

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

**August 24-25, 2006  
Ruidoso Convention Center, Ruidoso, New Mexico**

The third meeting of the Revenue Stabilization and Tax Policy Committee (RSTP) was called to order by Representative Donald L. Whitaker, chair, at 9:30 a.m. on August 24, 2006 at the Ruidoso Convention Center in Ruidoso.

**Present**

Rep. Donald L. Whitaker, Chair  
Sen. John Arthur Smith, Vice Chair  
Rep. Janice E. Arnold-Jones (8-25)  
Sen. Carlos R. Cisneros  
Rep. Anna M. Crook  
Rep. Keith J. Gardner  
Rep. Roberto "Bobby" J. Gonzales  
Rep. Ben Lujan  
Rep. Daniel P. Silva  
Sen. H. Diane Snyder  
Rep. Thomas C. Taylor

**Designees**

Sen. Sue Wilson Beffort (8/24)  
Sen. Nancy Rodriguez (8-25)  
Sen. John C. Ryan  
Rep. Joe M Stell

**Absent**

Sen. Ben D. Altamirano  
Sen. Mark Boitano  
Sen. Kent L. Cravens  
Sen. Joseph A. Fidel  
Rep. George J. Hanosh  
Sen. William E. Sharer  
Sen. James G. Taylor  
  
Rep. Donald E. Bratton  
Sen. Phil A. Griego  
Sen. John T.L. Grubestic  
Rep. Irvin Harrison  
Rep. Manuel G. Herrera  
Sen. Stuart Ingle  
Sen. Cisco McSorley  
Sen. Steven P. Neville  
Rep. Andy Nunez  
Sen. Leonard Lee Rawson  
Rep. Bill Rehm  
Rep. Debbie A. Rodella  
Rep. Henry Kiki Saavedra  
Sen. Bernadette M. Sanchez  
Rep. Don L. Tripp  
Rep. Luciano "Lucky" Varela

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

**Staff**

Tim Crawford, Legislative Council Service (LCS)  
Cleo Griffith, LCS  
Pam Ray, LCS  
Stephanie Schardin, Legislative Finance Committee (LFC)  
Doug Williams, LCS

**Guests**

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

**Thursday, August 24****Welcome**

L. Ray Nunley, mayor, Village of Ruidoso, welcomed the committee to Ruidoso. He said that Ruidoso is growing and that the availability of water is a concern. Ruidoso is also planning to expand the downtown area, improve camping facilities and become even more hospitable to tourists.

Senator Smith asked about new construction in Ruidoso. The mayor responded that because of the water situation, Ruidoso is currently at phase five, which means that no new construction permits are being issued.

Speaker Lujan asked about gross receipts tax (GRT) revenue. The mayor said that, despite the absence of snow during the 2005-2006 winter, GRT revenue was level compared to the 2004-2005 winter. GRT revenue this summer is greater than last summer.

Representative Silva asked about Ruidoso's water treatment plant. The mayor said that Ruidoso is in the process of replacing its 30-year-old plant because of the Environmental Protection Agency regulations concerning phosphorous.

Brad Treptow, executive director, Ruidoso Valley Chamber of Commerce, welcomed the committee to Ruidoso. He noted that Ruidoso has a racetrack, three casinos, the Apache ski area, two dinner theaters and a performing arts center.

**Tax Policy Transparency Recommendations**

Bill Jordan, deputy director for policy, and Gerry Bradley, research director, New Mexico Voices for Children, made a presentation concerning tax transparency.

The first recommendation is that New Mexico begin to prepare tax expenditure reports (TERs). They said that Texas and Minnesota prepare excellent TERs. Some 38 states prepare some form of a TER. Specifically, they recommend:

- New Mexico should prepare an annual TER as an appendix to both the legislature's and the governor's budget;

- the TER should show the amount of revenue the state gives up through tax expenditures; and
- food and health care deductions should be used as a prototype for what is needed. The Taxation and Revenue Department (TRD) Report 80 specifies the costs of the food and health care deductions.

