MINUTES
of the
SECOND MEETING IN 2010
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

July 8-9, 2010
Room 322, State Capitol
Santa Fe

The second meeting of the Revenue Stabilization and Tax Policy Committee (RSTP) for 2010 was called to order by Representative Edward C. Sandoval, chair, at 9:14 a.m. on July 8, 2010 in Room 322 of the State Capitol in Santa Fe.

Present
Rep. Edward C. Sandoval, Chair
Sen. John Arthur Smith, Vice Chair
Sen. Carlos R. Cisneros
Rep. Nathan P. Cote
Rep. Anna M. Crook
Sen. Dianna J. Duran
Sen. Tim Eichenberg
Rep. Keith J. Gardner (July 8)
Sen. Timothy Z. Jennings (July 8)
Sen. Timothy M. Keller
Sen. Gay G. Kernan
Rep. Ben Lujan, Speaker of the House
Sen. Howie C. Morales
Rep. Henry Kiki Saavedra
Rep. Jim R. Trujillo

Absent
Rep. Rodolpho "Rudy" S. Martinez
Sen. William E. Sharer
Rep. Thomas C. Taylor

Designees
Rep. Donald E. Bratton
Sen. Phil A. Griego
Sen. Clinton D. Harden, Jr.
Rep. Sandra D. Jeff

Rep. Ray Begaye
Sen. Mark Boitano
Rep. Zachary J. Cook
Sen. Kent L. Cravens
Rep. Miguel P. Garcia
Rep. Roberto "Bobby" J. Gonzales
Sen. Carroll H. Leavell
Rep. Antonio "Moe" Maestas
Sen. Steven P. Neville
Rep. Debbie A. Rodella
Sen. Nancy Rodriguez
Sen. Bernadette M. Sanchez
Sen. John M. Sapien

Rep. James R.J. Strickler
Rep. Don L. Tripp
Rep. Luciano "Lucky" Varela
Sen. Peter Wirth

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

<u>Thursday, July 8</u>

The minutes of the June 7, 2010 meeting of the committee were adopted without corrections.

Tax Expenditures — Policy for Assessing

Thomas Pogue, professor emeritus of economics, University of Iowa, gave the committee a presentation on methods of evaluating the effectiveness of business tax expenditures. Tax expenditures are special tax provisions in law that are designed to create incentives for certain types of business activity. They should be thought of as a type of government spending, rather than as tax policy, because they allocate tax revenues and reduce a government's budget surplus or reserves, just as appropriations do. Business tax credits and exemptions reduce the amount of total revenue collected in taxes.

Dr. Pogue said that business tax credits should have as a goal to improve the living standards of New Mexicans, which can be achieved by increasing the total value of goods and services produced in the state and the incomes New Mexicans derive from that production. However, many tax credits are defined more narrowly, such as to increase investment in manufacturing or to create high-wage technology jobs. Such narrow definitions can have negative overall effects on the state's economy because a credit granted to one segment of the economy will be paid for by other sectors, which could diminish the total value of production in the state. Dr. Pogue said that a narrowly defined credit should not be implemented without first determining how the credit and its financing will affect total production and income. Business credits should be based on identified needs for changes in resource use and based on evidence that a credit can, in fact, direct those resources to more valuable uses.

New Mexico currently has 27 business credits, all of which have been enacted since 1979 and most of which have been created in the past decade. The budgetary cost of credits has increased over time, accounting for two percent of general fund spending for fiscal year 2009. This amount is not the full cost of the credits because state agencies incur costs to oversee the implementation of the credits.

In order to evaluate the effectiveness of a business credit, it should be determined to what extent the actions subsidized by the credit would have occurred without the credit. If the same level of action would have occurred, then the credit does not serve its intended purpose and should be eliminated. Regardless of whether a credit has its intended effects, a credit has after-tax income and spending impacts, which should be measured. Taxpayers that receive the credit have increased disposable income and spending. In order to offset the revenue lost from a credit, the government must reduce spending or increase taxes on other businesses, which tends to reduce disposable income and spending in other segments of the economy. The task in evaluating a credit is to estimate the net effect of these changes in spending flows. A credit is cost effective only if it diverts spending and resources from less valuable to more valuable economic activities.

There are many complications that arise when trying to evaluate tax credits, said Dr. Pogue. Most credits do not require sufficient reporting in order to evaluate their effectiveness. Data needed include state government revenue foregone; what recipient businesses are doing differently because of the credit; state agency compliance and administrative costs; the extent to which the credit benefits out-of-state businesses and individuals; the net effect of the multiplier effect of a credit, which measures increased tax revenue from increased productivity against decreased tax revenue from cuts in other areas in government spending; the effect of the credit on employment, taking into account net job changes, rather than merely new jobs created in a particular industry or by a particular business; the effect of the credit on wages; and the overall effects from multiple government subsidies on a business that receives a credit.

Dr. Pogue said that, typically, it is impossible to determine definitively whether a tax credit will have a positive economic effect. The best that policymakers can do is to set out clear guidelines for credits in order to increase the likelihood that credits will be cost effective. He presented a list of guidelines that policymakers could establish, including the following:

- <u>Establish the need for the credit.</u> Why is there a need for an incentive to shift resources? Does the credit duplicate existing incentives? The strongest case for the establishment of a credit is to offset recognized market failures in which businesses are unwilling to perform the identified activity due to high risk, failure to account for external benefits and limited knowledge of new technologies.

