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

November 30
Room 307, State Capitol

December 1
Room 322, State Capitol

The sixth meeting of the Revenue Stabilization and Tax Policy Committee (RSTPC) for the 2005 interim was called to order by Senator John Arthur Smith, chair, on Wednesday, November 30, at 8:25 a.m. at the State Capitol.

Present
Sen. John Arthur Smith, chair
Sen. Ben D. Altamirano
Rep. Janice E. Arnold-Jones
Sen. Mark Boitano (12/1)
Sen. Carlos R. Cisneros (11/30)
Sen. Kent L. Cravens (11/30)
Rep. Anna M. Crook
Rep. Roberto "Bobby" J. Gonzales
Rep. George J. Hanosh
Rep. Ben Lujan
Sen. William E. Sharer (11/30)
Rep. Daniel P. Silva
Sen. H. Diane Snyder (12/1)
Sen. James G. Taylor
Rep. Thomas C. Taylor

Absent
Rep. Donald L. Whitaker, vice chair
Sen. Joseph A. Fidel
Rep. Keith J. Gardner

Designees
Rep. William "Ed" Boykin (*designee for Rep. Keith J. Gardner*)
Sen. Nancy Rodriguez (*designee for Sen. Joseph A. Fidel*)
Rep. Henry Kiki Saavedra (*designee for Rep. Donald L. Whitaker*)

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

Staff
Amy Chavez, Cleo Griffith, Pam Ray and Tim Crawford

Guests
The guest list is in the meeting file.

Wednesday, November 30

Call to Order

Senator Smith called the meeting to order at 8:25 a.m.

Daily Bed Surcharge

Carolyn Ingram, Human Services Department (HSD), provided the committee with a description of legislation that resulted in the imposition of the daily bed surcharge, more commonly known as the bed tax. The surcharge became law as the result of the passage of Senate Bill 385 during the 2004 legislative session. The surcharge of $8.25 per occupied bed per day is imposed on licensed nursing homes, licensed intermediate care facilities for the mentally retarded and licensed residential treatment centers. Some proponents of the surcharge hoped to generate federal matching funds for the Medicaid program.

To offset the increased costs to non-Medicaid patients or their families resulting from the daily bed surcharge, the legislature also passed separate legislation in 2004 to create an income tax credit for expenses paid to licensed nursing homes, licensed intermediate care facilities for the mentally retarded and licensed residential treatment centers. After the legislation passed, the federal Centers for Medicare and Medicaid Services (CMS) of the Social Security Administration expressed concern that the daily bed surcharge constituted a provider tax in violation of the Social Security Act and that federal matching funds could not be provided to the state so long as a credit to offset the daily bed surcharge remained in effect. To respond to federal concerns, the legislature repealed the tax credit in 2005. The CMS, however, ruled that revenues raised by the state from the daily bed surcharge while the tax credit was in effect could not be matched by the federal government for the Medicaid program due to what it deemed as a violation of the Social Security Act. The HSD has appealed the decision of the CMS. Ms. Ingram indicated that states with similar cases, including Hawaii, Louisiana and Tennessee, have filed successful administrative appeals and are currently negotiating settlements with the CMS. Meanwhile, the funds generated by the daily bed surcharge during the period of the tax credit's effectiveness have been set aside until a conclusion on the HSD's appeal is reached.

Ms. Ingram indicated that the Medical Assistance Division of the HSD has considered different options in determining how to best obtain funding for Medicaid and in determining the role of the daily bed surcharge in raising funds. Those options will be presented to the Legislative Finance Committee (LFC) before the end of 2005. Ms. Ingram estimated that a repeal of the daily bed surcharge might result in a $20 million loss to the state.

Questions and comments from the committee members addressed:

- the fiscal impact of repealing the income tax credit for expenses paid to licensed nursing homes, licensed intermediate care facilities for the mentally retarded and licensed residential treatment centers;
- whether urgency to fund Medicaid programs still exists;

- the policy implications of repealing the income tax credit for nursing home facility expenses;
- whether fees for certain types of physicians might be raised to obtain revenues;
- the amount of money that the state might lose as the result of a lost appeal;
- whether nursing homes obtained indirect benefits from the imposition of the daily bed surcharge; and
- whether New Mexico should reinstate the income tax credit if it wins its appeal against the CMS.

Gross Receipts Tax Elimination on Health Care Practitioners

Ms. Ingram and Randy Marshall, director, New Mexico Medical Association, discussed the effects of legislation that passed in 2004 to provide for a deduction from gross receipts for the receipts of health care practitioners. That deduction applies to receipts from payments by managed health care providers or health care insurers for commercial contract services or Medicare Part C services provided by health care practitioners. Fee-for-service payments are not deductible. Mr. Marshall warned that although elimination of the gross receipts tax has a positive effect upon recruiting physicians to practice in New Mexico, narrowing the tax base excessively might result in a CMS ruling that the gross receipts tax on physicians constitutes a provider tax. He also discussed physician efforts to receive a greater reimbursement rate from managed care programs in New Mexico. Mr. Marshall further discussed state efforts to recruit physicians to rural areas of the state.