The second recommendation is to begin tax incidence reporting, i.e., tax burden should be identified by income group. Specifically, they recommend:

- enactment of legislation requiring an annual analysis of how the overall burden of state taxes falls on taxpayers of various income levels;
- an analysis of tax burden by income group should be required for any new tax or fee that raises more than \$1 million a year. This analysis should be performed as part of the fiscal impact report (FIR);
- an analysis of any proposal that would increase, decrease or redistribute taxes by more than \$5 million as part of the FIR; and
- the prototype for this type of analysis can be found in the FIR for the 2003 PIT tax cut.

The third recommendation is to initiate economic development cost-benefit analysis. Specifically:

- the job training incentive program report on the Economic Development Department (EDD) web site is an excellent example of the type of information that should be available for all economic development incentives;
- TRD and EDD reports to the RSTP during the FY 2005 interim showed a good faith effort to begin to come to terms with the cost of economic development incentives, but an estimate of number of jobs created by economic development incentives is needed; and
- cost-benefit analyses of incentives would be a longer-term goal.

The fourth recommendation is to create a current services budget. Essentially, they suggest that the existing LFC five-year budget outlook should be expanded and contain more detail.

Senator Snyder is opposed to disclosure of economic development corporate tax credits.

Representative Taylor does not believe that tax incidence reporting would have any value. Also, he believes that tax expenditure reporting would impose an undue burden on businesses.

Representative Gardner believes that, after the first year of a tax cut, there is no longer a cost to the general fund.

Senator Smith asked if there is any theoretical limit to the maximum GRT rate. Mr. Jordan suggested that beyond a rate of eight percent it might be difficult to obtain voter approval.

Senator Beffort wants New Mexico to remain business friendly and not become overly intrusive. She also is an advocate of dynamic scoring with respect to evaluating economic development incentives.

Speaker Lujan believes that a TER would be helpful to legislative policymakers.

### **Gaming Revenue Report**

Dr. Tom Clifford, chief economist, TRD, reported on the structure of New Mexico gaming taxes. The gaming tax is imposed at the rates that follow.

- Manufacturer and Distributor Licensees: The gaming tax is 10 percent of the gross receipts of manufacturer and distributor licensees from the sale, lease or other transfer of gaming devices into the state. Receipts of a manufacturer from sale to a distributor for subsequent sale may be deducted.
- Nonprofit Gaming Operator Licensees: The gaming tax is 10 percent of the net take of a gaming operator licensee that is a nonprofit organization.
- All Other Gaming Operator Licensees: The gaming tax is 26 percent of the net take of all other gaming operator licensees. Net take is defined as the amount wagered on gaming machines less the amount paid out in prizes less a deduction for regulatory fees.

In addition to the gaming tax, a racetrack operator licensee must pay 20 percent of the net take to purses to be distributed according to rules promulgated by the State Racing Commission (SRC). In addition, racetrack licensees must pay one-fourth percent of their net take to support programs for the treatment and assistance of compulsive gamblers.

Nonprofit operators must distribute for charitable or educational purposes at least 60 percent of their net take after paying gaming tax and income taxes.

The gaming tax was created in the 1997 legislative session at the same time that gaming compacts were authorized between the state and certain Indian tribes and pueblos. Nonprofit operators (certain veteran and fraternal organizations) and racetrack operators were authorized to operate video gaming devices. Nonprofits were limited to 15 machines each, while racetrack operators were limited to 300 machines each. The tax rate was set at 25 percent of net win for gaming operators and 10 percent of gross revenue for manufacturers and distributors.

In 1999, the distribution rate on nonprofit operators was cut from 88 percent to 60 percent. The gaming tax of 10 percent was implemented in 2001. Racetrack operators were allowed to increase to as many as 600 machines. Racetracks could transfer the right to operate a machine to another racetrack, but each track is limited to no more than 750 machines in operation.