- <u>Set measurable goals.</u> Goals of the credits should be stated in terms that are measurable.

- <u>Offset revenue loss.</u> The full cost of a credit should be established and budgeted before it is enacted. Any claim that a credit's costs will be offset by expanded economic activity should be supported by a quantitative analysis of that claim.

- <u>Certification.</u> Some credits that involve technologically complicated activities may need to have certification of the credit by a state agency before it can be claimed.

- <u>Refundable or carry-forward credits.</u> A credit should be fully refundable or be allowed to carry forward in future tax years if it is actually effective in directing resources to more valuable uses. If an effective credit is allowed to be taken only against tax liabilities, then businesses without those liabilities may be unwilling to change their activities. That restriction can limit the extent to which the credit is used, which may defeat the purpose of the credit.

- Recapture. Businesses that do not fulfill the requirements of a credit may have the credit revoked, and the previous credit granted can be recaptured. However, the possibility of recapture may make businesses reluctant to apply for the credit if the outcome of the change in activity is uncertain for that business. Recapture is appropriate when events subsequent to payment of the credit prevent it from having its intended effect. For example, a new jobs credit should be recaptured if a business ceases operation for an extended time after the granting of the credit. One method of avoiding recapture issues would be for the state to grant a credit on a post-performance basis.

- Transferability. Transferable tax credits are not cost effective for the state in providing incentives for certain types of business activities. Refundable credits are more cost effective.

- Limits on overlap, outlays and duration. Policymakers should decide to what extent a business should be allowed to receive multiple subsidies for performing the same business activity. The state should also determine whether a certain dollar amount of credit needs to be established and whether the credit should terminate after a certain time.

- State agency oversight and reporting. The state agency that oversees a credit should be required to report on the cost effectiveness of the credit. Evaluations should not solely rely on information provided by credit recipients.

- Taxpayer reporting requirements. Businesses that receive a credit should be required to report periodically on specified information so that the state can measure whether the credit is cost effective. Businesses should also report on every state and local incentive they receive from various programs in order to accurately measure the effectiveness of the credit being analyzed.

Representative Sandoval asked Jim O'Neill, tax consultant, to comment on tax expenditure policy. Mr. O'Neill said that unless statutes protecting confidentiality are modified, it will be difficult to get more reporting information from businesses on existing tax credits. He suggested that any new credit require full disclosure from the receiving entity as a condition of being granted the credit. Mr. O'Neill also suggested that a single system of taking credits against combined reporting system (CRS) taxes should be established, which would make administration of credits more streamlined. Finally, he said that the state pays twice for some credits because of the municipal credit against the gross receipts tax (GRT).

Questions and comments from committee members included the following:

- Are some businesses double-dipping with tax credits? Mr. O'Neill said that many businesses receive two or even three types of subsidy for a single activity.

- How does competition with other states factor into the establishment of business tax credits? Dr. Pogue said that interstate competition is often the political factor that determines whether a tax credit is enacted. However, nationally, interstate competition is a zero-sum game or even worse if one accounts for the amount of money spent by each state's economic development department. He said that many studies have shown that, in reality, a state tax burden tends to be on the bottom of a business' list of priorities in contemplating relocating. More important than tax policy is access to transportation, capital availability, the presence of an educated labor force and access to raw materials.

- Tax exemptions are not reported, so the full cost of exemptions is not fully known. Mr. O'Neill said that if current GRT exemptions were changed into deductions, businesses would be required to report those deductions. The state could then determine the amount of tax expenditures for those entities.

- Industrial revenue bonds issued to attract certain businesses to a city merely shift the property tax burden to other entities in the region.

- What new tax credits could be enacted that would help New Mexico's small businesses to stay afloat? Dr. Pogue said that taxes are a small part of a business' costs, so the state does not have much leverage over profitability. Mr. O'Neill suggested that a tax credit based on a business' payroll would stimulate job creation and help businesses.

- Usually a tax credit is paid for by some other tax increase elsewhere. Large corporations tend to get most of the business tax credits in New Mexico.

- How significant is the economic multiplier effect for a business tax credit? Mr. O'Neill said that anyone claiming a multiplier effect of greater than two is probably wrong. Dr. Pogue said that a factor of 1.2 is more common, if there is any net positive economic impact at all.

- How can the state leverage better access to capital for businesses? Dr. Pogue said that with the current tight capital markets, the state providing investment support could be a significant help to New Mexico's businesses.

- The burden of tax credit reporting should be placed on the recipients of credits, rather than the state. Dr. Pogue agreed and suggested that businesses could be charged an administrative fee for the state's oversight duties.

Tax Incentive Review

Duffy Rodriguez, secretary-designate of taxation and revenue, Marilyn Hill, deputy secretary, Taxation and Revenue Department (TRD), and Clinton Turner, senior economist, TRD, updated the committee on business incentive tax credits that the department administers. Secretary-Designate Rodriguez agreed with comments made by Dr. Pogue, adding that tax expenditures should not be evaluated using tax policy principles but should be evaluated using the same expenditure principles that are used to evaluate other expenditure programs. Consideration must be given to the intended purpose of the tax expenditure, to other types of business subsidies that may be combined with a tax credit and to quantitative analyses that evaluate the effectiveness of a tax expenditure.

