MINUTES
of the
THIRD MEETING IN 2009
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

August 27-28, 2009
Raton Convention Center
Raton, New Mexico

The third meeting of the Revenue Stabilization and Tax Policy Committee (RSTP) for 2009 was called to order by Senator John Arthur Smith, chair, at 9:12 a.m. in the Raton Convention Center in Raton, New Mexico.

Present
Sen. John Arthur Smith, Chair
Rep. Edward C. Sandoval, Vice Chair
Sen. Carlos R. Cisneros
Rep. Nathan P. Cote
Rep. Anna M. Crook
Sen. Tim Eichenberg
Sen. Timothy M. Keller (August 28)
Rep. Ben Lujan, Speaker of the House
Rep. Rodolpho "Rudy" S. Martinez
Sen. Howie C. Morales (August 27)
Rep. Henry Kiki Saavedra
Rep. Jim R. Trujillo

Absent
Sen. Dianna J. Duran
Rep. Keith J. Gardner
Sen. Timothy Z. Jennings
Sen. Gay G. Kernan
Sen. William E. Sharer
Rep. Thomas C. Taylor

Designees
Rep. Zachary J. Cook
Sen. Clinton D. Harden, Jr.
Rep. James R.J. Strickler
Sen. Peter Wirth

Rep. Ray Begaye
Sen. Mark Boitano
Rep. Donald E. Bratton
Sen. Kent L. Cravens
Rep. Miguel P. Garcia
Rep. Sandra D. Jeff
Sen. Carroll H. Leavell
Rep. Antonio "Moe" Maestas
Sen. Steven P. Neville
Rep. Debbie A. Rodella
Sen. Nancy Rodriguez
Sen. Bernadette M. Sanchez
Sen. John M. Sapien
Rep. Luciano "Lucky" Varela
Rep. Don L. Tripp

Other Legislators Attending
Sen. Cisco McSorley (August 27)
Rep. Dennis J. Roch (August 28)

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

Staff
Pam Ray, Staff Attorney, Legislative Council Service (LCS)
Doris Faust, Staff Attorney, LCS
Ric Gaudet, LCS

Guests

The guest list is in the meeting file.

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

<u>Thursday, August 27</u>

Welcome

Joe Apache, mayor, City of Raton, welcomed the committee to Raton and briefed the members about economic development activities in the area. Ever since the closing of the Kaiser coal mining operation, Raton has had difficulty creating jobs in the area. With the approval of a new racetrack and casino, Raton is set to enter a job-growth period again, he said. Natural resource extraction has always been an important economic sector for the region, and when drilling and mining activities in much of the Vermejo Park area were restricted, the state and city lost much revenue.

Mayor Apache said that gross receipts tax (GRT) collections have declined 13 percent in the first two months this fiscal year compared to last year, and the city has seen a 20 percent decline in occupancy tax collections. He mentioned the creation of the Miners Colfax Medical Center, which combines the operations of the old miners' hospital with a regional hospital. Finally, he said that Raton expects a big boost in tourism from the area roughly 250 miles from the city once the casino opens.

Don Day, county manager, Colfax County, told the committee that Colfax County is a large, remote county with a population of 14,000 and six incorporated municipalities. He reported that the county is managing financially this fiscal year, but that its budget is flat. Mr. Day said that the county detention facility needs upgrades and expansion and that many bridges in the county need repair.

Questions from committee members (and answers) included:

- What is the status of the racetrack/casino? (Preliminary groundwork is starting.)

- What is the difference in sales taxes between Trinidad, Colorado, and Raton? (Trinidad's sales tax is about eight percent; Raton has a GRT of 7.835 percent.)
- Since physicians in Colorado (with a sales tax) do not pay sales tax on their services, yet most physicians in New Mexico do pay the GRT, has it been difficult to attract physicians to Raton? (Raton will be endorsing a resolution soon that will try to attract medical professionals to the area.)

