall into one of four categories, from "unmodified" (best) to "disclaimed" (worst). An audit report might contain a finding, which is an indication of a deficiency or noncompliance.

According to the annual financial health report card issued by the OSA, New Mexico's financial health has recently improved. The number of "at-risk" entities, or those late in submitting an audit, has fallen. The OSA has been working directly with at-risk entities and with the Department of Finance and Administration (DFA) to help the entities complete their audits. Over 90% of all audited entities have clean audits. Among entities, there are over 2,000 findings, many of which are repeat findings. The OSA plans to address the most prevalent needs for corrective action by offering training. It also plans to resume the production of a finding report.

Fund balance report. Ms. Esquibel turned the committee's attention to the fund balance report. It evolved out of an interest in improving accountability and transparency in government and an awareness that the state is charged with satisfying great needs using limited resources. Data for the report came from the most current independently audited financial statements of state agencies. The OSA has made available on its web site a spreadsheet of the information contained in its report so that the public may access it and provide feedback. Although the report drew attention to the fact that the state has large financial reserves in its many funds, the OSA does not advocate that money in any fund be used for a purpose for which it is not intended, urges that the state maintain sufficient general fund reserves to cover budget shortfalls and recognizes that there are restrictions on the uses of money in the state's funds.

In its study, the OSA found that: 1) there is: $4.2 billion in more than 700 funds designated for a specific purpose; $473 million in restricted special revenue funds; $462 million in water-related funds; $338 million in debt-service funds; and $30 million in assigned and unassigned general funds, or those with the fewest restrictions on spending; 2) funds overseen by the DFA, more than those of any other agency, have the highest aggregate balance; 3) the bulk of the money in funds whose use is restricted for special purposes is not concentrated in any one agency; 4) the Wastewater Facility Construction Loan Fund contains the most unspent money for water-related purposes; and 5) the Statewide Infrastructure Bond Fund contains the most unspent money for infrastructure. The report also lists, among others, balances in funds overseen by agencies that manage infrastructure projects. Much of that money is stalled for reasons that include: lack of required matching funds; funding insufficiency; project phasing; conflicting priorities or the lack of priority; and difficulty reaching project readiness.

State Auditor Keller summarized his impressions of and responses to the findings. He commented that the report paints a complex portrait of unspent money: for each fund, a different set of restrictions applies. He relayed his experience as a senator having secured capital outlay money to beautify a median in his district. The money has gone unspent because the city had a conflicting idea for the use of that space. Unlike that situation, capital money was put to productive use in Albuquerque's Paseo de Norte/I-25 project. To improve the productivity of money dedicated to capital outlay projects, the OSA has suggested the following: addressing the executive order restricting certain spending; exercising more discipline in appropriating money to projects; focusing on project implementation; and addressing the problems inherent in infrastructure financing and building. State Auditor Keller closed by saying that the report was intended to shine a light on the state's reserves and be a helpful source of information for, and stimulate dialogue among, policymakers.

<u>Questions and Discussion</u>

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

Political subdivision audits. A member commented, and State Auditor Keller agreed, that entities need help with fixed-asset auditing. State Auditor Keller identified as key problems faced by entities in rural areas the scarcity of auditors, the rising costs of audits and the lack of access to modern technological resources. A member recommended that the OSA scrutinize school districts more since the state ends up liable for the districts' violations of federal provisions.

Fund balance report. State Auditor Keller said that in recent years, when maintaining solvency was a primary concern, the figure representing unspent infrastructure funds was probably lower than the current $2.1 billion figure. When asked whether the high balances maintained in funds used by the Children, Youth and Families Department and the Public Education Department are average, as compared with those of other states, State Auditor Keller recommended directing that and related questions to the agencies or the Legislative Finance Committee (LFC). Some members pointed out reasons that maintaining reserves is appropriate or advisable to maintain high bond ratings because of constitutional limitations and to avoid upsetting the entities whose use the money was intended for. Members requested that the OSA: 1) if producing the report in the future, and with the LFC's help, more saliently portray what money can and cannot be reasonably tapped; and 2) avoid presenting such a report in a way that may give the public the impression that more of the state's resources are available for spending than are actually available. State Auditor Keller responded that, going forward, the OSA will request more feedback from agencies and refine the report's content and presentation. A member requested an explanation of why "unassigned" fund balances, at almost $771 million, are so high.

Reversions. A member observed that a lot of money for capital outlay gets stalled — i.e., avoids reversion — because of project reauthorizations. Some members pointed out that enacting laws requiring more automatic reversions of unused money might, in many but not all cases, be useful.

Capital infrastructure hurdles. Several members described capital outlay hurdles they had experienced. In some cases, money stalled because of restrictions imposed by the executive order; in other cases, projects were vetoed because they were not listed in the community's infrastructure capital improvement plan. State Auditor Keller remarked that the executive order imposes strict requirements. He advocated employing councils of governments to serve as fiscal agents to overcome the order's strictures. Several members commented, and State Auditor Keller agreed, that successful capital outlay projects require coordination among local authorities in a given region. A member expressed doubt that the executive order would withstand a court challenge and that it may represent an attempt to shrink government spending. A member requested from the OSA a report outlining common issues in capital outlay spending and recommended that the office interview local authorities in preparing the report. State Auditor Keller commented that, although the legislature has made water infrastructure projects a priority, it appears that multi-jurisdictional complexities, other red tape and project-cost underestimation have at times derailed those projects.

The committee recessed at 4:40 p.m.

Thursday, July 23

Approval of Minutes

On a motion made and seconded, the minutes from the June meeting were adopted without objection.

2014 Tax Expenditure Report

Demesia Padilla, secretary of taxation and revenue, and Frank Crociata, tax policy director, Taxation and Revenue Department (TRD), presented the department's 2014 Tax Expenditure Report. Secretary Padilla prefaced the presentation by introducing Mr. Crociata, the TRD's new tax policy director, and several of her staff who were in the audience. She noted that Mr. Crociata holds a law degree and has a background in state and local corporate, sales, excise, property and income taxes and most recently worked for a large international firm in Phoenix. Secretary Padilla encouraged the committee to alert the department to any technical errors noticed in the report. She also noted that the 2015 report is due out in October or November.

Mr. Crociata explained that the presentation was divided into three parts: a comparison with previous years' reports; an overview of the 2014 report; and a summary of changes that the department wishes to implement for future reports.

Background. The 2014 report reflects a change in the TRD's understanding of what qualifies as a tax expenditure; this year, it used the federal definition of that term. Excluded are provisions that meet any of the following criteria: it is required by state or federal law; it relieves a taxpayer from paying one tax, but substitutes another; and it constitutes double taxation or tax pyramiding.

2014 report. The current report contains provisions in all of the state's major tax programs, except the property tax program. In all, the TRD identified 126 tax expenditures, 113 non-tax expenditures and 19 "marginal provisions", which are those that could fall under either of the first two categories.

For each provision, a series of characteristics, including its fiscal impact (i.e., the tax expenditure's cost to the state), the reliability of that fiscal impact information and the TRD's evaluation and recommendations, is considered. The provision's purpose is outlined if its purpose is explicit in its legislation or fiscal impact report. The TRD considered a provision's intended purpose and degree of utilization to evaluate its effectiveness. Under "recommendations", TRD statements include whether the provision should have a sunset and whether the provision needs clarity. Mr. Crociata stressed the need to weigh provisions' reliability factors, which are numbers from one to four or a "no data" designation. A "one" signifies that the provision requires separate reporting by taxpayers; thus, plenty of data support the TRD's findings. A "four", in contrast, signifies that there are little data from which the TRD could derive findings. There is a wide gulf in reliability between provisions marked two or higher and three or lower.

The report contains tax expenditure data broken down by broad categories: 1) citizen benefits; 2) economic development; 3) environment, conservation and renewable energy; 4) highly specialized industries; and 5) health care, a subset of the fourth category. Each expenditure is listed under only one category. The "citizen benefits" category consists of expenditures available to all taxpayers or that are designed to ease a population subset's tax burden. The cost of expenditures in the "citizen benefits" category constitutes 94.1% of the total, according to a chart in the report. Mr. Crociata cautioned that the conclusions illustrated by the chart are somewhat unreliable because of limitations inherent in producing it.

Future changes. The TRD intends to improve its future tax expenditure reporting by: 1) correcting technical inaccuracies, particularly in the index and statutory citation section; 2) continually evaluating whether provisions constitute expenditures; 3) strengthening the quality of the data and the data retrieval system; 4) finding ways to improve data reliability; and 5) improving certain evaluation sections.

Questions and Discussion

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

Tax expenditure sunsets. A member raised the question of whether tax expenditure expirations should be looked at as the discontinuance of a benefit to a particular group or as an opportunity for the legislature to review the benefit's effectiveness. Another member argued that: 1) every tax expenditure bill should include a sunset provision to institute a check on effectiveness and maintain awareness of the expenditure's existence and cost; and 2) the committee should make it a priority to routinely evaluate tax expenditures. Another member pointed out that the need for sunsets would be obsolete if a broad-base, low-rate tax reform policy — in which a drastic reduction in tax expenditures afforded the imposition of a drastically lower (primarily gross receipts tax (GRT)) rate — were enacted.

Broad-base, low-rate tax reform. A member discussed the impediments to adopting broad-base, low-rate tax reform: the lack of reliable information to guide policymakers in selecting a tax rate that would generate enough revenue to offset the cost of government expenses. Inaccuracy in quantifying expenditures with reliability ratings of three and below makes determining that rate especially difficult. The member stated that a system under such reform would offer the advantages of being fairer to taxpayers, i.e., not picking winners and losers, and reduce the incentive for tax evasion.

Accuracy of expenditures' cost estimations. Mr. Crociata reiterated that the error rate in reliability is high for an expenditure marked with a factor of three or four. The following reasons might contribute to a high error rate: absence of auditing; faulty code reporting by taxpayers; and faulty deduction amount reporting by taxpayers. Mr. Crociata said that the department has explored ways, but has not developed a specific plan, to get better data for determining tax expenditures' costs. A member requested that the TRD develop and propose to the committee recommendations for improving that system. Several members stressed the importance of accurately measuring expenditures' projected and actual costs — but expressed frustration with the historic difficulty in getting such accurate information. One member added that accurate information is especially important considering the volatility in the energy sector, which historically has provided the means to overcome underestimations in measures' projected costs.

Tax expenditure effectiveness. A member expressed a strong interest in receiving information that: 1) helps to determine tax expenditures' relative effectiveness; and 2) shows the consequences to nonrecipient taxpayers of benefits given to a different class of taxpayer.

Comparing New Mexico's Tax Structure to Other States: An Overview

Richard L. Anklam, president and executive director, New Mexico Tax Research Institute, delivered a presentation on New Mexico's tax structure as it compares to that of other states. Mr. Anklam prefaced his presentation by underscoring the limitations inherent in such a comparison: states have vastly different systems, making comparison difficult even with reliable, accurate information. He also reviewed the principles of good tax policy — adequacy, efficiency, equity, simplicity, comprehensiveness and accountability — which, he said, though they often compete with each other, are important to remember when evaluating proposed tax measures.

Sales taxes. The first modern American sales taxes originated in the 1930s and were generally imposed at low rates on the transaction of tangible personal property. Increasingly, sales taxes have been imposed on the transaction of services, too. Sales taxes are now common and take a variety of forms that vary in principle and in practice. For instance, the most commonly used sales tax, the "general retail sales tax", in principle is a single-stage levy on consumer expenditures applied at a final sale for use and consumption. Despite the tax's prevalence, no state that imposes it conforms to that principle. Instead, those taxes in practice capture some or many business-input, or intermediate, transactions.

In general, sales taxes feature the following attributes: 1) in contrast to income, franchise and property taxes, they are imposed on transactions involving tangible personal property and some services; 2) states administer sales taxes and distribute revenue from them to local governments, which lack the inherent power to tax; 3) states' sales tax bases match those of their local governments; 4) sales taxes are imposed on buyers, not sellers; 5) sales taxes imposed on sellers generally legally obligate the seller to remit and separately state the tax; 6) the economic incidence of sales taxes — regardless of their legal imposition — falls on the buyer; and 7) sales taxes are considered regressive, i.e., they impose a burden that proportionately increases, the lower a taxpayer's income.

Certain legal principles and practical considerations limit the application of sales taxes. For instance, an out-of-state seller must have some physical presence in a state for that state to tax it, and the object taxed cannot be subject to more than one state's sales tax. Concomitant with these limitations are issues of "e-commerce" fairness and issues in delineating who is the seller, who is the buyer and what is the transaction location. Moreover, the complexity of modern commerce introduces questions about what portion of a sale is taxable. For instance, how should a sale be taxed when a discount applies, and how should finance charges on a sale be treated?

Use taxes. Use taxes, also known as compensating taxes, are designed to equalize the disparity between taxes owed on in-state sales and taxes owed on out-of-state sales. Because they are meant to cancel the incentive for in-state buyers to pay less tax by making out-of-state purchases, use taxes generally are imposed on the same base and at the same rate as sales taxes. In practice, use taxes are difficult to enforce on individual and household buyers.

GRTs. In principle, GRTs are very broad-based excise taxes imposed on the total receipts of an enterprise. They generally feature few or no deviations, very low rates and a high degree of pyramiding. Some states impose sales taxes that resemble a GRT.

New Mexico's GRT. New Mexico's version of a sales tax, its GRT, is most aptly characterized as a broad-based, seller-imposed general retail sales tax. The tax's precursor was the emergency school tax enacted in 1933. The modern GRT provides deductions for sales for retail, credits for taxes paid to other states and many exemptions to delimit its otherwise broad application, which covers, among other things, intangible property and services. Like other states, New Mexico administers the GRT on behalf of its local governments, and it performs a similar function with respect to some tribes. Those arrangements make remittance easier for businesses. With its relatively high GRT rate, New Mexico relies more heavily for revenue on its GRT than most other states do. To overcome the constitutional prohibition against taxing the federal government, the state legally imposes its GRT on the seller. The state offsets GRT regressivity by offering a low-income comprehensive tax rebate.

New Mexico compared with other states. In 2011, as a percentage share of total tax revenues, New Mexico ranked among states: nineteenth for its property tax, thirty-ninth for its sales tax, eleventh for its excise tax, fifteenth for its personal income tax, third for its corporate income tax and thirteenth for its other taxes. Attributes of the state's economy somewhat influence its position in the rankings. Although New Mexico's state and local average tax rate falls in the middle on that scale among its neighbor states, its tax base is generally broader than those of its neighbors.

General caveats concerning data and rankings. Mr. Anklam drew the committee's attention to handouts showing state tax rankings and several dense publications aimed at comparing states' tax structures. Despite their bulk, he said, they provide only a cursory look at the world of state tax structures. He stressed that comparing states' tax structures involves great complexity and requires a thorough understanding of context. Using as a guide superficial comparisons of one state's tax structure to others, he said, can lead to bad tax policy.

Mr. Anklam praised the TRD's efforts to improve the quality and accuracy of its tax expenditure-related data and conclusions. He noted that accuracy in that context is elusive, partly because of flaws in taxpayer reporting.

Single Sales Factor Income Apportionment Option for Headquarters Operations

Mr. Anklam, Jason Espinoza, president, New Mexico Association of Commerce and Industry (ACI), and Suzanne Bruckner, past chair of the ACI's tax policy committee, reviewed the content of the provision in HB 2 (1st Special Session, 2015) relating to a corporate income tax single sales factor option for headquarters operations.

Corporate income tax apportionment. Mr. Anklam described the context of the enacted headquarters/single sales factor provision. Corporations operating in more than one state that assess a corporate income tax use a state-specific apportionment formula to calculate how much tax is owed to each of those states. The formula is based in part on the degree to which a corporation is doing business in a state. It can include the factors of property, sales and payroll. In its purest form, apportionment is calculated by dividing, for each of those factors, a corporation's state-specific portion by its multistate aggregate. However, many states have deviated from that baseline to create economic development-driven tax incentives for corporations to locate to or stay in them. Specifically, many states have enacted formulas more favorable to corporations with high in-state payroll factors, property factors or both. States that have deviated from the baseline generally use formulas favorable to corporations whose in-state sales factors are low. In theory, these states reap the benefit of having within their borders corporations that concentrate their employees, infrastructure and equipment in the state and draw a high concentration of revenue from outside of the state.

Trends in changes to state apportionment formulas. Over time, the number of states with apportionment formulas that weigh the three factors equally has decreased. The number of states with formulas weighing the sales factor heavily — i.e., giving it double or triple weight in comparison with other factors, or weighing only the sales factor — has increased. Most states mandate the use of a particular formula, while some offer formula options.

New Mexico's single sales factor for headquarter operations. Mr. Espinoza reviewed the ACI's perspective on the benefits of extending a single sales factor apportionment formula option to corporations with headquarters operations in the state. He articulated that the new provision will: increase the state's attractiveness to corporations interested in relocating their headquarters; help draw in out-of-state revenue; and remove the disincentive for corporations based here to increase their capital and work force investments in New Mexico. Having in-state headquarters operations typically correlates to good jobs, spurs overall business growth and development and enriches the quality of life in a community.

Ms. Bruckner reviewed technical aspects of the new provision. Under it, a corporation can take advantage of the single sales factor option if it has its principal business activity in New Mexico and meets other facets of the definition of a "headquarters operation", including performing "centralized functions". While not a disqualifying factor, operating a call center alone does not satisfy the centralized-function requirement. Ms. Bruckner added that the new law also amended the "throwback" rule within the corporate income tax laws so as not to defeat the purpose of offering the use of a single sales factor formula.

<u>Questions and Discussion</u>

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

Potential effects of the new policy. A member expressed concern at having the provision's benefit added to the corporate tax structure, considering the existing option of corporations to choose separate reporting and considering the possibility that corporations will exploit the measure under the potentially over-broad definition of "headquarters operation". Mr.

Anklam suggested that the TRD could by rule refine the law if unintended consequences result or if clarification is needed. Other members expressed skepticism about the prudence of the state's forfeiting revenue by adopting policies that lack evidence of effectiveness.

Members and presenters expressed diverging viewpoints on whether the measure would entice corporations like GAP and GE to establish their primary or regional headquarters in the state. Mr. Anklam opined that the measure would be most attractive to mid-size businesses, but would constitute a consideration less important to big businesses interested in relocating their headquarters. A member suggested that the measure might help satisfy a need for in-state jobs that the state's business school graduates can enter.

Accountability. Several members commented on the importance of continually evaluating the new provision for effectiveness. Mr. Espinoza said that the TRD would be able to track data useful to that evaluation and that the ACI was willing in the future to come before the committee to discuss the provision's effectiveness. Mr. Anklam noted that it would most likely take more than a year to properly understand the provision's effectiveness. A member requested from the TRD information on the effectiveness of the recently enacted single sales factor provision for manufacturing operations. Elisa Walker-Moran, chief economist, TRD, who was in the audience, said that the department is engaged in that analysis.

Reporting method and formula election. Mr. Anklam clarified that a corporation qualified under the new provision can make the single sales factor election regardless of its filing method (e.g., separate or combined with other entities within a unitary group) but that, once the election is made, a change to it requires the permission of the secretary of taxation and revenue. Ms. Walker-Moran agreed to look into the administrative requirements imposed on a corporation electing to use the single sales factor formula.

Fiscal impact. A member expressed some doubt that the projected fiscal impact of the measure was merely $20,000. Mr. Anklam agreed that the estimation was most likely inaccurate but that a more accurate reflection of the provision's cost to the state would be noted in future tax expenditure reports. A member questioned the extent to which the benefit will cause an increase in corporate activity and the extent to which existing corporations that otherwise would have engaged in business, even without the benefit, will take advantage of it.

Adjournment

There being no further business before the committee, the RSTP adjourned at 12:15 p.m.

Revised: August 13, 2015

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

August 13-14, 2015
State Capitol, Room 322
Santa Fe

Thursday, August 13

10:00 a.m. (1) **State Land Office Annual Status and Revenue Update**
—Aubrey Dunn, Commissioner of Public Lands

11:00 a.m. (2) **Gaming — Revenue, Trends and Tribal-State Revenue Sharing**
—Jeffrey S. Landers, Chair, Gaming Control Board (GCB)
—Paulette Becker, Commissioner and Acting State Gaming Representative, GCB
—Donovan Lieurance, Acting Executive Director, GCB

12:00 noon **Lunch**

1:15 p.m. (3) **Laboratory Partnership with Small Business Tax Credit Annual Report**
—Micheline Devaurs, Manager, Market Transition, Los Alamos National Laboratory
—Genaro Montoya, Program Leader, New Mexico Small Business Assistance Program, Sandia National Laboratories

2:15 p.m. (4) **Assessment of Property Taxes on Utility Contributions in Aid of Construction**
—Keven Groenewold, Executive Vice President and General Manager, New Mexico Rural Electric Cooperative Association (NMRECA)
—Daniel Najjar, Counsel, NMRECA
—David Spradlin, General Manager, Spring Electric Cooperative, Inc.

3:00 p.m. (5) **Revenue, Infrastructure and Impact of the Changing Utility Environment**
—Ron Darnell, Senior Vice President, Public Policy, Public Service Company of New Mexico (PNM)
—Matthew Jaramillo, State Government Affairs, PNM

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

Friday, August 14

9:00 a.m.	(6)	**Report from the State Treasurer** —Tim Eichenberg, State Treasurer
10:00 a.m.	(7)	**Film Production Tax Credit — Annual Report and Update** —Nick Maniatis, Director, New Mexico Film Office
11:00 a.m.	(8)	**Capital Outlay — Process and Outstanding Projects** —Linda Kehoe, Principal Analyst, Legislative Finance Committee
12:00 noon		**Adjourn**

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

August 13-14, 2015
State Capitol, Room 322
Santa Fe

The third meeting of the Revenue Stabilization and Tax Policy Committee was called to order by Senator Carlos R. Cisneros, chair, on Thursday, August 13, 2015, at 10:10 a.m. in Room 322 of the State Capitol in Santa Fe.

