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

September 15-16
Taos Convention Center
Taos

On September 15, the fourth meeting of the Revenue Stabilization and Tax Policy Committee (RSTPC) for the 2005 interim was held at the Taos Convention Center in Taos.

Present

Rep. Janice E. Arnold-Jones
Sen. Mark Boitano (9/16)
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Rep. Keith J. Gardner
Rep. Roberto "Bobby" J. Gonzales
Rep. Ben Lujan (9/16)
Rep. Daniel P. Silva (9/15)
Sen. James G. Taylor (9/15)
Rep. Thomas C. Taylor

Absent

Sen. John Arthur Smith, Chair
Rep. Donald L. Whitaker, Vice Chair
Sen. Ben D. Altamirano
Sen. Kent L. Cravens
Sen. Joseph A. Fidel
Rep. George J. Hanosh
Sen. William E. Sharer
Sen. H. Diane Snyder

Designees

Sen. Sue Wilson Beffort (*designee for Sen. H. Diane Snyder*)
Sen. John T.L. Grubesic (*designee for Sen. Ben D. Altamirano*)
Sen. Nancy Rodriguez (*designee for Sen. John Arthur Smith on 9/15*)
Sen. John C. Ryan (*designee for Sen. Kent L. Cravens)*
Rep. Henry Kiki Saavedra (*designee for Rep. Donald L. Whitaker*)
Rep. Joe M Stell (*designee for Rep. George J. Hanosh*)
Rep. Luciano "Lucky" Varela (*designee for Rep. Ben Lujan on 9/15*)

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

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

Guests
The guest list is in the meeting file.
Thursday, September 15

Call to Order and Approval of Minutes

Representative Roberto "Bobby" J. Gonzales and Senator Carlos R. Cisneros acted as co-chairs for the fourth meeting of the Revenue Stabilization and Tax Policy Committee (RSTPC) in Taos. Senator Cisneros called the committee to order at 9:40 a.m. The committee unanimously approved the minutes from the third meeting of the RSTPC on August 25-26 in Rio Rancho.

Introductory Remarks

Bobby Duran, mayor, Town of Taos, welcomed the committee members to Taos. Charlie Gonzales, mayor, Village of Questa, also welcomed the committee members. Mayor Gonzales encouraged continued support for transportation systems throughout the state and offered Questa's support in developing transportation programs. Mayor Gonzales also discussed local needs for the Village of Questa. He noted that the village will seek an appropriation for replacement of a wastewater treatment plant.

Barbara Wiard, mayor pro tem, Village of Taos Ski Valley, and co-chair, Intergovernmental Council, explained the role of the Intergovernmental Council in northern New Mexico. Mayor Pro Tem Wiard explained that the council is composed of 13 members, including local and tribal officials from throughout northern New Mexico. The mission of the council is to enhance northern New Mexican communities, foster educational opportunities and provide for the social and economic well-being of residents in northern New Mexico. Mayor Pro Tem Wiard provided the committee with an overview of projects undertaken by the council, including projects in the Eagle Nest Lake area and projects to support local pediatric clinics.

Jean Marquardt, executive director, Taos Center for the Arts, discussed the role of the center in providing community theater performances to the Taos area. She also discussed the center's efforts in providing programs for schoolchildren in the Taos area. She asked the committee members to consider providing support to the center for expansion of the local theater in Taos.

Alex Abeyta, El Valle de Los Ranchos Water and Sanitation District, discussed the district's necessity to find funding for various capital projects. Such projects include wastewater system improvements and the purchase of water rights.

Questions and comments from the committee members addressed:

- the amount of appropriation that might be necessary to replace the Questa wastewater treatment plant;
- who would be served by additional transit services;
- the distribution of the lodger's tax in Taos County;
- whether Taos Ski Valley obtained any part of the appropriation to the Tourism Department for advertising;
- the proposed commuter rail system;
- whether water and sanitation districts can obtain project financing through the New

Mexico Finance Authority; and
- potential water rights conflicts between municipalities and pueblos.