Questions and comments from the committee members addressed:

- the possibility of including other classes of physicians, such as chiropractors, as among the eligible for the gross receipts tax deduction for health care practitioners;
- the burdens imposed upon taxpayers for the double local option penalty for misreporting the gross receipts tax deduction for health care practitioners;
- whether the physician retention rate in New Mexico has risen;
- the distribution of physicians throughout the state;
- programs that might encourage students educated in rural areas to obtain medical degrees and practice in those rural areas; and
- the number of temporary medical physicians practicing in-state.

Update on Food and Medical Gross Receipts Tax Deductions

Dr. Kelly O'Donnell, assistant secretary and tax policy director, Taxation and Revenue Department (TRD), provided the committee with an update of gross receipts tax deductions reported by food retailers and health care practitioners for the sales of food and services provided by health care practitioners. According to Dr. O'Donnell, the total deductions averaged $232 million per month in the first nine months. Deductions for the sale of food averaged $187 million per month, while deductions for health care practitioner services averaged $44 million per month. Consumers realized cost savings of approximately $14.5 million per month on purchases of food and medical care as a result of the deductions for retailers and health care practitioners.

The TRD estimates that as a result of the food and health care practitioner gross receipts tax deductions, general fund collections decreased by $7.8 million per month. However, general fund collections increased by $11.9 million per month due to a repeal of a .5 percent credit to municipalities. Hold harmless distributions to local governments averaged $7.2 million. Overall, net general fund revenue decreased by $3.1 million per month.

Questions and comments from the committee members addressed:

- whether the TRD has explored alternatives to imposing a double local option penalty for misreporting the food and health care practitioner deductions; and
- whether the imposition of additional local option taxes might affect hold harmless distributions to municipalities.

Economic Development Incentives

John Tull, deputy secretary, Economic Development Department (EDD), discussed the progress of various tax incentives in retaining and attracting companies to the state and in contributing to the state's economic growth. Mr. Tull indicated that New Mexico ranks as twelfth in the nation in job growth and is outpacing the nation in personal income growth. Mr. Tull stated that there are currently 27 tax incentives in state law. Programs such as the Job Training Incentive Program, Film Workforce Training Program and Film Mentorship Program are counted by the EDD as additional incentives for economic development. Mr. Tull stated that 20 percent of the tax incentives provided by the state are used 80 percent of the time. Those incentives include the rural jobs tax credit, the high wage jobs tax credit, the investment tax credit, the job training incentive program, the film production rebate, the child care tax credit and tax incentives associated with industrial revenue bonds. Specialized incentives are also used to target specific industries, such as aircraft and hi-tech industries. The EDD attributes the attraction of companies such as Monarch Litho, Southwest Cheese, Kendal Precision Machining and Ktech to the provision of state tax incentives. Mr. Tull indicated that the EDD will continue to aggressively promote tax incentives to expand New Mexico businesses and to recruit new business to the state.

During the 2005 legislative session, House Joint Memorial 11 was introduced. The memorial requested the EDD and TRD to survey the best practices of other states and to study methods through which economic development information and data tied to tax incentives should be collected. The memorial requested that the departments recommend methods for analyzing the information and data and estimating economic impacts of tax incentives. Although the memorial did not pass, the EDD, TRD, Department of Finance and Administration (DFA), Labor Department, LFC and private sector economic development and business professionals formed a task force to make such determinations. Mr. Tull stated that the task force is currently working to reach a consensus on the recommendations that it will bring to the legislature for the 2006 legislative session.

Questions and comments from the committee members addressed:

- companies attracted to the state versus those that are expanding in the state;

- whether the Job Training Incentive Program has effectively produced new jobs;
- the impact that the Job Training Incentive Program has made in training Intel employees;
- whether employees trained pursuant to the Job Training Incentive Program use the skills learned through training for the same employers that trained them;
- the potential utility to permanent legislative committees of the findings of the task force;
- whether any employment opportunities exist for seasonal employees; and
- the need to provide sufficient training in schools to attract new industries.

Personal Income Tax Rate Reductions

Dr. O'Donnell provided the committee with an overview of changes to the personal income tax rates that were enacted during the 2005 regular session and the 2005 special session. During the 2005 regular session, changes in the top personal income tax rate, which were scheduled to decrease from 6 percent in 2005 to 5.3 percent in 2006 and to 4.9 percent in 2007 and in subsequent years, were delayed. As a result, the legislation changed the top rate from 5.3 percent to 5.8 percent in 2006 and from 4.9 percent to 5.3 percent in 2007. The rate under the 2005 regular session legislation would not have changed the 2008 rate.

The top personal income tax rates were again changed during the 2005 special session. The top personal income tax rate during the 2005 tax year was reduced from 6 percent to 5.7 percent. The top rate for 2006 was reduced from 5.8 percent to 5.3 percent. The 5.3 percent rate for 2007 and for subsequent years enacted during the regular session remained the same.

According to the TRD, reducing the 2006 top personal income tax rate to 4.9 percent would result in reduced state revenues of $25.4 million in fiscal year 2006, $58.5 million in fiscal year 2007 and $33.3 million in fiscal year 2008.