Mr. Turner presented fiscal year 2010 tax expenditure estimates for the state's business credits. The total value of credits for fiscal year 2010 is estimated to be $94.3 million, which is down from last year's total of $122.7 million. The film production tax credit is still the state's largest credit, accounting for $65 million. The credit cost the state $76.7 million in fiscal year 2009. The high-wage jobs tax credit, which cost $14.4 million in fiscal year 2009, fell to $4.9 million in fiscal year 2010. In a similar reflection of the state's economic condition, the investment credit, which is a credit for certain industrial capital asset acquisitions, fell from $11.6 million to $5.9 million. Secretary-Designate Rodriguez said that she would like to present personal income tax credit data to the committee later in the interim.

Questions and comments from committee members included the following:

- The TRD was asked to provide tax credit information about companies receiving the credit. Mr. Turner said that confidentiality statutes prohibit the department from providing taxpayer information, unless a particular payment in excess of $10,000 is made to an entity. He said that the TRD could easily provide a list of credits granted and sorted by industry groups.

- The rural health care practitioner tax credit is the most important tool in recruiting health care providers to many parts of the state. Secretary-Designate Rodriguez said that most business tax credits were enacted to achieve a public policy goal rather than an economic development goal.

- Is there a time limit for companies to claim the film production tax credit? Mr. Turner said that there is not, but there is no incentive for companies to delay the submission of the fully refundable credit.

- What are the reporting requirements for business tax credits? Mr. Turner said that before a credit is granted, an applicant must submit a detailed application. Each credit has different reporting requirements after a credit is granted, however.

- More than two-thirds of the state's entire business tax credits go to the film industry. In addition, the state has loaned $240 million, interest free, to film companies over the past several years.

- The department was asked to provide more information about the effectiveness of the research and development small business tax credit, which has fallen from $249,000 claimed in 2007 to $20,000 in 2010.

One Percent Revaluation Fund Use

Karen Montoya, Bernalillo County assessor, presented to the committee proposed legislation that would allow counties to use excess money in their county property valuation funds to partially offset future mill rate increases. The fund was set up in each county to provide assessment tools for counties to better manage appraisals. Administrative charges of one percent of property tax received by counties are deposited in the fund. Currently, Bernalillo County has an excess of money in its fund, but it has no statutory authority to use that money for other purposes. Ms. Montoya proposed that Section 7-38-38.1 NMSA 1978 be amended to allow unneeded money to be used to offset the property tax mill rate the following year. She estimated that in Bernalillo County, an average household property tax bill could be reduced by $50.00 if the changes were enacted into law.

A committee member suggested that the wording in the proposal be modified to require, rather than allow, the county assessor to use the excess money in the fund for property tax relief.

TRD Duties, Organization and Review

Secretary-Designate Rodriguez presented information to the committee about the structure and duties of the TRD. The department consists of seven divisions, including the Motor Vehicle Division (MVD), Property Tax Division, Revenue Processing Division, Audit and Compliance Division (ACD), Tax Fraud Investigations Division, Information Technology Division and Administrative Services Division. In addition, the office of the secretary consists of the tax policy office, ombudsman, legal services, administrative hearing office and public information officer. The department collects and distributes taxes, distributing $5.7 billion in various taxes in fiscal year 2010. GRTs account for 64 percent of distributed revenues, followed by oil and gas revenues at 15 percent; personal income tax at six percent; fuel taxes at five percent; motor vehicle excise tax at four percent; and corporate income tax, gaming tax, weight distance tax (WDT) and cigarette tax each at one percent. Various other taxes make up the remaining two percent of revenues distributed by the department. The department's budget has seen a steady increase in the past several fiscal years, reaching a total operational budget in fiscal year 2010 of $90 million. The department's budget was cut, however, in fiscal year 2011 to $84 million. The department has a total of 1,183 authorized full-time-equivalent positions (FTEs), with vacancies in 180 positions.

The TRD is developing several technological improvements that will save the state money and provide better services to its customers. The department continues to implement its electronic filing initiative and will soon begin requiring electronic filing by certain large taxpayers. The MVD web site is being redesigned, and the department's call center system is being replaced with a much more efficient system. Finally, the department's entire web site is being redesigned, which will make it easier for taxpayers to find information and file returns.

Secretary-Designate Rodriguez updated the committee on the department's Fair Share Initiative, which was begun in 2009 to collect additional delinquent taxes. The program has $5.1 million in recurring costs, but it was expected to raise $29.2 million in fiscal year 2010 and $44.4 million in the current fiscal year. However, due to the fiscal year 2010 budget cuts and the reductions in tax revenues due to the economic recession, the Fair Share Initiative is expected to only raise $25.9 million for fiscal year 2010.

The ACD is improving its auditing functions by adding more data sources to the data warehouse to enable it to easily identify taxpayer discrepancies. It also uses a scoring system to rank potential candidates for auditing and compares 1099 forms issued by the Department of Finance and Administration (DFA) to reported income. The division expects to conduct 770 field audits, 791 managed audits, 49 desk audits and 130 business credit audits in fiscal year 2010.