Kit Carson Electric Cooperative Update

Luis Reyes, chief executive officer, Kit Carson Electric Cooperative, provided the committee with an update of its activities in Taos, Colfax and Rio Arriba counties. The cooperative engages in propane, Internet, telecommunications and economic development activities. The cooperative has also created a call center, a regional command center and a solar manufacturing plant. The cooperative provides broadband Internet services to Penasco, Ojo Caliente and surrounding areas. It also has partnered with the Taos Municipal School District to provide voice service and broadband applications to all schools within that district.

Mr. Reyes provided the committee members with statistics regarding its provision of propane. The cooperative has 3,016 propane customers and seven competitors. The cooperative's bulk storage capacity stands at 310,000 gallons. The cooperative sells about 2.4 million gallons of propane annually. Mr. Reyes stated that a mission of the cooperative's propane initiative is to continue to preserve safety by ensuring safe installations. Another mission of the cooperative's propane initiative is to use financial tools to keep propane prices competitive. Mr. Reyes stated that the cooperative currently has the lowest propane prices in northern New Mexico. As a result of the low prices, cooperative representatives have estimated that northern New Mexico has experienced a 43 percent reduction in the market cost of propane during the last heating season.

Kit Carson Electric Cooperative has also participated in several renewable energy programs in northern New Mexico. The cooperative participates in green tariff and net metering initiatives. It has also conducted studies on renewable energy sources, including wind generation, solar and photovoltaic energy sources.

Finally, Mr. Reyes discussed the overall contribution that Kit Carson Electric Cooperative has made to the economic development of northern New Mexico. He stated that the cooperative's Penncro Call Center and Regional Command Center have contributed to employment levels in northern New Mexico and that the cooperative has contributed $15,595,171 in property taxes to Taos, Colfax and Rio Arriba counties. He added that the cooperative has contributed a total of $15,040,296 in county and state taxes during the last five years.

Questions and comments from the committee members addressed:
- the type of propane services provided by the cooperative;
- the cooperative's method of eliminating price spikes in propane during the winter months;
- methods of involving state police officers for dispatch emergency services; and
- whether Kit Carson Electric Cooperative has protested electricity price rate increases.

Recycling Equipment Tax Exemption

English Bird, executive director, New Mexico Recycling Coalition, and Marlene Feuer, director, New Mexico Recycling Coalition, asked the committee members to consider adoption of legislative initiatives to promote recycling in the state. In particular, they advocate a tax credit for the purchase of recycling equipment, including balers, sorting conveyors and glass crushers. The coalition believes that the tax credit could create additional recycling opportunities and increase the amount of material diverted from landfills in New Mexico. Ms. Bird and Ms. Feuer predict that the tax credit would provide an effective incentive to include the business community in recycling efforts. According to the coalition's estimates, 50 percent of waste is generated by commercial entities. Reduction of waste and increased recycling by such entities might, according to the coalition, eliminate much of the state's waste problems.

Questions and comments from the committee members addressed:
- the possibility of the use of recyclable materials in state parks;
- the use and distribution of money in the Tire Recycling Fund;
- whether most tires in the state are recycled;
- whether curbside recycling pickup services exist in various cities; and
- which materials are not cost-effective for recycling purposes.

DWI Affiliate Update

Dr. Tasia Young, legislative liaison, New Mexico Association of Counties (NMAC), Rob Mitchell, chair, and Kevin Kinsey, vice chair, DWI Affiliate, discussed the issue of funding for local DWI programs. They stated that the local DWI grant program funding has decreased by $2.3 million annually over the past two fiscal years as a result of $1.5 million diverted to the Administrative Office of the Courts for drug court programs, $300,000 for ignition interlock indigent funding and an additional $500,000 to the Local Government Division of the Department of Finance and Administration for increased oversight of county DWI programs. The DWI Affiliate takes the position that the Local DWI Grant Fund is not the appropriate funding source for such state programs. The affiliate has found that reduced funding has impacted the ability of county programs to provide local DWI-related services. The affiliate requests an increase in funding for local DWI programs.

Dr. Young, Mr. Mitchell and Mr. Kinsey answered committee member questions from the previous RSTPC meeting in Rio Rancho. They addressed the following: how reductions in services have been realized relative to reduced funding for local DWI programs; specific increased responsibilities that local DWI program coordinators have experienced in the climate of decreased funding; how local program funds are spent; and whether local programs have obtained funding from other sources. Mr. Mitchell and Mr. Kinsey provided the committee members with data regarding the amount of funds provided to individual counties for DWI programs.