Gross Receipts Tax Pyramiding Options

Jim Eads, president and executive director, New Mexico Tax Research Institute (NMTRI), and Dr. Manuel Del Valle, research director, NMTRI, provided the committee with a report of pyramiding transaction taxes in New Mexico. Mr. Eads explained that as the sales of services become a greater portion of New Mexico's economy, pyramiding effects might be exacerbated as determination of the location of the sale and as definition of inputs becomes increasingly complicated. Mr. Eads cited a recent study that identified New Mexico as among the states with the highest incidence of taxed services. However, Mr. Eads stated that pyramiding is not unique to New Mexico and that any state that imposes a sales-type tax will create some pyramiding. He also warned that New Mexico's broad tax base is in compliance with a basic principle of tax policy that encourages broad tax bases. He stated that although some relief might be necessary to reduce the negative impact of pyramiding in New Mexico, that relief should not eviscerate the gross receipts tax system that has been successful for the state.

In response to the committee's request, Mr. Eads identified possible options for gross receipts tax pyramiding reduction. First, relief might be given to industries most impacted by pyramiding by offering those industries tax relief. Relief might also be given to businesses that purchase goods and services that are taxed in New Mexico but not in other states. Finally, relief might be granted to all businesses predicated on the taxability of goods and services in New Mexico that are not taxed by competing states. In making determinations regarding pyramiding, Mr. Eads indicated policymakers might consider the cost to the state's revenue stream, the type of relief that might be necessary and the kind of tax system that will ultimately benefit the state.

Committee members discussed the need for identification of industries that are most impacted by gross receipts tax pyramiding and whether reduced pyramiding should result at the cost of a narrowed tax base.

Tax Increment Financing

Raymond Sanchez, former speaker of the House of Representatives, introduced Robert Desiderio, former dean of the University of New Mexico School of Law, and Mike Daley, Mesa del Sol, to the committee. Mr. Desiderio explained the concept of tax increment financing (TIF) to the committee. He stated that TIF is an economic development tool for the financing of infrastructure. It facilitates taxable development by creating increased value within communities. From the increased value, increased property taxes and gross receipts taxes are expected to be generated. Those increased taxes, known as incremental revenues, are used to pay for public infrastructure projects. Mr. Desiderio indicated that 47 states use TIF programs to help communities generate value and add tax revenue collected from underutilized property. He further indicated that the legislature will be asked to approve legislation allowing local governments to use, at their option, an enhanced TIF in New Mexico. Mr. Desiderio stated that the TIF mechanism in the legislation will not reduce the amount of taxes presently received by local authorization. TIF directs the public purposes for which the revenue is used. TIF applies only to the incremental revenues that result from new development or redevelopment. Special TIF districts are proposed to be created through the legislation to administer incremental revenues, to issue bonds and to administer the infrastructure projects financed by TIF.

Mr. Daley provided the committee with examples of successful TIF projects throughout the country. He indicated that the infrastructure of Stapleton, a redevelopment of the former Denver airport, was accomplished through TIF. He further indicated that Anne Arundel County in Maryland used TIF to fund public infrastructure, transportation and utility improvements in connection with two major development projects. The Pittsburgh Technology Center in Pittsburgh, Pennsylvania, was also funded by TIF.

Mr. Desiderio and Mr. Daley provided the committee with a draft of the legislation, labeled as **draft 1**, that will serve as a basis for TIF discussions during the upcoming legislative session. David Buccholtz, attorney, Brownstein, Hyatt & Farber, LLP, answered committee member questions regarding the draft.

Questions and comments from the committee members addressed:

- the presence of a mill levy imposition component in the TIF discussion draft;
- the administrative implications of permitting TIF;
- whether business improvement district revenues might be pledged for a district created for TIF;
- whether funds raised by TIF would replace funds raised by impact fees;
- the consequences that might occur if a district created for TIF does not raise sufficient revenues to pay back bonds issued by the district;
- the distribution of tax revenues between a district created for TIF and a local governing body;
- whether the issuance of bonds for TIF would impact the New Mexico Finance Authority;
- voting implications in TIF districts comprised of government-owned land;
- mechanisms to fund elections for TIF districts; and
- whether revenues diverted to districts would adversely affect municipalities and counties.

Educational Retirement Fund Update

Greg Geisler, senior fiscal analyst, LFC, discussed the impact of the passage of 2005 Senate Bill 181 on the actuarial solvency of the Educational Retirement Fund. The legislation increases employer and employee contributions to the fund. The employer contribution will increase by .75 percent per year, amounting to a 5.25 percent increase over seven years. The employer contribution will increase from 8.65 percent in fiscal year 2005 to 13.9 percent in fiscal year 2012. The employee contribution will increase by .30 percent over four years. Thus, the contribution will increase from 7.6 percent in fiscal year 2005 to 7.9 percent in fiscal year 2009. The employer contribution increase is expected to generate $18.7 million during fiscal year 2007.