The TRD also collects revenues for the WDT and trip tax. Revenues from the taxes reached a high of nearly $100 million in fiscal year 2007, but they have dropped each year since. Fiscal year 2010 revenues are expected to be $80 million. The ACD has set up a special unit dedicated to processing WDT returns and providing taxpayer assistance to the trucking industry. The division also has a WDT audit unit that performs an average of 65 WDT audits annually. The department works with the Motor Transportation Division (MTD) of the Department of Public Safety (DPS) in ensuring WDT and trip tax compliance. The MTD operates electronic license plate readers at various state ports of entry and has two mobile readers for intrastate compliance efforts. The MTD also has conducted WDT enforcement operations in the Albuquerque-Santa Fe area. The TRD data warehouse collects information on MTD compliance, and the system automatically compares its data with third-party data to identify tax deficiencies.

The Tax Fraud Investigations Division enforces the criminal statutes relative to the Tax Administration Act. It identifies and prosecutes fraud, while encouraging voluntary compliance with tax laws. The division also conducts internal auditing within the TRD to ensure the department's accountability and effectiveness. In fiscal year 2010, 21 criminal investigations were initiated and seven criminal convictions were obtained. The division also completed 16 internal audits and 16 internal investigations.

The MVD is responsible for assuring compliance with the Motor Vehicle Code. Its duties include licensing commercial and non-commercial drivers; issuing registrations, titles and licenses for vehicles; licensing auto dealers and title service companies; and contracting with private entities to provide selected MVD services. The department is developing a new "Drive MVD" system that will make MVD services easier to access. Customers will be able to make appointments online, rather than waiting for hours at a local office. Beginning in August, private MVD contractors will be able to conduct driving tests. More private retail locations have been added in Albuquerque and other cities. In fiscal year 2010, $318 million in MVD-related fees were distributed, more than 50 percent of which went to the State Road Fund (SRF). Thirty-one percent of MVD distributions went to the general fund; nine percent were distributed to local governments; the Administrative Office of the Courts received two percent; and the TRD received 4.6 percent for administrative expenses.

The Property Tax Division oversees the implementation of ad valorem taxation in each county. Property taxes contribute approximately $1.2 billion in revenues, making it the second-largest tax revenue program in the state. The division has supervisory authority over and provides technical support to county assessors. The division's budget normally consists of general fund appropriations supplemented by money distributed to it from penalties and interest. For fiscal year 2011, however, the entire division budget was appropriated from internal funds. The division's current budget is $3.3 million. The division has three bureaus: the State Assessed Properties Bureau, which assesses certain classes of property, including telecommunications, railroads, electrical utilities and oil and gas pipelines and refineries; the Delinquent Property Tax Bureau, which pursues collection of delinquent taxes and as a last resort conducts public auctions to sell delinquent property; and the Appraisal Bureau, which provides assistance to counties in the assessment of certain types of property and reviews appraisals for the State Board of Finance.

Questions and comments from committee members included the following:

- When will the implementation of the recently enacted law allowing online renewal of driver's licenses begin? Michael Sandoval, director, MVD, said that the new system will begin in June 2011.

- Will the TRD begin automatically deducting CRS payments from taxpayers' bank accounts? Ms. Hill said that taxpayers have the option of sending a check to the department or authorizing electronic payment.

- What is the status of state implementation of the federal REAL ID Act of 2005? Mr. Sandoval said that the state was granted an extension until May 2011 by the federal government to implement the act.

- Some DWI offenders who were convicted and mandated by a judge to obtain an ignition interlock device did so, but they were not aware that they also had to obtain an ignition interlock license from the department. After having the device installed in their vehicles for the specified time, they were informed by the MVD that they still had to obtain an ignition interlock license because they had neglected to do so.

- The tax amnesty letter that the TRD recently sent to taxpayers has an intimidating tone. Phil Salazar, director, ACD, said that the division sent out different types of letters to taxpayers, depending on the type of possible violation. The letter referred to by the legislator was directed toward individuals who had already been identified as candidates for auditing. Instead of going ahead with the audit, the TRD offered those individuals to enter into the tax amnesty program.

- Since New Mexico has been licensing undocumented foreign nationals, the uninsured motorist rate in the state has dropped significantly. However, insurance companies have not cut their premiums for uninsured motorist coverage. It is not fair that some national and local politicians blame Mexico for all of the problems in the United States. Mr. Sandoval said that in 2003, 20 percent of drivers in the state were not insured. By 2010, that figure dropped to nine percent. Since 2003, 80,000 driver's licenses have been issued to persons without a social security number.

- The state should require a CRS number for all potential contract bidding.

- Any mistakes made by the TRD in estimating revenues in the next six months will have serious negative consequences for the state.

- Seventy percent of federal stimulus contracts have gone to out-of-state contractors. Is there a discrepancy between the contracts awarded and the amount of GRT collected by the department?

- The GRT is collected essentially on the honor system, and 154 auditors working for the department are not sufficient to ensure adequate compliance. Mr. Salazar said that the department audits 30 different tax programs, but that the CRS system (which includes the GRT) is the primary audit function. More than one-half of the TRD auditors work on the CRS system.

