

MINUTES
of the
FOURTH MEETING IN 2012
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

September 17-18, 2012
Pan American Center, Barbara Hubbard Room
New Mexico State University
Las Cruces

The fourth meeting of the Revenue Stabilization and Tax Policy Committee (RSTP) for 2012 was called to order by Representative Edward C. Sandoval, chair, on Monday, September 17, 2012, at 9:05 a.m. in the Barbara Hubbard Room of the Pan American Center at New Mexico State University (NMSU) in Las Cruces.

Present

Rep. Edward C. Sandoval, Chair
Sen. Tim Eichenberg, Vice Chair
Rep. Donald E. Bratton
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Sen. Clinton D. Harden, Jr.
Sen. Timothy M. Keller
Sen. Gay G. Kernan (9/17)
Rep. Rodolpho "Rudy" S. Martinez
Sen. Howie C. Morales
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith
Rep. Jim R. Trujillo

Absent

Sen. Mark L. Boitano
Sen. Timothy Z. Jennings, Senate President
Pro Tempore
Rep. Ben Lujan, Speaker of the
House
Rep. Thomas C. Taylor
Rep. Bob Wooley

Designees

Rep. Ernest H. Chavez (attending as a guest)
Rep. Zachary J. Cook
Rep. Antonio Lujan
Sen. George K. Munoz
Rep. Debbie A. Rodella (attending as a
guest 9/17)
Sen. William E. Sharer

Sen. Rod Adair
Rep. Ray Begaye
Sen. William F. Burt
Rep. Brian F. Egolf, Jr.
Rep. Miguel P. Garcia
Rep. Thomas A. Garcia
Rep. Roberto "Bobby" J. Gonzales
Sen. Eric G. Griego

Sen. Phil A. Griego
Rep. Sandra D. Jeff
Rep. Antonio "Moe" Maestas
Sen. Steven P. Neville
Sen. Nancy Rodriguez
Sen. Bernadette M. Sanchez
Sen. John M. Sapien
Rep. James R.J. Strickler
Rep. Don L. Tripp
Rep. Luciano "Lucky" Varela
Sen. Peter Wirth

Guest Legislators

Sen. Mary Kay Papen
Rep. Richard D. Vigil (9/18)

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

Staff

Pam Ray, Staff Attorney, Legislative Council Service (LCS)
Ric Gaudet, LCS
Damian Lara, Staff Attorney, LCS
Pam Stokes, Staff Attorney, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Monday, September 17

Welcome from NMSU President

Barbara Couture, president, NMSU, welcomed the committee to the university campus. The university opened in 1890 as a land grant college focusing on agriculture and engineering. Today, the university has extensive research and economic development activities in many more arenas. The Arrowhead Center since 2004 has participated in 300 business research projects, which has contributed greatly to the state's economic climate. The linkage of research and economic development partnerships has made the university a major economic engine for the state. NMSU has a presence throughout New Mexico, with extension agents in every county and with 13 agricultural experiment stations. Total enrollment at the university is 28,000, with 9,000 students at the main campus in Las Cruces. President Couture mentioned the new Barnes and Noble bookstore and café, which is an example of a successful partnership with private enterprise on the campus.

Questions and comments from committee members included the following.

- The Range Improvement Task Force, which receives funding from NMSU, plays a vital role in assisting ranchers in obtaining grazing permits. This program should continue to be funded.

- Is the high school located on the NMSU campus part of the Las Cruces Public School District? President Couture said that it is part of the school district. Students are selected to attend the school based on their economic and social situations. The school focuses on college readiness and allows students to earn an associate degree at the school.

- What progress has been made with the Santa Fe Higher Learning Center? The issuance of local bonds has already been approved, but the project appears to be on hold. President Couture said that NMSU's cost-benefit analysis of the program was not favorable. The university was unable to cover the costs associated with the learning center.

- What has happened regarding the nursing program at the Dona Ana branch of NMSU? President Couture said that in August 2012, the nursing program at Dona Ana Community College was not re-accredited by a national accreditation body. The university immediately offered all currently enrolled students at the community college the option to transfer to the main campus nursing program and offered scholarships to those students. So far, more than 70 students have transferred. The community college is currently acting to remedy the accreditation problems and has re-applied for accreditation. The main reasons for failing accreditation were that the college did not have a good faculty-to-student ratio and not enough faculty with master in nursing degrees.