- Which entity owns the learning center? (New Mexico Highlands University acquired the property.)

- What GRT-backed bonds does the city have outstanding? (The community wellness center is backed by a $5.8 million GRT bond. Raton's budget consists of 83 percent GRT revenues, and the new racetrack/casino should stabilize revenues to its general fund.)

Revenue Forecast Update

Rick Homans, secretary of taxation and revenue, Laird Graeser, chief economist, Department of Finance and Administration (DFA), and Tom Clifford, chief economist, Legislative Finance Committee (LFC), presented the committee with the most recent general fund consensus revenue estimates. Mr. Graeser began by reporting that the current recession is expected to be declared over as of July or August 2009, which would mean the national recession would have lasted 17 to 18 months. Job losses in New Mexico are expected to stop by the end of 2009, and economic growth is expected shortly thereafter. After New Mexico deals with fiscal year 2009 and 2010 shortfalls, said Mr. Graeser, revenue growth is likely for fiscal years 2011 through 2014.

Federal stimulus money is expected to help balance the budget for fiscal years 2009 and 2010, which has been hit hard by the current recession. Mr. Graeser said that the key factor to the revenue estimate is not natural gas and crude oil prices, as has been true in the past, but rather a decline in the broad-based revenues that are responsive to the weak economy, including the GRT, personal income tax and motor vehicle excise tax. The consensus revenue group expects $32 million extra revenue for fiscal year 2009 compared to the February 2009 forecast. However, revenues for fiscal years 2010 through 2012 are expected to be only a few million dollars more than the February estimate.

The current forecast for recurring and total revenues for fiscal year 2009 is down $309.1 million and for fiscal year 2010, $432.6 million. After including all of the action known as the "Solvency Package", plus reversions and transfers enacted during the 2009 regular legislative session, fiscal year 2009 total revenues are still $121.5 million short of restoring a 10 percent reserve, and fiscal year 2010 revenues are short an additional $427.7 million. Total general fund revenues are not expected to exceed the fiscal year 2008 peak level before fiscal year 2015, said Mr. Graeser.

Secretary Homans led the committee through a detailed analysis of the revenue forecast, which has worsened since the February forecast. That estimate forecasted slow growth in all sectors, but growth in the broad-based taxes has actually turned negative. Gross receipts and compensating taxes are the largest sources of general fund revenues, but are expected to fall .7 percent for fiscal year 2009 and another 1.0 percent in fiscal year 2010. Revenue growth is expected the following three fiscal years, hovering near three percent each year.

After reviewing natural gas and oil price and volume predictions for the next few fiscal years, Secretary Homans reported that the consensus group expects an additional $31.9 million to the general fund for fiscal year 2009 and nearly the same forecast for fiscal year 2010.

Personal income tax estimates have fallen dramatically since the February forecast, due to lower personal income levels and reductions in capital income gains. Total combined reductions for fiscal years 2009 and 2010 are nearly $200 million lower than the February estimate. The combined reductions from corporate income taxes for those two years amount to a similarly large drop of $164 million. Selective excise taxes are expected to be $5 million higher than predicted in February, and an additional nonrecurring amount of $40.2 million in reversions and higher-than-expected federal forest reserve account accumulations have been reported.

In conclusion, Secretary Homans said that there is still much work to be done to remedy an approximate $433 million budget deficit for fiscal year 2010 and build an adequate budget for fiscal year 2011.

Mr. Clifford next reported to the committee, giving the viewpoint of the LFC, which mostly concurred with the executive branch estimate. He pointed out that the total loss in revenues from fiscal year 2009 to 2010, excluding the solvency package, amounts to $1 billion, or 17 percent of the general fund budget. Without making any changes, the general fund balance at the end of the current fiscal year will be -$34 million, down $675 million from previous estimates. Mr. Clifford said that the lack of timely and accurate revenue reports has become a serious risk to the revenue forecast.