Present
Sen. Carlos R. Cisneros, Chair
Sen. Ted Barela
Rep. David M. Gallegos (8/14)
Rep. Antonio Maestas
Rep. Rod Montoya
Sen. Mark Moores
Sen. George K. Munoz (8/13)
Rep. Debbie A. Rodella
Sen. Clemente Sanchez
Sen. William E. Sharer
Rep. James R.J. Strickler
Rep. Carl Trujillo
Rep. Jim R. Trujillo
Sen. Peter Wirth

Absent
Rep. Jason C. Harper, Vice Chair
Sen. Sue Wilson Beffort
Rep. Tim D. Lewis
Sen. John Arthur Smith

Designees
Sen. William F. Burt
Rep. Bill McCamley
Sen. Nancy Rodriguez (8/13)

Rep. David E. Adkins
Sen. Jacob R. Candelaria
Rep. Sharon Clahchischilliage
Sen. Lee S. Cotter
Rep. Randal S. Crowder
Rep. Brian Egolf
Rep. Miguel P. Garcia
Rep. Stephanie Garcia Richard
Rep. Bealquin Bill Gomez
Sen. Stuart Ingle
Rep. Conrad James

Sen. Gay G. Kernan
Rep. Stephanie Maez
Rep. Javier Martinez
Rep. Tomás E. Salazar
Sen. John M. Sapien
Rep. Jeff Steinborn
Rep. James G. Townsend
Sen. Pat Woods

Guest Legislator
Rep. Dennis J. Roch (8/14)

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

Staff
Pam Stokes, Staff Attorney, Legislative Council Service (LCS)
Amy Chavez-Romero, Assistant Director for Drafting Services, LCS
Nancy Martinez, Intern, LCS

Guests
The guest list is in the meeting file.

Handouts
Handouts and other written testimony are in the meeting file.

Thursday, August 13

State Land Office Annual Status and Revenue Update
Aubrey Dunn, commissioner of public lands, provided the committee with an overview of the activities of various divisions within the State Land Office (SLO) and the revenues generated from those activities.

Commissioner Dunn summarized the objectives of the SLO, which focus on:

- optimization of revenue for public institutions;
- support of education;
- job creation;
- maintenance of a strong agricultural sector;
- fostering oil, gas and renewable energy development; and
- watershed restoration, site remediation and trust land protection.

Commissioner Dunn provided examples of specific initiatives and priorities of the SLO. He discussed the SLO's recent watershed restoration activities, which include the restoration of over 3,000 acres of state trust land. He also described efforts to update the Oil and Natural Gas Administration and Revenue Database (ONGARD).

Total SLO revenues for fiscal year (FY) 2015 were projected to approximate $732 million, yet actual revenue for FY 2015 reached $739.5 million. Commissioner Dunn indicated that estimates had been revised downward due to dropping oil prices. He stated that oil prices reached a low of $32.00 per barrel, and that figure could be $35.00 per barrel in December. However, revenues from lease sales have also made significant contributions to revenues. For instance, in July, a lease sale in southern New Mexico yielded about $15.5 million for beneficiaries of the state land trust. Commissioner Dunn said this was the fourth largest sale in SLO history. He then presented a chart containing historical information on lease sales by the SLO from FY 2013 through FY 2015.

Commissioner Dunn talked about the audit and royalty collection efforts of the SLO. The SLO conducted six field audits in FY 2013, nine field audits in FY 2014 and 13 field audits in FY 2015. In FY 2015, interest and royalty collections stemming from these efforts approximated $10 million. Commissioner Dunn discussed royalty and interest collections from previous years and indicated that those collections in FY 2011 were significantly larger, approximating almost $25 million, because of receipts from a $20 million settlement with BP.

Next, Commissioner Dunn described the activities of the SLO's Commercial Resources Division. He projected that revenues generated by rights of way related to electric lines, pipelines and roads would approximate $7.1 million for FY 2017. The Commercial Resources Division is in the process of reviewing hundreds of applications for rights of way, many of which were submitted at least a few years ago. Revenues from managing water disposal agreements and water easements are expected to approximate $6.1 million for FY 2017. The Commercial Resources Division also manages business leases for activities such as renewable energy and telecommunications. Revenues from those activities are expected to approximate $4.9 million for FY 2017. In total, the Commercial Resources Division anticipates the generation of approximately $18.1 million in revenue for FY 2017. Commissioner Dunn briefly discussed possible contributions of existing leases for solar development to revenues generated by the Commercial Resources Division.

The Field Operations Division of the SLO is responsible for administering agricultural leases. Commissioner Dunn estimated that about $8 million would be generated from agricultural leases for FY 2016. He described the formula used to calculate agricultural leasing fees and how factors such as rainfall and lease rates in western states could affect lease rates in New Mexico.

For FY 2015, revenue collected by the SLO from all sources reached $739.5 million; $669.4 million attributable to royalties and land sales was contributed to the Land Grant Permanent Funds; and $70.1 million of the total revenue collected by the SLO was earned for the State Lands Maintenance Fund.

For FY 2016, Commissioner Dunn projected that total revenue could approximate $493.8 million, with $441.9 in revenues from royalties and land sales that could be contributed to the Land Grant Permanent Funds. He estimated that the State Lands Maintenance Fund could receive approximately $51.9 million in FY 2016.

Commissioner Dunn presented a table showing the earnings received by each beneficiary of state trust lands. He noted that during the last five fiscal years, New Mexico's public schools have received over $2.8 billion in distributions.

Questions and comments from the committee members followed. The committee members and Commissioner Dunn commented on the volatility of oil prices and the effect on state revenues, including distributions to certain beneficiaries of state trust lands.

Committee members also asked about the possibility of developing state trust lands for commercial enterprise and other possibilities for job creation. Commissioner Dunn indicated that the SLO is working to develop state trust lands within municipalities and is working with economic development partners to promote and use state trust lands that are in the path of economic development and growth. In response to a question regarding the distribution of money from long-term commercial leases, SLO staff indicated that the revenue is distributed to the State Lands Maintenance Fund, which is distinguishable from royalties distributed to the Land Grant Permanent Funds.

Committee members asked whether the planned Rio Grande Trail is anticipated to cross through any state trust land. Commissioner Dunn responded that while the trail could cross through a couple of tracts of state trust land, it would have a minimal impact on that land. He indicated that one tract in Sierra County is already leased to the State Parks Division of the Energy, Minerals and Natural Resources Department.

In response to questions from committee members, Danny Martinez, director, Royalty Management Division, SLO, and Commissioner Dunn discussed how revenues from lease sales are generated. They explained that demand for leases with respect to certain tracts of land could result in a lessee's payment of a "bonus" to the SLO.

Committee members and Commissioner Dunn discussed how lease fees in New Mexico might compare with those fees in other states. Committee members expressed that lease fees are only one factor that the oil and gas companies might consider when making decisions to conduct business in New Mexico. They discussed how other factors, such as severance tax rates relative to other states, might also be considered. Committee members also discussed the risks undertaken by oil and gas companies and the possible impacts of technology on risk reduction.

In response to questions regarding SLO lease agreements with tribes, SLO staff explained that the SLO has some existing leases with tribes for livestock grazing. Committee members also inquired about the status of the Dixon apple orchard. SLO staff indicated that the property is under lease to the Pueblo of Cochiti, but many of the irrigation structures on the property have been devastated.

Approval of Minutes

On a motion made and seconded, the minutes from the July meeting were adopted without objection.

Gaming Revenue, Trends and Tribal-State Revenue Sharing

Donovan Lieurance, acting executive director, Gaming Control Board (GCB), provided the committee with an overview of gaming revenue collections. He presented a graph showing gaming tax revenues that have been distributed to the general fund within the last five years. He pointed out that gaming tax revenues have increased by less than one percent from FY 2014 to FY 2015. He also presented a graph showing trends in tribal net wins and revenue shares and racetrack net takes. The net take for racetracks increased slightly from FY 2014 to FY 2015 because of renovations to the racetrack at the Albuquerque Downs Racetrack and Casino. Tribal net wins decreased slightly from FY 2014 to FY 2015.

Mr. Lieurance presented a chart showing estimated nontribal gaming revenue for FY 2015 and estimated revenue for FY 2016. He indicated that those revenues increased in FY 2015, but he projects that those revenues will probably stay relatively flat in the next fiscal year because of saturation of the gaming markets, particularly in the Albuquerque area.

Mr. Lieurance presented estimates that were made during the 2015 legislative session with respect to gaming revenues anticipated, assuming that all of the tribes that signed onto the 2007 compact, with the exception of the Pueblo of Pojoaque, had signed the 2015 compact. The estimated revenues range from $6.91 million in FY 2016 to $14.15 million in FY 2019.

Jeffrey S. Landers, chair, GCB, briefly discussed the possible impact of the 2015 compacts on tribes that have signed the compacts and the affected casinos. He indicated that provisions pertaining to extensions of credit and free play might allow those casinos to increase revenue.

Committee members asked about the possible construction of new casinos. Mr. Lieurance noted that the Pueblos of Zuni and Nambe are exploring construction of new casinos. Committee members also inquired about the amounts of revenue generated from out-of-state visitors to casinos in New Mexico. Mr. Landers indicated that casinos in areas such as Hobbs and Ruidoso often attract visitors from other states, but the operating tribes would have the specific information on those revenues generated.

Committee members asked about legal age limitations with respect to lottery games available in bars. Mr. Lieurance indicated that those games are bingo-themed games, and the age limits for playing those games would be a function of the establishments in which the games are available. The games available in bars could only be played by individuals over the age of 21, and an age limit of 18 would likely be required in other establishments. In response to a question about whether the availability of those games would have an impact on existing compacts, Mr. Lieurance indicated that the compacts would not be affected because those games are considered to be lottery-based.

Committee members asked about the role of the GCB in overseeing gaming compacts with the tribes. Mr. Lieurance explained that the board has a role in monitoring compliance with the compacts.

Committee members inquired about the current status of litigation between the state and the Pueblo of Pojoaque. At issue is an appeal of a federal district court's holding that the federal Department of the Interior did not have authority to exercise secretarial procedures when the state and pueblo could not agree upon a compact. Mr. Lieurance indicated that if the Tenth Circuit Court of Appeals affirms the decision of the district court, the state and the pueblo might be required to negotiate a compact. He explained that almost $5 million per year is being put into an escrow account by the Pueblo of Pojoaque, pending the resolution of the litigation. The pueblo has indicated that it would set aside eight percent of revenue that it would have received pursuant to the 2001 compact. An oral argument in that matter is scheduled in the Tenth Circuit Court of Appeals in December. When asked about the outcome of a similar matter in the Fifth Circuit Court of Appeals, Mr. Lieurance indicated that the Fifth Circuit held that the Department of the Interior did not have the authority to exercise secretarial procedures in that case.

Questions followed regarding the status of the possible establishment of gaming facilities or racetracks in areas such as Akela Flats, Deming and Lordsburg. Mr. Lieurance indicated that there are currently no gaming facilities in Akela Flats, and he is not aware of any requests to the GCB with respect to the establishment of racetracks in Deming or Lordsburg.

In response to a question about how the number of gaming licenses is regulated, Mr. Lieurance stated that the number of gaming licenses is not prescribed by statute. However, he indicated that legal limitations on racetracks and casinos might exist within contract exclusivity provisions.

Mr. Lieurance and the committee members discussed how federal approval is granted for tribal-state gaming compacts. While the Department of the Interior must approve the compacts pursuant to the federal Indian Gaming Regulatory Act, they may be "deemed approved" if the secretary of the interior does not take action on them within a specified amount of time.

Laboratory Partnership with Small Business Tax Credit Annual Report

Genaro Montoya, program leader, New Mexico Small Business Assistance Program, Sandia National Laboratories, provided an overview of the Laboratory Partnership with Small Business Tax Credit Act. Pursuant to the act, up to $2.4 million in tax credits are provided to the national laboratories operating in New Mexico for research assistance provided to small businesses in the state. Up to $20,000 in tax credits is provided to a laboratory for qualified expenditures made for each business located in a rural county and up to $10,000 for each business located in an urban county. Mr. Montoya explained that the Taxation and Revenue Department (TRD) administers the program, and the national laboratories are required to seek the advice of the Economic Development Department with respect to improvements of the New Mexico Small Business Assistance Program. He indicated that surveys are conducted each year to assess the economic impact of and customer satisfaction with the program.

Mr. Montoya provided the committee with various statistics on the impact of the program. From 2000 to 2014, the program assisted 2,341 small businesses in New Mexico, with 65 percent of those businesses located in rural areas. During that period, $43.7 million in assistance was provided to small businesses in 33 counties throughout the state. Mr. Montoya attributed the creation or retention of 4,086 jobs in New Mexico from 2000 through 2013 to the New Mexico Small Business Assistance Program. He also stated that small businesses assisted by the program obtained $77.1 million in new financing or funding during the same period. For 2015, Mr. Montoya estimated that 315 to 345 businesses would be assisted and that small businesses would receive a total of $4.5 million to $4.7 million through the program.

Mr. Montoya discussed ongoing strategies of the program, including broadening the types of businesses receiving assistance and increasing the range of technical assistance available through the program. He summarized how the program assists businesses in industry sectors, including agriculture, oil and gas mining, renewable energy, manufacturing and high-technology.

Mr. Montoya introduced Kimberly Corbitt, chief executive officer, Pharma Connect XPress. Pharma Connect Xpress uses a distributed software system to facilitate interactions between health care providers and the pharmaceutical industry. Ms. Corbitt explained how the New Mexico Small Business Assistance Program provided her business with technical expertise in data analytics, which allowed her to provide critical information to stakeholders.

In response to questions from committee members, Mr. Montoya clarified that a gross receipts tax credit is provided pursuant to the Laboratory Partnership with Small Business Tax Credit Act. He also clarified that the national laboratories in New Mexico receive tax credits for labor and technical assistance provided by the laboratories to small businesses in New Mexico. Financial assistance is not provided by the laboratories through the New Mexico Small Business Assistance Program. The tax credits are capped at $2.4 million per laboratory in a calendar year.

Committee members discussed possibilities for providing increased assistance to small businesses and increasing program efficiency. Mr. Montoya indicated that a waiver of overhead for scientists providing assistance could facilitate those goals. Committee members also expressed encouragement for businesses receiving assistance through the New Mexico Small Business Assistance Program to stay in New Mexico.

Assessment of Property Taxes on Utility Contributions in Aid of Construction

Keven Groenewold, executive vice president and general manager, New Mexico Rural Electric Cooperative Association (NMRECA), discussed the possible impacts of the potential imposition of property taxes upon utilities with respect to contributions in aid of construction. Mr. Groenewold indicated that, recently, questions have been raised about whether contributions in aid of construction are part of a utility facility's value for property tax purposes. He expressed concern that if property taxes are imposed upon contributions in aid of construction, customers will bear the cost.

David Spradlin, general manager, Springer Electric Cooperative, Inc., indicated that its property attributable to contributions in aid of construction has historically not been subject to the property tax. However, since 2011, there have been isolated instances in which contributions in aid of construction have been included in assessed values for property tax purposes. Mr. Spradlin indicated that the cooperative has protested those valuations and consulted with the Property Tax Division of the TRD, but the protests associated with those assessments have not been resolved.

Daniel Najjar, counsel, NMRECA, suggested that including contributions in aid of construction in property valuations is not uniform with valuations employed by most other counties. He indicated that most counties do not include contributions in aid of construction in property valuations.

The committee received presentations from representatives of various electric cooperatives, including: Mike Anderson of the Central Valley Electric Cooperative; Luis Reyes of the Kit Carson Electric Cooperative; and Robert Castillo of the Continental Divide Electric Cooperative. The utility representatives talked about contributions in aid of construction received by their respective cooperatives with respect to certain projects. They indicated that if contributions in aid of construction become subject to the property tax, costs to their cooperative members would significantly increase. Mr. Groenewold added that contributions in aid of construction are not depreciated, yet the useful life has expired for many of those assets. Public Regulation Commissioner Valerie Espinoza stated that since cooperatives are member-owned, she is concerned about the potential impact to ratepayers.

Questions and comments by the committee members followed. In response to a question, Mr. Groenewold clarified that a contribution in aid of construction is associated with a cost not borne by an electric cooperative, and it is not included in the cooperative's balance sheet. Committee members asked why some county assessors might view contributions in aid of construction as property that must be valued for property tax purposes. Mr. Najjar indicated that some interpret existing statutes to require valuation of the actual cost of acquired property, whether the cost is borne by the taxpayer or the contributing party. However, he stated that electric cooperatives do not earn rates on contributions in aid of construction and that the cooperatives would find difficulty fronting those costs. He suggested that for the cooperatives, a viable solution might be statutory clarification that only those costs borne by the taxpayer for assets would be considered in valuations for property tax purposes. Mr. Groenewold suggested the NMRECA would work with the TRD on potential solutions to the issues surrounding contributions in aid of construction.

Committee members pointed out that valuation increases could have a significant effect in rural communities if the increased costs are spread out among few members. Committee members also asked about federal requirements governing the accounting of contributions in aid of construction. Mr. Groenewold indicated that under requirements of the Rural Utilities Service (RUS) of the United States Department of Agriculture, if a cooperative does not incur a cost, it is not included in plant accounts. He said that the chart of accounts used for the RUS is recognized by the Public Regulation Commission and the Property Tax Division of the TRD.

In response to a question regarding the perspectives of county assessors on this issue, Clyde Ward, then-San Juan County assessor, indicated that there could be large values associated with transmission lines and that there may be other considerations regarding ownership of assets associated with contributions in aid of construction.

Revenue, Infrastructure and Impact of the Changing Utility Environment

Matthew Jaramillo, state government affairs, Public Service Company of New Mexico (PNM), provided the committee with an overview of PNM's service territory and generation facilities. He indicated that PNM employs more than 1,500 employees and is responsible for 14,763 miles of transmission and distribution lines. PNM is also responsible for 2,707 megawatts of generation capacity. PNM ranks in the top quartile of utilities nationally and paid $22.8 million in property taxes and $57.7 million in gross receipts taxes in 2014. According to Mr. Jaramillo, PNM purchases $203 million in New Mexico goods and services annually and contributes over $3 million to communities and local nonprofits through grants, the Low Income Home Energy Assistance Program and PNM's Good Neighbor Fund. Mr. Jaramillo stated that PNM is currently investing $270 million in 15 large-scale solar facilities throughout the state.

Ron Darnell, senior vice president, public policy, PNM, provided the committee with an update of PNM's recent activities, including its plans to file a new rate case with the Public Regulation Commission in August. He also provided an update on PNM's efforts with respect to a revised state implementation plan for the San Juan Generating Station (SJGS). Pursuant to rules of the federal Environmental Protection Agency (EPA), the SJGS must reduce emissions in order to reduce haze and improve visibility in the Four Corners area. PNM plans to install selective non-catalytic emissions-reduction technology. PNM's plans would assist with compliance with new carbon regulations proposed by the EPA, while reducing coal capacity by 50 percent, emissions by 50 percent and water usage by 50 percent. A new coal supply contract will save customers $340 million over the next six years.

Mr. Darnell talked about the value to PNM of fuel diversity. He stated that fuel diversity helps to protect consumers from contingencies such as fuel unavailability and fluctuations in prices. He also said that fuel diversity helps PNM to maintain reliability during extreme conditions and provide a greater ability to respond to outages and security threats. Mr. Darnell presented a chart showing the relative percentages of fuel used by PNM. Of PNM's total energy generation mix, 46 percent is composed of coal, 31 percent is composed of nuclear energy, 12 percent is composed of natural gas and 11 percent is composed of renewable energy sources. He indicated that PNM is exploring methods to modernize its power grid, including the possible use of smart meters in place of a net metering system.

Mr. Darnell stated that PNM customers currently spend four times the amount on electric applications than they spend on electric bills. Electric applications include services related to landline and cellular phones, internet access, cable and satellite television and other services.

A discussion between the committee members and Mr. Darnell followed. Committee members commented that the jobs provided by PNM are important contributors to New Mexico's economy. In addition, committee members and Mr. Darnell discussed existing costs associated with net metering and smart metering systems. Mr. Darnell indicated that smart meters would be more effective by sending pricing signals associated with customer use of PNM's power grid, especially in extreme weather conditions. In response to a question from a committee member, Mr. Darnell indicated that PNM is gathering data on the possible benefits of smart metering but that no immediate changes to that system are anticipated. Committee members and Mr. Darnell also discussed possible impacts with respect to developing technologies that could permit some homeowners to live "off the grid".

Committee members raised questions about funding mechanisms with respect to utility regulation and the distribution of an existing mill levy imposed on utilities. They also discussed issues with regard to the funding and composition of the Public Regulation Commission. Committee members also discussed possible attributes of different energy sources, including nuclear, coal and petroleum sources.

Friday, August 14

Report from the State Treasurer

Tim Eichenberg, state treasurer, provided an overview of the operations of the State Treasurer's Office (STO). He introduced several members of his staff, including: Ricky Bejarano, deputy state treasurer; Leo Marquez, chief financial officer; Charmaine Cook, chief investment officer; Edward Gallegos, state cash manager; and Clarence Smith, chief operations officer.

Mr. Gallegos explained the functions of the STO's Cash Management Division. The division is responsible for ensuring that cash balances in the state's custody are efficiently and prudently managed. The division develops regulations pertaining to cash control and monitors the activity and balances of more than 500 state bank accounts; validates deposits and withdrawals; compares fiscal agent balances to the Statewide Human Resources, Accounting and Management Reporting System (SHARE); authorizes requests for depository bank accounts outside of the fiscal agent bank account; and is responsible for compliance with the federal Cash Management Improvement Act of 1990.