Mr. Geisler explained that since Senate Bill 181 became law, two developments have affected the Educational Retirement Fund. First, the Educational Retirement Board's fiscal year 2005 investment return of 9.86 percent exceeded its 8 percent target, which will result in improved solvency. However, the board has adjusted its actuarial assumptions, which has worsened its actuarial position as of June 30, 2004 from an unfunded actuarial liability of $2.4 billion to $2.6 billion. Assuming the six remaining years of employer contribution increases are implemented, the time frame for meeting actuarial benchmarks will change so that the board will reach an 80 percent funded ratio by 2020 rather than by 2019. Mr. Geisler indicated that since the impact of the recent developments is relatively small, Senate Bill 181 still improves the Educational Retirement Board's actuarial position, but he warned that improvement is not guaranteed.

Evalynne Hunemuller, director, Educational Retirement Board, discussed the impact of increased employee and employer contributions to the Educational Retirement Fund. She provided the committee with data regarding the funding ratios that would have resulted by 2025 if increased contributions to the fund had not been enacted versus the funding ratios expected to result from the enactment of increased contributions. The funding period, which before the enactment of the increased contributions stood at infinity, will decrease to the General Accounting Standard Board's recommended funding period of 30 years by 2012. The funding period is expected to decrease each year thereafter.

Questions and comments from the committee members addressed:

- the reason for a slight funding percentage dip expected in fiscal year 2007;
- the need to make educational retirement competitive with other states; and
- the possibility of encouraging longer work periods to improve Educational Retirement Fund solvency.

General Fund Consensus Revenue Estimates

James Jimenez, secretary, DFA, and Jan Goodwin, secretary, TRD provided the committee with the general fund consensus revenue estimates of the DFA and TRD. They first discussed the general economic outlook developed by the departments. According to Secretary Jimenez, inflation has risen since fiscal year 2003 but is expected to begin declining in fiscal year 2007. The federal funds rate continues to increase throughout the five-year forecast period. In addition, Secretary Jimenez noted that the New Mexico personal income tax revenue estimates were revised upward in fiscal year 2006. The estimates reflect improvements in wage and salary disbursements.

Natural gas prices were revised downward by $1.00 per million cubic feet (mcf) in fiscal year 2007 and oil prices were reduced by $2.00 per barrel in fiscal year 2006 and by $3.00 per barrel in fiscal year 2007. Several factors account for the revisions. First, supply is expected to increase so that hurricane losses will be offset by late next year. In addition, natural gas production in the Gulf of Mexico has been partially offset by increased imports. Demand has also decreased in response to increased prices. According to the DFA and TRD estimates, after peaking at over $10.00 per 1,000 cubic feet in October, New Mexico prices have fallen sharply relative to national average prices in recent weeks. The price reduction is partially due to a surplus of gas stemming from mild weather, production increases and limited pipeline outlets to eastern markets.

Secretary Goodwin provided a revenue outlook of the general fund for the upcoming fiscal years. Recurring general fund revenue is expected to total $5.385 billion in fiscal year 2006 and $5.232 billion in 2007. Those estimates reflect reductions from previous estimates by $95 million in fiscal year 2006 and $100.8 million in fiscal year 2007. The reductions reflect reduced natural gas prices.

Increases in gross receipts tax and personal income tax collections are also reflected in the new general fund revenue estimates. Revenue from the gross receipts tax was increased by $7.2 million in December. Personal income tax collections were increased by $11.6 million in fiscal year 2006 and by $6.4 million in fiscal year 2007.

The general fund revenue estimates also account for reduced motor vehicle and mineral production taxes. Motor vehicle excise tax revenue was reduced by $3.5 million in fiscal year 2006 and by $7.0 million in fiscal year 2007. Mineral production taxes and rents and royalties were collectively reduced by $121.8 million in fiscal year 2006 and by $137.7 million in fiscal year 2007 due to lower energy prices.

Increased expected earnings on state balances are additionally reflected in the estimates. Earnings on state balances were increased by $5.5 million in fiscal year 2006 and by $15.4 million in fiscal year 2007. Higher portfolio balances and an increasing federal funds rate indicate improved state earnings.

General fund balances are projected to reach 25.6 percent of recurring appropriations in fiscal year 2006. The fiscal year 2007 consensus forecast of $5.232 billion yields $523.6 million of "new money" when compared with fiscal year 2006 recurring appropriations of $4.709 billion.

David Abbey, director, LFC, provided the RSTPC members with an update of expected federal grants to the state. Due to projected decreases in some federal funds, state agencies have requested $11.2 million in fiscal year 2007 general fund dollars to replace those funds. Replacement requests have been made by courts, the first judicial district attorney, the Labor Department, the Children, Youth and Families Department, the Corrections Department and the Higher Education Department.

Mr. Abbey and Representative Luciano "Lucky" Varela, chair, LFC, stated that the legislature should exercise care in maintaining prudent expenditure levels in fiscal year 2007 and avoiding structural deficits in fiscal years 2008 and 2009.

Questions and comments from the committee members addressed:

- a potential decline in revenues and the need to keep expenditures at a manageable level; and
- whether tax rebates approved during the 2005 special session have been mailed out.