Mr. Clifford presented recurring general fund revenue trends since 2003. Although revenues to the fund grew a total of 50 percent from 2003 to 2008, one-half of that growth was lost the next two fiscal years (including projections for the current fiscal year). Growth is expected to resume beginning in fiscal year 2011, and current projections are that fiscal year 2011 collections will be $346 million more than fiscal year 2010. Energy-related revenues accruing to the general fund have dropped significantly, from fiscal year 2006 and 2008 levels above 20 percent, to an expected fiscal year 2010 level of 13 percent of the general fund, said Mr. Clifford.

Mr. Clifford pointed out that food and medical deductions from gross receipts are approaching $4 billion annually, and are now in well in excess of levels originally forecast. The result is a net decrease in general fund GRT distributions of approximately $90 million in fiscal year 2010.

A committee member asked what the fiscal year 2009 shortfall is. Mr. Clifford said that the LFC estimate is $133 million, and the DFA estimate is $121 million. The difference in figures is because the DFA is using some nonrecurring dollars to fill in gaps in recurring revenue. The committee member said he has heard the cumulative impacts of the 2003 income tax cuts and GRT deductions are about $1 billion. Mr. Clifford said he estimates the cost to the general fund to actually total $650 million. Mr. Graeser said that previously, he had validated the $1 billion estimate.

Mr. Graeser, responding to a question from a committee member, said that the secretary of finance and administration wants to shift balances in accounts to bring fiscal year 2009 final balances to a 10 percent general fund reserve level. Looking to fix the current 2010 budget, he said that the governor has asked all agencies to trim three percent from their budgets. Some tax incentives can be looked at for elimination, but he said he has heard that the governor has said that film tax credits and personal income tax increases are not on the table for negotiation. The committee member responded by saying that everything should be on the table, and that social service programs, especially Medicaid, should not be cut. If the state cuts Medicaid funding, it will lose a large amount of proportionate federal funding, which will hurt the state's population even more.

A committee member asked why emergency school tax collections were increasing, compared to the February forecast. Mr. Graeser said that tax is a source of revenue to the general fund. Oil prices and volumes are holding steady, and natural gas prices are expected to increase soon.

A committee member asked what the economic impacts of film industry tax incentives are. Secretary Homans said he would send the member copies of recent economic analyses of the film industry and the tax credits. He said that any capping of the total tax credits allowed would send a negative message to the industry.

A committee member asked why the fiscal impact to the state from the food deductions is so large. Mr. Clifford said that when he did the fiscal analysis for the original food deduction legislation, he did not have accurate data. The removal of a GRT credit for municipalities was supposed to offset the food deduction, but it did not do so.

The committee requested information about the impacts that combined reporting of tax returns has on the state.

A committee member said the revenue projections presented seem too optimistic. He thinks New Mexico will have a difficult time recovering from the recession, citing as evidence the still-sluggish construction industry. He asked if the governor still supports a one-year surtax on personal income for people earning over $250,000. Secretary Homans said he cannot represent any proposal that the governor will support.

A committee member stressed that the film industry, although receiving a 25 percent credit on expenditures, has also spent more than $320 million last year in the state. He also suggested revisiting the definition of "food" for GRT purposes.

A committee member asked whether the Tobacco Settlement Permanent Fund will be receiving more distributions, since it is complying with manufacturers' demands that it perform "due diligence" in enforcing the Master Settlement Agreement. Mr. Graeser said that issue is now undergoing national mediation, and any resolution will not have any immediate fiscal impact.

A committee member asked whether the $433 million budget shortfall for fiscal year 2010 could go even higher in the next consensus revenue forecast. Mr. Graeser said that the uncertainty in the current forecast is probably higher than in previous forecasts. Mr. Clifford said that he is concerned about the natural gas price projections of $5.60 per thousand cubic feet (MCF) next fiscal year. The current price New Mexico producers are receiving is $2.80. Most national indicators predict gas prices will rise to $4.30 per MCF by the end of this fiscal year. He also said that he is concerned that GRT collections will not rebound as predicted.