Mr. Gallegos also discussed the responsibilities of the STO's Cash Management Division to project the state's cash needs and to determine amounts available for short- and long-term investment. The division must ensure adequate safeguards for money in state time deposits, state fiscal agent accounts and state agency accounts. The division additionally manages collateral levels set by depository institutions and monitors compliance with the State Board of Finance's collateral policy and the state treasurer's investment policy.

Ms. Cook briefly discussed the characteristics of the Local Government Investment Pool, a voluntary investment alternative for local and quasi-governmental entities, which maintains a Standard & Poor's AAAm rating. Investment with the fund provides investing entities with the expertise of the STO's investment managers.

Mr. Marquez described his areas of responsibility, including finance, budgeting and reconciliations, and Mr. Smith described his responsibilities, which include oversight of the day-to-day operations of the Department of Information Technology (DOIT) and human resources management.

Committee members asked about the total number of employees working at the STO. State Treasurer Eichenberg stated that the STO currently has 31 full-time employees.

Committee members inquired about the status of the implementation of SHARE and its impact on the STO. Mr. Bejarano stated that there have been a number of concerns with the implementation of SHARE and suggested that, from the perspective of the STO, strategies with regard to implementation of the system might need significant revision. There are concerns about the reliability of some accounting data contained on the system, and he indicated that because of the STO's concerns, it is seeking to implement a system that would allow it to obtain information on balances separately from the Department of Finance and Administration (DFA). State Treasurer Eichenberg added that $1.9 million has been appropriated to the STO for its own module in SHARE, which will allow the STO to maintain its own information on balances, and to create some separation between the STO's data and the data controlled by the DFA in the primary SHARE system.

Committee members asked about the costs that have been associated with the implementation of SHARE. Mr. Bejarano indicated that initial expenditures for SHARE approximated $20 million, but over the last 10 years, between $80 million and $100 million has been spent on implementation. State Treasurer Eichenberg noted that the STO is currently meeting with officials from the City of Albuquerque, which is in the process of implementing its own treasury module in SHARE. He stated that the STO is studying the city's implementation of the module and hopes to gain insight from the city's experience. The STO is also making inquiries with treasurers from other states about their respective modules.

When asked about the DOIT's planned upgrades to SHARE, Mr. Bejarano stated that the STO is concerned about the upgrades because they do not permit the STO to maintain accounts independently and would not necessarily resolve existing issues with the system. A committee member questioned whether independent modules would be feasible if the purpose of SHARE is to reconcile all of the state's accounts in one system. Committee members also discussed whether it would be feasible for the DFA to find a fiscal year in which the data are most reliable and produce a comprehensive annual financial report for that year and subsequent fiscal years. Some committee members discussed interests in exploring options for a new accounting system.

A committee member questioned whether required chief procurement officer designations for each political subdivision of the state are beneficial to those political subdivisions, especially smaller ones such as mutual domestic water consumer associations. Mr. Bejarano stated that in his opinion, any certification is beneficial because it ensures adequate training and continuing education. However, he expressed that some smaller entities might require flexibility and suggested that some exceptions within a structure of required certification might be beneficial. He suggested that models employed by regional cooperatives could be useful.

In response to a question from a committee member, State Treasurer Eichenberg briefly described his role as a member of the New Mexico Mortgage Finance Authority Board of Directors and as a member of the State Investment Council (SIC).

Film Production Tax Credit — Annual Report and Update

Nick Maniatis, director, New Mexico Film Division, Economic Development Department, presented a number of statistics regarding the production of films in New Mexico during FY 2015. There were 79 productions in New Mexico in FY 2015, and 180 inquiries regarding productions were recorded by the division. The 79 productions in FY 2015 exceeded the annual average of 71 productions. Twenty-five projects had budgets greater than $1 million in FY 2015, exceeding the average of 18 productions of that type in previous years. Of those 25 projects, 11 projects were television projects. Five of those 11 projects were television series. Direct expenditures attributable to television series productions in New Mexico averaged $19 million per series. Mr. Maniatis attributed $286.4 million in direct qualifying expenditures to productions in FY 2015. The New Mexico Film Division recorded 298,000 "worker days" for that fiscal year.

Mr. Maniatis described legislation passed in 2015 pertaining to film tax credit assignability, which includes allowing a film production company to assign the payment of a refundable film production tax credit to a third-party financial institution or another authorized third party. The assignment is permitted only once. These new provisions would assist smaller film production companies and entities in obtaining loans for their projects.

Mr. Maniatis discussed how the New Mexico Film Division has undertaken various initiatives, including efforts to encourage productions to hire veterans and interns attending New Mexico educational institutions. The New Mexico Film Division's pre-employment training program and various outreach efforts promote New Mexico filmmaking and include a filmmakers' showcase, an annual film and media conference and a weekly radio show. The division's efforts to promote film tourism also include the creation of downloadable maps, which pinpoint locations where films in New Mexico were made. The goal of that initiative is to encourage tourists to add one day to their stay in New Mexico to allow time to visit those locations.

In response to a question regarding the state's total tax expenditures on film tax credits each year, Mr. Maniatis indicated that there is a $50 million cap on the amounts of those credits awarded per year. Committee members asked about the New Mexico Film Division's efforts to promote the production of films in areas outside of Albuquerque and Santa Fe. Mr. Maniatis indicated that since there is already high demand for filming in those areas, the division makes an effort to promote other areas throughout New Mexico.

Some committee members discussed the economic benefits attributable to the provision of film production tax credits within certain communities. Committee members also asked about the film tax credits that are provided in New Mexico relative to other states. Mr. Maniatis indicated that besides California and New York, Georgia and Louisiana are the states most competitive with New Mexico in terms of available film tax incentives. Mr. Maniatis indicated that Louisiana's film tax credits have become capped at a certain amount.

A committee member asked how the film industry in New Mexico would be affected by a proposed flat tax at a two percent rate. Mr. Maniatis indicated that the industry would be affected in some manner, but further research would be necessary to assess the impacts.

Capital Outlay Process and Outstanding Projects

Linda Kehoe, principal analyst, Legislative Finance Committee (LFC), provided the committee with an update of the status of outstanding capital outlay funds. As of June 2015, approximately $717.8 million from all funding sources is outstanding for 1,942 projects, excluding 991 projects totaling $293.9 million authorized in the 2015 special session and not including $438 million from supplemental severance tax bonds for public schools. The total includes certain earmarked amounts, including $56.4 million for water projects, $29 million for colonias infrastructure projects, $23.5 million for tribal infrastructure projects and $167 million for 2014 general obligation bonds issued in March 2015.

Ms. Kehoe indicated that since the March 2015 quarterly report, 154 capital projects closed with approximately $70.3 million expended or reverted. Of the outstanding funding sources, the percentage attributable to the general fund accounts for less than one percent, while severance tax bonds account for 58 percent, general obligation bonds account for 31 percent and other state funds account for 10 percent. During 2008 and 2009, the LFC used general fund balances to assist with solvency issues.

Ms. Kehoe presented a chart showing amounts appropriated and expended for capital projects each year. The chart contained information on capital project expenditures as a percentage of appropriations. The percentages ranged from 88 percent expenditures for 2009 to seven percent expenditures for 2014. Ms. Kehoe explained that amounts appropriated for capital projects from 2009 through 2011 were low compared to subsequent years because of solvency issues that existed during those years. She indicated that there were few funds available for local projects during that period.

Ms. Kehoe stated that of the funds authorized from the general fund and severance tax bonds, $128.3 million for state-owned projects and $184.5 million for local projects remain unexpended. Ms. Kehoe presented a table showing expended funds as a percentage of amounts appropriated for 2009 through 2014. The expenditures for state and local projects as a percentage of appropriated amounts might not be comparable because the number of state projects is often significantly lower than the number of local projects.

Ms. Kehoe stated that the LFC tracks appropriations funded for amounts of $1 million or greater. This includes 205 projects funded at an aggregate amount of $1.1 billion. She said that unexpended balances account for 81.1 percent of all unexpended funds.

Ms. Kehoe highlighted a number of major capital projects that have recently been completed, including the following projects:

- phase 2 of the Meadows long-term care facility;
- renovations to the Manuel Lujan, Jr. building;
- the San Juan College School of Energy center;
- the Department of Public Safety's Law Enforcement Academy dormitories;
- Department of Health facility patient health and safety statewide improvements; and
- the Rio Rancho all-inclusive regional park facility.

Ms. Kehoe presented charts containing information on outstanding capital outlay appropriations for local projects in each county. For 2012 through 2015, one of the charts indicated that 83.8 percent of funds appropriated for those projects are still outstanding. Another chart provided information regarding fiscal agents for local projects and information on the progress of those projects.

Ms. Kehoe described the LFC's process for obtaining information on capital project needs. By July 1, every state agency is required to make requests for capital projects for the next legislative session. The LFC conducts site visits to gain an understanding of capital outlay needs throughout the state and receives presentations from state agencies. Certain LFC staff serve as voting members on the Higher Education Department's (HED's) Capital Outlay Review Committee to assist the LFC in obtaining information about critical needs with respect to projects funded through general obligation bonds. While general obligation bond capacity for 2016 is not yet known, it could reach a low of $150 million. Yet, Ms. Kehoe stated, requests for $260 million in higher education projects have been received by the HED's Capital Outlay Review Committee. In previous years, auxiliary projects have not been funded despite their inclusion in a general obligation act. Ms. Kehoe explained that general obligation bonds are serviced by property taxes with the assumption of a flat mill levy.

Ms. Kehoe indicated that in September, the LFC will hold a hearing to obtain an overview of the needs and priorities of various entities. Local governments will also submit capital improvement plans, which provide information on local government capital improvement priorities. Ms. Kehoe stated that local governments are encouraged to obtain matching funds from all possible sources to ensure that enough funding is provided for their projects.

Ms. Kehoe stated that some appropriations for 2013 will be voided because the applicable capital projects have not been certified as ready for funding, and she emphasized the importance of reviewing reversion dates on projects.

Committee members and David Abbey, director, LFC, discussed possible methods to encourage local governments to individually improve tracking of progress on capital projects. A committee member expressed concern about how money set aside for particular capital outlay projects might eventually be appropriated for other purposes and inquired whether there might be a method to minimize the impact on certain projects.

Committee members also discussed the manner in which capital outlay projects are prioritized. A committee member indicated that in some states, legislative budget committees are responsible for such prioritization, but New Mexico has a unique prioritization process. Committee members discussed possible advantages and disadvantages of the process used in the state.

Adjournment

There being no further business before the committee, it adjourned at 12:10 p.m.

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

September 8, 2015
State Capitol, Room 322
Santa Fe

Tuesday, September 8

10:00 a.m.	(1)	**Revenue Forecast** —Demesia Padilla, Secretary, Taxation and Revenue Department (TRD) —Elisa Walker-Moran, Chief Economist, TRD —Tom Clifford, Secretary, Department of Finance and Administration (DFA) —Leila Burrows Kleats, Chief Economist, DFA —Christina Keyes, Economist, Legislative Finance Committee (LFC) —Abraham Sanogo, Economist, LFC
12:00 noon		**Working Lunch Provided**
12:15 p.m.	(2)	**Updated Fiscal Impact Report on the Corporate Income Tax Provisions of House Bill 641 (2013)** —Demesia Padilla, Secretary, TRD —Elisa Walker-Moran, Chief Economist, TRD
1:30 p.m.	(3)	**Income Tax Credit for Preservation of Cultural Property — Overview and Proposed Changes** —Wade Jackson, General Counsel, Economic Development Department (EDD) —Veronica Gonzales, Secretary, Cultural Affairs Department
2:15 p.m.	(4)	**Annual Report — Locomotive Fuel Gross Receipts and Compensating Tax Deductions** —Wade Jackson, General Counsel, EDD
3:00 p.m.		**Adjourn**

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

September 8, 2015
State Capitol, Room 322
Santa Fe

The fourth meeting of the Revenue Stabilization and Tax Policy Committee (RSTP) for the 2015 interim was called to order by Senator Carlos R. Cisneros, chair, on Tuesday, September 8, 2015, at 10:05 a.m. in Room 322 of the State Capitol in Santa Fe.

Present
Sen. Carlos R. Cisneros, Chair
Rep. Jason C. Harper, Vice Chair
Sen. Ted Barela
Sen. Sue Wilson Beffort
Rep. Antonio Maestas
Rep. Rod Montoya
Rep. Debbie A. Rodella
Sen. William E. Sharer
Sen. John Arthur Smith
Rep. James R.J. Strickler
Rep. Jim R. Trujillo
Sen. Peter Wirth

Absent
Rep. David M. Gallegos
Rep. Tim D. Lewis
Sen. Mark Moores
Sen. George K. Munoz
Sen. Clemente Sanchez
Rep. Carl Trujillo

Designees
Rep. Sharon Clahchischilliage
Sen. Lee S. Cotter
Rep. Randal S. Crowder
Rep. Bill McCamley
Sen. Nancy Rodriguez

Rep. David E. Adkins
Sen. William F. Burt
Sen. Jacob R. Candelaria
Rep. Brian Egolf
Rep. Miguel P. Garcia
Rep. Stephanie Garcia Richard
Rep. Bealquin Bill Gomez
Sen. Stuart Ingle
Rep. Conrad James
Sen. Gay G. Kernan
Rep. Stephanie Maez
Rep. Javier Martinez
Rep. Tomás E. Salazar
Sen. John M. Sapien
Rep. Jeff Steinborn
Rep. James G. Townsend
Sen. Pat Woods

Staff
Pam Stokes, Staff Attorney, Legislative Council Service (LCS)
Amy Chavez-Romero, Assistant Director for Drafting Services, LCS
Rebecca Griego, Records Officer, 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, September 8

Revenue Forecast

Demesia Padilla, secretary of taxation and revenue, Elisa Walker-Moran, chief economist, Taxation and Revenue Department (TRD), Tom Clifford, secretary of finance and administration, Leila Kleats, chief economist, Department of Finance and Administration (DFA), and Christina Keyes, economist, Legislative Finance Committee (LFC), gave updates as follows on the fiscal year (FY) 2015 revenue forecast. The forecast was made by the Consensus Revenue Estimating Group (CREG), which consists of economists from the TRD, DFA, LFC and Department of Transportation.

TRD report. Secretary Padilla prefaced the TRD presentation by noting that the CREG's forecast has not changed since the group reported on it to the LFC in Taos. She said that revenue associated with the oil and gas industry has been revised downward since February, but gross receipts tax (GRT) revenue is showing strength.

Secretary Padilla highlighted aspects of the TRD's handout, including: sources of general fund revenue; changes to the prior forecast for revenue from those sources, such as the notable increases in personal income tax (PIT) revenues; the stable growth in GRT revenues; the erratic changes in monthly GRT revenues; the consistency in sector-specific sources' proportion of GRT revenues; and the relative inconsistency, but overall growth, in corporate income tax (CIT) revenues. Secretary Padilla discussed a TRD initiative to implement a new, ongoing program to close the gap between taxes owed and taxes paid. It identifies past-due tax liabilities and alerts those who owe taxes of those liabilities. The department, she said, might need an additional appropriation for the program's continuance.

Secretary Padilla identified and elaborated on some salient factors that could affect the forecast, including: the high-wage jobs tax credit; gaming compacts; and unclaimed property. Claims for the credit, for which the TRD strives for consistency in approach, are tapering off. Many cases associated with the credit have been settled. Still, the TRD will pursue in court those cases on which it has a strong stance. Concerning gaming compacts, the establishment by the

Pueblo of Jemez of a casino near Anthony would increase general fund revenues. Lastly, the department is considering promoting legislation that would allow the state to auction off unclaimed property. Currently, it must be held in perpetuity until claimed.

DFA report. Secretary Clifford commented that, though the forecast brings some good news, potential developments in the oil and gas industry and in the stock market cause concern. Overall, the budget is healthy and stable. Despite the state's heavy fiscal reliance on the volatile oil and gas sector and the heavy blow dealt the state by federal sequestration and budget cuts, the state has sustainable growth. It has managed its budget well without raising taxes or cutting budgets mid-year and has maintained a high bond rating.

Ms. Kleats highlighted aspects of the forecast, including the following:

- the United States' economic outlook — the second-quarter gross domestic product (GDP) exceeded expectations; job growth is strong and broad-based; household debt is at an all-time low; and the dollar has appreciated;
- employment in New Mexico — growth, particularly in the education and health care sectors, is pronounced but tempered by some job losses, especially in the mining sector;
- the GRT base — the construction industry has had the highest annual percentage change, while the oil and gas and mining industries have had the lowest;
- the energy market outlook — oil prices are falling because of less Chinese demand but will be buoyed in time by market forces; and consumer and business spending will increase;
- the New Mexico oil and gas outlook — despite oil production having hit a record high in FY 2015, the CREG took a conservative stance in forecasting future production; the group forecasts decreases in oil and gas prices and gas production;
- the general fund revenue outlook — recurring revenue reached a record high in FY 2015; FY 2016 growth is forecast at .3%; and long-term growth is forecast at 4.5%, still below the 5.2% historic average; and
- a general fund overview — FY 2015 balances are at the 10% target level; and FY 2017 "new money" is forecast at $293 million.

Secretary Clifford continued the presentation by highlighting the administration's views on the forecast and certain fiscal policy matters. The forecast contains uncertainty that could result in increased *or* decreased revenues; overall, the balance of risks is prudent. Despite expecting $293 million in new money to materialize, it is also expected that state agency budgets will be tight, particularly considering potential liabilities related to public education funding and Medicaid. Given this, the administration wishes to focus the new spending on measures for economic development, education reform and public safety. Since the state ranks in the middle-to-upper range in comparison with other states in the region for public employee compensation, the administration will not pursue across-the-board pay increases but, rather, those for positions for which recruitment and retention are more difficult. Concerning tax policy, the administration will focus on several economic development strategies, on energy development and on improving highway funding. Concerning capital outlay, the administration wishes to continue to reform the process and notes that Audit Act compliance has improved dramatically. It also notes that a court ruling on prevailing wages for public construction projects, along with other factors, will dilute the state's spending power in that area. Lastly, concerning financial reporting, the second phase of the cash reconciliation process is under way. State agencies' accounts have been reconciled, and the SHARE system has been stabilized.

LFC report. Ms. Keyes highlighted the following aspects of the LFC-produced handout.

- The estimate for FY 2015 revenue is $6.2 billion, up by $112 million from the February estimate of that figure.
- Against a backdrop of nationwide post-recession employment recovery, New Mexico employment is 3% below its pre-recession peak. Nevertheless, the state is headed toward recovery.
- The Bureau of Business and Economic Research forecasts the state's job growth rate at 1.4% for each of the years from 2015 through 2017. The state then will return to its pre-recession employment level. That growth will continue.
- The greatest employment gains in the state are in the health care sector, followed by the professional and technical sector and, third, the hospitality and food sector.
- Second-quarter GDP growth was less robust than expected. The potential of the Federal Reserve System to adjust its monetary policy poses a risk to GDP growth.
- By virtue of improved production methods, the volume of oil produced in New Mexico in FY 2015 exceeded the record for that measure set in 1969. The prices in energy markets continue to fall.
- Changes in the energy sector caused a decline in FY 2015 PIT revenue, but PIT revenues are expected to grow in the two fiscal years after that.
- Due in part to the TRD's efforts to improve taxpayer compliance, GRT revenue increased in FY 2015 from the previous year.
- The revenue risk associated with oil prices was revised since that information was presented to the LFC at its meeting in Taos.

<u>Questions and Discussion</u>

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

Program to improve tax compliance. A member requested a comparison of the tax amnesty program (proposed in the most recent regular legislative session) with the TRD's current efforts to improve tax compliance. Secretary Padilla agreed to present information about the TRD's active program at a future meeting.

Public employee compensation. A member requested of Secretary Clifford a ranking of New Mexico among states on compensation for certain types of public employees, including teachers, public safety officers and higher education personnel. Secretary Clifford said that he would send staff a corrected version of page 15 of the DFA handout; that page's second table erroneously lists Texas twice.

SHARE system. Secretary Clifford indicated that money is earmarked for the SHARE system upgrade, which will take approximately 18 months to complete. The change will require training for agency staff.

Prevailing wage ruling. Several members expressed concern about the effects of the recent court ruling on the prevailing wage for public construction projects, especially public school construction. Secretary Clifford indicated that the degree of resulting dilution of the state's buying power will vary depending on the project type and union relationship; certain agencies are in the process of projecting the ruling's fiscal implications. He added that the administration is concerned about the issue and is interested in exploring responses to it.

Capital outlay; system reform. Some members stressed the importance of cooperation for more responsible, effective capital outlay spending and the need to finish — or remove the authorization for — idle projects. Secretary Clifford responded that the reasons for projects' standstill vary widely and are sometimes complicated. Members requested reports on: 1) unspent capital outlay appropriations by year for the years 2013 through 2015; 2) each quarter going forward, how much has been spent on, and the progress of, authorized projects; 3) the outstanding balance on and progress of state-sponsored projects; and 4) the projects that have been stalled because of audit noncompliance and detailed reasons for other projects' languishment. In response, a member indicated that the LFC has information on unexpended project balances.

Fiscal policy of the administration. A member argued that public spending, more so than reliance on private-sector growth, has proved effective at lifting societies out of economic slowdowns; an example is the nation's recovery from the Great Depression. The member questioned the wisdom of the administration's approach to fiscal policy, which includes efforts to shrink government spending and maintain high reserve levels. Secretary Clifford noted, in the case of the recovery from the Great Depression, the distinction between the federal government's ability to deficit spend and the state's requirement to balance its budget. The member cited as economic boons the Medicaid expansion, full public-sector employment and public works projects.

Another member commented on the need for balance and moderation in taxation and regulation. The member contended that New Mexico, which could become more economically robust, has too many tax incentives; further, if the state adopted a tax policy that treated taxpayers more uniformly, businesses would still want to do business here. As things stand, the state's overregulation harms small business viability and development.

Renewable energy development. A member expressed interest in extending the renewable energy production tax credit, remarking that businesses want renewable energy options.