Alcohol Purchase Electronic Age Verification

Senator Cravens explained the role of a task force created pursuant to the passage of Senate Memorial 40 during the 2005 legislative session. The task force was charged with the responsibility of studying and investigating available and emerging technologies that verify the ages of retail alcohol customers. The task force concluded that additional tax credits for the purchase of electronic age verification equipment would encourage businesses to purchase such equipment. State law currently offers tax credits of $300 for each business location for which the electronic age verification equipment is used. On behalf of the task force, Senator Cravens presented a discussion draft, labeled as **draft 2**, that would raise the tax credit to $1,000 for each business location for which the age identification equipment is used.

Questions and comments from the committee members addressed:

- the cost of each electronic age verification device;
- locations at which electronic age verification equipment is used;
- whether electronic age verification equipment will store social security numbers;
- whether electronic age verification equipment will be able to detect fake identification cards; and
- the use of electronic age verification by large companies.

Credit for Produced Water

Tom Brown, Yates Petroleum Company, asked the committee to endorse legislation that would provide income tax credits to oil or gas well operators for water produced from oil or gas drilling.

Deduction for Fee-for-Service Providers and Underground Irrigation Systems Deduction

Amy Chavez, staff attorney, LCS, summarized the provisions of two of the discussion drafts requested by RSTPC members for consideration for RSTPC endorsement. The first draft, labeled as **draft 7**, provides for a gross receipts tax deduction for receipts from fee-for-service payments by health care practitioners, phased in over a period of five years. The second draft, labeled as **draft 9**, expands the scope of a gross receipts tax deduction for the sale of agricultural implements to include sales of underground irrigation tools, utensils and instruments. Sales of aboveground irrigation tools, utensils and instruments are currently eligible for the deduction.

Sithe Global and Dine Power Authority Proposal

Richard Minzner, lobbyist, Freddy Sanches, vice president, Sithe Global, LLC, and Steve Begaye, general manager, Dine Power Authority, urged the committee to endorse legislation to provide a partial credit against compensating tax owed with respect to a coal-fired electric generating facility located on Navajo Nation land. The credit is the lesser of: (1) 85 percent of the compensating tax owed with respect to the facility; or (2) the amount paid to the Navajo Nation in lieu of taxes, pursuant to an agreement between the taxpayer and the Navajo Nation. The draft presented was labeled as **draft 3**. According to Mr. Minzner, the proposal would provide approximately $50 million in tax relief.

Gross Receipts Tax Deduction for Hospital Construction

Representative Jose A. Campos asked the committee to endorse draft legislation, labeled as **draft 4**, to provide a gross receipts tax deduction for the sale of construction services, construction equipment and construction materials used to build a sole community provider hospital that is located in a federally designated health professional shortage area if the services or materials are sold to a foundation or nonprofit organization that enters into an agreement with a county to pay at least 95 percent of the costs of building the facility. Representative Campos indicated that the proposed deduction might serve as an incentive for the construction of hospitals in counties such as Guadalupe County.

Questions and comments from the committee members addressed:

- the wages that might be generated by hospitals for which construction services and materials may be deducted; and
- the age of the existing hospital in Guadalupe County.

Approval of Minutes

The minutes from the fifth meeting of the committee held on October 15 and 16 in Santa Fe were unanimously approved.

Biomass Gross Receipts Tax Deduction

Representative Hector Balderas and Art Hull, Public Service Company of New Mexico, asked the committee to endorse draft legislation, presented as **draft 5**, to expand a compensating tax deduction for biomass-related equipment to include deductions for feedstock processing or drying equipment, harvesting and transportation equipment, composting equipment or mulching equipment. It additionally creates a new gross receipts tax deduction for the sale of biomass materials and biomass-related equipment that mirrors the existing compensating tax deduction. Finally, the draft expands the definition of "biomass" of the renewable energy production tax credit to mirror the definition of biomass contained in the gross receipts and compensating tax deductions.

<u>Thursday, December 1</u>

Hospital Gross Receipts Tax Deduction

Cindy West, lobbyist, New Mexico For-Profit Hospitals, and Dan Weaks, lobbyist, New Mexico Hospitals and Health Systems Association, asked the committee to endorse draft legislation to provide a credit for the state portion of gross receipts tax for hospitals licensed by the Department of Health as presented in **draft 6**. Ms. West and Mr. Weaks indicated that the allowance of the credit would create greater tax parity among all hospitals. They further indicated that such a tax credit would encourage for-profit hospitals to expand services and improve facilities.

Questions and comments from the committee members addressed:

- whether the gross receipts tax is paid on the amounts collected or the amounts billed by hospitals;
- the administrative changes that might be involved in implementing the hold harmless provisions of the proposed draft; and
- the principle of tax policy that addresses the equal tax treatment of similar groups.

Local DWI Program Report

Tasia Young, legislative liaison, New Mexico Association of Counties (NMAC), and Rob Mitchell, NMAC DWI Affiliate, provided committee members with copies of a report by the NMAC DWI Affiliate regarding questions posed to the NMAC by the RSTPC throughout the interim regarding local DWI programs.