Residential Property Tax Limitation - Litigation Update

Karen Montoya, Bernalillo County assessor, provided the committee with an update of the Dzur case, in which residential property owners successfully sued the assessor's office in district court, claiming that statutes establishing how properties are valued for taxation violate the Constitution of New Mexico. The court ruled that valuation provisions of Section 7-36-21.2 NMSA 1978, in which a procedure is set up to limit property valuations until a property is sold, violates Article 8, Section 1 of the constitution, which allows for limitation of valuation of residential property, but only in regard to owner-occupancy, age or income. The court ruled that Section 7-36-21.2 NMSA 1978 set up a fourth class of property owners to which valuation limitations could be applied, which unfairly hurt new homeowners, since they have to bear a heavier burden than similar homeowners who have not recently purchased their property.

Ms. Montoya said that the county assessor's office argued that the Dzur's property valuation should be upheld, and presented four arguments, each of which was rejected by the court. The first argument was that the appeal to the court did not name the county assessor as a defendant, and thus violated clearly established procedures. The court held that although the wrong defendant was named (the valuation protest board instead of the county assessor), no harm was done, and minor technical deficiencies should not stand in the way of the appeal.

The second issue revolved around the protest board's ability to make constitutional determinations. The court did not determine whether the board had that ability, but merely determined that the court did have that authority.

The third, and perhaps most important issue, centered on the constitutionality of Section 7-36-21.2 NMSA 1978. The assessor argued that the constitutional language of "the limitation may be applied to classes of residential property taxpayers based on owner-occupancy, age or income" implied that the legislature can set up other classes in which to limit valuations. The court rejected that argument and held that those classes are the only permissible ones in which valuations can be limited.

The final issue argued by the assessor was that if the statute in question is held unconstitutional, then all residential property owners would be harmed, since all properties would have to be valued at their current and correct values. The court, according to Ms. Montoya, carving with a very sharp knife, skirted this potential effect and only ruled that Subsections A, B and E of that section violated the constitution. The impact of that narrow decision is that pre-existing homes that are sold would not be deemed to be a change in ownership, and, thus, the previous cap on valuation would remain in effect for the new homeowner.

A committee member asked whether the ruling will be appealed, and what impact the ruling will have. Ms. Montoya said that she will decide by September 1 whether to appeal. She said that currently, the decision only applies to one residential property and does not apply to other properties.

Committee members commented that the case is not a class action lawsuit, and the case only applies to one property. The case will also not set a precedent, and another judge may rule differently in another case. Another committee member clarified that the case did not involve a federal constitution equal protection claim, but was rather a limited New Mexico constitutional issue.

Mr. Graeser said that if the ruling in the case were to be applied statewide, local government finances will not be affected very much, but that state general obligation bonding capacity will be significantly reduced.

Weight Distance Tax Update

Secretary Homans and Colonel Forest Smith, director, Motor Transportation Division (MTD), Department of Public Safety (DPS), discussed issues involving New Mexico's weight distance tax. Secretary Homans described New Mexico's trucking industry, which employs about 46,000 people in the state, with a yearly payroll of $1.6 billion. Approximately $488 million in federal and New Mexico road taxes are paid each year by the industry. A long-term issue that the state is facing is declining revenues to the State Road Fund. Gasoline tax revenues are flat, weight distance tax and special fuel excise tax revenues are declining and trip tax revenues are slightly up. Considering ever-increasing costs for road maintenance and construction, the State Road Fund faces serious long-term shortfalls.

New Mexico is only one of four states that administers a weight distance tax. Other states apply a much higher registration fee on commercial vehicles. The weight distance tax and the alternative trip tax generate about $88 million per year, all of which is directed to the State Road Fund. The weight distance tax is imposed based on miles traveled and the weight of vehicles and is paid quarterly by registered companies. If a commercial vehicle is not registered, it is instead levied a trip tax at New Mexico ports of entry that is imposed at an amount approximately 10 times greater than the weight distance tax.