Another member commented on the downsides of the increasing preference for development in renewable, rather than traditional-source, energy. The member's points related to that increased preference included: 1) well-paying jobs are being lost, and jobs in the renewable energy field pay less; 2) companies are going out of business; 3) the state should not exceed minimum compliance with federal emissions standards; 4) preserving people's livelihoods is a concern more important and immediate than eliminating the sight pollution associated with traditional-source energy production; 5) reliance on renewable energies poses greater risk of blackouts and brownouts; and 6) energy affordability is important. Secretary Clifford responded by adding that the state relies heavily for its revenue on the oil and gas industry. Policymakers, therefore, should be prudent when it comes to regulation, the economy and state spending.

Revenue forecast. A member expressed skepticism about the CREG's oil price projections, saying that some in the energy industry see them as too optimistic. The member added that it would be preferable for forecasters to be initially more conservative and for revised forecasts to report rises in new-money projections — rather than drops in that measure, as typically reported. Another member remarked on the inherent difficulty in accurately projecting future revenue.

Revenue stabilization. A member commented on the dwindling ability of the oil and gas sector to compensate when the state underestimates the costs of its enacted measures. The state should, therefore, diversify its revenue streams and more accurately estimate the costs of those measures. It should also strive for predictability and stability in its revenues.

Unemployment insurance. A member brought to the committee's attention the rising costs of unemployment insurance to employers, saying that many of the state's industries, such as skiing, farming and film, hire seasonal workers whose unemployment claims contribute substantially to the cost increases. The state, therefore, should concentrate on promoting industries associated with year-round employment.

Updated Fiscal Impact Report on CIT Provisions of House Bill (HB) 641 (2013)

Secretary Padilla, Ms. Walker-Moran and Frank Crociata, director of tax policy, TRD, gave an update as follows on the TRD's revised estimates, originally made in 2013, of the fiscal impact of HB 641's CIT provisions. Secretary Padilla noted that HB 641 contained several components, such as those related to the film credit and hold harmless provisions, outside of the presentation's focus. She also stressed that the bill's enactment made New Mexico more competitive with other states in the region and, according to an Ernst and Young study of states' business friendliness, propelled New Mexico to the top in manufacturing.

CIT revenue forecast for FY 2015. For FY 2015, the CIT was expected to draw $255 million, or 4% of all general fund revenues, into that fund. This figure represents a decline, possibly due to businesses' net operating losses and renewable energy credits. The CIT generally produces volatile revenue streams whose average for the last six years has been about 4% of annual inflows to the general fund. That proportion is approximately equivalent to or lower than the corresponding measure for neighboring states.

Effects of HB 641. The changes effected by HB 641 affect three of the CIT's major components: 1) the tax rate; 2) apportionment for multistate businesses; and 3) the filing method for multistate businesses.

Tax rate change; fiscal impact. A phased-in decrease in the tax rate on income of $500,000 or more began on January 1, 2014. By the end of 2018, taxpayers will pay 5.9% on that income. When fully phased in, the rate change will affect about half of all CIT taxpayers, the higher-income tier, who generate the bulk of the tax's revenue.

The TRD has revised its original CIT rate reduction analysis, which was based on only taxable year (TY) 2010 data. The revision is based on data from TY 2010 through TY 2012, and it includes projections for FY 2018 through FY 2020. For each of the fiscal years originally measured, the revision forecasts lower CIT revenues.

Apportionment change; fiscal impact. Manufacturers may elect to apportion their income using a formula that, over time, relies increasingly on the sales (versus property and payroll) factor. The sales factor weight will incrementally increase to where, by the end of 2018, manufacturer taxpayers may use a single-sales-factor formula for calculating the tax owed to New Mexico. According to reporting by taxpayers of their North American Industry Classification System (NAICS) codes, manufacturer businesses constitute approximately 10% of CIT filers. That taxpayer set generates a relatively high proportion of CIT revenue.

To calculate the single-sales-factor phase-in's projected fiscal impact, the TRD: 1) based its analysis on two additional years' data and on the most recent forecast for CIT revenue; 2) considered that taxpayers whose reported NAICS code suggests an oblique relationship to manufacturing might also qualify for the advantageous apportionment formulas; and 3) in contrast to the original fiscal impact analysis, assumed that all taxpayers eligible to calculate their tax using the advantageous formulas would use them. The revisions to the forecast of the apportionment change's fiscal impact are minor. Because of the relatively high prevalence of manufacturer-business taxpayers, the single-sales-factor phase-in will depress CIT revenue levels. However, the TRD believes that the measure was critical for helping New Mexico remain competitive among states, particularly other southwestern states.

Filing method change; fiscal impact. Beginning in 2014, combined reporting became mandatory for certain retailers that sell goods in a facility bigger than 30,000 square feet. The fiscal impact of this measure is difficult to estimate. In making its calculation, the TRD assumed that all retailers (who represent approximately 6% to 7% of CIT filers and who generate approximately 5% of CIT revenues) meet the criteria for combined reporting. Further, the TRD reviewed several studies, which suggested a wide range of outcomes. The TRD's revised estimate of this measure's effects resembles its original estimate. Its effects are uncertain, however, in part because of the potential for businesses to apportion their losses to New Mexico. In time, the TRD will better know and predict the measure's fiscal impact.

Questions and Discussion

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

Effectiveness of rate reduction and single-sales option. A member made the following remarks: HB 641 was promoted as a job creator, but there is no strong evidence that its pro-business measures have improved the economy or created jobs; rather, New Mexico still falls behind other states in those areas. And given that the almost $70 million annual loss from the CIT rate reduction will result in less money available to pay for other programs, it is questionable whether the initiative was in the state's best interest. In the future, before enacting another initiative based on a supply-side, trickle-down theory, policymakers should be confident that the initiative will have its intended result.

Other members expressed support for the business-friendly measures, arguing that they portray the state as a good place to do business. Further, they have produced concrete results: New Mexico was recognized recently as the top state in the region for manufacturer businesses. One member contended that, to be truly competitive with other states, the top CIT rate should be 4.9%. In response, a member suggested that New Mexico need not have the lowest rate, but rather it should avoid being an outlier among states. Several members agreed that eliminating the CIT would be inadvisable because of the subsequent difficulty of reinstating it, should its reinstatement be desired. Lastly, a member remarked that the rate reduction tempers the relative advantage of businesses that pay tax on business income through the PIT, whose top rate is lower than that of the CIT.

Secretary Padilla responded with the following remarks: the TRD's incapacity to do dynamic scoring prevents it from estimating how many jobs have been created as a result of the passage of HB 641, but it is probable that those measures spurred what the secretary reported is recent growth in the manufacturing industry. Moreover, the projected losses in CIT revenues could be attributable to factors unrelated to HB 641's enactment. Meanwhile, the department is striving to adjust its system so that taxpayers must report any change in their NAICS code; that change would allow the department to more accurately prepare fiscal impact reports. A member requested updates on those efforts.

Other aspects of HB 641. A member remarked on the fiscal gap between HB 641's hold harmless measure and the bill's pro-business measures, adding that the hold harmless measure creates financial strain for many local governments and allows increases in certain jurisdictions' GRT rates. Another member countered that even more broad-reaching than that measure are the initial hold harmless provision's statewide effects; the state's scaling back of that provision was, therefore, justifiable. Other members remarked that: 1) the hold harmless measure was not intended to pay for losses from the pro-business CIT measures; rather, the bill contained a series of trade-offs and measures, including some that saved the film industry; 2) imposition of the hold harmless GRT has yielded an unintended windfall for some local governments; and 3) higher GRT rates are problematic. A member requested a fiscal impact report on the HB 641 measure that tightened the definition of "manufacturing consumables".

In response to members' comments, Secretary Padilla pointed out that HB 641's hold harmless measure does not affect smaller local governments and that larger local governments, which are affected, have more opportunity for growth. She agreed to send to staff a report on the hold harmless measure's effects on local governments.

Income Tax Credit for Preservation of Cultural Property — Overview and Proposed Changes

Veronica Gonzales, secretary of cultural affairs, and Wade Jackson, general counsel, Economic Development Department (EDD), presented as follows on the existing preservation of cultural property income tax credit and on proposed changes to it. Secretary Gonzales opened by highlighting the credit's benefits and its potential to enhance cultural and historic preservation and economic development.

Existing credit. Mr. Jackson reviewed the existing tax credit law. At present, a taxpayer may take a PIT or CIT credit for half of the cost, up to $25,000, of the restoration of one or more cultural properties on the historic register. If that property is in an arts and cultural district, the cap is $50,000. A project must comport with preservation goals and receive approval from the Cultural Properties Review Committee to qualify for the credit.

Proposed changes and results. Mr. Jackson continued by reviewing companion bills from the last regular session to amend the tax credit. In addition to imposing an annual aggregate-credit cap of $1.5 million on the credit, HB 583 (2015) and Senate Bill 414 (2015) would have: 1) made properties located in MainStreet districts and frontier communities eligible for the enhanced credit; 2) increased the per-taxpayer credit limit; and 3) made the credit refundable. The bills' first key measure would have boosted in-state and out-of-state tourism and enriched property preservation. The bills' second key measure would have introduced a distinction between residential and commercial properties and assigned new caps to certain types of properties and projects. And the bills' third key measure would have improved the restoration incentive for property owners who are "land rich but cash poor", since those taxpayers tend to have lower tax liabilities. The third measure also would have provided for an income stream while a project is in progress.

Additional points. Mr. Jackson said that with the changes in place: 1) construction activity would increase; 2) efforts to enhance preservation and those to enhance development would be less at odds; and 3) the state would improve its ability to help retail businesses.

Enacting the changes is a priority of the administration. The EDD is soliciting comments and concerns about the tax credit so that they can be addressed before the committee considers the proposal for endorsement. Jeff Pappas, state historic preservation officer and director, Historic Preservation Division, Cultural Affairs Department, who was in the audience, added the following: 1) New Mexico was the first state to enact a historic properties tax credit program — now, 34 states have one; 2) many of those other states' credits are refundable; and 3) the proposed changes to New Mexico's credit would enhance the incentive for restoration of cultural icons in rural and MainStreet communities.

Annual Report — Locomotive Fuel Gross Receipts and Compensating Tax Deductions

Mr. Jackson reported as follows on the deductions from gross receipts and the compensating tax for sales of locomotive fuel.

Scope of the deductions. In the case of the GRT, the deduction is offered on the sale of fuel to a common carrier to be loaded or used in a locomotive engine. In the case of the compensating tax, the deduction is offered on the value of fuel to be loaded or used by a common carrier in a locomotive engine. For both, certain parameters related to capital investment by the common carrier apply.

Use and results of the deductions. Two railroad companies, Union Pacific and BNSF Railway, have qualified for the deductions. Union Pacific's capital investment was $350 million in an intermodal facility. The investment created 1,375 temporary jobs, 436 permanent jobs and more jobs indirectly. Its deduction is worth $15.9 million. BNSF, meanwhile, added 38 jobs in FY 2015 and 86 since the deduction began. BNSF employs 1,211 employees in six locations in the state. It has bought almost $56 million worth of fuel to take advantage of the deduction.

Adjournment

There being no further business before the committee, the RSTP adjourned at 2:30 p.m.

Revised: October 5, 2015

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

October 13-14, 2015
State Capitol, Room 322
Santa Fe

Tuesday, October 13

10:00 a.m. (1) **National Perspectives on the Gross Receipts Tax**
—Matthew Gardner, Executive Director, Institute on Taxation and Economic Policy
—Joseph D. Henchman, Vice President of Legal and State Projects, Tax Foundation

12:00 noon **Lunch**

1:15 p.m. (2) **Local Option Gross Receipts Tax Distribution Adjustments — Status After the New Mexico Supreme Court's Action in *City of Eunice v. State of New Mexico Taxation and Revenue Department***
—Brad Odell, Chief Legal Counsel, Taxation and Revenue Department (TRD)
—Frank Crociata, Director of Tax Policy, TRD
—Bill Fulginiti, Executive Director, New Mexico Municipal League

2:15 p.m. (3) **New Mexico Municipal League Priorities**
—Bill Fulginiti, Executive Director, New Mexico Municipal League

3:15 p.m. (4) **Unemployment Insurance Benefits and Employer Costs**
—Celina Bussey, Secretary, Workforce Solutions Department

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

Wednesday, October 14

9:00 a.m. (5) **Update on the Growth of the Craft Beer Industry in New Mexico**
—Christopher Goblet, Director, New Mexico Brewers Guild (NMBG)
—Berkeley Merchant, General Manager, Abbey Brewing; Board Member, NMBG

9:30 a.m.	(6)	**Determining In-State Sales of Intangibles and Services** —Richard Anklam, President and Executive Director, New Mexico Tax Research Institute
10:00 a.m.	(7)	**Update on County Gross Receipts Taxes** —Steve Kopelman, Executive Director, New Mexico Association of Counties
11:30 a.m.		**Adjourn**

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

October 13-14, 2015
State Capitol, Room 322
Santa Fe

The fifth meeting of the Revenue Stabilization and Tax Policy Committee was called to order by Senator Carlos R. Cisneros, chair, on Tuesday, October 13, 2015, at 10:05 a.m. in Room 322 of the State Capitol in Santa Fe.

Present
Sen. Carlos R. Cisneros, Chair
Rep. Jason C. Harper, Vice Chair
Sen. Ted Barela
Rep. Antonio Maestas
Rep. Rod Montoya
Sen. Mark Moores
Sen. George K. Munoz (10/13)
Rep. Debbie A. Rodella (10/13)
Sen. Clemente Sanchez (10/13)
Sen. William E. Sharer
Sen. John Arthur Smith
Rep. James R.J. Strickler
Rep. Carl Trujillo
Rep. Jim R. Trujillo
Sen. Peter Wirth

Absent
Sen. Sue Wilson Beffort
Rep. David M. Gallegos
Rep. Tim D. Lewis

Designees
Sen. William F. Burt
Rep. Conrad James
Rep. Bill McCamley
Sen. Nancy Rodriguez (10/14)

Rep. David E. Adkins
Sen. Jacob R. Candelaria
Rep. Sharon Clahchischilliage
Sen. Lee S. Cotter
Rep. Randal S. Crowder
Rep. Brian Egolf
Rep. Miguel P. Garcia
Rep. Stephanie Garcia Richard
Rep. Bealquin Bill Gomez
Sen. Stuart Ingle
Sen. Gay G. Kernan
Rep. Stephanie Maez

Rep. Javier Martínez
Rep. Tomás E. Salazar
Sen. John M. Sapien
Rep. Jeff Steinborn
Rep. James G. Townsend
Sen. Pat Woods

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

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

Guests
The guest list is in the meeting file.

Handouts
Handouts and other written testimony are in the meeting file.

Tuesday, October 13

National Perspectives on the Gross Receipts Tax
Matthew Gardner, executive director, Institution on Taxation and Economic Policy (ITEP), explained that the ITEP is a nonprofit think tank that analyzes tax policy issues and is based in Washington, D.C. The ITEP has developed a microsimulation model that uses a large sample of tax returns and other data to examine taxes paid under current laws and various proposed alternatives to current laws. This model has the capacity to examine various data from all 50 states.

Mr. Gardner discussed a number of tax principles that might be considered when examining options for tax reform. He stated adequacy, sustainability, simplicity or transparency and competitiveness as principles that should be considered in addition to fairness. He also discussed the principle of neutrality, which requires that tax systems refrain from choosing winners and losers.

Mr. Gardner presented a chart showing the state and local taxes paid, as a percentage of income, by taxpayers within various income levels in New Mexico. He pointed out that the chart shows that low- and middle-income taxpayers pay higher percentages of their incomes on taxes than upper-income taxpayers. He noted that New Mexico's tax structure ranks as the seventeenth most regressive system in the country and that the regressive pattern is the result of how personal income taxes, corporate income taxes, sales taxes and excise taxes are imposed and paid. States with the most regressive tax structures typically do not rely heavily on income taxes; rather, those states rely more heavily on sales, excise and gross receipts taxes.

With respect to the imposition of broad-based consumption taxes, Mr. Gardner said that 45 states, including New Mexico, have a broad-based consumption tax that applies to most retail consumption, while exempting most business inputs. He indicated that a few states, including Delaware and Washington, have taxes that are considered as gross receipts taxes, rather than traditional sales taxes. He mentioned that New Mexico is sometimes considered as part of this list, but New Mexico is most often considered to have a hybrid sales and gross receipts tax system.

Some possible issues associated with consumption taxes are that they are regressive, and low-income credits intended to offset those taxes often do not provide a complete remedy. Also, consumption taxes often do not provide for full taxation of consumer sales or adequately exempt business inputs. New Mexico, unlike other states, has taken steps to provide for full taxation of consumer sales by taxing services.

Mr. Gardner stated that in theory, an ideal gross receipts tax would apply a low tax rate to the value of business receipts from the sale of goods and services and no deductions would be provided for costs incurred by sellers. A low tax rate would be an important component of such a system because of pyramiding concerns. However, in practice, some states apply different rates to different activities, while others exempt some business inputs or impose high tax rates. Yet, Mr. Gardner noted that most traditional sales taxes imposed in other states also fall short of an ideal system.

Options for tax reform could include providing for a structure that is more similar to a pure gross receipts tax or a pure sales tax structure. Under either approach, it must be determined whether tax reform should, on its own, raise new revenue or be revenue-neutral. Impacts on local governments and possible changes to low-income tax credits should also be considered.

Mr. Gardner stated that some states are considering implementing gross receipts taxes as a replacement for corporate taxes. For example, Ohio repealed its corporate income tax and replaced it with a commercial activity tax. Other states, such as Delaware, have implemented a gross receipts tax as an alternative to a sales tax.

Joseph D. Henchman, vice president of legal and state projects, Tax Foundation, commended the committee members for exploring the topic of tax reform and mentioned that a recent survey of businesses nationwide indicated that taxes are the main factor that businesses consider when locating to various states. Some states, such as North Carolina and New York, have recently implemented major tax reforms, and many other states are contemplating how their tax systems fit into a competitive environment.

Mr. Henchman stated that nationally, there is not a consensus on whether a gross receipts tax constitutes a business tax or a consumption tax. In Ohio, the gross receipts tax is based on a percentage of the amounts collected by businesses. In New Mexico, the gross receipts tax is based on business activity, and a percentage of business sales is taxed. New Mexico's gross receipts tax closely resembles a sales tax, in part, because of its broad base. He contrasted New Mexico's gross receipts tax with Ohio's gross receipts tax, which he indicated operates more like a business tax.

Mr. Henchman also discussed the tax structures and contemplated reforms of various states. Texas recently reduced its corporate income tax rate, while Washington is contemplating whether to base its tax structure on a gross receipts tax or an income tax. Nevada recently enacted a modified gross receipts tax, which provides for varying rates for different industries.

Mr. Henchman said that an ideal tax base is one that includes a tax on all final purchases of goods and services, but does not include a tax on business inputs. He said there are no states that have achieved this ideal. All states tax business inputs or exempt from taxation some elements of final purchases of goods and services. He mentioned that New Mexico provides a deduction on sales of food from gross receipts, while other states exempt transactions on clothing or prescription drugs. While there might be policy reasons for such deductions or exemptions, they depart from a traditional tax base.

Elaborating on the characteristics of New Mexico's gross receipts tax, Mr. Henchman said that a number of business inputs are taxed, while consumption is exempted at various levels. As was mentioned by Mr. Gardner, Mr. Henchman explained that New Mexico may be ahead of other states in that it taxes services, broadening the base of the tax. Since the national economy is becoming more service-oriented, other states are examining the possibility of imposing a tax on services, as well as goods.

In regard to tax reform, Mr. Henchman suggested that any strategy should first focus on what objective is sought to be achieved. Tax principles such as transparency, stability and fairness could provide some guidance in crafting tax reform strategies.

Mr. Henchman discussed a recent study performed by the Tax Foundation that compares the tax systems of each state through the viewpoint of hypothetical businesses in seven different industry sectors. The study showed that New Mexico falls within the average of taxes imposed on businesses. When considering tax reform options, it might be useful to consider whether it is most prudent for New Mexico to seek to attract all businesses or certain businesses that fit New Mexico's economic profile. He suggested that the state's strengths and shortcomings should be considered in an evaluation of its tax system.

Questions and comments from the committee members followed. A committee member discussed possible strategies to reform the state's gross receipts tax system, including the imposition of a broad-based gross receipts tax with a low rate and an examination of existing exemptions, deductions and credits. The committee member mentioned that it might be a challenge to determine whether such reform might yield the revenue necessary to provide for a balanced budget.

Another committee member highlighted a number of tax advantages available in New Mexico relative to other states, including that New Mexico has the eighth-lowest property tax rate in the country, has a low corporate income tax rate and a competitive personal income tax rate. The committee member expressed a desire to make the gross receipts tax system more transparent.

In response to a question from a committee member, Mr. Gardner noted that New Mexico's income tax structure might have a relatively greater impact on taxpayers with lower incomes even if many corporate income taxpayers are located out of state. He said that on some level, many corporate income taxes might eventually be shifted to wage earners. He also said that property owners might eventually shift the burden of some property taxes to property renters. In response to a question from a committee member, Mr. Gardner stated that a chart showing the overall tax incidence of all New Mexico's major tax programs could be produced.

A committee member asked how gross receipts deductions for food and medical services might be viewed in terms of certain principles such as tax fairness or how those deductions would be viewed relative to a system that includes a pure sales tax. In response, Mr. Henchman stated that some states provide for tax exemptions for unprepared food, but impose taxes on transactions involving prepared food. While some of those states might have meant to provide tax relief to low-income individuals, the taxation of prepared food still had an effect on those individuals. Other states have adopted more targeted programs where rebates are provided to individuals with incomes below certain levels. Mr. Gardner said that states have not yet expanded tax rebates for low-income individuals in a manner that completely offsets the impact of taxes on groceries. Trends show that states are increasingly exempting transactions on groceries from taxation, but taxes on other items might increase.

