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

June 18, 2004
Santa Fe

On June 18, 2004, the first meeting of the Revenue Stabilization and Tax Policy Committee (RSTPC) for the 2004 interim was held in Room 322 of the State Capitol.

PRESENT
Rep. Donald L. Whitaker, Chair
Sen. John Arthur Smith, Vice Chair
Rep. Janice E. Arnold-Jones
Sen. Sue Wilson Beffort
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Sen. Joseph A. Fidel
Rep. Roberto "Bobby" J. Gonzales
Sen. Timothy Z. Jennings
Rep. Ben Lujan
Sen. William E. Sharer
Sen. H. Diane Snyder

ABSENT
Sen. Mark Boitano
Rep. George J. Hanosh
Sen. Roman M. Maes, III
Rep. Daniel P. Silva
Rep. James G. Taylor
Rep. Thomas C. Taylor

Designees
Sen. Ben D. Altamirano *(designee for Rep. Daniel P. Silva)*
Rep. Donald E. Bratton *(designee for Rep. Thomas C. Taylor)*
Sen. Phil A. Griego *(designee for Sen. Roman M. Maes, III)*
Rep. Irvin Harrison *(designee for Rep. James G. Taylor)*
Rep. Manuel G. Herrera *(designee for Rep. George J. Hanosh)*

Staff
Pam Ray, Amy Chavez and Cenissa Martinez

Guests
The guest list is in the meeting file.

The chair called the committee to order at 10:05 a.m.

INTRODUCTION
Pam Ray of the Legislative Council Service staff explained the circumstances under which a designee of the RSTPC should replace a member of the committee. She stated that to promote continuity, a designee used to replace a member at a committee meeting should be from the same political party and the same legislative house. Ms. Ray also introduced the proposed

2004 RSTPC interim work plan, meeting schedule and budget to the members. The work plan provided for reviews of legislation from the 2003 special session, monitoring of the success and impact of 2004 state tax legislation and review of the effectiveness of state-sponsored business incentives. Ms. Ray also introduced various other tax and fiscal matters to be discussed by the committee during the interim. Members suggested additions to the work plan, including topics such as convention center fees, film industry tax credits and funding of state employee and educational retirement programs. The committee adopted the work plan with the suggested additions.

LONG-TERM CARE BED SURCHARGE

Pamela Hyde, secretary of human services, discussed the bed surcharge that the legislature passed during the 2004 session. The Human Services Department (HSD) estimates that about $22.5 million, including federal funds, could be raised by the surcharge. Effective July 1, 2004, nursing facilities, intermediate care facilities for the mentally retarded, residential treatment centers and accredited residential treatment centers will be assessed a daily bed surcharge in the amount of $8.82 per occupied bed. The first payment for the surcharge will be due to the Taxation and Revenue Department (TRD) on August 25. Secretary Hyde discussed the HSD's cooperation with the TRD to develop a form that facilities will use to pay the surcharge.

Secretary Hyde also discussed the rebasing of per diem rates for nursing facilities, which occurs every three years. An inflation factor is used by the HSD to recognize economic conditions and trends during the time period covered by the provider's prospective per diem rate between the rebasing years. The rebasing includes any cost incurred, reported, audited and reviewed for the provider's fiscal year. The costs include costs of doing business, such as the long-term care bed surcharge, and cost of living. Nursing facilities receive facility-specific per diem rates based on acuity. Therefore, each facility has a low and high rate. The current average low Medicaid rate for nursing facilities is $103.12 per day. The average high Medicaid rate is $164.61 per day. The estimated low Medicaid rate after rebasing this year will increase to approximately $115.13 per day, and the estimated high Medicaid rate after rebasing will be approximately $176.62. Secretary Hyde indicated that a special rebasing to consider the bed surcharge as a cost of doing business is taking place for intermediate care facilities for the mentally retarded, residential treatment centers and accredited residential treatment centers.

Earlier this year, the HSD received a letter of concern from the federal Centers for Medicare and Medicaid Services indicating that the daily bed surcharge might be considered an "impermissible provider tax" pursuant to federal regulations when viewed with an income tax credit that passed during the 2004 session for expenses paid to licensed nursing homes, licensed intermediate care facilities for the mentally retarded and licensed residential treatment centers. Secretary Hyde said that the law complies with federal regulations because the care facilities are considered to be the taxpayers under the regulations, while the tax credit is claimed by individuals occupying the beds. Secretary Hyde further stated that the HSD would challenge a decision against the surcharge, but said legislators may need to revisit the issue if federal funding falls through.

