

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

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

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

**PRESENT**

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

**ABSENT**

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

**Designees**

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

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

**Staff**

Cleo Griffith  
Amy Chavez  
Pam Ray  
Cenissa Martinez

**Guests**

The guest list is in the meeting file.

Copies of all written testimony are in the meeting file.

**Monday, November 17**

**NEW MEXICO ASSOCIATION OF COUNTIES LEGISLATIVE PRIORITIES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Representative Marquardt and Mr. Rodriguez stressed that New Mexico has the scientists, research personnel and infrastructure needed for these projects, and years of technical expertise. These give New Mexico an advantage over other states in competing for these projects, but the compensating tax issue is destroying that advantage. The shift of projects out of New Mexico will mean the loss of high-paying jobs for scientists and research personnel. Representative Marquardt pointed out that the legislation has been narrowly drafted to apply to limited situations. He said the fiscal impact to the state will be positive due to the economic development these projects generate. It is not accurate to say there is a negative fiscal impact due to the lost tax, because without the deduction, the projects will not come to New Mexico and there will be nothing to tax.

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

### **NEW MEXICO MUNICIPAL LEAGUE LEGISLATIVE PRIORITIES**

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

### **PROPOSAL TO EXPAND GROSS RECEIPTS TAX DEDUCTION FOR COLLEGE TEXTBOOKS**

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

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

### **PROPOSED TAX CREDIT FOR DISPOSAL OF PRODUCED WATER**

Marc Christensen, director of special communications for the Public Service Company of New Mexico (PNM), and John Gillis, lobbyist for PNM, presented a proposal for a tax credit for the cleaning of produced water and its disposal through its use in the generation of electricity. They distributed a written summary of the proposal and draft legislation, and noted that the legislation had previously been endorsed by the interim Water and Natural Resources Committee.

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

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

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

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

## **Tuesday, November 18**

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

### **REVIEW OF BLUE RIBBON TAX REFORM COMMISSION REPORT**

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

### **TAXATION AND REVENUE DEPARTMENT PROPOSED LEGISLATION**

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

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

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

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

Several committee members commented that the Streamlined Sales Tax Project model legislation had created some concern in the special session the previous month because of what

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

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

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

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

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

#### **ADOPTION OF COMMITTEE RECOMMENDATIONS FOR LEGISLATION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Bill #15, extending the gross receipts tax exemption for college textbooks to private bookstores, received no recommendation. Senators Beffort, Boitano, Smith and Snyder and Representative Thomas C. Taylor voted in favor of adoption.

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

**ADJOURN**

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

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