Chemical Gross Receipts Tax Deduction

Dan Najjar, lobbyist, and Terry McDermott, Intel, asked the committee to endorse legislation, as presented in **draft 8**, to provide for a deduction from gross receipts for sales of chemicals or reagents to manufacturers for use in the manufacturing process. The deduction is phased in over a period of three years. Mr. Najjar and Mr. McDermott indicated that the proposed draft could alleviate input costs for high-technology industries and could reduce gross receipts tax pyramiding.

Questions and comments from the committee members addressed:

- the potential benefit of the proposed draft to microelectromechanical systems companies;
- the difference between processing and manufacturing;
- the fiscal impact of the proposed draft;
- whether the proposed draft would attract new industries;
- the possibility of including a minimum requirement of chemicals purchased to narrow the scope of the proposed draft;
- whether industrial revenue bonds are being used to improve facilities throughout Sandoval County; and
- the number of distributors that would be affected with respect to Intel's use of the proposed draft.

Recycling Tax Incentives

Joseph Ellis, president, New Mexico Recycling Coalition (NMRC), and English Bird, executive director, NMRC, asked the committee to endorse draft legislation, presented as **draft 10**. The draft legislation provides for a gross receipts tax deduction for the sale of qualified recycling equipment approved by the Department of Environment.

Gross Receipts Tax Deduction for Professional Contests

Arturo Jaramillo, superintendent, Regulation and Licensing Department (RLD), asked the committee to endorse draft legislation, presented as **draft 33**, to provide for a deduction from gross receipts for the promotion of professional contests, including boxing, wrestling or martial arts contests. Superintendent Jaramillo indicated that professional contests in New Mexico have declined. Thus, fees used to support the New Mexico Athletic Commission from those professional contests have decreased. Superintendent Jaramillo indicated that declining revenues are threatening the continued existence of the commission. The RLD hopes that the proposed gross receipts tax deduction will aid in the attraction of professional contests to the state and improve the financial position of the commission.

Questions and comments from the committee members addressed:

- the number of boxing matches held on tribal land;
- the attendance at professional contests;
- the reason for the limited scope of the deduction;

- the possibility of increasing budget expenditures for the New Mexico Athletic Commission; and
- the possibility of the occurrence of boxing matches without supervision by an athletic commission.

Energy, Minerals and Natural Resources Department (EMNRD) Clean Energy Proposals

Craig O'Hare, special assistant for renewable energy, EMNRD, asked the committee to endorse draft legislation, labeled as **draft 12**, to provide for a tax credit for qualified energy generators that use solar-light or solar-heat-derived energy resources in the amount of $.02 per megawatt-hour for the first 200,000 megawatt-hours of electricity produced. The draft also expands the definition of "qualified energy generator" to include any facility that has at least one megawatt of energy generating capacity. The definition previously required at least 10 megawatts of energy generating capacity. The RSTPC endorsed a similar proposal made by the EMNRD during the 2004 legislative interim.

Advanced Energy Product Manufacturers Tax Credit

Representative Gonzales and Carol Radosevich, Public Service Company of New Mexico, asked the committee to endorse draft legislation to provide a tax credit for 5 percent of the costs of purchasing manufacturing equipment used to produce advanced energy products. The draft proposed is similar to House Bill 527 as amended during the 2005 legislative session, but broadens the scope of the definition of "advanced energy product" to include components for clean coal technology and renewable energy systems that generate bio-fuel. Questions and comments from the committee members addressed the need to provide incentives for research and development.

TRD Proposals

Dr. O'Donnell summarized the drafts presented by the TRD for endorsement by the committee.

Draft 13 requires the TRD to keep and to make available for public inspection records of tax credits made in excess of $10,000.

Draft 14 requires the TRD to mail assessments of taxes, interest, penalties and other payments to the last known mailing addresses of persons owing those payments. The draft further requires the TRD to notify persons who have claimed tax returns of the TRD's receipt of the claims. The draft also allows for protective claims.

Draft 15 repeals TRD authority to issue bulk fuel permits that enable farmers and contractors to buy clear diesel fuel for off-road use.

Draft 17 requires sellers of cigarettes to file information returns with the TRD. The information returns will require information on cigarette imports into and exports from the state and on cigarette sales to tribes and retailers. A penalty of $250 is included for failure to file a timely information return. The draft also increases a penalty on unstamped cigarettes to 100 percent of the cigarette tax due plus $500.

Draft 18 empowers the TRD to contract with collection agencies to collect or assist in the collection of an obligation over 120 days past due to the state or a political subdivision of the state pursuant to the state's tax laws. It also expands the tax programs under which electronic reporting may be required by the TRD.

Draft 19 requires tax return preparers who file over 25 personal income tax returns to file those returns electronically, unless the person for whom the return is prepared elects to file a return by other means. The draft also gives the TRD discretion in establishing a due date for withholding tax payments.

Draft 20 caps the penalty imposed for incorrect reporting of gross receipts tax deductions for the sale of food or medical services to a maximum of $10,000. The requirement for validating gross receipts tax deductions of sales-for-resale is also loosened to allow for evidence other than a type-2 nontaxable transaction certificate.