Questions and comments from the committee members addressed:
- methods of communicating the success of local DWI programs;
- how unexpended balances in local DWI programs are spent;
- the amount of money in the Local DWI Grant Fund;

- possible monitoring of projected liquor excise tax revenues and communication of those projects to counties for budget adjustment purposes;
- whether poor infrastructure contributes to DWI fatalities;
- the accessibility of local DWI program managers; and
- the results of the Legislative Finance Committee's audit of the Local DWI Grant Fund program.

New Mexico Association of Counties Legislative Priorities

Dr. Young asked the committee for support of the association's legislative priorities for the 2006 legislative session. The NMAC first plans to advocate proposals to reimburse counties for state prisoners housed in county detention facilities. The New Mexico Sentencing Commission and University of New Mexico estimates indicate that the annual cost of housing such prisoners approaches $25 million. Dr. Young indicated that NMAC has requested reimbursement for county prisoner housing costs every year since 1999.

The NMAC also plans to request an increased distribution from the State Fire Fund to local governments. Under current state law, approximately half of the revenues derived from property and vehicle insurance payments is diverted from local fire departments and distributed to the general fund.

Additionally, the NMAC will request assistance to counties for compliance with recent changes in federal and state election laws, such as the federal Help America Vote Act (HAVA) and the new voter identification law approved by the legislature during the 2005 session. Dr. Young stated that recent statutory mandates to report absentee and early voting results by precinct and to create paper ballot trails have created significant additional staffing and equipment costs for county governments. The cost of replacing voting machines to meet the new requirements will affect at least 75 percent of New Mexico's 33 counties and, according to the Office of the Secretary of State, will cost between $14 million and $34 million. The NMAC will seek further legislative action to increase salaries for county-elected officials and to increase term limits for county officials.

Questions and comments from the committee members addressed:

- previous legislative proposals to extend term limits of county officials;
- whether counties have fully implemented the county correctional facility gross receipts tax; and
- whether counties use a portion of the property tax for county correctional facility operations.

Tax Expenditure Budgets

Jim Eads, president and executive director, New Mexico Tax Research Institute, provided the committee with a briefing on tax expenditure budgets. The tax expenditure budget process treats tax incentives and tax subsidies as direct government expenditures for the beneficiaries of those incentives and subsidies. For budget purposes, those tax relief measures are treated in the same manner as direct grants, loans and other forms of government assistance. Ultimately, the tax expenditure budget is intended to provide information that will allow legislative bodies to subject indirect expenditures of public money, including tax incentives and subsidies, to the same degree of scrutiny as direct expenditures of public funds.

Tax expenditures are predominantly measured using three different methods. First, the conceptual baseline approach identifies a benchmark tax base and measures deviations from that base to determine the expenditures that exist in the tax law. The reference low baseline approach measures expenditures based on existing exemptions or exclusions from the tax base. In this approach, some exemptions are not considered as tax expenditures. Under the revenue reducer list approach, revenue reducers are identified as tax exemptions, exclusions or deductions and losses are quantified without reference to any set standard.

Mr. Eads discussed some of the benefits associated with tax expenditure budgets. Some advantages of tax expenditure budgets include their systematic method of identifying and examining the effect of tax breaks and their utility in providing information regarding foregone tax revenues.

Despite the advantages tax expenditure budgets might provide, Mr. Eads noted that they might also create some disadvantages. The expertise and data for initial preparation of such budgets might be costly. In addition, Mr. Eads noted that tax expenditure budgets might become a list of easy elimination targets for certain tax exemptions if the underlying policies that led to the provision of those exemptions are forgotten.

Questions and comments from the committee members addressed:

- the potential value of tax expenditure budgets in identifying unnecessary gross receipts tax deductions; and
- the potential value of tax expenditure budgets in contributing to the understanding of the breadth of the gross receipts tax base.