LCS staff was requested to investigate whether state regulation of nursing education programs is redundant, since national accreditation is the most important factor for a school's ability to train employable students.

Union Pacific Fuel Yard and Burlington Northern Santa Fe Railway Update

Zoe Richmond, director of public affairs, Union Pacific Railroad, Andrew Johnsen, assistant vice president, state government affairs, Burlington Northern Santa Fe Railway Company (BNSF), David Uphaus, director, Tax Department, BNSF, and Dennis Kearns, legislative counsel, state government affairs, BNSF, discussed with the committee the status of ongoing rail projects and proposed legislation to expand the scope of a gross receipts tax (GRT) deduction for railway companies. Ms. Richmond discussed the progress made on the Union Pacific intermodal facility in Santa Teresa. Legislation passed in 2011 granted a deduction from gross receipts for locomotive fuel for a railroad company that invests \$100 million in a railroad locomotive refueling facility and that has the project commence prior to July 1, 2012. Union Pacific has so far spent \$40 million on the project since 2011, mostly on site preparation, and will begin actual construction of the facility soon. The fueling facility and intermodal ramp are expected to be completed in 2015, assuming no delays in permitting or due to weather.

Ms. Richmond said that the Taxation and Revenue Department (TRD) will need to notify the LCS and the New Mexico Compilation Commission by July 1, 2013 that the project is in compliance with the legislation, giving effect to the section of law granting the GRT deduction.

Mr. Johnsen, Mr. Uphaus and Mr. Kearns discussed with the committee BNSF's desire to have legislation enacted to allow more types of investment across the state to qualify for the fuel deduction. Legislation from the 2012 legislative session to do that nearly passed the legislature, but the clock ran out before final passage could occur. BNSF has already invested hundreds of millions of dollars in railroad facilities and would like to invest more if the state's tax policy is more favorable. To a large extent, the state's tax policy drives capital investment in new facilities and upgrades.

Questions and comments from committee members included the following.

- Why was there an embargo on cargo in Monahan, Texas, in May 2012? Ms. Richmond said that in the railroad industry, "embargo" means that there is too much cargo to be moved quickly. She said that the situation in Texas was resolved quickly after the embargo became apparent. Mr. Kearns said that the proposed legislation would provide incentives for railroad companies to invest in short-line improvements. Many lines currently do not have enough annual traffic to justify large-scale improvements.

- What is happening with the maintenance issue on the track between Raton and Lamy? Mr. Johnsen said that there has been a delay in the negotiations with the New Mexico Department of Transportation. He clarified that BNSF has full responsibility to maintain that track. However, if Amtrak wants to operate its cars at a higher speed, it would be responsible for the extra investments needed.

- How is Union Pacific working with local schools to train the work force? Ms. Richmond said that a proposed amendment to the GRT deduction section would have forced the company to partner with local schools. However, Union Pacific is not an education provider, she said. The company has donated \$100,000 to the community college to jump start the work force training process. David Lopez, representing the Mesilla Valley Economic Development Alliance, said that his organization has developed surveys, trying to match current skills with the current student population. John Walker, associate vice president, Dona Ana Community College, said that the school is ready to provide work force training. The college is also working with Sunland Park and Chaparral high schools.

- Would providing BNSF with the option to calculate its corporate income tax liability using a single-weighted sales factor, rather than the proposed GRT deduction, be a more effective option to provide tax relief? Mr. Uphaus said that he would investigate how that change would impact BNSF's tax liability.

New Mexico Lottery Revenue Update and Lottery Tuition Fund Status

Tom Romero, chief executive officer, and Adrianna Binns, director of marketing and communications, New Mexico Lottery Authority, and Glenn Walters, deputy secretary, Higher Education Department (HED), presented to the committee an update on lottery revenues and projections for fund balances. In fiscal year (FY) 2012, the authority realized \$133.9 million in gross revenue. By statute, the lottery is required to return a minimum of 50 percent of proceeds to players in the form of prizes and 30 percent to the Lottery Tuition Fund. The remaining revenue is allocated to cover the costs of products, retailer commissions and administrative costs. Forty-one million dollars was deposited into the fund last FY.