In response to a question from a committee member about what might constitute a pure sales tax, it was Mr. Henchman's opinion that an ideal tax base would include minimized business input taxes and continued taxation of services. Tax expenditure reports illustrate that what states do not tax can have as much of an impact on policy as what is taxed. For example, in Nebraska, there were efforts to eliminate all tax expenditures, and most of those expenditures involved business inputs in the agricultural industry. He said there are some deductions, credits or exemptions that address structural issues and might be enacted to mitigate pyramiding or eliminate taxation on certain transactions for constitutional reasons. Some tax expenditures involve economic development incentives that are intended to attract certain industries, and some involve policy initiatives and might include deductions for transactions on groceries or other transactions.

A committee member asked how other states approach taxation of donations to or transactions by nonprofit organizations. Mr. Henchman stated that some states provide exemptions or deductions for nonprofit organizations based upon whether those transactions are essential to the missions of those organizations, but other states do not.

A committee member asked for clarification of the difference between a pure gross receipts tax and a pure sales tax. Mr. Henchman explained that a pure gross receipts tax provides for an imposition of a uniform tax rate on all transactions, and pyramiding is a characteristic of that type of system. A pure sales tax includes a tax on all final purchases of goods and services, without the imposition of a tax on business inputs. In response to another question, Mr. Henchman stated that the incidence of the sales tax does not necessarily determine whether the tax constitutes a pure sales tax or a pure gross receipts tax since, ultimately, practical tax burdens are shifted by businesses to consumers, by employers to employees and by corporations to shareholders. New Mexico's tax system is a hybrid between a gross receipts tax and a sales tax system, but has more of the characteristics of a sales tax system due to the deductions to address pyramiding.

A committee member asked how a tax system could be fashioned to provide for adequate revenue while encouraging economic development. Mr. Gardner responded that while there might be various conflicting objectives within state tax systems, states can analyze tax reforms using the basic principles that underlie various tax structures and study existing distortions in their tax structures. He also said that states can use tax expenditure reports to examine why certain tax incentives are included in their tax codes and whether those incentives help eliminate pyramiding or achieve some desirable social objective. He added that states should take into account their own unique features when considering options for tax reform.

A committee member expressed concerns with New Mexico's existing tax structure and that some of the state's tax laws do not promote fairness or simplicity. He said the state needs a tax system that better fosters economic development, while promoting fairness and providing revenue neutrality. The committee member indicated that a broad-based gross receipts tax with a low rate could include a pyramiding aspect but indicated that a low rate could mitigate any impacts on business inputs. The committee member also mentioned that a simpler tax system could encourage better compliance with state tax laws.

Mr. Gardner responded that if a low rate is achieved, political decisions can still enter into a tax system. In that case, there might be some deductions or exemptions that would continue to exist, and it might be necessary to examine the effects on existing tax rates. Mr. Henchman added that while a pure gross receipts tax might have a lower rate than other taxes, its effective rate might be higher than that of other taxes as a result of pyramiding. Some industries would be more impacted than others, but vertical integration of industries could help mitigate the impact. He also said that some taxes provide a greater impact on economic growth than others. For instance, property taxes have the lowest impacts on economic growth, while taxes with high effective rates might have the most significant effects.

A committee member asked what types of strategies might mitigate the impact of a broader, flatter gross receipts tax on low-income individuals. Mr. Gardner suggested that increasing the impact of mechanisms such as the low-income comprehensive tax rebate might achieve that goal. He indicated that some states, such as Vermont, have explored the possibility of providing "pre-bates", instead of rebates, to offset certain tax liabilities.

A committee member asked whether other states have benefited from having a number of exemptions or deductions in their tax codes for varying purposes. Mr. Henchman responded that in the 1970s and 1990s, Michigan used some targeted tax incentives to benefit the automotive industry, but eventually those incentives became less effective and Michigan implemented a more broad-based tax. Mr. Gardner added that some states have become susceptible to providing tax incentives for various reasons, and it is possible for large numbers of incentives to drive tax rates up and narrow the tax base.

A committee member asked whether there might be a mechanism to tax internet sales transactions in the future. Mr. Henchman explained that federal laws would need to be changed to permit states to address this issue. Another committee member asked if there had been any lessons learned from successful tax reform attempts. Mr. Gardner stated that the most successful reforms have been viewed as principled, fair and even-handed.

A committee member noted that New Mexico's population is declining and New Mexico's rate of recovery after the recession lags behind the recovery rates in the rest of the country. The committee member noted that a study of New Mexico's tax system might provide some insight on possible reforms.

A committee member expressed concern about the ability to raise the necessary revenues while trying to reduce tax burdens. Mr. Gardner responded that states must consider spending levels when reducing taxes.

Committee members, Mr. Gardner and Mr. Henchman discussed the importance of the concept of fairness in tax reform efforts and how perceptions of tax fairness can widely vary. A committee member commented that certain circumstances, such as a changing economy, can motivate tax reform. The committee member opined that a competitive, adequate and stable tax system should be a goal and that without stability and adequacy, underground economies could emerge.

Local Option Gross Receipts Tax Distribution Adjustments — Status After the New Mexico Supreme Court's Action in *City of Eunice v. State of New Mexico Taxation and Revenue Department*

Demesia Padilla, secretary, Taxation and Revenue Department (TRD), provided the committee with an update on the status of local option gross receipts tax distribution adjustments. She explained that the City of Eunice filed a lawsuit against the TRD as the result of negative distributions of local option gross receipts taxes for which the TRD sought collection.

Negative distributions might occur when taxpayers request refunds of local gross receipts taxes already distributed to local governments. The New Mexico Court of Appeals upheld a district court decision to limit the TRD's recoupment of payments of taxes that were distributed during the current year and previous year. The TRD filed a petition for a writ of certiorari with the New Mexico Supreme Court. The petition was initially denied, but then the court granted a motion for reconsideration. Secretary Padilla said the New Mexico Supreme Court subsequently declined to make a decision on that matter due to the passage of House Bill 581 and Senate Bill 669 during the 2015 legislative session.

Secretary Padilla said that the TRD is in the process of implementing the new provisions of the law. Specifically, she said the TRD is working with stakeholders on a revised report of monthly distributions, commenting that the report should be easier to read and understand. She stated that a couple of small municipalities have recently been informed of negative distributions and the TRD has contacted those municipalities about the possibility of entering into payment plans with the TRD. Local governments are becoming increasingly vigilant in spotting sudden large increases or drops in gross receipts tax revenues, and as a result, some issues with the use of incorrect location codes have been addressed. The TRD is educating small communities about the importance of tracking spikes or drops in monthly gross receipts tax distributions.

Bill Fulginiti, executive director, New Mexico Municipal League (NMML), said that the NMML is aware of some negative distributions affecting five local governments and the NMML has requested information from the TRD on those negative distributions. The NMML is researching whether the law is being followed with respect to those negative distributions.

Brad Odell, chief legal counsel, TRD, presented a diagram showing the process that the TRD follows with respect to negative distributions to local governments pursuant to the provisions of the new law. He added that the TRD has always worked with local governments and is reaching out to certain communities to enter into payment agreements.

Mr. Fulginiti indicated that in one case, the NMML was under the impression that receipts would be distributed to a local government, but the distribution did not occur. Mr. Odell replied that the relief provisions of House Bill 581 were not triggered in that case. Secretary Padilla said that the TRD would look forward to continuing to work through any issues involving negative distributions because they present difficulties for both local governments and the general fund.

In response to a question from a committee member, Mr. Fulginiti indicated that the NMML is looking into whether there is any possible recovery with respect to the five local governments with negative distributions, which he mentioned earlier. A committee member asked about the potential liability to the state, and Mr. Odell stated that the TRD is analyzing the relevant events and whether there would be any liability to the general fund. He said that, in the process, the TRD is complying with requests for records as required by law. Mr. Fulginiti reiterated that at this point, it is difficult to tell what any potential liabilities would be or what kind of relief municipalities might seek. Secretary Padilla stated that if the general fund was required to absorb negative distributions as contemplated by the New Mexico Court of Appeals decision, the fiscal impact could approximate $85 million. Mr. Fulginiti said that municipalities pay $30 million per year to administer local option gross receipts taxes and that money might go to the general fund. Secretary Padilla said that from the TRD's perspective, the provisions of the new law are working as planned, but the law has been in effect for only one distribution cycle.

A committee member asked whether the TRD and the NMML have examined the root causes of the issues underlying negative distributions in order to prevent future problems. Secretary Padilla stated that the TRD is exploring coding options that might prevent future issues. Frank Crociata, tax policy director, TRD, said that the TRD is exploring an option to use geographical information system components to identify accurate location codes for taxpayers. He added that accurate taxpayer reporting cannot, however, be guaranteed. Secretary Padilla stated that obtaining accurate location codes for construction businesses might present some challenges, since location codes for construction businesses are not based on office locations, but are instead based on construction sites.

New Mexico Municipal League Priorities

Mr. Fulginiti listed the priorities set by the NMML's board of directors. He stated that the NMML supports amendments to provide an additional distribution to municipalities when the local option hold harmless gross receipts taxes do not generate enough revenue to equal their hold harmless distributions.

Another priority of the NMML is the establishment of a local government unit within the TRD to handle administration and distribution issues affecting cities and counties. The unit would be funded with an existing administrative fee paid by local governments and is imposed on 3% of gross receipts taxes collected for local governments.

Mr. Fulginiti said that the NMML also supports an increase in funding for municipal streets, roads and bridges. Municipalities receive a distribution of two cents of the gasoline tax, but funding for those municipal purposes has not increased in almost 30 years. The NMML is seeking either an increase in the municipal share of the gasoline tax or the authority to levy a local option gasoline and special fuels tax.

The NMML also supports an increase in funding for law enforcement from the Law Enforcement Protection Fund, which receives money from an existing insurance premium tax. Mr. Fulginiti said the fund has not received an increase in funding for 15 years.

Mr. Fulginiti also stated that municipalities are experiencing personnel shortages in the areas of law enforcement, fire service, emergency medical services, water and wastewater operations, certified electric utility services and corrections. The NMML supports legislation to provide return-to-work provisions for workers in those areas.

In addition, the NMML supports the continuation of the current distribution of state-shared revenues, including a percentage of the revenues from the state gross receipts tax. The NMML also supports the continued authority to impose local option taxes. Finally, Mr. Fulginiti stated that the NMML continues to support the passage of a general obligation bond for the funding of libraries.

A committee member asked whether the NMML would support an examination of possible revenue shortfalls in state revenue if supplemental hold harmless distributions are provided to municipalities. Mr. Fulginiti said that such an examination would be supported. The committee member asked whether the Public Employees Retirement Association (PERA) might oppose the NMML's return-to-work proposals, and in response, Mr. Fulginiti said that the provisions would not add liability to the PERA system. Another committee member indicated that law enforcement shortages are occurring not only for local governments, but also exist at the state level. The committee member asked whether the NMML would seek the PERA's endorsement of its return-to-work proposals. Mr. Fulginiti responded that the NMML would hire an actuary to review the NMML's assumptions and it is hopeful that it can reach an understanding with the PERA.

A committee member cited instances in which some government workers are retiring at young ages and suggested that modification of retirement ages should be explored. The committee member asked whether the NMML is examining retirement ages in an environment where individuals have longer careers. Mr. Fulginiti said that raising the length of service required for law enforcement officers to retire from 20 years to 25 years might provide some benefit.

A committee member asked whether an existing local option fuel tax exists. Jim O'Neill, consultant, stated that there is such a tax established in law to permit a referendum on a local fuel tax, but the law does not provide for state administration of the tax. Thus, the tax has not been imposed.

A committee member indicated that consumption of gasoline has not increased in the last few years and the reduced consumption could reduce gasoline tax revenues. Mr. Fulginiti stated that fuel tax distributions to municipalities have declined and suggested that indexing mechanisms might provide some solution. He added that municipalities are using general fund revenues and revenue bonds to offset reduced fuel tax collections.

Unemployment Insurance Benefits and Employer Costs

Celina Bussey, secretary, Workforce Solutions Department (WSD), provided the committee with various statistics pertaining to unemployment insurance in the state. She said that the statewide unemployment rate for August 2015 was 6.7% and that 12,000 individuals are currently certifying for benefits every week in New Mexico. In addition, approximately 1,000 initial claims for unemployment insurance are filed every week and as of the date of her presentation, 37,667 experience-rated employers were active. The state's unemployment trust fund balance as of September 15, 2015 was almost $222 million, and the secretary presented a chart showing the monthly balances of the fund from January 2008 through August 2015. In 2012, the balance dropped to a low of about $20 million, but balances began to recover in 2015.

Secretary Bussey also provided some information comparing New Mexico's unemployment insurance system to systems of other states in the region. New Mexico provides for a maximum of 26 weeks of unemployment insurance benefits, which is comparable to states such as California, Nevada, Utah, Colorado, Arizona and Texas. In regard to maximum and minimum benefit amounts, New Mexico has a minimum amount of $77.00 and a maximum amount of $412. Unemployment insurance benefits are based on a replacement percentage of earnings, and in New Mexico, that percentage is 53.5%. In New Mexico, benefits are paid for an average of 18.3 weeks, and the average weekly benefit amount for the first quarter of 2015 was $306.86 and the "exhaustion rate" was almost 43%. The exhaustion rate specifies the percentage of individuals who exhaust all 26 weeks of unemployment benefits.

Secretary Bussey discussed some basic concepts underlying unemployment insurance issues. She said that the term "taxable wage base" refers to the annual amount of wages paid by an employer to an employee that is subject to state unemployment insurance taxes. The taxable wage base fluctuates each year and is set by a formula. In 2015, employers will pay their unemployment insurance tax rate on the first $23,400 of each employee's salary. Secretary Bussey indicated that the amount of each employee's salary that exceeds $23,400 is reported, but not taxed. The amount upon which the unemployment insurance tax is paid is indexed and recalculated each year.

Secretary Bussey explained how different rate schedules applied to employers with various experience ratings over the past few years. Benefit ratios are calculated under a new rating system, and beginning in 2015, new contributing employers will have a rate that is the greater of their industry average unemployment insurance contribution rate or 1%. She added that 61% of businesses were shielded from drastic tax rate changes that would have taken effect under the old formula. A table showing the percentages of employers required to pay various tax rates was presented, and the secretary added that the WSD has worked to educate employers about the manner in which tax rates are calculated and that rate notices will be provided to employers in November.

Secretary Bussey also provided the committee with a chart showing the distribution of unemployment insurance tax payments by various industries. According to a preliminary analysis, overall industry rates are expected to fall in 2016 from the preceding year. However, the tax rate change for industries related to mining, quarrying and oil and gas extraction is expected to rise by 11%. Secretary Bussey further described how tax rate changes might affect employers with various numbers of employees. For instance, employers with up to four employees are expected to experience a 9% reduction, while employers with 500 or more employees are expected to experience a 5% reduction. Several examples were shown of how contribution rates would be calculated under the new rating system.

Secretary Bussey also explained how the "60 percent rule" is used to calculate maximum benefits for eligible individuals. Total benefit amounts are based on the lesser of 60% of an individual's wages for insured work paid during the individual's base period or the weekly benefit amount multiplied by 26 weeks. Some individuals might have only a marginal attachment to the workforce, but still receive more generous benefit amounts than those available in other states. She indicated that such circumstances might exist in construction and agricultural industry sectors.

Questions from committee members followed. A committee member asked about policies that other states have employed to encourage reemployment or strategies that have been used with respect to benefit amount adjustments. Secretary Bussey responded that some states have strived to provide lower benefit amounts, to reduce exhaustion rates or to provide more targeted reemployment strategies. The committee member asked what specific reemployment strategies could be employed in New Mexico. Secretary Bussey replied that it is important to go back to basics and understand barriers that unemployed individuals might face in becoming reemployed. The committee member and Secretary Bussey discussed the roles that chambers of commerce, private companies and local workforce boards could have in reemployment efforts.

Another committee member commented that the state should seek strategies to foster the extension of employment periods for industries that are typically classified as seasonal industries. The committee member stated that, for example, there might be possibilities for some agricultural businesses to extend processing periods for certain crops on a year-round basis. Another committee member expressed concern about rising unemployment rates in the oil and gas industry, and the secretary added that the industry has experienced an increase in its unemployment insurance tax rate.

A committee member inquired whether there is a target balance for the unemployment trust fund. Secretary Bussey explained that a target balance requires the provision of an adequate reserve. A fund balance that provides enough money to pay for benefits for the next 12 months is adequate, but the WSD is now looking to keep enough cash on hand for the next 18 to 24 months while considering payouts for the five years in which the highest payouts were made. Considering such factors, an ideal unemployment trust fund balance is about $400 million. A committee member asked a follow-up question about the role of a reserve factor in calculating the balance. Secretary Bussey responded that reaching a target balance is a goal, but also indicated that overfunding could lead to discounted rates for employers.

A committee member asked how the WSD might combat abuse of unemployment benefit claims. Secretary Bussey replied that the WSD is conducting follow-up work on claims through audits and by encouraging unemployed individuals to actively seek employment on a weekly basis. She also discussed the importance of employer vigilance and education of employers. Another committee member talked about the importance of the availability of unemployment benefits during economic downturns, but stated that abuses of unemployment benefits also present a challenge.

Wednesday, October 14

Approval of Minutes

On a motion made and seconded, the minutes from the August meeting, with a technical correction, were adopted without objection. On a motion made and seconded, the minutes from the September meeting were adopted without objection.

Update of Growth of the Craft Beer Industry in New Mexico

Christopher Goblet, director, New Mexico Brewers Guild (NMBG), and Berkeley Merchant, board member, NMBG, provided the committee with a presentation on the status of the craft beer industry in New Mexico. Mr. Goblet indicated that the industry for brewing craft beer is the fastest-growing manufacturing sector in the state and that the industry's growth has favorably impacted tourism. He pointed out that craft businesses will increase from 23 in 2013 to 72 in 2018 and business locations will increase during the same period from 33 locations to 86 locations. Capacity for breweries has grown by 157% from 2013 to 2015, and brewery expansions in 2015 exceeded $14 million in capital investment. Breweries are increasingly expanding into both the rural and urban areas of the state. Examples of various brewery expansions include areas such as Silver City, Moriarty, Taos, Santa Fe, Albuquerque and Las Cruces.

Mr. Goblet stated that brewery expansions have contributed to economic development and have led to job development and capital expansion in various locations. Some communities are leveraging craft breweries to create rural festivals to attract tourists. Industry participants are also exploring means to expand agricultural opportunities through the cultivation and processing of barley and hops. In addition, educational institutions such as Central New Mexico Community College and the University of New Mexico are building educational facilities and designing classes focused on brewery science and operations.

Mr. Merchant said that craft beer businesses account for 15% of the market share in the United States, but New Mexico lags in market share growth and per capita consumption. He said that craft beer business participants are increasingly exploring opportunities to permit those businesses to serve as economic engines in the state. He mentioned that the craft beer industry has faced some challenges in reaching production levels to achieve economies of scale within the state's tax structure.

Mr. Merchant stated that breweries in New Mexico constitute either brewpubs that only sell their products in New Mexico or packaging breweries that sell products in the state and out of the state. Microbrewers are subject to lower liquor excise tax rates than other beer brewers. In addition, the liquor excise tax is applied only to beer produced and sold in New Mexico. He explained that beer produced in New Mexico and shipped out of state is not subject to the liquor excise tax, but is subject to the applicable excise tax imposed by the destination state.

Mr. Merchant explained that the NMBG's priority for the 2016 session would include possible changes to the definition of "microbrewer" in the Liquor Control Act. Before 2014, a brewery that produced less than 5,000 barrels per year constituted a microbrewery. A microbrewery producing less than 5,000 barrels per year was taxed at a rate of eight cents per gallon, while a brewer producing more than 5,000 barrels was taxed at a rate of 41 cents per gallon. He said that breweries often controlled production to avoid the higher tax rate.

Mr. Merchant said that in 2014, the law changed so that breweries producing less than 15,000 barrels per year would constitute microbreweries. The tax structure also changed so that the first 10,000 barrels sold by a microbrewer is taxed at a rate of eight cents per gallon, while a tax rate of 28 cents per gallon is imposed on production exceeding 10,000 barrels but remaining less than 15,000 barrels. Brewers producing 15,000 or more barrels are taxed at a rate of 41 cents per gallon. Mr. Merchant noted that in 2023, the definition of "microbrewer" will again only encompass breweries producing less than 5,000 barrels per year. He said the restoration of the previous definition might create uncertainty and the NMBG recommends keeping the current definition of "microbrewer" in place.

Mr. Merchant noted that excise tax revenues attributable to breweries have grown. In 2007, $41,775 in liquor excise tax revenues was attributable to breweries. The revenues grew to $84,174 in 2013 and $155,846 in 2014. Mr. Merchant said liquor excise tax revenues attributable to breweries are expected to approximate $185,000 for 2015.

Some committee members expressed concern with removing the time limitation on the existing definition of "microbrewery" within only a couple of years of the change to the law in 2014. They discussed how the time limitation set for 2023 provides a period during which sufficient data on tax collections pursuant to the existing law can be gathered. They suggested that the time limitation be evaluated closer to its expiration in 2023.

A committee member asked whether the change to the definition of "microbrewer" and the amended liquor excise tax structure have helped to grow the economy. Mr. Goblet indicated that the NMBG is beginning to collect data pertaining to any correlation between the change in the law and economic growth, but it is expected that the change will encourage production.

A committee member asked what might constitute a fair tax rate if the existing tiered structure, based on production, for the imposition of liquor excise taxes was eliminated. Another committee member asked how New Mexico's liquor excise tax rate compares to that of other states. Mr. Merchant indicated that the median rate across all states is about nine cents per gallon. He indicated a fair rate could exist within that range and that a flat rate should be predictable and equitable.