Tax Credits for Private School Tuition

Troy Williamson, executive director, Educate New Mexico, stated that the mission of Educate New Mexico, a nonprofit organization, is to assist low-income families in paying for private school tuition. Mr. Williamson indicated that Educate New Mexico has assisted 816 children to attend private schools of their parents' choice. This year, 770,000 children have applied with the organization for 430 scholarships.

Educate New Mexico proposes that the legislature provide a tax credit to taxpayers who donate money to nonprofit organizations that provide scholarships to low-income students for private school tuition. Mr. Williamson indicated that similar tax credits exist in Arizona, Florida and Pennsylvania.

Dr. Moises Vengas, executive director, Albuquerque Partnership, expressed support for the legislative action requested by Educate New Mexico. He indicated that such legislation would expand educational options for students who have not performed successfully in the public education system.

Ron Donkersloot, New Mexico Association of Nonpublic Schools, discussed the obstacles that students in nonpublic schools encounter in meeting tuition payments. He indicated that the existence of several nonpublic schools is threatened due to reduced enrollments stemming from high tuition costs. He advocates tax credits for tuition payments and other alternatives to make nonpublic school tuition affordable for families.

Charles Bush, a representative from Chamisa Mesa, a nonpublic school in Taos, stated that nonprofit organizations such as Educate New Mexico have positively affected enrollment at that school. According to Mr. Bush, Educate New Mexico has provided scholarships to six Chamisa Mesa students who would not have attended that school otherwise. Mr. Bush spoke in support of legislation that would grant tax credits for donations to organizations such as Educate New Mexico. He predicts that the number of students at Chamisa Mesa might double if such legislation is enacted.

Questions and comments from the committee members addressed:

- whether private schools provide the best alternative to students struggling in public schools;
- the importance of parental responsibility in improving student performance;
- whether property tax credits should be used to supplement private school tuition programs;
- the potential benefits of providing tax credits to nonprofit organizations that provide private school tuition scholarships;
- private school student transportation needs; and
- the possibility of providing a cap on the amount of tax credits that might be available with respect to legislation advocated by Educate New Mexico.

Hospital Tax Credit

Cindy West and Dan Weaks, New Mexico Hospital Association, and Fred Woody, Carlsbad Medical Center, urged the committee members to consider providing a gross receipts tax credit to for-profit hospitals. Mr. Weaks explained that the gross receipts tax imposed on hospitals in New Mexico contributes to the competitive disadvantages that New Mexico hospitals have relative to out-of-state hospitals and to in-state medical providers that are able to claim existing gross receipts tax deductions for medical services. In addition, New Mexico hospitals often provide a large amount of uncompensated care, which increases their financial burden. To help alleviate such disadvantages, the New Mexico Hospital Association proposes a gross receipts tax deduction for receipts from health care services provided to uninsured patients.

Questions and comments from the committee members addressed:

- the potential fiscal impact of eliminating the gross receipts tax on hospital receipts; and
- the number of patients receiving uncompensated care in New Mexico hospitals.

Friday, September 16

El Prado Water and Sanitation District Requests

John Painter, El Prado Water and Sanitation District, requested that the committee members consider legislation to appropriate funds to the district for capital outlay projects in the district. The district will seek funding for well replacement and to obtain water rights during the 2006 legislative session.

Tax and Expenditure Limits

Bert Waisenen, senior policy specialist, fiscal affairs program, National Conference of State Legislatures (NCSL), summarized a study conducted for the NCSL regarding tax and expenditure limits (TELs). TELs are restrictions on government tax revenues and spending outlays. The study indicated that 23 states have spending limits, four have tax limits and three have both. Many of the TELs were enacted in the late 1970s and early 1990s. Those enactments coincided with economic fluctuations in the United States and, after the property tax revolt in California, the passage of Proposition 13.

Four categories of traditional TELs exist. They include expenditure limits, revenue limits, appropriations limited by revenue estimates and hybrids or combinations. Revenue limits tie allowable yearly increases in revenue to personal income or some other type of index such as inflation or population. The limit provides for the refund of excess revenues to taxpayers. Expenditure limits restrict expenditures with respect to a growth index related to the expansion of the economy. Some expenditure limits contain refund provisions if revenues exceed authorized spending levels. Another TEL restricts appropriations to a percentage of revenue estimates. This variation of a spending limit ties appropriations to revenue forecasts and does not establish an absolute limit or tie growth to a measurable index. Hybrid TELs combine components of various limits. Oregon and Colorado have enacted hybrid TELs.