With commercial truck traffic down 20 to 25 percent from last year, Secretary Homans said that revenues to the road fund are declining significantly. He discussed a new initiative to better collect weight distance and trip taxes. The initiative involves collaboration among the TRD, the MTD and the Department of Transportation (DOT). Part of the initiative involves installation of electronic license plate readers to better track vehicle traffic and more auditing of tax returns to enforce compliance with the tax. The initiative is self-funded and expects to generate an extra $3.2 million in fiscal year 2010 and $6 million in fiscal year 2011.

Colonel Smith described enforcement operations in which the MTD is involved, including citing hundreds of weight distance tax nonfilers and nearly 1,400 filers that claimed no miles traveled. In addition, the division performs thousands of safety inspections and has seized eight caches of drugs this year. He said that the new electronic license plate readers will help officers enforce compliance with the weight distance tax. Colonel Smith also described a recent eight-day enforcement "blitz" in which hundreds of citations were issued. He said that due to a lack of officers, only 45 percent of vehicles that were identified as being out of compliance were actually stopped.

A committee member said that there seems to be unfair treatment of DPS employees who work at weigh stations. He said they are paid very little and often face dangerous situations. In addition, at the Gallup weigh station, employees have no safe place to store cash collected from truck drivers paying trip taxes. Colonel Smith agreed about the wage issue, and said that he has been trying to get better pay and classification for transportation inspectors for three years. The current entry wage for transportation inspectors is $10.88 per hour, he said. Another committee member said that vehicle inspectors face some of the same dangers that MTD officers face, but that they do not have access to safety gear such as protective vests.

A committee member asked what the impact would be if New Mexico raised commercial vehicle registration fees. Secretary Homans said that although New Mexico has one of the lowest registration fees in the country, it also has a significant weight distance tax, which most other states do not have. He said that if registration fees were raised, the fee structure would have to be adjusted to take into account the seasonal nature of agricultural vehicles.

A committee member said that there are competing missions between the MTD and the New Mexico State Police (NMSP), and that MTD officers frequently are called to assist the state police. Colonel Smith said that MTD officers are sometimes called for backup in domestic violence calls. He said that the NMSP and the MTD have high officer vacancy rates. The committee member said that perhaps the entrance requirements to attend the New Mexico Police Academy are too stringent.

Taxation and Revenue Department Legislative Proposals

Secretary Homans and Jim Nunns, tax policy director, TRD, presented three legislative proposals for the committee's consideration. All three bills are substantially similar to bills endorsed by the committee in 2008, said Secretary Homans. He said the governor has not yet endorsed any of the proposals this year. The first proposal involves changes to withholding provisions for oil and gas proceeds and pass-through entities; clarification of definitions and rules for withholding; tightening of rules that allowed nonresidents to avoid New Mexico income tax; and making pass-through entity withholding due quarterly. This legislation is similar to 2009 legislation introduced by Speaker Lujan, but with some important changes made to address concerns of the oil and gas industry and of accountants. In particular, the current proposal does not apply to New Mexico residents.

The second bill draft discussed involves changes to tax increment development district (TIDD) legislation. The TRD proposes to amend the GRT increment calculations to correct an omission regarding food or medical deductions to more closely conform to tax reporting and to specify how certain estimates used in the calculations are made. The bill also amends the list of municipal and county GRTs that can be dedicated to a TIDD to remove obsolete local option taxes and to add others that are not currently listed. Finally, the bill would add a funding mechanism for necessary TRD staff work related to TIDDs.