Mr. Romero discussed the effect that the statutory requirement of maintaining a monthly 30 percent return to the Lottery Tuition Fund has had on the operations of the authority. That requirement makes it difficult for the authority to operate as a sales and marketing organization; limits its ability to respond to changing market conditions; and does not allow for reserve balances. The requirement could become a significant problem if vendor contract terms increase as a result of changes in the lottery industry. The authority has been forced to eliminate retailer and employee sales incentives, reduce staffing from 68 to 56 full-time-equivalent employees and reduce prizes to players. This reduction in payout has led to a dramatic reduction in instant game sales since FY 2007. The average payout in 2007 was 63 percent, while today it is only 58 percent, which is the lowest payout in the nation. While instant game sales have decreased recently, sales of drawing games have increased. Powerball and Mega Millions have contributed to the overall stability of net revenues in the past few FYs.

Deputy Secretary Walters discussed Lottery Tuition Fund balance projections with the committee. By FY 2014, the fund is expected to have negative balances, given the current revenue and scholarship trends. Since FY 2009, expenditures from the fund have exceeded revenues being deposited. Most higher education institutions have also raised tuition rates, which has further hurt fund balances. If there is insufficient money in the fund, the HED will be forced to reduce the amount each student receives in scholarship funding.

Questions and comments from committee members included the following.

- When was the 30 percent monthly return requirement enacted? That requirement has only hurt the authority's ability to be flexible. Mr. Romero said that the requirement was enacted in 2007. In 2007, the authority provided a 27 percent return to the fund. By 2009, the authority was able to comply with the 30 percent requirement.
- Why have instant game sales declined so much? Mr. Romero said that vendors report that the payout of 57 percent is too low, turning off potential customers. The slowdown in the economy also has contributed to declining sales. The current focus of the authority is to revitalize instant game sales. Those changes will need to be made slowly, however.
- The legislature should reconsider enacting legislation to allow New Mexico residents to donate a portion of their income tax refund to the Lottery Tuition Fund. That would allow residents who do not play the lottery to contribute to the scholarship program.

- HED staff was asked to provide the committee with graduation rates of students receiving a lottery tuition scholarship. Information on student loan amounts and scholarship amounts per student was also requested.

- The state is wasting money providing scholarships to students who are not prepared to attend college. Deputy Secretary Walters agreed, and said that some students are not ready for college immediately after high school. However, the statutes providing for the scholarships require students to attend college immediately after graduation from a New Mexico high school. Extending scholarship eligibility would help the situation, but further weaken fund balances.

- Have the two vacancies on the board of directors of the authority been filled? Mr. Romero said those positions are still open.

- Playing the lottery seems to be a form of taxation on low-income people. Mr. Romero said that there is a broad player base in New Mexico. The majority of adults in the state play the lottery.

Gaming — Revenue and Trends; Tribal-State Revenue Sharing

Frank Baca, general counsel and acting executive director, and David Norvell, member and acting tribal gaming representative, Gaming Control Board (GCB), presented to the committee an update of the board's activities. The board oversaw \$134 million in gaming revenue deposited into the general fund in FY 2012. Approximately one-half of that revenue was generated by racetrack and nonprofit casinos licensed by the board and license fees. The remaining portion of the revenue came from tribal casinos, which pay a different percentage of net win than racinos. Revenue from racinos is estimated to slightly decline in FY 2013, but revenue from tribal casinos may grow as much as four percent. A decline in racino gaming tax revenue will also mean a decline in contributions to racetrack purses, which could further weaken the horse racing industry.

Questions and comments from committee members included the following. In addition, the chair allowed members of the public to address the committee.

- Is the Downs at Albuquerque in fiscal trouble? Mr. Norvell said that the Downs reduced its race days, but he was not sure why.

- What is the status of the dispute between the GCB and some tribes regarding the revenue-sharing agreement? Mr. Norvell said that some tribal casinos have been calculating net win differently from the state's method. He said the board hopes to resolve the issue without the need for arbitration or pursuing the legal process. The board will know by the end of 2012 whether the current negotiations will be successful. The issue in dispute is whether free-play is taxable as if it were a form of pay-for-play.