Mr. Waisenen presented several pros and cons associated with the enactment of TELs. As advantages of enacting TELs, Mr. Waisenen stated that TELs force discipline over budget and tax practices; make government more accountable; and force governments to form creative methods of revenue generation. Some disadvantages of TELs include the shifting of fiscal decision-making away from elected representatives; potential disproportional cuts for nonmandated or general revenue fund programs; and increased difficulty in raising new revenue.

Colorado has received attention from policymakers for its enactment of its Taxpayers' Bill of Rights (TABOR). TABOR is a set of constitutional provisions Colorado voters adopted in 1992 to limit revenue growth for state and local governments and to require that any tax increase by state or local government be approved by the voters of the affected governments. NCSL's study of TELs indicated that Colorado's early experience with TABOR included rapid demographic and economic growth in the 1990s due to substantial migration to the state and the rapid expansion of the electronics and telecommunications industries in the state. Taxpayers received substantial "TABOR refund checks" as revenues were returned to them. The Colorado General Assembly subsequently reduced personal income and sales tax rates to reduce surplus revenues.

In 2000 and 2001, the electronics and telecommunications industries began to decline and Colorado's economy and tax collections were adversely affected. Reduced reserves from those economic changes were exacerbated by the failure of TABOR to permit revenue collections during economic downturns. TABOR prevents the creation of a traditional state rainy day fund through its requirement to refund revenues in excess of specified limits. Reserves of three percent of the general fund are allowed, but any use must be repaid in the following fiscal year. Due to budget problems that have arisen in Colorado, several suggestions to alleviate the impact of TABOR have arisen. Some advocates propose to relax TABOR limits. Other advocates have suggested higher refund base requirements.

Questions and comments from the committee members addressed:

- whether a similar provision in New Mexico would have prevented appropriations of additional oil and gas tax revenues received by the state;
- the cause of the decline of Colorado's electronics and telecommunications industries;
- the amount of Colorado's total budget;
- whether Colorado has any permanent funds; and
- the existence of expenditure limits in New Mexico, to the extent that the legislature cannot appropriate more funds than are generated by the state.

Streamlined Sales and Use Tax Agreement Negotiation Update

Dr. Kelly O'Donnell, assistant secretary and tax policy director, Taxation and Revenue Department (TRD), provided the committee with an update of the TRD's participation with other states in discussing the terms of the streamlined sales and use tax agreement. House Bill 575, which passed during the 2005 legislative session, authorized the secretary of taxation and revenue to enter into multistate negotiations to develop a streamlined sales and use tax agreement if that agreement has specific attributes. That legislation did not, however, commit New Mexico to implementing a streamlined sales tax. Implementation of the terms of the streamlined sales and use tax agreement generally would require destination-based sourcing of the gross receipts tax, uniform gross receipts tax exemption certificates and standardized definitions of terms such as food, drugs, medical equipment, school supplies and computer equipment.

If the terms of the streamlined sales and use tax agreement are implemented in New Mexico, some of the compensating taxpayers might have increased tax burdens. In addition, large cities could lose gross receipts tax revenues to smaller cities where services are ultimately received. However, if the Congress works with streamlined sales and use tax agreement terms to permit states to tax remote sellers, New Mexico would have an additional source of gross receipts tax revenue. Dr. O'Donnell warned that any Congressional action with respect to the taxation of remote sellers is still uncertain.

Adoption of streamlined sales and use tax agreement terms would affect a wide range of statutes affecting New Mexico taxes. First, use of the agreement's definitions would change the meaning of several provisions in New Mexico's tax laws. For instance, the agreement's definition of food differs from the definition of food contained in New Mexico's tax provisions and would affect the provision of tax deductions for gross receipts on food sales. The streamlined sales and use tax agreement's required streamlined exemption certificates would additionally change New Mexico's nontaxable transaction certificate system.