The Hobbs racetrack started operation in November 2004, joining Albuquerque Downs, Ruidoso Downs, Sunland Park and Sunray, all of which have been licensed racetrack operators since 1997, when the law took effect allowing horse racetracks to be licensed as gaming machine operators.

Several changes were made by the 2005 legislature (Senate Bill 837). These changes took effect at the beginning of FY 2006:

- operating hours of racetracks were increased from 12 to 18 hours, with the provision that the total hours in which gaming machines are operated does not exceed 112 hours in a one-week period; and
- the gaming tax rate for racetracks was increased from 25 percent to 26 percent.

Speaker Lujan noted that the opening of the Hobbs racetrack appears to have negatively impacted wagering at Albuquerque Downs, Ruidoso Downs and Sunland Park.

### **Regulatory Authority of the State Racing Commission**

Eddie Fowler, chair, and Julian Luna, executive director, SRC, made a presentation concerning the statutory authority of the SRC.

Senator Smith is opposed to the chair of the SRC being a member of the Gaming Control Board (GCB).

Senator Smith inquired about the trend in the number of racing days. Mr. Fowler provided the following statistics:

Year	2003	2004	2005	2006
# Days	249	254	288	303

Speaker Lujan asked about the number of licenses issued by the SRC. Mr. Fowler said that at present there are approximately 10,000 persons associated with the racing industry that are licensed.

Mr. Fowler noted that horse breeding in New Mexico is improving, with New Mexico horses winning approximately 35 percent of races.

### **Status Report on Racetrack and Casino Activity and Capital Outlay Credit**

Bruce Rimbo, president, Ruidoso Downs Racing, Inc., briefed the committee on gaming at both Zia Park (Hobbs) and Ruidoso Downs. The key statistics for Zia Park in 2006 are:

- gaming taxes: \$18,031,804;
- purses: \$13,947,955;
- payroll: \$5,836,602;
- races held: 466;
- number of starting horses: 3,978 (1,688 New Mexico-bred); and
- average number of horses per race: 8.54.

The key statistics for Ruidoso Downs in 2006 are:

- gaming taxes: \$2,758,156;

- purses: \$3,318,634;
- payroll: \$4,547,215;
- races held: 582;
- number of starting horses: 4,685 (2,155 New Mexico-bred); and
- average number of horses per race: 8.05.

Scott Scanland, lobbyist, Sunland Park Racetrack and Casino, briefed the committee on gaming at Sunland Park. The key statistics for Sunland Park in 2005 are:

- gaming taxes: \$25,797,912;
- purses: \$104,554,577;
- payroll: \$12,106,639;
- 84 percent of patrons are out-of-state residents; and
- number of racing days: 79.

Mr. Scanland said that the greatest concern for Sunland Park is the emergence of off-reservation casino gaming.

Luke Otero, Sunray Park and Casino, briefed the committee on gaming at Sunray Park. The key statistics for Sunray Park in 2006 are:

- gaming taxes: \$7,490,131;
- purses: \$5,761,637;
- payroll: \$5,300,000; and
- annual number of visitors: 1,200,000.

Ed Mahr, lobbyist, Albuquerque Downs, briefed the committee on gaming at Albuquerque Downs. Mr. Mahr stated that the expanded hours of operation authorized by the legislature has resulted in a significant increase in gaming and state tax revenue.

Senator Smith asked about the number of slot machines. Albuquerque Downs operates 300 slot machines. Ruidoso Downs also operates 300 machines.

Senator Smith asked about the percentage of nonresident persons visiting the racetracks. Approximately 75 percent of patrons at Ruidoso Downs and Zia Park are nonresidents; 84 percent of patrons at Sunland Park are nonresidents.

Asked about changes that might be made at the various racetracks, Zia Park is switching racing from Thursday and Friday to Monday and Tuesday in order to simulcast to Las Vegas; Sunland Park would like to improve drainage around the track; and Albuquerque Downs would like the grandstand upgraded.