- If the legislature changed state law about licensing foreign nationals to remove language that says "regardless of immigration status", the state would be in compliance with the federal REAL ID Act of 2005. Mr. Sandoval said that the language change is an option for the state to consider. Another possible approach to licensing noncitizens or citizens who want to produce more minimal documentation than is required for a REAL ID license is to provide a second type of driver's license so that the driver remains in the state system and is required to obtain car insurance.

Department of Transportation (DOT) and State Transportation Commission (STC) Organizational Review

Secretary of Transportation Gary Giron and many members of the DOT's executive staff presented to the committee the organizational structure and operations and budget of the department. Daniel Opperman, DOT chief counsel, reviewed the powers and duties of the department and commission. The STC is created in Article 5, Section 14 of the Constitution of New Mexico, and power to determine all matters of policy for the department are granted to the commission. The STC is composed of six commissioners appointed by the governor. The commission is granted in statute the authority to control all roads designated as state highways, and much of the power of the commission is vested in the department to carry out the policies of the commission. Commission members may receive per diem and mileage, but they do not receive any other compensation or have DOT staff or offices. Each year, the department's budget is first reviewed by the commission before it is submitted to the DFA and legislature.

Secretary Giron described the organizational structure of the DOT. He said that due to the recent recession and cuts to government spending, he has reduced the number of deputy secretaries from three to two and reduced FTEs by 250 positions. The department consists of a general office and six district offices. The department has 2,500 employees and has a yearly operating budget in fiscal year 2011 of $803 million. The department is responsible for the construction and maintenance of more than 30,000 lane-miles of highway infrastructure. In the operations and maintenance program, more than 1,600 employees work at the six district offices. There are 46 construction crews and 82 maintenance patrols statewide. The programs and infrastructure component of the DOT manages several programs, including the Office of Infrastructure, program management, engineering support, the Aviation Division, the Planning Division, transit and rail, traffic safety and property asset management.

The DOT receives no general fund support, being funded entirely by the SRF and federal funds. However, the recent economic downturn led to a reduction in SRF revenues of more than $120 million in the past three years. With funding for Governor Richardson's Investment Partnership (GRIP) and federal American Recovery and Reinvestment Act of 2009 (ARRA) projects ending soon, the state's highway capital program will continue to decline at current projected funding levels, said Secretary Giron.

Deputy Secretary of Construction Programs Max Valerio described trends in the DOT's construction funding. The federal highway construction funding authorization expired in September 2009, with no reauthorization date in sight. That leaves an annual average federal funding amount of $330 million, which is further reduced by $122 million in debt service for prior projects and $60 million for various research programs and DWI penalties imposed by the federal government. GRIP funding has a $425 million shortfall, which has been partially offset by one-time ARRA funding of $135 million. Total ARRA funding for highway projects in New Mexico amounts to $252 million. Mr. Valerio contrasted fiscal year 2010 total DOT construction funding of $524 million to fiscal year 2012's expected budget of $142 million.

Deputy Secretary of Operations Domingo Sanchez reviewed forecasted distributions to the SRF from various road-related taxes and fees, including the gasoline tax, special fuel excise tax, petroleum products loading fee, WDT, trip tax, vehicle registration fees, transaction fees and driver's license fees. SRF revenue is expected to grow slowly in the next two fiscal years from $353 million to $371 million. However, distributions to the fund have dropped each year since fiscal year 2008 from a previous high of $399 million. The DOT has taken several actions to deal with reduced SRF revenue, including reducing the rollover of budgeted encumbrances; convening strategic planning sessions with district engineers to implement budget reductions; engaging in employee outreach to seek cost savings; reducing authorized FTEs by 250 positions; resolving critical issues with the SHARE accounting system for federal reimbursements; and continuing to research options for SRF revenue enhancements. The impacts of budget reductions have been felt in all areas of the department's operations: state-funded highway construction projects have been essentially eliminated in fiscal years 2009 and 2010; contract maintenance programs were cut by $21 million; heavy equipment replacement schedules for more than 80 patrols were delayed; the department reduced the purchase of field supplies, which resulted in increased deferred maintenance problems; and the department is maintaining a 19 percent vacancy rate.

Department analysis shows an annual gap in funding for routine maintenance of almost $200 million. An additional $50 million is needed each year for bridge replacement and repair. The current budget outlook only exacerbates these ongoing problems. If new funding sources are not found soon, some state highways will fall into disrepair, said Secretary Giron. He then discussed potential revenue enhancements from various tax and fee hikes to be dedicated to the

SRF. For each one-cent increase in the gasoline tax, the SRF would generate an additional $8.3 million. Raising the special fuel excise tax generates $4.3 million for each one-cent increase per gallon. For each $10.00 increase in motor vehicle registration fees, the fund stands to gain $15 million annually. Secretary Giron said that he is not proposing any tax hikes yet. He pointed out a recent study, however, that ranked New Mexico's gas tax as the eighth lowest in the nation.

Questions and comments from committee members included the following:

- Is the rubberized asphalt program cost effective? Ernest Archuleta, DOT operations manager, said that one million tires from New Mexico are processed each year into polymerized asphalt. The cost of that asphalt is about 30 percent higher than standard materials, and it is still unclear whether the rubberized asphalt lasts longer than standard asphalt mixtures.