- Are some tribes in violation of their gaming compacts? Mr. Norvell said that could be true.

- The GCB has not disclosed any useful information to the legislature regarding the dispute about the revenue-sharing agreement. The chair of the State Racing Commission (SRC) sits on the GCB, but the GCB apparently is not aware of what is happening at the Downs at Albuquerque. The legislature may need to change what kinds of information the board must disclose to the legislature.

- Class III gaming at racetracks originally was enacted as a means of saving the horse racing industry. The racetracks had enthusiastically endorsed the 26 percent gaming tax that they are now complaining so loudly about. It appears that the industry would prefer that horse racing in New Mexico disappears, and that the state be left with only private casinos with no racetrack activity. Mr. Norvell said that the tribes, which pay between three and 10 percent of their revenues to the state, have a significant advantage over the racinos, which pay about 46 percent of their revenues to the state and race purses.

- Does the GCB have any information about the status of the negotiation process between the governor and some tribes to establish a new gaming compact? Mr. Norvell said that the Office of the Governor has not released any substantive information about the status of those negotiations, except to indicate that the negotiations are under way. Conroy Chino, lobbyist for the Jicarilla Apache Nation and the Pueblo of Acoma and a member of the compact negotiating team, said that meetings between the tribes and the Office of the Governor began in May, but that serious negotiations have not yet begun. He had hoped the negotiation process would be much further along by now.

- Tribes cannot be forced to pay revenue sharing to the state. Any revenue sharing must have consideration for a benefit derived from the state through negotiation. Tribes are not private enterprises but governments, and the services tribes provide complement services provided by the state.

- The only statutory requirement placed on the governor is to negotiate with the tribes in good faith. There is no time frame setting out the process. Mr. Norvell said that some of the compacts will expire in 2015 and that those compacts are currently in negotiation.

- What percentage of net win do the tribal casinos pay to the state? Mr. Norvell said that the tribes operating under the 2001 compact pay eight percent of net win. The tribes operating under the 2007 compact pay between three and 10 percent of net win, depending on how much net win a casino generates. That rate is set to increase beginning in 2015.

- In the revenue-sharing dispute with the GCB, are the tribes claiming they are paying too much? Mr. Baca said that the dispute centers on how net win is calculated, not the percentage of net win paid to the state. The question is whether costs associated with "free play" can legitimately be deducted from gross revenue in the calculation of net win.

- How much money is in dispute regarding the calculation of net win? Mr. Baca said that the disputed amount the GCB wants the tribes to pay to the state is millions of dollars.

- Pamela Gallegos, chief executive officer, Hard Rock Casino, asked the committee members to hear the tribes' perspective. She said that the tribes were under the impression that they were paying the correct amount of revenue sharing, but in 2009, the GCB attempted to collect extra revenue-sharing payments retroactively. Several other tribal representatives asked that the tribes be allowed to present their perspective at a future committee meeting.

LCS staff was instructed to provide an agenda item for the tribal perspective on the calculation of net win at a future meeting of the committee.

Lincoln County Business Retention Tax

Secretary of Taxation and Revenue Demesia Padilla, John Tysseling, chief economist, TRD, Alan Morel, Lincoln County attorney, and Sandi Aguilar, representative, Ruidoso Downs Racetrack and Billy The Kid Casino, discussed with the committee the impact on the Ruidoso area of the recently enacted county business retention GRT. The legislation was enacted in an attempt to keep the casino and racetrack in its current location by shifting some of the tax burden from the casino to the rest of the taxpayers in Lincoln County. Lincoln County residents voted to impose a GRT increment to offset lost state revenue from a 50 percent gaming tax credit granted to the business. Any revenue generated from the tax in excess of \$750,000 annually is to be distributed to the county for specified purposes. In FY 2012, the county received a distribution of \$107,000 from the state.

Mr. Morel said that the special election held in 2010 considering the tax increment was paid for by a nonprofit organization that supported the tax increase. The GRT referendum severely divided the county, but the measure passed.

Ms. Aguilar said that Ruidoso Downs has been able to make capital improvements and increase its marketing and employment levels since the legislation and referendum passed. This has resulted in a 10 percent increase in gaming, racing and other revenue since 2011. She said the legislation has increased economic activity in the area. Although the racino was granted a \$750,000 tax incentive, the business has paid more than that amount in new tax liabilities to the state in the form of additional GRTs from capital improvements made and from increased business.