Draft 21 permits the TRD to inform a licensing body of licensee failure to file or pay taxes and other relevant taxpayer information for use in disciplinary proceedings. It also provides the failure to file a tax return as grounds for suspension or revocation of occupational licenses and for the disbarment of attorneys.

Draft 22 extends the time period during which managed audit participants may make interest-free payments on delinquent taxes from 30 days to 180 days. The draft further eliminates for managed audit participants the penalty for incorrect reporting of gross receipts tax deductions for sales of food or health care practitioner services. It also extends the time period during which an income tax form may be filed due to receipt of an extension for filing the federal income tax form. The time period is extended from four to six months.

Draft 23 increases the civil penalty for failure to pay or file a tax return from 2 percent per month, capped at a total of 10 percent, to 2 percent per month, capped at a total of 16 percent. The draft also decreases the interest rate charged on underpayments and overpayments of tax from 15 percent annually to the rate used by the Internal Revenue Service (IRS). The IRS rate is calculated as the federal short-term interest rate plus 3 percent. It is currently equal to 7 percent annually.

Draft 24 makes a technical change to income tax exemption for low- and middle-income taxpayers enacted in 2005 to make the phase-out of the benefits more gradual. According to the TRD, the law that passed inadvertently contained an abrupt elimination of tax benefits at $40,667, so that a $1.00 increase in income would result in a $50.00 increase in taxes.

Draft 25 provides a technical change to expand a special fuel excise tax deduction for school bus operators that contract with the Public Education Department so that the same deduction can be taken by school bus operators that contract with public school districts.

Draft 26 creates an electronic reporting requirement for holders of more than 25 unclaimed properties presumed abandoned. It permits the sale of abandoned property to occur by any reasonable method and extends the time period during which an owner can enter into an agreement to locate abandoned property from 24 months to 48 months.

Draft 27 permits the TRD to disclose personal income tax information to the Bureau of Business and Economic Research of the University of New Mexico for the purposes of population and demographic research. The bureau is prohibited from releasing that information in any form other than as statistics that protect taxpayer identity. The draft also permits the TRD to disclose taxpayer information to law enforcement agencies with which the department is conducting a joint investigation.

New Mexico Municipal League Proposals

Bill Fulginiti, executive director, New Mexico Municipal League (NMML), summarized the bills recommended by the NMML for endorsement.

Draft 28 permits municipalities and counties to obtain access to information on gross receipts taxes and gross receipts taxes paid.

Draft 29 requires that certain collections by the Aviation Division of the Department of Transportation be distributed to the State Aviation Fund. The draft also provides for distributions to the State Aviation Fund from the general fund in an amount equal to $80,000 monthly from July 1, 2006 to June 30, 2007; $167,000 monthly from July 1, 2007 through June 30, 2008; and $250,000 monthly after June 30, 2008.

Draft 30 permits municipalities to trade a part of the municipal distribution of the gross receipts tax for a distribution of personal income tax. The bill reduces the 1.225 percent of the state gross receipts tax that municipalities receive to 1 percent. The state would keep the .225 percent difference and distribute the greater of (1) that .225 percent; or (2) .275 percent of the total adjusted gross income reported by the residents of the municipality in the tax year two years prior to the calendar year in which the distribution is made. If the reduced distribution of gross receipts tax revenue impairs the ability of any municipality to meet principal or interest obligations on bonds outstanding prior to January 1, 2007, the municipality may pledge a portion of the new distribution to meet the reduced amount.

The secretary of taxation and revenue, the secretary of finance and administration and the executive director of the NMML would report annually to the RSTPC on the amounts distributed under the new formula and make recommendations for changes in the formula or the revenue sources. A temporary provision would permit TRD to develop a method for determining as accurately as practicable the site of residence of income taxpayers for the distributions made in the calendar year.

Draft 31 allows county and municipal governments to impose a local option compensating tax. The local option compensating tax is proposed to be imposed in addition to local option gross receipts taxes. The draft requires the TRD to administer the tax and to transfer payments to local governments.

Draft 32 provides for a municipal property tax rebate for low-income homeowners and permits municipalities to submit to qualified electors the question of a new property tax imposition.

Votes on Proposed Legislation for Committee Endorsement

The committee members reviewed each piece of legislation presented and voted whether to endorse the legislation. The table on the following pages indicates the draft number, description and proponent of each piece of legislation and the committee's final vote for or against endorsement of that legislation. Committee sponsors for the endorsed bills are also listed.