Questions and comments from the committee members addressed:

- a possible study examining the steps necessary to implement the terms of the streamlined sales and use tax agreement;
- the effect of the streamlined sales and use tax agreement upon nonprofit organizations that have obtained tax-exempt status from the Internal Revenue Service;
- the manner in which sales taxes on remote sales would be calculated and tracked throughout the country;
- the necessity for and likelihood of Congressional action on the taxation of remote sales;
- the origin of the streamlined sales and use tax negotiations; and
- the streamlined sales and use tax as a tool to enable the legislature to permit reduced gross receipts tax rates in New Mexico due to increased revenues received from remote sales.

Severance Tax Permanent Fund Distributions

Doug Williams, economist, Legislative Council Service, provided the committee with an overview of how severance tax revenue is distributed. Severance tax revenue is composed of oil and gas severance tax revenues and revenues from the severance taxes on coal and other minerals. Those revenues, which approximated $394 million in fiscal year 2005, were distributed to the Severance Tax Bonding Fund. The money in that fund is used to pay principal and interest on severance tax bonds and on supplemental severance tax bonds. The residual revenues left in the Severance Tax Bonding Fund are then remitted to the Severance Tax Permanent Fund. The balance of the that fund as of June 30, 2005 approximated $3.76 billion. The money contained in that fund is invested in domestic and international equities, private equities, economically targeted investments and core fixed income and high yield bonds. Of the five-year average balance of the Severance Tax Permanent Fund, 4.7 percent is distributed to the general fund. Mr. Williams prepared a table showing the amounts of net severance tax revenues during the last 15 years and the percentages of revenues distributed in the Severance Tax Permanent Fund. The percentages of revenues distributed amounted to 67.8 percent in 1991 and declined to 4.8 percent in 2004.

Questions and comments from the committee members addressed:

- the reduced revenues distributed to the Severance Tax Permanent Fund;
- the necessity to maintain a certain distribution to the Severance Tax Permanent Fund each year; and
- the source of new contributions to the Severance Tax Permanent Fund.

Motor Transportation Division Enforcement Issues

Secretary John Denko, Department of Public Safety (DPS), and Captain Ron Cordova, Motor Transportation Division (MTD) of the DPS, updated the committee on the efforts of the MTD in enforcing certain transportation-related taxes and in dealing with special enforcement issues in the United States-Mexico border region. They noted that due to over 77,000 inspections it conducted last year, the MTD seized more than 30,000 pounds of illegal narcotics with an approximate street value of $40 million.

Secretary Denko and Captain Cordova discussed the MTD's additional enforcement duties with respect to the statutorily required use of weight-distance tax identification permits and the imposition of the trip tax and the caravan tax. Captain Cordova noted that MTD revenues have increased significantly from the previous year due to better enforcement at ports of entry of the fees for oversize and overweight vehicles stemming from the tax identification permit requirements.

Dr. O'Donnell added to the MTD's data regarding improved enforcement of transportation-related taxes. Dr. O'Donnell noted that due to the use of weight-distance identification cards, collections of the trip tax are projected to increase by $2 million to $3 million annually.

Improvement in weight-distance tax collection is also expected. MTD and TRD have shared information pursuant to the federal International Fuels Tax Agreement to identify multistate trucking operators who have not complied with certain taxes. In addition, a new fuels and weight-distance tax processing system will also be ready for implementation by the beginning of fiscal year 2007. That system will enable automated compliance processes. Dr. O'Donnell noted that the program's success will likely improve if funding for two additional weight-distance tax auditors is provided and if certain statutory changes are enacted. The TRD recommends legislation that includes provisions to permit the detainment of vehicles that are not tax compliant; to provide a penalty for failure to stop at a port of entry; to increase penalties for carrying overweight loads and for operating without an oversize or overweight permit; and to provide an additional penalty for failure to carry a weight-distance tax identification card or for failure to carry a log book. If additional auditors and such statutory provisions are provided, Dr. O'Donnell predicts that total weight-distance tax revenue could increase by two percent, or $1.5 million, per year.

Questions and comments from the committee members addressed:

- how often ports of entry are open;
- whether the cost of fuel has affected the use of DPS fleets;
- DPS budget shortfalls in providing for fuel costs;
- accident location identification;
- the source of gasoline for police fleets; and
- the reason for the delay in implementing the weight-distance tax processing system.

The committee adjourned at 3:30 p.m.