The third bill being proposed by the TRD makes several changes to tax administration laws. Changes include:

- simplification and improvement of the protest and hearing process for taxpayers who have disagreements with the TRD;

- the ability to award administrative and litigation costs related to credits;

- increasing the threshold for required monthly filing of combined reporting system taxes from the 1991 level of $200 to an inflation-adjusted level of $300;

- giving the secretary of taxation and revenue limited authority to delay accrual of interest for persons affected by disasters or by military or terrorist actions;

- correction of an oversight in the 2007 change to the tax rate for food and medical hold harmless distributions to large municipalities and counties; and

- changes to help the TRD administer tax laws more effectively.

Public Improvement Districts

Robin Blair, county attorney for Colfax County, discussed briefly with the committee public improvement districts (PIDs), including the creation of one in Angel Fire in 2008. Mr. Blair said that he became aware of PIDs in 2008 upon the filing by the Angel Fire PID of a special levy for the district, which the county is obligated to administer. Soon thereafter, several residents filed lawsuits objecting to the special levy. According to the authorizing statutes (Chapter 5, Article 11 NMSA 1978), PIDs can be initiated on a petition of 25 percent of the ownership of the proposed district. Then, the appropriate local government holds public hearings and decides whether to hold a formation election. Property owners are allowed to vote in proportion to the number of acres they own, and residents of the district are also allowed to vote. A special levy is allowed to be voted on at the formation or other election, which can assess a certain dollar amount per property, as opposed to a mill levy, which is assessed at a certain percentage of property valuation. Mr. Blair said that one potential problem with the Angel Fire PID is that it is created within the municipality of Angel Fire, but Colfax County is obligated to collect the levy. Another issue that could be raised is that PIDs can issue levies based on indirect benefits, rather than direct benefits. Improvement districts, which also have the ability to issue assessments against property, are limited to direct benefits, and property owners have an easier way of protesting that assessment. It could be argued that PIDs, when levying assessments for indirect benefits, violate equal protection provisions of the U.S. Constitution, since property owners have a greater say than residents in assessment elections, said Mr. Blair.

A committee member said that bonds have already been issued by the New Mexico Finance Authority for the Angel Fire PID, but the bond proceeds are unable to be released due to the litigation. Another committee member suggested that the legislature gave too much authority in the enactment of PID legislation.

A committee member asked if PID special levies have priority over mortgages. Mr. Blair said that special levies are treated co-equal with other property taxes and will trump a mortgage.

The minutes from the July 14-15 meeting of the committee were adopted, without changes. The committee recessed at 4:25 p.m.

Friday, August 28

The committee reconvened on Friday, August 28, at 9:04 a.m. Scott Weese, president of the Raton Chamber of Commerce, welcomed the committee to Raton and encouraged committee members to visit local assets, including Sugarite Canyon State Park and the National Rifle Association's Whittington Center.

Archie Vigil, mayor, Village of Chama, spoke to the committee about the need to keep "hold harmless" provisions designed to protect local governments in place. He said that Chama cannot afford to absorb any reductions in tax revenue that the legislature may be contemplating. Mayor Vigil then described activities in Chama, including that the Cumbres and Toltec Scenic Railroad has seen declining use. He said that village residents recently adopted a new one-fourth percent GRT increase. A committee member asked about the wastewater system upgrade. Mayor Vigil said that the wastewater system is more than 30 years old, and that renovations are more than 10 years overdue. With community development block grant funding, the village finally received enough funding to complete upgrades.

Hold Harmless Tax Provisions — Revenue Impact on State and Local Governments

Mr. Nunns and Bill Fulginiti, executive director of the New Mexico Municipal League, discussed with the committee the fiscal impacts on hold harmless provisions enacted into tax law, designed to offset local government revenue impacts from the creation of new credits, deductions or distribution formulas. The benefits provided to local governments by hold harmless provisions usually reduce state general fund revenues, said Mr. Nunns. Many of the provisions have been enacted recently, including enacting new distributions to municipalities and counties to offset the deductions for food and health care practitioner services; the allowance of some credits against the state portion of GRT due; and changes in distribution formulas that reduce the amount distributed to the general fund but not the amount distributed to local governments.