- Are there any state highways that have dangerous conditions due to lack of maintenance activities? Gary Shubert, District 2 engineer, said that no roads are currently in a dangerous condition, but if New Mexico experiences another wet winter, the district may be forced to install warning signs indicating unmaintained roads.

- Does the department save much money in closing down highway rest areas? Secretary Giron said that the DOT has plans to close 13 rest areas. The maintenance budget has already been cut dramatically, so other areas need to be trimmed before further cuts in maintenance are made.

- Will STC members lobby the next governor to provide a stable revenue source for the SRF? Roman Maes, STC commissioner, said that they will. There needs to be an increase in road taxes in order to keep roads maintained, he said.

- Increasing motor vehicle registration fees is probably politically easier than raising the gasoline tax.

- The department should avoid cutting the budget for snow removal operations.

The committee recessed at 5:10 p.m.

Friday, July 9

The committee was reconvened by Representative Sandoval at 9:11 a.m.

Tax Incentives — Perspective on Effectiveness

Fred Mondragon, secretary of economic development, and Lisa Strout, director, New Mexico Film Office, Economic Development Department (EDD), presented to the committee their perspectives on the importance and effectiveness of business tax incentives. Secretary Mondragon identified the most important business incentives New Mexico has. Ms. Strout subsequently discussed film incentives. Secretary Mondragon said that the EDD conducted a survey of businesses to determine which business incentives are the most effective. Solar energy incentives are definitely an area in which New Mexico "gets it", he said. The state does not create jobs; the private sector does. Financing is still very tight for companies to start up or expand. New Mexico cannot compete with China for solar energy start-up companies. If New Mexico loses any incentives in the solar energy sector, it will be almost impossible to attract new business in the state.

Secretary Mondragon said that the high-wage jobs tax credit has been a great incentive for businesses to create high-paying jobs. That credit is the best method for the state to keep the younger generation of workers living in New Mexico. The investment credit, which can be applied toward the purchase of certain manufacturing equipment, provides a more level playing field with other states, because New Mexico is one of a few states that charges a sales tax on manufacturing equipment. Small business tax credits are important, because they help small businesses get started. The rural job tax credit provides incentives for companies to locate in rural areas of the state. New Mexico primarily competes with Texas, Colorado, Utah, Arizona and Nevada for business incentives, said Secretary Mondragon. Arizona recently developed enterprise zones, and New Mexico should consider them as well. Colorado has a high-wage jobs incentive; Utah has a post-performance tax credit of up to 30 percent against all taxes and has an industrial assistance fund; and Texas has no income tax, which has cost New Mexico a few business relocation deals in the past year.

Secretary Mondragon discussed an economic impact analysis of a solar manufacturing company that located in Albuquerque. The total value of the state and local incentives granted the company is $7.4 million. The company is expected to create 855 direct and indirect jobs with a $300 million payroll over 10 years. State and local taxing districts should expect to realize $140 million in additional revenue, while only incurring an additional $7 million in costs.

Ms. Strout discussed film incentives in New Mexico. The film industry in New Mexico creates jobs in hotels, restaurants, lumber yards, etc. She said that the data being reported by the film industry in how it spends money on a film project will help the department measure the economic impact of the industry. In New Mexico, the private sector has invested heavily in the film industry all over the state. There are many companies in Santa Fe and Albuquerque serving the industry.

New Mexico offers a film production tax credit of 25 percent of film-related expenditures. In fiscal year 2009, $80 million in tax credits was claimed, and in fiscal year 2010, $65 million was claimed. Ms. Strout said that claims for the credit will probably amount to even less money in the current fiscal year. The state is in heavy competition with other states to attract film projects. Twenty other states now have film incentives that exceed New Mexico's. However, New Mexico still has much to offer that other states do not have.

In order to maximize the revenue that the state receives from the film industry, the EDD is proposing three law changes in the upcoming legislative session. The first proposal would be to enact mandatory income tax withholding provisions for performing artists. The second proposal would require that vendors of film companies have an actual physical presence in New Mexico in order for those expenditures to qualify for the tax credit. The third proposal would require that companies apply for the tax credit within one year of completion of a project's expenditures.

Questions and comments from committee members included the following:

- Does the film production tax credit include expenditures for television productions? Ms. Strout said that it does. She said the television series *Breaking Bad* has been filmed in the state for four years, which has kept many New Mexicans employed.

- Does the film production tax credit actually create more revenue for the state? Ms. Strout said that according to the 2008 Ernst & Young study of the film industry in New Mexico, for every dollar the state spends on film incentives, the state collects $1.50 in associated revenues.

- Are enterprise zones a useful economic development tool? Secretary Mondragon said that the state has two enterprise zones, but they are not currently being developed. The state does not have any special tax benefits, but the federal government does.

- With so many states competing with each other by offering economic development incentives, are they collectively engaged in a race to the bottom? Secretary Mondragon said that the state is not trying to attract minimum wage jobs, but it is going after high-paying industries. He cited examples of Fidelity, Hewlett-Packard and several solar manufacturing companies.

- How many direct and indirect jobs are associated with the state's film industry? Ms. Strout said that there are currently 3,000 people directly employed by the film industry, which translates to about 10,000 total jobs associated with the industry.