Representative Gonzales asked if racetrack employees are part- or full-time. Mr. Mahr responded that the expansion of operating hours has made it possible to hire employees full time.

Representative Gonzales asked if there is any education program that trains people for a career in the racing industry. Mr. Rimbo said that other than veterinarian programs at UNM and NMSU, there are no training programs. The University of Arizona and the University of Kentucky have racetrack management training programs.

### **Revenue Distribution to Horsemen, Breeders and Municipalities**

B.J. Valentini, president, New Mexico Horsemen's Association, made a presentation concerning revenue distribution. Revenue distributed to horsemen is generated from parimutuel handle and slot machines and is designated for purses in New Mexico as follows:

- slot Machines - 20 percent of the net win;
- parimutuel handle - 50 percent of the net retained from the parimutuel handle (both live and simulcast);
- one-third of the outs tickets remaining after 90 days;
- one-fourth percent of the gross handle from incoming simulcasts; and
- entry fees paid by horse owners are also added to purses.

Purse money is distributed between stake races and overnight races as follows:

- stake races - represent the top level of competition with the largest individual purses. Generally, 15 percent to 20 percent of total purses for a given race meet are designated for stake races;
- overnight races - represent all nonstake races, including allowances, claiming and maiden races. This is where the vast majority of horses compete and generally, 80 percent to 85 percent of total purses for a given race meet are designated for overnight purses; and
- purses are usually distributed to the first six finishers of a race as follows:
  - 1st – 60 percent
  - 2nd – 20 percent
  - 3rd – 10 percent
  - 4th – 5 percent
  - 5th – 3 percent
  - 6th – 2 percent.

Anna Fay Davis, executive director, New Mexico Horse Breeders Association, (NMHBA) provided an overview of the association.

- The purpose of the NMHBA is to promote the breeding of racing quarter horses and thoroughbreds in New Mexico.
- New Mexico horse breeders have experienced growth in their industry and stability in their communities as a result of gaming revenues enhancing purses at New Mexico racetracks.
- The industry was in dire straights; however, as a result of legislative action, the industry is now healthy.
- Both new breeding operators and existing breeders reported purchases of more equipment, more feed and additional farm supplies such as fertilizer.

- Purchases appeared to be local and reinforced the established feed stores, livestock dealers and equipment sellers. In addition, breeders reported using more veterinarian and farrier services and increased hiring of part- and full-time employees. Again, these are local services and New Mexico residents.
- Enhanced purses and breeder incentives also mean steady racing schedules at racetracks and the addition of more and better horses participating at New Mexico racetracks.
- The number of employees required at New Mexico tracks continues to create jobs for New Mexicans. These are jobs at track facilities, including jobs on the backside of the racetrack where trainers, jockeys, exercise riders and grooms have all found more work.

The following chart provides a recent history of New Mexico-bred horse registrations:

HORSE REGISTRATIONS	2005	2004	2003	2002
<b>NM-BRED FOALS</b>				
Quarter Horse	866	817	739	656
Thoroughbred	702	600	499	464
Total	1,568	1,417	1,238	1,120
<b>NM BROODMARES</b>				
Quarter Horse	423	426	373	512
Thoroughbred	538	428	332	525
Total	961	854	705	1,037
<b>NM STALLIONS</b>				
Quarter Horse	29	22	26	33
Thoroughbred	54	40	31	38
Total	83	62	57	71

The following chart summarizes the recent history of races by New Mexico-bred horses by racing facility:

NEW MEXICO-BRED HORSE RACES	2005	2004	2003	2002
<b>SUNLAND PARK</b>				
Overnight Races	385	315	289	238
Trial Races	25	24	20	18
Stakes Races	20	20	19	13
Total Days of Racing	87	80	80	80
<b>RUIDOSO DOWNS</b>				
Overnight Races	157	141	162	138
Trial Races	28	32	20	18
Stakes Races	12	14	11	11
Total Days of Racing	60	61	61	61
<b>NM STATE FAIR</b>				
Overnight Races	42	37	34	32
Trial Races	15	17	20	16
Stakes Races	8	8	8	8
Total Days of Racing	17	17	17	17