A committee member discussed some policy concerns with providing lower rates for microbreweries. The committee member indicated that microbrewery growth might cause increased alcohol consumption. The committee member suggested that improved enforcement of laws governing liquor production, distribution and consumption might merit consideration. Another committee member discussed the relationship between alcohol consumption and incidents of domestic violence and driving while intoxicated. A committee member commented that some revenues from the liquor excise tax are distributed to the Local DWI Grant Fund.

In response to a question from a committee member, Mr. Merchant indicated that microbreweries carry insurance in the same manner as other purveyors of liquor. Mr. Merchant and the committee member discussed whether state laws limit the alcohol content of beer produced in the state. Staff was requested to research alcohol limits for wine, beer and other alcoholic beverages.

Determining In-State Sales of Intangibles and Services

Richard Anklam, president and executive director, New Mexico Tax Research Institute (NMTRI), listed the principles that the NMTRI has identified as principles of good tax policy. The principles include adequacy, efficiency, equity, simplicity, comprehensiveness and accountability.

Mr. Anklam stated that multistate business income must be "fairly apportioned" to be constitutional. For instance, New Mexico can only tax income amounts attributable to activities in the state. Mr. Anklam noted, however, that state apportionment rules can vary. Yet, if other states impose the same rules, they cannot tax the same income.

Mr. Anklam described the Uniform Division of Income for Tax Purposes Act (UDITPA). He said it was codified by most states with income taxes resulting in somewhat consistent rules, including rules for apportionment of business income. The UDITPA included a traditional three-factor formula for business income apportionment, with factors including property, payroll and sales. Under a formula in which each factor accounted for one-third of the apportionment formula, two-thirds of the factors were centered on activities in the state where production occurred, while one-third of the factors were centered on activities in the states in which the products of the businesses were marketed.

Mr. Anklam said that a single apportionment formula is not necessarily appropriate in all situations. Thus, the UDITPA provides discretion to taxing agencies to use different allocation or apportionment methods to more fairly represent business activities in the state.

Mr. Anklam described previous income sourcing rules under the UDITPA. Under the previous provisions, sales, other than sales of tangible personal property, were considered to be in the state if: (1) the income-producing activity was performed in the state; or (2) the income-producing activity was performed both inside and outside the state, but a greater proportion of the income-producing activity was performed inside the state, based on the cost of performance.

Under the new UDITPA rules, Mr. Anklam stated that receipts, other than receipts in Section 16 of the UDITPA, are in the state if the taxpayer's market for sales is in the state. When services are sold, the income is considered to be in the state to the extent the service is delivered in the state.

Mr. Anklam stated that it is not always clear where intangible property is ultimately used. Thus, the UDITPA includes a new approach with respect to sourcing intangible property by specifying that intangible property is used in a state if it is purchased by a consumer in the state. Mr. Anklam also indicated that current rules center less on the cost of performance. Pursuant to the new provisions, a contract right, government license or similar intangible property authorizing the holder to conduct a business activity in a specific geographic area is used in a state if the geographic area includes all or part of the state. In addition, receipts from intangible property sales contingent on the productivity, use or disposition of the intangible property are treated as receipts from the rental, lease or licensing of intangibles. All other receipts from the sale of intangible property are excluded.

A committee member and Mr. Anklam discussed the differences between income apportionment rules that are based on the cost of performance versus sales. Mr. Anklam said that Section 18 of the UDITPA provides some additional flexibility to allow states to fairly apportion business income. Another committee member asked whether the use of a single-sales factor in a state would require the use of market-based sourcing. Mr. Anklam replied that if a mandatory sales factor is implemented in the state, movement toward market-based sourcing could be considered. Use of a single-sales factor or market-based sourcing might be considered independently or together.

Update on County Gross Receipts Taxes

Steve Kopelman, executive director, New Mexico Association of Counties (NMAC), provided the committee with an overview of gross receipts tax collections by the state's counties. He stated that gross receipts taxes have become more important in the counties because property tax revenues have been flat for a long period of time. Mr. Kopelman presented a chart showing the extent to which the counties are imposing 18 local option gross receipts taxes, including 12 that require voter approval.

Mr. Kopelman highlighted various taxes that a few counties have imposed. He noted that no counties have imposed the quality of life gross receipts tax. In addition, few counties are authorized to impose the regional spaceport gross receipts tax, and only two counties have imposed a one-twelfth general gross receipts tax increment for the Safety Net Care Pool Fund. Some local option gross receipts taxes are unused or unusable because the laws permitting their imposition are narrowly drawn.

Mr. Kopelman stated that the NMAC supports gross receipts tax reform and restructuring. In particular, the NMAC proposes eliminating local option taxes that are not used and replacing those taxes with general purpose increments. He said the counties would like to partner with the state in fostering a more competitive gross receipts tax structure.

Mr. Kopelman discussed the effects of phased-out eliminations of hold harmless payments to counties and the authorization to counties to impose a replacement gross receipts tax. As of July 2015, 19 out of 30 counties have accordingly enacted one-eighth percent gross receipts tax increments.

Mr. Kopelman stated that county commissions have voted to impose additional gross receipts tax increments largely because of costs associated with county detention centers. He explained that if inmates have sentences of less than one year, they are automatically incarcerated in county jails, but that some inmates might be held for up to four years before a trial is provided. Mr. Kopelman added that inmate mental illness issues also increase the costs of operating county jails. He said that probation violations present another issue driving up the costs of jail operations.

Rick Rudometkin, county manager, Eddy County, said that Eddy County's detention facilities are overcrowded. For example, one specific facility is currently holding 300 inmates, but it was intended to hold only 250 inmates. Mr. Rudometkin also discussed the difficulties in recruiting qualified officers at the county's detention facilities.

Mr. Rudometkin also stated that counties in southeastern New Mexico benefit from oil and gas production, but such production also results in issues such as deteriorated roads and overpopulation. However, since oil and gas prices have dropped, there has been a reduction in population inflows from other states. He also discussed other problems encountered by Eddy County, including floods.

Mr. Rudometkin stated that the Eddy County Board of County Commissioners explored a proposal to impose all three one-eighth percent gross receipts tax increments that counties are permitted to impose to replace hold harmless payments, but due to some opposition, only a single one-eighth percent increment increase will take effect, beginning in January. He said such tax increases have become necessary for counties to meet expenses for jails, roads, infrastructure and other requirements. Mr. Rudometkin said that the availability of alternative sources of revenue is becoming increasingly critical for counties.

A committee member asked whether the NMAC will seek the proposal of legislation to provide for additional taxing authority for counties. Mr. Kopelman responded that the NMAC is not proposing any tax increase, but is seeking to work with courts on practical issues pertaining to bail bonds and probation, in order to help alleviate overcrowding at county detention facilities.

Another committee member expressed concern about the use of gross receipts tax increments, intended to replace hold harmless payments, for other purposes voters had previously rejected. Mr. Kopelman suggested that the elimination of earmarks from county gross receipts taxes would provide boards of county commissioners with more flexibility to meet expenses. He noted that if the boards use their taxing authority in a manner that does not reflect the desires of the voters, they would ultimately still be accountable to the voters. Mr. Rudometkin added that county managers must provide boards of county commissioners with all of the options that are available to solve certain problems. A committee member raised the possibility of using some motor vehicle excise tax revenues for local roads.

A committee member inquired about the history of the quality of life gross receipts tax. Mr. O'Neill explained that the tax was initially established to encourage the development of art facilities and museums and that individuals from the arts community are required to have a role in the proposed imposition of a quality of life gross receipts tax.

A committee member expressed a desire to find more systematic changes to address revenue shortfalls in counties and indicated that some states have established funding formulas for local governments. The committee member pointed out that the state has taken on a stronger commitment to provide capital funding for schools. The committee member also said that some states have used general fund revenues for roads at the expense of other necessary programs. The committee member indicated that county commissioners might need to work with county treasurers and that their relative requirements and responsibilities would need to be considered when making spending decisions.

In response to a question from a committee member, Mr. Rudometkin stated that Eddy County is exploring options to provide funding to address issues stemming from a sinkhole existing in the county. The committee member suggested that since severance tax bonding capacity is expected to be fairly low for the upcoming session, the county might consider options for funding the project at the county level.

Committee members discussed issues raised regarding county detention facility overcrowding. A committee member mentioned that the underlying issues leading to overcrowding should be addressed. Another committee member acknowledged the challenge of providing for adequate public safety, while alleviating the pressures on county budgets. The committee member mentioned that the New Mexico Supreme Court has convened an ad hoc task force to explore underlying issues related to bonding, which might contribute to overcrowding at county detention facilities. Another committee member raised a concern about the costs that counties bear with respect to mental health issues arising in county detention facilities. The committee member suggested that laws requiring counties to field all county jail costs should be reviewed. The committee member also suggested that the removal of earmarks on county-imposed gross receipts taxes should be explored.

Adjournment

There being no further business before the committee, it adjourned at 12:15 p.m.

Revised: December 15, 2015

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

December 15-16, 2015
State Capitol, Room 322
Santa Fe

<u>Tuesday, December 15</u>

9:00 a.m. (1) **Impact of Tax Policy on Child Poverty and Hunger**
—Amber Wallin, Director, New Mexico KIDS COUNT
—Bill Jordan, Senior Policy Advisor/Governmental Relations, New Mexico Voices for Children

10:30 a.m. (2) **Fiscal and Equity Impacts of the Food Tax Deduction**
—Brian McDonald, Ph.D., Economist

12:00 noon **Lunch**

1:00 p.m. (3) **Economic Outlook**
—Jeff Mitchell, Director, Bureau of Business and Economic Research, University of New Mexico

2:00 p.m. (4) **Revenue Forecast**
—David Abbey, Director, Legislative Finance Committee
—Tom Clifford, Secretary, Department of Finance and Administration
—Demesia Padilla, Secretary, Taxation and Revenue Department

3:30 p.m. (5) **Premium Tax Update**
—John G. Franchini, Superintendent of Insurance, Office of Superintendent of Insurance

Legislative Proposals:

4:15 p.m. (6) **Referrals from the Transportation Infrastructure Revenue Subcommittee: Towing and Repair Vehicles in Emergencies — .202319.1; Joint Resolution to Dedicate Revenue from Increased Taxes and Fees on Motor Vehicles and Motor Vehicle Fuels to Transportation Infrastructure — .202268.1**
—Mark Edwards, Staff Attorney, Legislative Council Service

4:30 p.m. (7) **Determine In-State Sales of Intangibles and Services Based on Market Sourcing Instead of Cost of Performance — .202108**
—Senator Peter Wirth

4:45 p.m. (8) **Gross Receipts Tax Deduction for Payments from the Federal Energy Employees Occupational Illness Compensation Act of 2000 for Services Provided by a Home Health Agency — .202047**
—Richard Minzner, Lobbyist

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

Wednesday, December 16

9:00 a.m. (9) **Global Contraction in Hydrocarbon Trade and Investment**
—Colin P. Fenton, Managing Partner, Blacklight Research, LLC

Legislative Proposals (continued):

10:30 a.m. (10) **Creating the Accounts for Persons with Disabilities Act — .202202**
—Representative Sheryl Williams Stapleton
—Representative Conrad James
—Nell Graham Sale, Partner, Pregenzer, Baysinger, Wideman & Sale, PC

10:45 a.m. (11) **Technology Maturation Assistance Gross Receipts Tax Credit — .202468**
—Micheline Devaurs, Manager, Market Transition, Los Alamos National Laboratory
—Jackie Kerby Moore, Manager, Government Relations, Sandia National Laboratories

11:00 a.m. (12) **Gross Receipts Tax Exemption for the Sale of Access to Private Land for Hunting or Fishing — .202553**
—Gerald Chacon, Chair, Federal and Trust Lands Subcommittee, New Mexico Cattle Growers' Association

11:30 a.m. (13) **Using the Law Enforcement Fund for Law Enforcement Officer Retention — .202480**
—Senator George K. Munoz

11:45 a.m. (14) **Return to Work for Public Employees — .202567**
—Representative Jason C. Harper

12:15 p.m. (15) **Gross Receipts Tax Deduction for Sales Made on Small Business Saturday by New Mexico Businesses and Restaurants — .202293**
—Representative David E. Adkins

12:30 p.m. **Adjourn**

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

December 15-16, 2015
State Capitol, Room 322
Santa Fe

The sixth meeting of the Revenue Stabilization and Tax Policy Committee (RSTP) for the 2015 interim was called to order by Senator Carlos R. Cisneros, chair, on Tuesday, December 15, 2015, at 9:15 a.m. in Room 322 of the State Capitol in Santa Fe.

Present
Sen. Carlos R. Cisneros, Chair
Rep. Jason C. Harper, Vice Chair
Sen. Sue Wilson Beffort
Rep. David M. Gallegos (12/15)
Rep. Antonio Maestas
Rep. Rod Montoya
Sen. Mark Moores
Sen. George K. Munoz (12/16)
Rep. Debbie A. Rodella
Sen. Clemente Sanchez
Sen. William E. Sharer
Sen. John Arthur Smith
Rep. James R.J. Strickler
Rep. Carl Trujillo
Rep. Jim R. Trujillo
Sen. Peter Wirth (12/15)

Absent
Sen. Ted Barela
Rep. Tim D. Lewis

Designees
Rep. David E. Adkins
Sen. Jacob R. Candelaria (12/15)
Rep. Sharon Clahchischilliage (12/15)
Sen. Lee S. Cotter
Rep. Randal S. Crowder
Rep. Miguel P. Garcia (12/16)
Rep. Bealquin Bill Gomez
Rep. Conrad James (12/16)
Rep. Idalia Lechuga-Tena
Rep. Bill McCamley
Sen. William F. Burt
Rep. Brian Egolf
Rep. Stephanie Garcia Richard
Sen. Stuart Ingle
Sen. Gay G. Kernan
Rep. Javier Martinez
Sen. Nancy Rodriguez
Rep. Tomás E. Salazar
Sen. John M. Sapien
Rep. Jeff Steinborn
Rep. James G. Townsend
Sen. Pat Woods

Guest Legislators
Rep. Alonzo Baldonado (12/15)
Rep. Roberto "Bobby" J. Gonzales
Rep. Jimmie C. Hall (12/15)
Rep. Larry A. Larrañaga (12/16)
Sen. Cisco McSorley (12/15)
Sen. Mary Kay Papen (12/15)
Sen. Cliff R. Pirtle (12/15)
Rep. Jane E. Powdrell-Culbert (12/16)
Rep. Larry R. Scott
Rep. Don L. Tripp (12/16)

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

Staff
Pam Stokes, Staff Attorney, Legislative Council Service (LCS)
Amy Chavez-Romero, Assistant Director for Drafting Services, LCS
Rebecca Griego, Records Officer, LCS
Tessa Ryan, Staff Attorney, LCS

Minutes Approval

Because the RSTP will not meet again this interim, the minutes for this meeting have not been approved.

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Tuesday, December 15

Impact of Tax Policy on Child Poverty and Hunger

Amber Wallin, director, New Mexico KIDS COUNT, and Bill Jordan, senior policy advisor/governmental relations, New Mexico Voices for Children (Voices for Children), gave a presentation on poverty, food insecurity and tax policy in New Mexico.

Health-impact assessment. Ms. Wallin described as follows the findings of a recent study conducted by Voices for Children to assess the effects on health of taxing the sale of food. Their findings included that: 1) only two states, Mississippi and Alabama, tax food at the regular tax rate; those states, like New Mexico, rank low in child well-being; 2) among states, New Mexico has the highest child-poverty rate, and its economic recovery is stagnant; 3) among states, New Mexico has the highest percentage of low-income working families; 4) the lower a worker's income, the greater the proportion of that income is spent on food; 5) New Mexico's high poverty rates mean that many New Mexicans spend a high proportion of their income on food; 6) despite program efforts to counteract the hunger problem, 28% of New Mexico children are still food insecure; 7) food insecurity and access to food are two of the state's major problems and are particularly pervasive in rural counties; 8) in part because they are used up quickly and not utilized by many low-income New Mexicans, Supplemental Nutrition Assistance Program (SNAP) benefits are inadequate to combat food insecurity; and 9) New Mexicans vulnerable to food insecurity often choose between buying nutritious food or: buying unhealthy food; paying for utilities; paying for medical care; and making rent or mortgage payments.

Two other aspects of the assessment, a review of relevant literature and stakeholder feedback, underscored many of the assessment's conclusions. The literature review revealed correlations between: poverty and health; the cost of food and the amount of nutritious food consumed; the amount of nutritious food consumed and health, school performance and child development; and government spending and health. In the three focus groups convened around the state, stakeholders articulated their observations that even modest increases in the cost of food detrimentally affect health and educational performance.

In sum, the assessment found almost universally poor outcomes, particularly on human health, resulting from an increase in costs brought on by a tax on the sale of food. The potential upside of such a tax is higher government revenues and greater public spending to improve residents' health.

Tax policy. Mr. Jordan discussed Voices for Children's stance on tax policy in the context of a hypothetical reimposition of the gross receipts tax (GRT) on the sale of food. Underlying that stance are the goals of reducing poverty, reducing hunger and improving health, the economy and child well-being — outcomes that state tax policy can influence. To these ends, Voices for Children recommends that the state: not reimpose the GRT on the sale of food; generate revenue in ways that do not harm residents' health or promote regressiveness in the tax system; and increase the tax credits that help low-income families with children. A recent poll revealed New Mexicans' shared opposition to taxing the sale of food, even if the tax were part of a proposal to lower the overall sales tax rate. Although Voices for Children previously opposed the GRT deduction on the sale of food (food deduction), it has since determined that repealing the deduction would impede efforts to end child poverty. That is, reimposing the tax would worsen tax regressiveness and inequality across income strata.

Mr. Jordan cited some options for generating more revenue and improving fairness in the tax system: 1) require combined reporting for all corporate income tax (CIT) filers; 2) establish a new personal income tax (PIT) rate of 5.9% for higher-income taxpayers; 3) tax internet sales; 4) suspend for one year the CIT incremental rate decrease; 5) repeal the 50% capital gains deduction, which Mr. Jordan characterized as one of the state's most regressive tax breaks; 6) increase the working families tax credit; 7) increase the low-income comprehensive tax rebate (LICTR); and 8) create a new child tax credit.

Mr. Jordan also stressed the importance of three tax-policy principles in particular: adequacy, equity and accountability. Of these, he said, accountability is essential to wise investment of state resources.

Questions and Discussion

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

Voices for Children's recommendations and tax reform proposals. Members reacted to the proposed tax policy changes by: expressing skepticism that any of the proposals could succeed in the current political environment; suggesting that the organization consider measures for reducing poverty that are more politically feasible; proposing an ongoing dialogue on options for reducing poverty and improving child well-being; urging the presenters to help lawmakers find solutions to the problems discussed by providing more policy-related data and being more open to all options for tax reform; and sharing in the presenters' concern for New Mexicans who struggle financially. A member pointed out that, even with the food deduction, New Mexico ranks last in child well-being. The member also expressed frustration with aspects of the current system, in which the poor pay the GRT on low-cost prepared meals at fast-food restaurants, but the rich do not owe the tax on luxury foods bought at high-end grocery stores. Another member criticized the administration's blanket refusal to raise tax rates or establish new taxes and its opposition to tapping the Land Grant Permanent Fund (LGPF) to pay for social welfare programs, characterizing those stances as a self-imposed hindrance to governing.

Reimposition of the GRT on the sale of food. In response to Voices for Children's recommendation that the GRT on the sale of food not be reimposed, members offered the following remarks: efforts to reform the broken GRT system by removing carve-outs and imposing the lowest-possible GRT rate will be undermined by a carve-out for food; the provision of social welfare programs is diminished by carving out food from the GRT base; it might be the case that reimposing the tax and enacting a drastically lower GRT rate would have a net positive effect on the poor; a tax-reform proposal should be adopted only if the poor experience a net benefit from its adoption; and it would be better for the poor to pay 2% on all purchases, including food, than over 8% on all purchases but food. One member relayed having heard that an Oregon study on comprehensive sales tax reform determined that, with a very broad base, the state's sales tax rate could be as low as 1% and still generate sufficient revenue. Mr. Jordan responded that New Mexico could enact base-expanding, rate-reducing GRT reform without taxing food; other states have tax systems resembling that model.

Members also expressed interest in hearing testimony pertaining to: data that show the effects of having removed the tax on the sale of food; the projected effects of excluding food from the GRT base if base-expanding, rate-reducing GRT reform were implemented; proposals for offsetting the negative repercussions to the poor of a reimposition of the tax; and the effects of the current GRT rates — many in excess of 8% — on the poor. Ms. Wallin responded that answers to many of those the questions are hard to tease out of existing data.

Poverty. Members commented on the problem of poverty. One member pointed out that the state has tried to temper poverty through a wide variety of approaches, but poverty still abounds. Lawmakers, therefore, should try different approaches to the problem, including that of nurturing a business climate that encourages small businesses to thrive and out-of-state businesses to locate in New Mexico. The current system fails in both of these respects; rather, it encourages lobbyists to advocate for tax breaks. Lawmakers should strive to find a balance in the tax system that promotes employment opportunity and reduces poverty.

SNAP benefits; poll on taxing the sale of food. Ms. Wallin said that the amount a household receives in SNAP benefits depends on its size and income and that the average per household benefit is about $130 per month. Mr. Jordan clarified that the poll referred to in the presentation does not specify a GRT rate, such as 2%, when asking respondents whether they would support a tax on food in conjunction with a lower overall GRT rate.

Fiscal and Equity Impacts of the Food Deduction

Brian McDonald, an economist, talked about the fiscal effects of the food deduction and the degree to which it has promoted fairness in taxation. He opened by summarizing his professional background and noting that his presentation was intended to inform lawmakers, not to advance a particular position.