REVENUE STABILIZATION AND TAX POLICY COMMITTEE
LEGISLATION PROPOSALS
NOVEMBER 30-DECEMBER 1

Draft Number	Title	Agency/ Proponent(s)	202 Number	Vote In Favor	Vote Against	Endorsement (Y/N)	Sponsor(s)
1	Tax Increment Financing	Sanchez/ Desiderio/ Daley	N/A	8	4	Y, in concept	Rep. Taylor Rep. Lujan Sen. Snyder
2	GRT Ded. for Electronic Purchase Age Verification Equip.	Sen. Cravens	159286.1	11	1	Y	Sen. Cravens
3	Coal Facility Comp. Tax Credit	Sithe Global/ Dine Power Authority	158616.3	11	1	Y	Rep. Taylor
4	GRT Ded. for Hospital Construction	Rep. Jose A. Campos	159263.1	12	0	Y, as amended	Rep. Hanosh
5	Biomass GRT Ded.	Rep. Hector Balderas/ PNM	159287.2	12	0	Y, as amended	Rep. Crook Sen. Cisneros

Draft Number	Title	Agency/ Proponent(s)	202 Number	Vote In Favor	Vote Against	Y/N Endorsed	Sponsor(s)
6	Hospital Service GRT Ded.	NM For-Profit Hospitals/NM Hospital Association	159130.2	12	0	Y	Sen. Smith
7	GRT Ded for Medical Service Providers	RSTPC Request	159284.1	12	0	Y	Sen. Taylor
8	Chemical GRT Ded.	Intel	N/A	12	0	Y	Rep. Lujan Sen. Altamirano Sen. Rodriguez
9	Underground Irrigation Systems Ded.	RSTPC Request	159281.1	12	0	Y	Rep. Taylor Sen. Taylor
10	Recycling Tax Ded.	NM Recycling Coalition	159235.1	3	9	N	None
11	Tax Credit for Private Schools	RSTPC Request	159280.1	5	7	N	None

Draft Number	Title	Agency/ Proponent(s)	202 Number	Vote In Favor	Vote Against	Y/N Endorsed	Sponsor(s)
12	Renewable Energy Production Credit Amendments	EMNRD	159236.1	12	0	Y, as amended	Sen. Cisneros
13	Public Record Tax Credits	TRD	159052.2	12	0	Y	Rep. Arnold-Jones Rep. Whitaker Sen. Altamirano
14	Assessments & Protective Claims	TRD	159053.2	12	0	Y	Rep. Arnold-Jones Rep. Whitaker Sen. Altamirano
15	Repeal Bulk Fuel Permits	TRD	159054.1	12	0	Y	Rep. Gonzales
No Draft 16							
17	Cigarette Tax Law Enforcement	TRD	159056.3	12	0	Y	Rep. Crook
18	Contracts to Collect Aged Receivables	TRD	159057.1	N/A	N/A	Withdrawn by TRD	None

Draft Number	Title	Agency/ Proponent(s)	202 Number	Vote In Favor	Vote Against	Y/N Endorsed	Sponsor(s)
19	Electronic Filing Requirements	TRD	159058.1	12	0	Y	Rep. Arnold-Jones Rep. Whitaker Sen. Altamirano
20	GRT Ded. Documenting Reform	TRD	159059.2	12	0	Y	Rep. Arnold-Jones Rep. Whitaker Sen. Altamirano
21	Tax Compliance & Fraud Reforms	TRD	159060.2	12	0	Y	Rep. Arnold-Jones Rep. Whitaker Sen. Altamirano
22	Managed Audit Improvement	TRD	159061.2	12	0	Y	Rep. Arnold-Jones Rep. Whitaker Sen. Altamirano
23	Penalties & Interest	TRD	159062.1	12	0	Y	Rep. Arnold-Jones Rep. Whitaker Sen. Altamirano
24	2005 PIT Cleanup	TRD	159063.1	12	0	Y	Rep. Arnold-Jones Rep. Whitaker Sen. Altamirano
25	School Bus Fuel Relief Cleanup	TRD	159064.1	12	0	Y	Rep. Arnold-Jones Rep. Whitaker Sen. Altamirano

Draft Number	Title	Agency/ Proponent(s)	202 Number	Vote In Favor	Vote Against	Y/N Endorsed	Sponsor(s)
26	Unclaimed Property Amendments	TRD	159065.1	12	0	Y	Rep. Arnold-Jones Rep. Whitaker Sen. Altamirano
27	Taxpayer Information Disclosure	TRD	159342.1	12	0	Y, as amended	Rep. Arnold-Jones Rep. Whitaker Sen. Altamirano
28	Municipality & County GRT Info. Disclosure	NMML	159291.2	12	0	Y	Sen. Altamirano
29	Dist. to Aviation Fund	NMML	159292.1	12	0	Y	Rep. Lujan Sen. Altamirano
30	Trade GRT for PIT Distribution	NMML	159266.2	N/A	N/A	Withdrawn by NMML	None
31	Local Option Comp. Tax	NMML	159265.1	12	0	Y	Rep. Gonzales Rep. Silva
32	Municipal Property Tax Rebate	NMML	159293.1	11	1	Y	Rep. Gonzales Sen. Taylor

Draft Number	Title	Agency/ Proponent(s)	202 Number	Vote In Favor	Vote Against	Y/N Endorsed	Sponsor(s)
33	Production or Staging of Professional Contests	RLD	158991.1	8	4	Y	Rep. Saavedra
---	Produced Water Tax Credit	Yates Petroleum	N/A	12	0	Y	Rep. Hanosh
---	Advanced Energy Products Tax Credit	RSTPC Request	159362.1	12	0	Y	Rep. Gonzales