- How effective is the EDD's assistance to small businesses? Secretary Mondragon said that most tax incentives currently in law apply to small businesses. However, he said that few businesses from rural communities seek assistance from the department.

- Why does the EDD keep information about companies using tax incentives confidential? Secretary Mondragon said that many businesses that are considering relocation to the state do not want their competitors to know what they are planning.

- The state spends much money on the film industry, but the nature of that business is temporary compared to other industries. Does the EDD have any incentives for the mining industry? Secretary Mondragon said that there are infrastructure incentives, but the state cannot currently help finance equipment purchases. He said that this is an area in which the state could provide assistance in the future.

- Many regulations have been promulgated by executive order, rather than being developed by the legislature. Many of these regulations make it harder for small businesses to operate and create disincentives for businesses to locate in the state. Secretary Mondragon said that the EDD tries to work with regulatory agencies in making it easier for businesses to understand and comply with the rules.

- Has the EDD identified any areas in which it can cut operating costs? Secretary Mondragon said that he is considering merging a few divisions in the department and has identified more positions that could be eliminated. He said that the department has already lost staff from the recent budget-cutting legislative sessions. He also said that the department is restricting travel for employees and is holding more electronic meetings.

- Any business incentives should be used to attract long-term instead of short-term business investment. Business incentives should not be treated as an entitlement, which is how the film production tax credit seems to be viewed by the film industry.

- Why do businesses locate in New Mexico? Secretary Mondragon said that although business incentives are not the most important reason for companies to locate in the state, the lack of incentives can keep a company from moving to New Mexico. The main attractions New Mexico has for businesses are the quality of life, the low cost of doing business, the relatively lower cost of labor, the lower cost of real estate and the business-friendly political leadership of state government.

Motor Transportation Division of the Department of Public Safety

Lieutenant Colonel Mark Rowley, director, MTD, DPS, and Faron Segotta, chief, New Mexico State Police, DPS, presented an overview of the MTD to the committee. Motor transportation police have been in existence in New Mexico since 1938, said Lt. Col. Rowley. MTD responsibilities include law enforcement services; safety inspections on commercial motor vehicles; preventive radiological nuclear detection and response; compliance reviews and safety audits of motor carriers; motor carrier educational workshops; size and weight enforcement; and tax and permitting compliance. There are 16 ports of entry in operation, although some of them do not operate continuously. The MTD has eight regional districts, with 156 authorized police officers, 84 transportation inspectors and 33 support personnel. The division currently has 46 vacancies. Due to the economic downturn and shortfall in state revenues, the division has frozen 19 FTE positions this fiscal year. In fiscal year 2009, the division budgeted 15.5 additional FTEs, and 10.5 of those positions have been filled. The division is funded by the general fund and the SRF and is budgeted for $16 million in fiscal year 2011. The MTD general fund appropriation has been cut more than 11 percent since fiscal year 2009, and the SRF appropriation has been cut less than one percent. The MTD has received special funding in fiscal year 2011 to increase deployment of license plate readers, which will increase the enforcement capacity of the division and collect more revenue. This year, the division will install the readers at the San Jon, Raton and Lordsburg ports of entry.

Lt. Col. Rowley suggested several changes in statute to increase revenue and streamline MTD operations, including the following:

- Eliminate the Weight Distance Tax Act

In order to maximize road fund revenue, Lt. Col. Rowley recommended exploring the possibility of eliminating the Weight Distance Tax Act and replacing it with a new heavy-vehicle revenue stabilizing registration plan. Forty-six states currently use a heavy-vehicle registration system in lieu of weight distance. Implementation of a heavy-vehicle registration system would eliminate the problem of zero filers, non-filers, underreporting mileage, underreporting weight and the need to conduct audits on motor carriers to ensure compliance with the Weight Distance Tax Act. Fewer personnel would be required to administer this program. This plan was previously recommended by the MTD in 2002, 2005 and 2007.

- Issuance of Civil Assessments by Transportation Inspector Personnel

Transportation inspectors are not certified commissioned law enforcement officers and cannot issue criminal citations. Consequently, when conducting commercial motor vehicle safety inspections, weighing trucks and checking for road use tax compliance, transportation inspectors cannot issue citations and are authorized only to note those violations on the inspection reports. If a law enforcement officer is not present to issue citations, which is now more common due to a current vacancy factor of 20.5 percent for commissioned officers, these violators are not fined, resulting in lost revenue to the state.

Lt. Col. Rowley recommended that the legislature explore the possibility of allowing transportation inspectors to issue civil assessments for driver out-of-service violations, such as log book violations, medical card violations, etc.; vehicle out-of-service violations, such as brake, tire, suspension, frame and other equipment violations; overweight/oversize violations; and road use tax violations. During fiscal year 2009, commissioned police officers conducted 74,225 safety inspections and transportation inspectors conducted 40,403 safety inspections. A conservative estimate of potential annual revenue to be realized from the issuance of civilian citations by transportation inspectors is $1.1 million. This plan was previously recommended in 2002.