Background on the food deduction. In 2004, a bill was signed into law that, among other measures: removed the GRT on sales of groceries; increased the municipal GRT rate; compensated local governments for the food deduction by providing for state-remitted hold harmless payments; and reduced PIT rates. The hold harmless provision resulted in significant revenue loss to the state. In fiscal year (FY) 2012, the hold harmless payments totaled about $227.3 million, or 10% of annual general fund GRT revenue. To curb that loss, the legislature in 2013 enacted a 15-year phase-out of certain hold harmless payments and an authorization for local governments to enact additional GRT increments.

2004 measure's effects. The 2004 bill was intended to relieve the financial burden of low-income residents, but that goal was arguably not achieved. Before and after the law's enactment, that segment of the population, which constitutes a substantial proportion of the total population, generally received SNAP benefits. Food purchased through SNAP, which represents a relatively high share of the food that low-income residents buy, is not taxed; hence, the food deduction somewhat missed its mark. Instead, it mostly benefited and continues to benefit middle- and upper-income households. Furthermore, a look at data for the year 2011 reveals that, had the 2004 law not been enacted, the state could have used the $227.3 million in hold harmless payments to supplement (through, for example, the LICTR program) by about $955 per household the income of residents who fall in the lowest quintile in the measure of income. In contrast, the food deduction saved those households only about $86.00 per year.

Meanwhile, other negative aspects feature prominently in the 2004 law. It increased the municipal tax on all non-food purchases; exacerbated the business tax pyramiding problem; heightened the Taxation and Revenue Department's (TRD's) administrative burden; neglected to enhance programs targeted to low-income residents or to extend the deduction to other types of purchases low-income residents make; and enriched high-income taxpayers' wealth by lowering the top PIT rates.

Mr. McDonald summarized by remarking that lawmakers should recognize that the 2004 law's measures do not help the poor. Reinstating the GRT on the sale of food and reducing the GRT rate would.

Questions and Discussion

On questioning, Mr. McDonald and the committee addressed the following topics.

Data. Members indicated that answers to the following questions would be helpful for shaping effective food-tax-related policy. 1) What proportion of low-income households' total food purchases consist of prepared foods? 2) To what degree would a food tax drive the poor to buy inexpensive, unhealthy food? 3) What are the governmental costs of providing health care to treat the effects of that increased unhealthy food consumption? 4) How many residents would qualify for the LICTR but do not receive it because they do not file a tax return? 5) Has any state found a way to target, through means other than the tax system, financial relief to residents in the lowest quintile in measure of income? 6) To what degree does the TRD still advertise the federal earned income tax credit and the LICTR and the fact that residents need not owe taxes to get those programs' benefits? Mr. McDonald suggested that the TRD and the U.S. Census Bureau survey on "food consumed at home" are possible sources for some of that information.

A member remarked that discrepancies in the conclusions from the two presentations should be reconciled.

Reimposing the GRT on the sale of food — effects on the poor. Members highlighted shortcomings of the proposal that would both reimpose the GRT on the sale of food and direct some of the increased GRT revenue to the poor through tax credit programs like the LICTR: the financial aid arrives in a lump sum, not evenly over the course of the year; and those who do not file tax returns would miss out. Mr. McDonald offered, and noted that the TRD could offer, suggestions to overcome those obstacles. Under a similar federal program, a recipient's employer, through its payroll system, could serve as an agent in distributing even installments of the aid, or local governments could help with that distribution. Mr. McDonald pointed out that some recipients prefer lump-sum payments of such benefits. A member countered that some recipients are self-employed or unemployed and also noted the importance of analyzing the relative efficiency of any such proposal.

The working poor. Members expressed a concern for not only the people at the low end of the economic spectrum, but also for those in the second-lowest quintile in measure of income. The latter group generally struggles financially but earns incomes that exceed the limits of programs such as SNAP. Mr. McDonald explained that the SNAP and other social welfare programs calculate benefits on a continuum. A member requested information on the percentage of SNAP recipients at the second-lowest quintile in measure of income, characterizing those people as one paycheck away from catastrophe. Mr. McDonald offered that those people could be helped through property tax or income tax relief.

Revenue stability. Members stressed the importance of revenue stability. They commented that: 1) what hurts the poor is poorly funded or unfunded social welfare programs, and the strength of the LGPF should be maintained since the fund generates money for such programs, is reliable and offsets residents' tax burdens; 2) unlike that from the LGPF, the revenue stream from the oil and gas sector is volatile; 3) GRT reform should be broad; 4) the state took a hit when it enacted the 2004 reform, and had that not been enacted, there would be more money for education and social services; 5) if the CIT were lifted, it would be extremely difficult to reestablish; and 6) lawmakers should consider adding junk food to the GRT base. A member requested a comparison of the state's hold harmless payments for July, August and September of last year with those months, respectively, in 2015, which were after the hold harmless phase-out began. The member pointed out that local governments benefit twice when they collect both hold harmless payments and revenue from the GRT increment allowed by 2013 legislation. Mr. McDonald submitted that a GRT on the sale of food would help stabilize revenues and that dependence on the energy sector for recurring revenues is destabilizing.

Determine In-State Sales of Intangibles and Services Based on Market Sourcing Instead of Cost of Performance (.202108.2)

Senator Wirth presented the draft of a bill that would change the calculation of the CIT by assigning the sales of services and intangible goods to the state in which they are sold, rather than the state in which the cost of performance is incurred. With no opposition, the committee endorsed the bill.

GRT Deduction for Sales Made on Small Business Saturday by New Mexico Businesses and Restaurants (.202293.2)

Representative Adkins presented a draft of a bill that would lift the GRT for purchases at small, in-state retail businesses and restaurants on the Saturday after Thanksgiving. The proposed measure was designed to help redirect much of consumers' holiday spending away from large-scale and online retailers to local "mom and pop" businesses. Helping those kinds of establishments strengthens local economies, employment and charitable giving. If the measure were enacted, the state would most likely forego less than $700,000 in revenue.

<u>Questions and Discussion</u>

In response to a member's point that the measure would benefit consumers who would have patronized such establishments even without the deduction, Representative Adkins said that, still, the incentive would produce a net increase in small-business revenue. Representative Adkins clarified that the deduction would apply to both the local and state portions of the GRT. A member suggested that the committee not endorse the bill until revenue predictions for the coming fiscal year were better known.

No motion was made to endorse the bill.

Economic Outlook

Jeff Mitchell, director, Bureau of Business and Economic Research (BBER), University of New Mexico (UNM), reported as follows on the national and state economies. He noted that the U.S. economic outlook plays heavily in the state economic forecast and that the data and assumptions informing the outlook for those economies were approximately one month old.

Measures of recent U.S. economic activity. Overall, the national economy shows signs of growth — but also areas of weakness. The gross domestic product (GDP) grew in 2015, but the growth rate was uneven. Employment levels have increased since September, and unemployment is at a relatively low 5.0%. The Consumer Confidence Index shows that consumer confidence is stronger than it has been since before the recession. Meanwhile, oil prices have fallen dramatically since June 2014. The S&P 500 indicates strong fluctuations in financial markets, and the housing market, though improving slowly, is still weak.

Forecasts for the national economy. The predictions for the U.S. economy are based on the following assumptions: 1) there will be no upheaval in federal budget development; 2) the federal funds rate will increase at the end of 2015 and reach 3.25% by the end of 2017; 3) there will be relatively slow growth in trade among major trading partners; and 4) the average per barrel prices of West Texas Intermediate oil will be $48.00 in 2015, $51.00 in 2016, $59.00 in 2017 and $74.00 in 2018.

Key economic indicators are forecast through 2020 as follows: 1) interest rates will rise moderately and then level off in about 2018; 2) oil spot prices will generally increase modestly, and gas spot prices will remain subdued; 3) there will be slow growth in the GDP; and 4) there will be slow growth in employment, and most of that growth will be concentrated in the professional and business services sector.

New Mexico economic review and outlook. Although nationwide employment returned to pre-recession levels in December 2013, New Mexico's employment is about 1% below its pre-recession level. Since a period of dramatic growth that ended in 2012, New Mexico's mining employment has slowed, although somewhat less than that of the nation. Overall, however, New Mexico's employment has improved in the last year, with growth concentrated in the health care and social assistance sectors. The spike to 6.8% in September of the state's unemployment rate shows that more people are looking for jobs, which can be seen as a good sign.

In non-employment-related measures, over the last year in New Mexico: home sales improved but values remained flat; income growth was weak; Medicaid transfers bolstered personal income growth; and oil rig counts fell sharply. Though oil prices have plummeted, the state recently experienced record oil production levels. That level of activity could be due to pressure on producers to pay debt or to producers having previously locked in to higher prices.

Key economic indicators for New Mexico through 2020 are as follows: 1) employment will be weak in the short term but should pick up by the end of 2016 and then remain steady; 2) most new jobs will be in the health care and social assistance sectors and in urban areas of the state; 3) personal income growth will be at about 5% after 2016; 4) employment will gain strength, reaching pre-recession levels in about mid-2017; 5) personal income growth will remain steady; and 6) housing permit issuance will continue on an upward track. There is a 15% chance that the economy will perform better — and a 20% risk that it will perform worse — than that forecast. New Mexico's post-recession recovery, compared with that of the nation, lags in part because of professional and business services sector jobs, which improve the overall economy.

Questions and Discussion

On questioning, Mr. Mitchell and committee members discussed the following topics.

Other economic indicators. A member asked about other areas of the economy that contribute to and mark its strength, including car sales, tourism and agricultural commodity prices. Mr. Mitchell noted that higher-than-average delinquencies in car and education loan payments seen in the state's southeast and northwest regions are most likely attributed to the recent turmoil in the oil and gas industry, which is concentrated in those regions. He also said that, in the presentation handout, tourism is captured in the "leisure and hospitality" category of employment data charts and that, although stymied by seasonal employment shifts, that sector performs relatively well.

In response to a member's questions about commercial property vacancies and manufacturing, Mr. Mitchell said that: 1) commercial and industrial properties tend to fill up in a well-performing overall economy, and those vacancies are a sign of weakness in the professional and business services sector; 2) the weakness in manufacturing sector job creation stems to the 1990s; 3) the "advanced manufacturing" sector, which is marked by speedy product turnaround, high-skilled and high-paying jobs, capital intensiveness and geographically broad markets, tends not to have a substantial presence in New Mexico. Moreover, he said, New Mexico's qualities lend themselves moderately well to business creation but not to business growth, which requires a broad range of supports.

Health care. Mr. Mitchell said that the expansion of Medicaid in the state is creating jobs in the health care sector. In time, he said, overall state fiscal health will suffer from the increasing state fiscal responsibility for that expansion, but it will be tempered somewhat by the increases in revenue from the insurance premium tax and the expansion's other side effects.

BBER. Mr. Mitchell said that the BBER has between eight and 10 full-time employees and between 10 and 15 student workers, who are mostly graduate students. Increasingly, the BBER faces funding challenges, like that stemming from UNM's view that the BBER's work falls outside the university's core mission. Consequently, the BBER seeks funding from other sources.

Economic drivers. A member commented that Albuquerque is an important driver of the state's economy. The member asserted that the state's current approach to helping the economy — shrinking government and reverting money to the general fund — is not working.

Economic data. Mr. Mitchell said that data from Indian lands are counted in economic-data surveys and that employers supply much of those data in accordance with federal law.

Revenue Forecast

Elisa Walker-Moran, chief economist, TRD; Clinton Turner, chief economist, Department of Finance and Administration (DFA); Tom Clifford, secretary of finance and administration; and Christina Keyes, Legislative Finance Committee (LFC), reported as follows on the Consensus Revenue Estimating Group's (CREG's) recently revised revenue forecast.

Report from TRD. Ms. Walker-Moran talked about: historical and projected revenue figures for the compensating tax, the CIT and severance taxes; legislative changes to liquor tax revenue distributions; oil and natural gas prices, production and rig count; risks to the forecast; and proportion by source of FY 2015 revenues. The CREG predicts lower compensating tax revenue for future years. Meanwhile, the group revised downward the previous forecast of CIT revenues in light of changes in expectations for oil and gas prices, net operating losses and corporate profits. In the area of severance taxes, the forecast reflects lower projected prices but strong production, which can be attributed in part to technological advances and the prevalence of horizontal rigs. Lastly, the CREG predicts that state liabilities associated with the high wage jobs tax credit will taper off and that the federal government will boost spending in the state.

Report from the DFA. Mr. Turner next focused the presentation on the national economy, employment in the state, the GRT base, energy markets, the state's oil and gas revenues, oil production and general fund revenue and balances. The national economy has strengthened, and consumer spending is expected to increase. Employment in the state is growing, albeit slowly. The drop in gas prices and the November federal budget deal will boost consumer and federal spending in the state. The GRT base is growing, particularly in the area of construction and services. Meanwhile, it is believed that market forces will increase the prices of oil and gas. In the area of revenue to the general fund, growth in recurring revenue has waned, and $232 million in "new" money, 3.7% more than in FY 2016, is expected to be available for FY 2017.

Mr. Turner and Secretary Clifford highlighted some positive aspects of the state's energy picture: oil production volumes are increasing, even though U.S. production levels have declined; New Mexico has one of the best oil basins; and the nation, compared with the world, is politically stable.

Secretary Clifford commented as follows on the state budget and the administration's spending priorities. Unlike some states, New Mexico has a healthy and stable budget, despite federal spending cuts and the dramatic fall of oil and gas prices. To maintain budget health, the administration focuses on restraining government growth, spending wisely and maintaining a reserve of about 10%. The forecast for revenue growth was developed cautiously and with various risks in mind. In developing a proposed budget, the administration focused on spending more in the areas of Medicaid, public safety, education and economic development and on targeting hard-to-fill positions for compensation increases. In tax policy, the administration strives to help small businesses grow and to recruit new businesses. Meanwhile, it is estimated that $140 million will be available for statewide capital outlay projects. The administration believes that capital outlay reform is needed. Finally, the state's financial reporting system has been stabilized, and the second phase of the reconciliation process is under way.

Report from the LFC. Ms. Keyes reiterated some of the key figures cited by the previous presenters in the areas of new money, general fund recurring revenue and forecast revisions and summarized as follows New Mexico's post-recession recovery and job growth, oil and gas prices and risks to the revenue forecast. The state has lagged behind the nation in post-recession economic recovery, in large part because of problems in employment and income levels and the labor market. The price of oil is forecast to rise modestly but steadily, and the price of gas is forecast to increase generally but to fluctuate. Lastly, risks to the forecast include the increasing number of non-GRT-generating online sales and the phase-out of hold harmless payments.

Questions and Discussion

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

GRT revenue. Responding to questions about GRT revenue collections and projections: 1) Secretary Clifford clarified that GRT revenues are projected to grow but not at a steady rate, and Medicaid expansion boosted some of the GRT revenue growth in FY 2015; 2) Mr. Turner explained that the drop in the gross receipts base from FY 2015 to FY 2016 was due in part to the high wage jobs tax credit, changes to which will be seen in FY 2017; 3) Ms. Walker-Moran indicated that the projected growth in GRT revenue is also due to projected increases in federal spending; 4) Mr. Turner said that the GRT revenue forecast reflects increases in spending by consumers from savings on gasoline sales; and 5) Ms. Keyes said that determining the amount of GRT revenue lost to online sales from retailers without a physical presence in the state is difficult and would require extensive study.

Tax credits. Secretary Clifford noted that the administration wishes to continue discussions on renewable energy and other types of tax credits and to examine the value of those credits in relation to each other. A member spoke in favor of the solar energy tax credit, whose extension the governor vetoed, saying that it is a big job creator and that its efficacy will be bolstered by the recent extension of a corresponding federal measure.

Oil and gas-related revenues. Mr. Turner and Secretary Clifford explained how the CREG determines the average price of oil. The determination relies on data collected from tax returns, New York Mercantile Exchange reports and other forecasting services. A member commented that federal over-regulation hurts the oil and gas industry and that the state should do what it can to help it, including protecting wells.

Forecast. A member remarked that the CREG should be more conservative with its estimates, since the state must balance its budget and since a healthy reserve level is important.

Appropriations for courts and the Public Defender Department. A member commented that, although the courts' and public defenders' requested appropriations are too high, lawmakers should understand that fiscal restraint in that area will affect crime levels and the quality of the state's criminal justice system.

Referrals from the Transportation Infrastructure Revenue Subcommittee

Towing and repair vehicles in emergencies (.202319.1). Mark Edwards, staff attorney, LCS, presented the draft of a bill that would require drivers who approach pulled-over towing vehicles and roadside-repair vehicles with lights flashing to exercise the same caution required when those drivers approach fire and law enforcement vehicles in those circumstances. Johnny R. Johnson, managing director, New Mexico Trucking Association, Inc., who was in the audience, expressed support for the bill, saying that every other state has enacted such a measure.

With no opposition, the committee endorsed the bill.

Joint resolution to dedicate revenue from increased taxes and fees on motor vehicles and motor vehicle fuels to transportation infrastructure (.202268.1). Mr. Edwards presented the draft of a joint resolution that would propose a constitutional amendment to require the legislature, when it imposes a new motor vehicle-related tax or fee, to dedicate the revenues from that assessment to transportation infrastructure projects.

With six members in opposition, the committee voted against endorsing the bill.

GRT Deduction for Payments from the Federal Energy Employees Occupational Illness Compensation Program Act of 2000 for Services Provided by a Home Health Agency (.202047.2)

Richard Minzner, a lobbyist, presented the draft of a bill that would allow a deduction from gross receipts for home health services when paid for through a federal program dedicated to helping people who became ill while working for the U.S. Department of Energy or its contractors. Mr. Minzner explained that several medical services-related deductions have been enacted since 1998 and argued the fairness of adding this deduction. Mr. Minzner also said that a fiscal impact report (FIR) on this measure had not been prepared, but he believes that the cost to the state would be modest; if it were not, he would propose phasing in the deduction.

<u>Questions and Discussion</u>

On questioning, Mr. Minzner said that the FIR would reveal the number of state residents who participate in the federal program. A member remarked that the benefit would largely fall in rural, mining-heavy areas of the state. Some members noted that their vote against the proposal would express a distaste for creating further holes in the tax system, not an objection to the proposal's underlying policy. Mr. Minzner responded by saying that if the GRT system were reformed to broaden the base and lower the rate, this deduction would go away; but until then, adding this deduction would improve fairness.

Members of the audience stood in support of the proposal. They were: Karen Wells, a lobbyist for New Mexico Advocacy for Home Health Care and Hospice; Mollie Mouton, New Mexico regional director, Professional Case Management; and Corbin Craig, Giving Home Health Care, LLC.

With seven members in opposition, the committee voted against endorsing the bill.

Premium Tax Update

John Franchini, superintendent of insurance, gave background on the insurance premium tax and an update on the Office of Superintendent of Insurance (OSI) revenues and distributions as follows.

Premium tax. The tax generates a substantial portion of the OSI's annual revenues, which in FY 2015 reached nearly $300 million. That revenue is deposited in the general fund and other funds and is used for the OSI's operations. The premium tax of 3.003% and a health insurance surtax of 1% are levied on a variety of types of insurance transactions. With some exceptions, the surtax applies to health insurance premiums, memberships and policy fees. Certain other types of transactions, which are government- and workers' compensation-related, are exempt from both taxes. Except for the property tax, insurance companies pay no state tax other than the premium tax. Portions of the premium tax and surtax are due quarterly, and some deductions and credits may be taken.

Revenue collection and distribution. Superintendent Franchini reviewed financial charts showing: the amounts in premium taxes remitted in FY 2011 through FY 2015 and medical insurance pool credits taken in calendar years 2012 through 2014; revenue by type for FY 2010 through FY 2015; revenue collections and distributions for FY 2007 through FY 2010; and revenue collections and distributions for FY 2011 through FY 2015. He also noted that: the OSI's total revenue rose relatively sharply in FY 2015 due largely to the expansion of the Medicaid program; distributions to the Insurance Operations Fund and the Fire Protection Fund are rising; and through the OSI's auditing efforts, more tax revenue was collected in each of the months of April, July and October of 2015 than in those months, respectively, in 2014.

Law-related initiatives. Lastly, Superintendent Franchini talked about the OSI's law-related initiatives. He remarked that a bill from the 2015 regular session would have simplified the quarterly payment provisions and based the calculation of those payments on the taxpayer's quarterly actual earnings. That measure will be pursued again in the upcoming session. Meanwhile, the OSI recently issued a bulletin clarifying the application of the medical insurance pool credit and a bulletin clarifying which policies are subject to the surtax. Having discovered that the latter bulletin's language was too broad, the OSI will schedule a hearing on the issue to revise the language. Superintendent Franchini highlighted other amendments to the New Mexico Insurance Code that the OSI will legislatively pursue, and he noted that the work on a special audit of premium tax collections, for which a special appropriation was made, will begin in January.

Questions and Discussion

Medical insurance pool and other health insurance plans. A member relayed the experience of a cancer-stricken constituent who, having lost the option to stay in a preferred provider organization (PPO) plan, had difficulty seeking coverage through the medical insurance pool. Her out-of-state doctor was not in her health maintenance organization (HMO) plan network, and because of her predicament, the constituent was considering leaving the state. Superintendent Franchini noted that some HMOs have wide provider networks. He advised the member to have the constituent call the OSI for further guidance. Superintendent Franchini also commented that the effects of new federal requirements have influenced insurance companies' decisions to quit offering PPO plans; however, amendments to those requirements are being enacted.

Premium tax revenue. A member spoke in favor of creating a distribution from the revenue collected from the premium tax to a forest and watershed restoration fund.

Bulletins. Superintendent Franchini explained that bulletins are the OSI's official statements clarifying aspects of the laws it administers. The bulletin for which the hearing is scheduled relates to the categories of companies that must pay the 1% surtax.

Requests for information. Superintendent Franchini agreed to provide information on: 1) the amounts distributed from the Fire Protection Fund to municipalities and counties; and 2) the amounts collected for each of the five taxpayer types listed on page 6 of the handout.

Approval of Minutes

On a motion made and seconded, the minutes from the October meeting were adopted without objection.

Recess

The committee recessed at 5:12 p.m.