ALBUQUERQUE				
DOWNS				
Overnight Races	162	161	123	116
Trial Races	7	0	0	0
Stakes Races	11	14	17	17
Total Days of Racing	42	53	51	48
SUNRAY PARK				
Overnight Races	148	158	117	102
Trial Races	8	9	8	5
Stakes Races	9	9	9	9
Total Days of Racing	38	44	40	35
ZIA PARK				
Overnight Races	166	NA	NA	NA
Trial Races	9	NA	NA	NA
Stakes Races	19	NA	NA	NA
Total Days of Racing	44	NA	NA	NA

### **Friday, August 25**

#### **Transfer of Regulatory Authority over Parimutuel Wagering on Horse Racing**

Carla Lopez, chair, GCB, and Julian Luna, executive director, SRC, made a presentation of draft legislation that would modernize and clarify the duties of the GCB and SRC. The legislation would permit greater autonomy on the part of racetrack operators, e.g., the SRC would no longer set the price for a hot dog; concession operators would establish prices.

Senator Smith expressed concern that the proposed legislation is the first step to merging the two agencies. He stated that the intent of the legislature was to make horse racing preeminent and gaming secondary.

Senator Smith requested LCS staff to check with the National Conference of State Legislatures regarding the gaming and horse racing regulatory practices in other states.

Representative Arnold-Jones asked about the repeals contained in the proposed legislation. It was explained that the repeals are technical cleanup, e.g., there is a definition in current law that never actually appears anywhere in the law; therefore, the definition is superfluous.

Senator Rodriguez stated that she believes the GCB and SRC should remain separate entities but that duplication of duties should be eliminated.

Representative Taylor questioned the current makeup of the SRC Board. He believes the board should be more diverse and not dominated by breeders.

Speaker Lujan is in favor of eliminating duplication of effort between the GCB and SRC.

Senator Cisneros suggested that a section-by-section summary of the bill would be helpful.

### **New Mexico Indian Gaming Association**

Charles Dorame, director, New Mexico Indian Gaming Association, made a presentation concerning the status of tribal gaming. He noted the following key points.

- The New Mexico Indian Gaming Association represents 12 of the state's gaming tribes, including the Pueblos of Acoma, Isleta, Laguna, Ohkay Owingeh, Sandia, San Felipe, Santa Ana, Santa Clara, Taos and Tesuque, the Jicarilla Apache Nation and the Mescalero Apache Tribe.
- Since the first state-tribal compacts were signed in 1995, tribal governments have paid the state in excess of \$365 million in revenue shares, including all settlement payments, regulatory fees and revenue-sharing payments. In 2006, estimates indicate that tribal revenue-sharing payments to the state will exceed \$50 million.
- Tribal governmental gaming has also had a positive impact on job creation in the state of New Mexico. Tribal governments and gaming enterprises employ more than 16,000 people. Nearly 75 percent of the individuals employed by tribes are nonmembers and live in surrounding communities.
- The growth in tribal governmental gaming will continue. Several pueblos are moving forward with expansion plans, including Isleta Casino & Resort, which plans to add a hotel and event center, and Ohkay Owingeh, which plans to expand its operations to include an event center. These projects will add additional jobs to the community and continue to fuel construction in the state. These are sustainable jobs that will not leave the community, but stay within the state and are not "enticed" by industrial revenue bonds, tax incentives or other types of state or nontribal government support. Tribal government gaming will continue to fuel growth in the state's tourism-dependent economy as the industry continues to transform into a resort destination industry.
- The market for tribal governmental gaming is predominantly local, but is changing to reflect an increase in out-of-state patrons, depending on location and amenities, and ranges from 10 percent to 65 percent. In particular, the Mescalero Apache Tribe has developed a destination-based market. The gaming operations along I-40 also enjoy a high percentage of out-of-state tourists and Sandia Resort and Casino has seen an increase in out-of-state patrons since opening its new hotel.
- Tribal governmental gaming revenues go to fund vital government operations. Most of these revenues are used to replace lost funds from cutbacks at the federal level. Some examples of the programs that tribes fund through gaming include:
  - education scholarship programs;
  - health care programs;
  - elder care programs;
  - housing programs;
  - wellness programs; and
  - emergency projects that address urgent health and safety issues.
- Tribes view gaming enterprises as investments in our people and the investments are paying off. Between 1990 and 2000, tribes saw improvements in the poverty rates and