- Increase Fees for Multiple Trip Permits

Lt. Col. Rowley said that multiple trip permits allow commercial motor carriers to make an unlimited number of trips hauling the same commodity for one year by purchasing one permit per year per envelope vehicle. The maximum dimensions for an envelope vehicle is 140,000 pounds weight, 14-foot width, 15-foot height, 90-foot length, 15-foot front overhang and 25-foot rear overhang. The current fee for a multiple permit is $250, which is significantly lower than other states. This permit is a bargain for commercial motor carriers that make numerous oversize/overweight trips per year hauling the same type of commodity.

Lt. Col. Rowley recommended that the annual fee for a multiple trip permit be increased from $250 to $1,000 in addition to implementing the issuance of quarterly multiple trip permits for $250 each quarter. The number of annual multiple trip permits issued during fiscal year 2010 was 4,302. At $250 per permit, this resulted in $1,075,500 in revenue. Increasing annual multiple trip permit fees to $1,000 would result in $4,302,000 in revenue for the same number of permits issued in fiscal year 2010 or an increase of $3,226,500 in additional revenue. Implementing the ability to purchase quarterly permits for $250 in addition to increasing annual multiple trip permits to $1,000 would result in projected revenue above $1,075,500 and below $4,302,000 based on fiscal year 2010 data. Additional revenue would be dependent on the number of annual versus quarterly multiple trip permits purchased.

- Increase Fees for Over-Dimensional Single Trip Permits

The base fee for an over-dimensional single trip permit is $25.00 plus $.025 per ton per mile over 86,400 pounds. Lt. Col. Rowley recommended increasing the base fee to $30.00 and charging a straight $40.00 surcharge on all vehicles weighing over 86,400 pounds, regardless of the distance traveled on New Mexico highways. Under the current tax structure, a five-axle vehicle weighing 100,000 pounds that travels 100 miles on New Mexico highways would be charged $42.00 for an over-dimensional single trip permit. Under the proposed formula, this same carrier would pay a flat $70.00 for the same permit. Additional revenue collected based on fiscal year 2010 data would be at least $162,285 using the base permit fee of $30.00 and additional undetermined revenue for vehicles weighing over 86,400 pounds.

- Abolish Self-Issue Over-Dimensional Permits

Self-issue over-dimensional permits are issued in books of 10 permits for $250 and are used primarily by the mobile home industry. Because of the potential to abuse these permits by reusing permits, failing to conduct route surveys, hitting obstacles such as bridges, etc., Lt. Col. Rowley recommended that these types of permits be abolished and motor carriers be required to purchase individual single trip permits. An undetermined amount of additional revenue will be realized due to motor carriers not being able to reuse permits, requiring the purchase of a permit for each move.

- Increase Fines for Overweight Vehicle Violations

Lt. Col. Rowley recommended increasing fines for overweight vehicle violations by 50 percent. He gave the example of a vehicle that is overweight by 5,000 pounds and that is currently assessed a fine of $206. A vehicle that is overweight by 10,000 pounds is currently assessed a fine of $906. The new fine with a 50 percent increase would be $1,359. By comparison, a vehicle overweight by 10,000 pounds is currently assessed a fine of $2,070 in Arizona, $3,800 in California and $1,206 in Colorado. Minimum estimated additional revenue is $110,000 and could be significantly higher if transportation inspectors are authorized to issue civil assessments for overweight vehicles.

- Cross-Train Transportation Inspectors to Issue Driver's Licenses

Lt. Col. Rowley recommended cross-training transportation inspectors to issue driver's licenses at rural ports of entry. This would help alleviate some of the work load on the MVD in addition to providing a convenient opportunity for rural New Mexicans to obtain their driver's licenses. This program would not result in additional revenue to the State of New Mexico; however, it would certainly make the issuance of driver's licenses to New Mexicans more efficient and effective with reduced budgets and personnel.

- Move the Radiation Control Bureau from the Department of Environment to the DPS

The Radiation Control Bureau is responsible for regulating the sources of radioactivity and radiation under the statutory authority of the Radiation Protection Act in an effort to provide for protection against intrinsic hazards that radiation can pose to workers, the public and the environment.

The federal Nuclear Regulatory Commission (NRC) issued order EA-05-090 in 2005, requiring the implementation of enhanced radioactive materials security. This order requires that New Mexico radioactive material licensees certify that those with access to radioactive material under their licenses are sufficiently trustworthy and reliable. The NRC also issued order EA-07-305 in 2007, requiring fingerprinting and Federal Bureau of Investigation (FBI) identification and criminal history records checks on licensees authorized to possess radioactive material in quantities of concern.

Because of the potential to use radioactive materials as a means of terrorism, the security of radioactive materials has become a high priority over the past several years. Increased control over radioactive materials and the requirements for some licensees of radioactive materials to undergo fingerprinting and FBI identification and criminal history records checks suggest that the Radiation Control Bureau would be better situated in a law enforcement agency that has the resources to conduct these background investigations in addition to investigating suspicious and unusual activities involving radiological materials. The DPS is also actively involved in preventive radiological nuclear detection (PRND) initiatives in conjunction with the federal Department of Homeland Security's Domestic Nuclear Detection Office, the U.S. Department of Energy and the national laboratories. The expertise of personnel in the Radiation Control Bureau would greatly benefit these PRND initiatives.

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

- 18 -