Wednesday, December 16

The committee reconvened at 9:13 a.m. on Wednesday, December 16, 2015, with Senator Cisneros chairing the meeting.

Global Contraction in Hydrocarbon Trade and Investment

Colin P. Fenton, managing partner, Blacklight Research, LLC, gave a presentation as follows on global issues surrounding the price, demand and production of hydrocarbons as they might affect New Mexico and other states dependent on revenues from oil and gas production.

Factors influencing hydrocarbon production. Many factors have contributed to recent distress in the oil industry. Global leaders, aiming to curb climate change, have committed to reducing the world's dependence on fossil fuels. The production of solar and other renewable energies has increased. Meanwhile, China, whose crude oil import levels heavily influence the global crude oil outlook and, in turn, the outlook for New Mexico, has enacted policies that contribute to the reduced demand for fossil fuels, and the country has been experiencing economic distress. Nevertheless, China is on track to become the world's largest crude oil importer. These and other factors have caused shifts in oil price and demand. High volatility markedly characterizes the price and production of oil.

Response to fluctuation. Because of the recent changes in oil price and demand, domestic oil producers have been under stress. They have cut back their production and have adjusted their capital, labor and physical stock. North Dakota producers have been especially hard hit.

Future of the industry. The future of hydrocarbon trade and investment is uncertain. Many factors shape that future. On a global level, there are signs of geopolitical unrest, including strife between members of the Organization of the Petroleum Exporting Countries. Meanwhile, the United States is considering lifting its ban on crude oil exports. All in all, the future of the oil industry is not only uncertain, but impossible to predict.

Mr. Fenton observed that the lifting of the export ban, the quality of New Mexico's crude oil and the nation's relative political stability will favorably influence New Mexico's oil industry.

Questions and Discussion

On questioning, Mr. Fenton and committee members discussed the following topics.

China's energy supplies. Mr. Fenton indicated that China has recognized its historic over-use of coal and has adjusted by making a transition to nuclear power. The country gets uranium for that purpose from Africa.

Dependence on the oil industry. Mr. Fenton expressed his belief that having a heavy oil industry presence is beneficial economically and geopolitically. He argued that hydrocarbons will always be used; the question is how to use them, i.e., how to draw them from the atmosphere to produce something useful on the ground.

Prospects for New Mexico's oil and uranium industries. Mr. Fenton cited as positive signs for New Mexico's oil industry that: China prefers to import oil from the United States because of the reliability of its supply; New Mexico is geographically advantaged; and the type of oil in New Mexico is in relatively high demand. Nonetheless, he said, New Mexico's oil industry still faces hurdles. Mr. Fenton suggested that a rapid loss of employment in the industry and a loss in inventories might signal the start of a prolonged period of low oil prices, such as that which occurred in 1986. He noted that New Mexico could counteract the negative effects of a potential contraction in the oil industry by hedging its investments; that is, it could enter investment markets by buying futures and locking in prices. To pursue that option prudently, he said, the state would need impartial advisors who could lay out an array of options. As for the prospect of growth in uranium mining in New Mexico, Mr. Fenton commented that there is a good chance that nuclear power development will increase, because that form of energy is reliable.

Future of other energy sources. Mr. Fenton and a member recognized some weaknesses characterizing renewable energies: unreliability and inefficiency in storage. Mr. Fenton said that biofuels' utility has probably peaked. He commented on the likelihood that the price of lithium will spike in response to the growing demand for Tesla cars. In general, he stressed, much is unknown, and it is exaggerated how much is known about the present and the past.

Legislative Proposals

Creating the Accounts for Persons with Disabilities Act (.202202.1). Representative Sheryl Williams Stapleton, Representative James and Nell Graham Sale, partner, Pregenzer, Baysinger, Wideman & Sale, PC, presented the draft of a bill that would allow New Mexico to participate in a program established by the federal Achieving a Better Life Experience Act of 2014. Through the program, people may contribute money to tax-free savings accounts whose deposits can be used for qualified expenses. Representative Stapleton indicated that the bill did not pass last year, and the measure was determined to have no fiscal impact. She also noted that the State Treasurer's Office (STO), which would help administer the program, supports the bill. Representative James added that the work on the bill in the 2015 regular session will be helpful going forward and that 34 states have adopted the program. Ms. Sale characterized the measure as a big benefit for account holders. In response to a member's question, a representative from the STO, who was in the audience, said that the office would contract for the service of determining account eligibility.

With no opposition, the committee endorsed the bill.

Technology maturation assistance GRT credit (.202468.4). Micheline Devaurs, manager, market transition, Los Alamos National Laboratory; and Jackie Kerby Moore, manager, government relations, Sandia National Laboratories, presented the draft of a bill that would create a "technology readiness" GRT credit. Ms. Moore acknowledged that the state is facing fiscal challenges but expressed her belief that the measure's net effect will be beneficial. She summarized the bill's background, reasons it would work well in New Mexico and some of its features. Ms. Devaurs noted that the measure would help continue technology development and give the laboratories an incentive to license technologies.

Questions and Discussion

Members: 1) remarked that the state has difficulty keeping companies in New Mexico and asked how the measure would encourage them to stay; and 2) pointed out that a laboratory that invests in a technology whose prototype does not come about would not meet the requirement for the credit. Ms. Moore: 1) elaborated that this measure would give laboratories an incentive to allow their scientists to work with companies on marketing technologies; 2) said that the measure's cost is a small fraction of what the laboratories generate annually in GRT revenue; and 3) explained that the 10-year sunset was decided on after considering what time would be needed for the laboratories to adequately demonstrate the program's value.

The committee resolved not to vote on endorsing the bill since its fiscal impact was not known.

GRT exemption for the sale of access to private land for hunting or fishing (.202553.3). Gerald Chacón, chair, Federal and Trust Lands Subcommittee, New Mexico Cattle Growers' Association, presented a draft bill that would exempt from the GRT sales by landowners of access to private land for hunting or fishing.

First, Demesia Padilla, secretary of taxation and revenue, who was in the audience, gave some background as follows on the issue. The imposition of the GRT on landowners' sales of access to their land has existed for 19 years. Seventeen years ago, a taxpayer protested the department's interpretation of the tax's application, and the department prevailed in the dispute. The department recently received complaints from some paying the tax on those sales that other landowners were evading it. In response, the TRD requested records from the Department of Game and Fish and learned that taxpaying compliance in the area was low. The TRD reached out to delinquent taxpayers, offering to arrange payment plans. It also suggested that landowners who sell the authorizations through outfitters request nontaxable transaction certificates from the outfitters, which would release the landowners from having to collect and remit the tax.

Secretary Padilla added that, in the context of this matter: 1) if enacted, the exemption would not operate retroactively, and the department would continue its efforts to collect outstanding liabilities; 2) she neither supports nor objects to the proposed measure, but, rather, she seeks to enforce the law; 3) more than 120 taxpayers have entered managed audits; 4) the TRD has conducted educational workshops to broaden awareness that tax is owed on these sales; and 5) landowner sellers could pass the tax on to buyers.

Next, Mr. Chacón explained more of the bill's context. The Department of Game and Fish issues to private landowners authorizations for hunting and fishing that they may sell. Those issuances are intended to compensate the landowners for property damage caused by wildlife. In September, the TRD began notifying landowners who sold the authorizations that they were liable for the GRT on those sales, both retroactively and going forward.

Mr. Chacón criticized the department's action and the imposition of the GRT in this context, arguing that: 1) most landowners were not aware that the GRT was imposed on the sales and are having trouble remitting to the department what it asserts they owe; 2) the sales do not offset the costs to landowners of repairing damage caused by wildlife, like elk, and by drought; 3) it is inconsistent that the state, on the one hand, actively compensates landowners for such natural disturbances by issuing the authorizations and, on the other hand, requires the remittance of some of that benefit's value.

Some audience members spoke in support of the proposed measure. David Sanchez, a rancher from the Chama Valley, underscored that often the cost of damage by wildlife exceeds the sales' value. Tom Sidwell, a rancher and president-elect of the New Mexico Cattle Growers' Association, argued that if the state compensated landowners directly, rather than using the authorization sale approach, that compensation would not be subject to the GRT. Zach Riley, director of governmental affairs, New Mexico Farm and Livestock Bureau, expressed disagreement with the interpretation that the GRT applies to these sales, given that the authorizations are a form of reimbursement for landowners' losses. Lastly, Kerrie Cox Romero, executive director, New Mexico Council of Outfitters and Guides, informed the committee that outfitters routinely pay the GRT on these sales, and that the issue deals not with landowners working with outfitters, but rather with landowners who sell authorizations directly to hunters.

Questions and Discussion

A member questioned why authorizations for fishing were included in the proposed exemption. The member also expressed concern that the exemption, as drafted, would apply to wealthy landowners who arguably do not need the relief, pointing out that such breadth would exacerbate the measure's fiscal impact. After the suggestion was made to enact a law in this context forgiving outstanding taxes owed, a committee staff member noted that such forgiveness was unconstitutional. The committee resolved to continue work on the draft.

Using the Law Enforcement Protection Fund for law enforcement officer retention (.202480.4). Senator Munoz presented the draft of a bill that would allow money in the Law Enforcement Protection Fund to be used for lump-sum payments to retain municipal and county law enforcement officers. He stated that the DFA would administer the program, which would address the concern for pension fund solvency, allow for payments to officers of about $10,000 to $25,000 each and cost about $7.6 million. Wayne Propst, executive director, Public Employees Retirement Association (PERA), who was in the audience, said that the measure would help with retention issues and would exclude lump-sum payments from pension calculations and that the PERA board would consider the measure at its next meeting. Gregory J. Fouratt, secretary of public safety; Shaun Willoughby, president, Albuquerque Police Officers Association; and Josh Anderson, political coordinator, AFSCME Council 18, who were in the audience, testified in favor of the measure.

Questions and Discussion

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

Program cost and administration. Mr. Propst said that money in the fund has historically reverted to the general fund, and Senator Munoz noted the possibility that, in the future, the program would need appropriations from another fund. Secretary Fouratt reported that a recent survey revealed interest in a proposed program in which incremental payments are made over a three-year period. That structure, he said, would preclude the need for a clawback provision. Secretary Fouratt expressed his belief that, since the cost of training law enforcement officers is high, the money would be well-spent.

Committee feedback. Members articulated criticisms of the proposal as follows: 1) the benefit would most likely concentrate in Albuquerque; 2) poor culture and leadership are at the root of many of the Albuquerque Police Department's problems, and this measure could not correct those deficiencies; 3) this issue is more appropriately handled at the local level, as evidenced by the local governments that have addressed the issue; 4) local governments could pay for similar measures with money from hold harmless payments and GRT increments; 5) the money proposed to be used for this program would otherwise revert to the general fund and that money, consequently, would not be available for other appropriations, such as those for education; 6) the proposal should include a cap and a mechanism for more universal distribution; and 7) the proposal is overly broad in that it would give the benefit to high-ranking officers and that "retain" encompasses more than retirement. Other members spoke in favor of the measure, arguing that Albuquerque's crime levels affect the entire state's well-being and that a concerted effort should be made to address the problem.

With eight members in opposition, the committee voted against endorsing the bill.

Return to work for public employees (.202567.5). Representative Harper, joined by Erick Petz and Brian Dolan, firefighters with the City of Rio Rancho Fire and Rescue Department, presented the draft of a bill that would encourage retirement-eligible employees to participate in a program in which they continue their public employment. Representative Harper explained that the measure was a way to avoid the issue of "double dipping". He further explained that, during the extended employment period, an employee's pension payments would accrue in an investment account and be payable upon retirement. Mr. Petz and Mr. Dolan testified in support of the proposed measure, saying that it would improve employee retention and public safety. Mr. Anderson, who was in the audience, commented that he had not looked closely at the measure, but it appeared to constitute double dipping.

Questions and Discussion

A member remarked that the program might reduce the number of opportunities for people wishing to enter public safety careers. Mr. Petz replied that it could have that effect, but it would ultimately help improve the quality of the public safety workforce. Representative Harper clarified that the bill as drafted would apply to all public employees; but, he said, it could be narrowed to apply only to certain employee types, such as rank-and-file public safety officers. When advised by Mr. Propst that an actuarial study could be performed since a bill has been drafted, Representative Harper pulled the bill from consideration for endorsement.

Adjournment

There being no further business before the committee, the RSTP adjourned at 12:50 p.m.

ENDORSED LEGISLATION

HOUSE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO MOTOR VEHICLES; REQUIRING DURING ROADSIDE EMERGENCIES THAT DRIVERS APPROACH STATIONARY TOWING AND REPAIR VEHICLES AS THEY WOULD OTHER EMERGENCY VEHICLES.

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

SECTION 1. Section 66-7-332 NMSA 1978 (being Laws 1978, Chapter 35, Section 436, as amended) is amended to read:

"66-7-332. OPERATION OF VEHICLES ON APPROACH OF AUTHORIZED EMERGENCY VEHICLES.--

A. Upon the immediate approach of an authorized emergency vehicle displaying flashing emergency lights or when the driver is giving audible signal by siren, exhaust whistle or bell, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in that position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

B. Upon approaching a stationary authorized emergency vehicle displaying flashing emergency lights, unless otherwise directed, the driver of a vehicle shall:

(1) if reasonably safe to do so, drive in a lane not adjacent to where the authorized emergency vehicle is stopped, decrease the speed of the vehicle to a speed that is reasonable and prudent under the circumstances and proceed with caution; or

(2) if it is not reasonably safe to drive in a lane not adjacent to where the authorized emergency vehicle is stopped, decrease the speed of the vehicle to a speed that is reasonable and prudent under the circumstances, proceed with caution and be prepared to stop.

C. This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive and park with due regard for the safety of all persons using the highway.

D. For the purposes of Subsections B and C of this section, "authorized emergency vehicle" includes roadside towing and repair vehicles."

SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; AMENDING THE UNIFORM DIVISION OF INCOME FOR TAX PURPOSES ACT TO DETERMINE IN-STATE SALES OF INTANGIBLES AND SERVICES BASED ON MARKET SOURCING RATHER THAN COST OF PERFORMANCE.

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

SECTION 1. Section 7-4-18 NMSA 1978 (being Laws 1965, Chapter 203, Section 18) is amended to read:

"7-4-18. DETERMINATION OF SALES IN THIS STATE OF SERVICES AND OTHER [~~THAN TANGIBLE PERSONAL~~] PROPERTY FOR INCLUSION IN SALES FACTOR.--

A. Sales, other than sales [~~of tangible personal property~~] described in Section 7-4-17 NMSA 1978, are in this state [~~if~~

~~A. the income-producing activity is performed in~~

underscored material = new
[~~bracketed material~~] = delete

~~this state; or~~

~~B. the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state based on costs of performance~~]:

(1) in the case of sale, rental, lease or license of real property, if and to the extent the real property is located in this state;

(2) in the case of rental, lease or license of tangible personal property, if and to the extent the tangible personal property is located in this state;

(3) in the case of sale of a service, if and to the extent the service is delivered to a location in this state; and

(4) in the case of sale, rental, lease or license of intangible property, if and to the extent the intangible property is used in this state.

B. If the state or states of assignment under Subsection A of this section cannot be determined, the state or states of assignment shall be reasonably approximated.

C. If the taxpayer is not taxable in a state to which a sale is assigned pursuant to Subsection A of this section or if the state of assignment cannot be determined or reasonably approximated pursuant to Subsection B of this section, that sale shall be excluded from the numerator and denominator of the sales factor.

D. The department may promulgate rules as necessary or appropriate to carry out the purposes of this section."

SECTION 2. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2017.

underscored material = new
[~~bracketed material~~] = delete

HOUSE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO ACCOUNTS FOR THE SUPPORT OF PERSONS WITH DISABILITIES; CREATING THE ACCOUNTS FOR PERSONS WITH DISABILITIES ACT; ENACTING ENABLING LEGISLATION REQUIRED BY THE FEDERAL ACHIEVING A BETTER LIFE EXPERIENCE ACT OF 2014; REQUIRING THE OFFICE OF THE STATE TREASURER TO ESTABLISH AND MAINTAIN A QUALIFIED PROGRAM FOR SUCH ACCOUNTS; DECLARING AN EMERGENCY.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 7 of this act may be cited as the "Accounts for Persons with Disabilities Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Accounts for Persons with Disabilities Act:

A. "account" means an individual tax-free savings account for a designated beneficiary that is established pursuant to Section 529A of the Internal Revenue Code of 1986, as amended;

B. "account owner" means a person who establishes and owns an account under the Accounts for Persons with Disabilities Act and who is one of the following:

(1) the designated beneficiary of the account;

(2) the parent, guardian or conservator of a minor designated beneficiary; or

(3) the conservator of a designated beneficiary otherwise incapable of handling such beneficiary's financial affairs;

C. "designated beneficiary" means a person for whom an account is established under the Accounts for Persons with Disabilities Act;

D. "disability certification" means a certification deemed sufficient by the United States secretary of the treasury to establish a certain level of physical or mental impairment that meets the requirements of Section 529A of the Internal Revenue Code of 1986, as amended;

E. "eligible person" means, for a taxable year, a person who is either:

(1) entitled during that taxable year to benefits based on blindness or disability under Title 2 or Title 16 of the federal Social Security Act; provided that such

blindness or disability occurred before the date on which the individual attained age twenty-six; or

(2) the subject of a disability certification filed with the United States secretary of the treasury;

F. "family member" means a sibling, whether by blood or adoption, including a brother, sister, stepbrother, stepsister, half-brother or half-sister;

G. "fiduciary" means a person authorized to do business in New Mexico and acting as a fiduciary to manage and invest an account; provided that such person is bonded and is not the parent, guardian or conservator of the designated beneficiary of the account;

H. "financial organization" means an organization that is authorized to do business in New Mexico and is:

(1) licensed or chartered by the office of superintendent of insurance;

(2) licensed or chartered by the financial institutions division of the regulation and licensing department; or

(3) subject to the jurisdiction of the federal securities and exchange commission;

I. "office" means the office of the state treasurer;

J. "qualified disability expenses" means any expenses, related to the designated beneficiary's blindness or disability, that include the following:

(1) education;

(2) housing;

(3) transportation;

(4) employment training and support;

(5) assistive technology and personal support services;

(6) health, prevention and wellness;

(7) financial management and administrative services;

(8) legal fees;

(9) expenses for oversight and monitoring;

(10) funeral and burial expenses; and

(11) other expenses approved by the United States secretary of the treasury; and

K. "qualified program" means a program established and maintained by the state or an agency or instrumentality of the state pursuant to 26 U.S.C. Section 529A.

SECTION 3. [NEW MATERIAL] DUTIES AND AUTHORITY OF THE OFFICE.--

A. The office shall:

(1) ensure that an account meets the requirements of a qualified program; and

(2) promulgate rules to implement and administer the qualified program and other requirements of the

Accounts for Persons with Disabilities Act.

B. The office may contract with third parties to:

(1) verify the disability certification of each designated beneficiary under the state's qualified program and certify whether expenses paid from such account are qualified disability expenses; and

(2) provide such information related to accounts as the state is required to report to the federal social security administration.

SECTION 4. [NEW MATERIAL] ACCOUNTS.--

A. An account owner may:

(1) establish an account with a financial organization or fiduciary;

(2) close the account and establish an account with another financial organization or fiduciary, no more than twice in any tax year; and

(3) change the owner of an account to a family member of a designated beneficiary; provided that the family member is an eligible person.

B. More than one person may contribute to an account.

C. A person shall not be the designated beneficiary of more than one account.

D. A designated beneficiary for whom an account is established pursuant to the Accounts for Persons with

Disabilities Act shall be a resident of New Mexico.

SECTION 5. [NEW MATERIAL] DUTIES OF FINANCIAL ORGANIZATION OR FIDUCIARY.--

A. If a designated beneficiary incurs a qualified disability expense, the financial organization or fiduciary shall pay such expense, or reimburse such expense; provided that the account balance is sufficient to do so.

B. If any person attempts to contribute to an account and such contribution would exceed the limits on annual or maximum aggregate contributions to the account pursuant to 26 U.S.C. Section 529A, the financial organization or fiduciary shall return the amount that exceeds such limits to the contributor.

SECTION 6. [NEW MATERIAL] STATE AS CREDITOR OF ACCOUNT.--Subject to any outstanding payments due for qualified disability expenses, upon the death of the designated beneficiary, an amount equal to the total medical assistance paid for the designated beneficiary after the establishment of the account shall be distributed to the state from funds remaining in the account upon filing of a claim for payment by the state. For purposes of this section, the state shall be a creditor of an account and not a beneficiary.

SECTION 7. [NEW MATERIAL] TREATMENT OF ACCOUNTS UNDER FEDERAL MEANS-TESTED PROGRAMS.--

A. Notwithstanding any other provision of federal

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law that requires consideration of one or more financial circumstances of a person when determining eligibility to receive benefits or determining the amount of assistance, such provisions shall not apply to a designated beneficiary except that, in the case of the supplemental security income program under Title 16 of the federal Social Security Act:

(1) a distribution for housing expenses shall be allowed; and

(2) any amount in an account established pursuant to the Accounts for Persons with Disabilities Act, including earnings on investment of the account, in excess of one hundred thousand dollars ($100,000) shall be considered an excess resource of the designated beneficiary.

B. The benefits of a designated beneficiary under the supplemental security income program under Title 16 of the federal Social Security Act shall not be terminated, but shall be suspended, by reason of excess resources of the designated beneficiary attributable to an amount in the account, within the meaning of Section 529A of the Internal Revenue Code of 1986, as amended.

SECTION 8. A new section of Chapter 6, Article 8 NMSA 1978 is enacted to read:

"[NEW MATERIAL] ACCOUNTS FOR SUPPORT OF PERSONS WITH DISABILITIES.--The state treasurer shall establish and maintain the program established pursuant to 26 U.S.C. Section 529A and the Accounts for Persons with Disabilities Act."

SECTION 9. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2016.

SECTION 10. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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