REVIEW OF 2004 TAX LEGISLATION

Jan Goodwin, secretary of taxation and revenue, and Richard Anklam, assistant secretary and director of tax policy, TRD, provided an overview of the tax legislation that passed during the 2004 session. Legislation discussed included the elimination of the gross receipts tax on food and medical services, the establishment of a regional transit gross receipts tax, expansion of county gross receipts tax authority, creation of a compensating tax deduction for defense-related businesses, an increase in workers' compensation fees and the creation of the high-wage jobs tax credit. Secretary Goodwin and Assistant Secretary Anklam also summarized the provisions of Senate Bill 23, which expands the definition of "governmental gross receipts" to include receipts from renting or granting permission to use parking, docking or aircraft tie-down spaces. Questions posed by committee members included whether the definition of governmental gross receipts encompassed proceeds from university parking lots and how many businesses paid workers' compensation fees.

POST-SESSION FISCAL SUMMARY

David Abbey, director of the Legislative Finance Committee (LFC), and Bill Taylor, assistant director, LFC, presented a 2004 post-session fiscal review to the committee. According to LFC estimates, fiscal year 2005 recurring revenue, adjusted for legislation, is estimated to increase from the last fiscal year by 4.2 percent to $4.38 billion. Fiscal year 2005 recurring appropriations are projected at $4.38 billion, a 6.1 percent increase from the previous fiscal year. Fiscal year 2005 recurring revenue and recurring appropriations are balanced. Estimated general fund reserve ending balances are $399 million and $386 million. The balances reflect an estimated $285 million one-time revenue adjustment associated with the shift in revenue recognition policy recommended by Governmental Accounting Standards Board Statement 34.

LFC adjustments to its January revenue estimates include $59.7 million for legislation. Tax changes account for $35.6 million of those adjustments, while $25 million of the adjustments are for improved revenue collections expected from the TRD's expanded audit program.

Mr. Taylor discussed the impact of lower energy prices and the personal income tax reduction enacted in 2003 upon revenue estimates. Reductions in energy prices and production declines for natural gas and crude oil were attributed as factors in weak revenue growth estimates. The volatility of natural resource revenue, which accounts for about 15 percent of general fund revenues, was cited as a major risk to the overall revenue forecast.

Flat personal income tax revenues were discussed as another factor in weak revenue growth. The second phase of the personal income tax reduction passed in 2003 reduces the top income tax rate from 7.7 percent to 6.8 percent. While personal income tax revenues normally grow more rapidly than personal income, revenues in fiscal year 2005 are only expected to increase by 3.7 percent, in comparison with projected personal income growth of 5.2 percent in fiscal year 2005.

INCOME TAX REFORM REVENUE PROJECTIONS

Dr. Tom Clifford, chief economist, TRD, and Dr. Al Maury, senior economist, TRD Tax Research Office, provided the committee with information on recent trends in personal income tax collections. The department analyzed the fiscal impacts of personal income tax cuts passed by the legislature in 2003 upon its revenue forecasts. In 2003, House Taxation and Revenue Committee Substitute for House Bill 167 and Senate Bill 167, as amended, increased the deduction for capital gains income; reduced the time allowed for processing personal income tax refunds; and reduced personal income tax rates over a five-year period beginning in tax year 2003. At the time the legislation was approved, the department estimated it would reduce fiscal year 2008 personal income tax revenues by approximately 28 percent or $360 million. Fiscal year 2004 revenues were expected to be reduced by $22 million — approximately two percent of fiscal year 2004 total personal income tax revenues.

Subsequent to the passage of the 2003 personal income tax cuts, the federal government implemented new tax reductions that affect the state's personal income tax base. The department estimates that the federal changes will reduce state collections by approximately $10 million per year.

Dr. Clifford and Dr. Maury also informed the committee about new developments that have significantly impacted personal income tax collections in fiscal year 2004. The first development is increased personal income tax revenue that has resulted from the enhanced collection initiative that the department began in February. The initiative, which was funded by a $5 million nonrecurring appropriation to the department, has generated total collections of over $60 million as of the end of May 2004. Thirty-five million dollars of the total includes enhanced personal income tax collections.

Senate Bill 621, approved by the legislature in 2003, was also discussed as a development that affects personal income tax revenues. The legislation imposed new withholding tax requirements on operators of crude oil and natural gas production facilities. The operator is responsible for withholding tax on proceeds owed to third parties who are not residents of New Mexico. The department estimated that $1 million in revenue would be raised by the legislation. Initial payments of the tax were due in January 2004 for proceeds distributed after October 1, 2003. The department has received tax payments of $28.8 million through the end of May 2004. Thus, payments are averaging about $14 million per quarter.

Discussions among committee members included topics ranging from the degree to which enhanced audits should be performed to the potential economic benefits of inflation and capital outlay spending upon revenue estimates.

ADJOURN

The meeting adjourned at approximately 2:30 p.m.