levels of education of tribal members. During that period, tribal governments in New Mexico benefited from gaming. The attached three graphs show some of that improvement. For instance, median household income rose from \$18,568 in 1990 to \$28,499 in 2000. Poverty levels dropped from 27.5 percent to 19.6 percent. Additionally, education levels rose.

Based on a study conducted by Global Insight, Inc., the Sandia Resort and Casino has the following economic impact.

- Total economic impact adds 0.3 percent to the state output.
- Pueblo of Sandia operations generate 1.7 percent of total state leisure-related jobs.
- Pueblo of Sandia direct operations contribute 3.2 percent of total state leisure and hospitality wage disbursements.
- Pueblo of Sandia will generate state and local tax receipts roughly equal to nine percent of New Mexico's 2005 corporate income tax collections.
- For each dollar spent at the Pueblo of Sandia, the state will receive \$1.53.

Senator Ryan believes that the tribal gaming revenue sharing received by state government should be used to assist those tribes that are not able or not willing to engage in gaming.

### **Update on Indian Gaming in New Mexico**

Mo Chavez, state gaming representative, stated that 13 tribes currently operate 18 casinos. Three of the six tribes that are not currently operating a gaming facility are considering gaming. In fiscal year 2006, tribal revenue sharing totaled \$42 million. Revenue sharing is based on the net receipts from class III gaming machines only and is governed by a compact that will expire in 2015.

### **Class II Gaming Machines**

Mo Chavez stated that class II gaming machines are essentially bingo games that must be played against a second player for the game to operate. The compact does not govern such gaming and there is no revenue sharing with respect to class II gaming. However, any class II gaming machine on non-Indian land on the premises of a racetrack or nonprofit gaming operator would be included in the count of gaming machines allowed on those premises and the net take from those machines would be taxable.

Currently, none of the tribes are using class II machines. Also, nonprofits that are permitted to operate bingo games, pursuant to the Bingo and Raffle Act, may not use the class II electronic machines due to the opinion in *Citation Bingo, Ltd, v. Otten (1995)*.

It is very difficult for the layperson to identify the difference between class II and class III gaming machines.

Senator Rodriguez would like to establish a graduated revenue-sharing system that relates to the amount of gaming net receipts. She believes that some of the smaller operations are having difficulty with the current eight percent revenue-sharing agreement.

### **Status of Charitable Bingo Regulation**

Carla Lopez, chair, GCB, stated that, in FY 2006, regulation of bingo was transferred from the Regulation and Licensing Department (RLD) to the GCB. License revenue was transferred from the RLD to the TRD.

### **Surface Owner Protection Act**

Raye Miller, Marbob Energy Corporation, and Bob Gallagher, New Mexico Oil and Gas Association, made a presentation concerning the relationship between oil and gas producers and cattle ranchers.

Proposed legislation is referred to as the Surface Owner Protection Act. The bill requires communication between producers and landowners and allows for compensation to be paid to landowners in the event producers damage the land. The bill does not imply or suggest that producers will pay for use of the land.

### **Other Business**

The minutes of the July 27-28, 2006 meeting were unanimously approved.

The committee adjourned at 12:05 p.m.