Questions and comments from committee members included the following.

- This legislation is an example of local involvement in economic development initiatives. Although it may be terrible tax policy from a complexity standpoint, it makes local governments pay their share, rather than having the state pay for local initiatives. In addition, concern was expressed about the precedent of allowing a nongovernmental group to pay the costs of holding an election.

- How many gaming machines are located at the casino? Ms. Aguilar said that Ruidoso Downs has 300 machines. The rest of the allotment of 600 machines allowed by statute has been leased out to other casinos.

Tax Expenditure Report

Secretary Padilla and Mr. Tysseling presented a summary of the TRD's 2012 tax expenditure report. Tax expenditures were defined in the report to be tax provisions implemented to achieve policy objectives, allowing taxpayers to retain specific economic value. Tax expenditures are taxes not collected, which can be an efficient means of achieving a public purpose. In preparing the report, TRD staff engaged all executive agencies, reviewed all prior tax expenditure analyses and reports, researched TRD data and audit systems, in addition to outside data sources, and compiled more than 400 templates of possible expenditures. Tax expenditures were then compiled into eight categories, including industry-specific expenditures for economic development, improving the business climate, specific public purposes, health care programs and facilities, public welfare, nonprofit enterprises, natural resource policy and any related to Indian nations, tribes and pueblos.

Secretary Padilla and Mr. Tysseling discussed a few dozen of the expenditures listed in the report, giving a brief description of each expenditure and the cost of each expenditure, dating back to 2007, if possible.

Questions and comments from committee members included the following.

- The draft version of the tax expenditure report was much larger than the report published on the TRD's web page. It appears that many pages from the report were removed. Secretary Padilla said that the original report was nearly the same size as the final version. Some pages containing backup documentation were removed.

- Why is there not a summary of the total amount of tax expenditures and a total cost? Secretary Padilla said that there is no total cost figure because many of the expenditure figures are estimates. Mr. Tysseling said that many tax expenditures count against several tax programs, so providing a total number of expenditures would be misleading.

- Many tax expenditures listed in the report's appendix do not appear in the report. For example, the appendix lists the coal tax rate differential as a tax expenditure, but nowhere in the report is it discussed. Mr. Tysseling said that many of the credits, deductions and exemptions are not considered true tax expenditures, so they were not included in the report.

- The new tax expenditure report appeared to be incomplete. More than one-half of the expenditures listed in the appendix are missing from the report. The report given to the committee in 2010 had much more complete data and figures than the current report. Secretary Padilla said that the TRD did not include those expenditures that are not actually tax expenditures. Also, some tax expenditures could not have detail given because disclosing information about a few taxpayers could violate statutory confidentiality provisions.

LCS staff was directed to provide copies of previous tax expenditure reports to members of the committee. TRD staff was requested to provide the committee with the draft tax expenditure report.

- The executive order directing the TRD to create a tax expenditure report mandated that each tax expenditure provide an evaluation and determine its cost-effectiveness. None of that information is provided in the report. If TRD staff is overburdened, it should ask the legislature for the resources to produce a meaningful report. Mr. Tysseling said that the production of the report was a full-time effort for several months by some TRD staff. Cost-benefit analyses are very difficult and time-consuming to perform.

- Does the TRD have the ability to correct overpayments to municipalities from incorrect reporting of gross receipts by businesses? Secretary Padilla said that the TRD needs more authority to penalize businesses that report gross receipts incorrectly. The department is doing more outreach with small businesses to ensure proper location reporting.

- When will the TRD give recommendations on how to reform provisions of the high wage jobs tax credit? Secretary Padilla said that a group of stakeholders is meeting and will make recommendations soon. She said that proposed legislation will be similar to a bill introduced in the 2012 legislative session.

- It is difficult for analysts to score open-ended tax expenditures. The newly enacted construction and manufacturing deductions will be much more costly than originally estimated. Policymakers also need return-on-investment analyses on some tax expenditures. Secretary Padilla suggested that the TRD could spend more time analyzing tax expenditures that cost the most, rather than spending a brief period studying each expenditure.

- The business sector in New Mexico needs a consistent tax policy in order to recognize the state as a good place to do business. Policymakers need to know which tax expenditures have a significant impact on state revenues.

The minutes from the August 30-31, 2012 meeting of the committee were adopted without changes.

The committee recessed at 4:22 p.m.

Tuesday, September 18

The committee reconvened on Tuesday, September 18, 2012, with Representative Sandoval chairing the meeting.

Horse Racing Update

Vince Mares, executive director, and Beverly Bourget, member, SRC, gave the committee an update on the horse racing industry in the state. The SRC regulates five racetracks in the state. The sixth license allowed by statute, granted for a proposed racetrack in Raton, was revoked by the commission. The issue is currently in court, with the former licensee claiming that due process was not followed in revoking the license. The SRC is currently accepting applications to fill the sixth license and will act on that license once the court issue is resolved.

The SRC has five main areas of focus: licensing, equine drug testing, investigations and enforcement, auditing and accounting and race meet oversight.

The SRC has identified strategies to combat the illegal use of clenbuterol and demorphin. Use of these substances appears to be widespread in the horse racing industry. The commission is in the process of issuing a new request for proposals (RFP) for a laboratory to test the blood of horses. The previous laboratory was unable to identify the presence of demorphin. Once a horse has been tested positive for a banned substance, the commission is unable to keep that horse from racing until due process has been afforded the horse owner or trainer. The horse trainer is allowed to send the blood sample to a different laboratory, which often takes weeks. Trainers have been successful in getting court injunctions against the commission, which allows horses to run in meets, sometimes for several years after they have tested positive.

The SRC is attempting to bring back integrity to the New Mexico horse racing industry. It needs more money in its budget to investigate and prosecute infractions, and it needs to have certified law enforcement officers on its staff. There has been infiltration by Mexican drug cartels into the state's industry. The current SRC budget of \$2.1 million should be doubled in order to properly regulate the industry.

The SRC recently joined the Association of Racing Commissioners International, with the \$10,000 membership fee being provided by New Mexico racetracks. Membership will allow the SRC use of a modern database to make licensing, accounting and investigation functions easier.

In the past, the SRC was not consistent in how it enforced its rules. The commission has recently adopted new classes of violations, which can hold accountable an owner and veterinarian, in addition to the trainer. Finally, Mr. Mares said that Zia Park is constantly on the commission's radar for unsafe conditions on and off the track.

Questions and comments from committee members included the following.

- The situation at the SRC and within the horse racing industry seems very bleak. Does the governor know the severity of the situation? Mr. Mares said that the chair of the SRC has met with the governor. Ms. Bourget said that the commission's hands are tied, and it can do very little to quickly enforce SRC rules.
- The SRC should be funded by allocating a percentage of purses toward its budget, rather than from the general fund.
- How much money from the gaming portion of racino businesses is allocated toward horse racing purses? Mr. Mares said he would provide the committee with that figure.
- Gaming was permitted at racetracks in an attempt to save the state's horse racing industry. Money from that industry should be used to fix today's problems, rather than having all New Mexicans pay to fix the problem.

- How much money is generated from fines imposed by the SRC? Mr. Mares said he did not know that number, since most fines get deposited into the general fund.

LCS and SRC staff were directed to provide the committee with information detailing the amount and types of fines imposed each fiscal year.

- The chair of the SRC sits on the GCB, but he is prohibited from sharing confidential information with the other members of the SRC. This situation needs to be modified by statute.

- What level of testing would be adequate to ensure a cleaner industry? Mr. Mares said that the current practice of testing the winner and one other horse in a race is inadequate. At least four horses in a race need to be tested.

- What is the current status of the RFP for laboratory blood testing? Mr. Mares said that the RFP is being evaluated in Santa Fe, and he did not know what its status was.

The committee directed LCS staff to send a letter from the committee chair to the Department of Finance and Administration inquiring into the status of the RFP for blood testing.

- Zia Park in Hobbs has said that it does not have enough money to provide a proper track and paddock surface, yet it recently announced plans to build a \$2 million steakhouse on the premises.

- The SRC should establish reciprocal agreements with other states to prevent violators from participating in New Mexico meets.

- The SRC has been aware since February 2012 that a new RFP for blood testing was needed, but it still has not been issued.

- A letter dated August 10, 2012 sent to the SRC asked whether horses that had tested positive for illegal substances would be allowed to run in a futurity event. Three days before the event, the legislator received a letter from the commission that staff would be happy to discuss the issue. Mr. Mares said that due process concerns do not allow the SRC to ban a horse from racing until the lengthy process is finished. However, some racetracks have said that any horse that tests positive for an illegal substance will not be allowed to race at their tracks.

- The SRC needs to propose to the legislature specific statutory changes in order for it to better regulate the industry.

- The SRC should adopt a zero-tolerance policy, regardless of whether the due process course is finished. If an employer can immediately fire an employee for testing positive for illegal substances, the SRC should have that same power over whether a horse can race. Mr. Mares said that he does not know whether a rule can be changed or statutes would need to be modified in order to have that power.

- Mexican drug cartels have established a significant presence in the horse racing industry. The SRC should have the power to immediately suspend a license, based on the idea that certain activities pose an imminent threat to the industry.
- Illegal doping of horses should be classified as felonies.
- New Mexico racetracks consistently do not run the statutorily required number of race days. The SRC should announce that it may revoke racetrack licenses on that basis, which would probably result in a quick fix to the problem.
- There is a problem with conflicts of interest on the SRC. One commissioner recently voted against the reinstatement of a license after the person had been exonerated. But that commissioner, who also ran horses at meets, apparently did not want to have the competition from the person. Mr. Mares asked the legislator to provide detailed information to him about the allegation.
- The SRC knew that the Zia Park track was inferior the day it was opened. The park, which cost \$40 million to build, sold the next year for \$200 million. Principals involved in that project had relatives on the SRC, which could explain the lack of oversight.
- Class III gaming, which was touted as being the savior of New Mexico horse racing, is in fact destroying the industry. There needs to be a complete overhaul of the systems regulating the gaming and horse racing industries.
- The decision to grant a racetrack permit in Raton should never have happened, but that decision came from much higher up than the SRC, months before the decision was formally announced.
- Racino owners do not care about horse racing; they only care about gaming. If a racino does not run its required number of race days, the number of gaming machines allowed at the premises should be proportionally reduced.
- There are many communities across the state that would love to have a horse racing license should an existing license be revoked for noncompliance with the law.

Patient Protection Act and Affordable Care Act — Revenue Outlook and Update

Bill Jordan, policy director, and Nick Estes, deputy policy director, New Mexico Voices for Children, gave an update on the revenue outlook of the federal Patient Protection and Affordable Care Act (ACA). The ACA will provide health coverage for 300,000 New Mexico residents, greatly improving their long-term health. The governor has not yet decided whether to participate in the Medicaid expansion associated with the new law. The economics of Medicaid expansion should not be a concern, since the state will collect more than twice the amount of revenue from premium and related taxes that it needs to pay for increased costs of Medicaid during the first seven years of increased coverage. After seven years, revenues will

approximately equal the costs associated with the program. This estimate does not include other tax revenues generated from increased coverage, including GRT and personal income tax revenues. Other savings will come from reduced uncompensated care expenses, estimated to be \$2 billion over seven years.

Questions and comments from committee members included the following.

- What is the time frame for opting into the Medicaid expansion? Mr. Jordan said that the state could opt in at any time, but it may need some time for planning for the transition to the new system. Increased federal funding begins in January 2014.

- There has been discussion of the state needing to come up with \$500 million before the federal money comes to the state. Mr. Jordan said that the \$500 million figure is the total amount that the state will need to pay over seven years. In the first year of the program, the state will only need to pay \$1 million extra in order to receive hundreds of millions of dollars in Medicaid funding from the federal government.

- A legislator expressed the opinion that the ACA is nothing more than an elaborate Ponzi scheme, in which the federal government props up state governments by borrowing more money. Future generations will be forced to pay that debt. The government needs to create economic prosperity so businesses can thrive and employ more Americans who then can buy health insurance. Mr. Jordan said that the ACA reduces the federal deficit by \$200 billion over 10 years.

There being no further business, the RSTP adjourned at 11:51 a.m.