When the food and medical deductions were enacted in 2004, they were accompanied by hold harmless distributions to municipalities and counties, which generally fully offset the loss of revenue that local governments would otherwise have incurred as a result of those deductions. The total cost to the state general fund in fiscal year 2009 as a result of the hold harmless distributions was $121 million, consisting of $93.4 million for food and $27.5 million for medical services. The legislature in 2004 also repealed the .5 percent credit for municipal GRT rates against the state rate, which was supposed to make the food and medical deductions revenue neutral to the state. However, the food deduction turned out to be much more costly than was estimated in 2004. Taking into account the state share of deductions and the local government offsets against the municipal GRT credit repeal, the state lost $95.9 million in general fund revenues compared to what would have accrued if the legislation were not in effect.

Another type of hold harmless provision is the allowance of certain credits only against the state portion of the GRT. The investment credit, the technology jobs tax credit and the affordable housing tax credit do not allow claimants to take the credit against local government GRT liabilities.

The third type of hold harmless provision is created when distribution formulas are amended such that local governments are not harmed by redistributions. For example, when modifying the distribution to the State Aviation Fund, the legislature included language that specified the distribution would be "from the net receipts attributable to the gross receipts tax distributable to the general fund". The effect of this language was to keep the same distribution amount to local governments.

Finally, Mr. Nunns discussed several administrative concerns regarding hold harmless provisions, including that taxpayers often incur significant additional costs to comply with hold harmless provisions; there are often reporting errors associated with the food and medical deduction; the TRD often needs to spend a considerable amount of time working with taxpayers who have difficulty complying with a new hold harmless provision; and TRD resources were especially taxed when the food and medical provisions were enacted. Policy considerations for future hold harmless legislation include whether local governments are more willing to accept changes to the tax system with a hold harmless provision that would otherwise not be in their best interests; and whether the benefits of hold harmless provisions are fairly allocated among local governments.

Mr. Fulginiti then presented the point of view of municipalities, which see hold harmless provisions as critical to municipal budgetary stability. The chief reason is that municipalities derive 75 percent of their revenue from the GRT. Whenever the legislature narrows the GRT base by enacting a credit or deduction, it disproportionately affects municipalities without a hold harmless provision. Mr. Fulginiti repeated advice given by Franklin Jones: keep the tax base broad and keep rates lower.

Mr. Fulginiti discussed how certain rural municipalities would have fared had the food deduction hold harmless provisions not been enacted. In Ruidoso Downs, for example, food expenditures account for 40 percent of gross receipts. If the village was not able to recoup from the state the amount of deductions from gross receipts, it would have had a budgetary crisis. In Albuquerque, however, of which approximately eight percent of gross receipts are attributable to food sales, the impact would not have been as severe.

State Road Fund and Transportation Infrastructure Revenue Needs

Gary Giron, secretary of transportation, discussed with the committee State Road Fund revenue trends. The DOT is funded by various highway taxes and fees; not by the general fund. The current recession has had a large negative impact on revenues accumulating to the department, which department economists began noticing in February 2009. Freight traffic from California ports dropped, which reduced the resulting taxes New Mexico received from weight distance and trip taxes, oversize/overweight permits and special fuel excise taxes. Freight taxes make up about 50 percent of distributions to the State Road Fund, and those collections are down 20 percent from last year, which amounts to about $40 million less revenue.

Gasoline tax collections, however, have not declined, even though gasoline prices reached record levels last year. Vehicle registrations, which make up another large part of distributions to the fund, have declined slightly over the last year. In summary, while fiscal year 2009 distributions to the State Road Fund were about $400 million, the fund is expected to only receive $360 million in fiscal year 2010. In addition, interest rates the DOT received from its various fund investments began to decline in October 2008 and have not yet rebounded. Secretary Giron estimated that revenues to the fund will not reach fiscal year 2007 levels until fiscal year 2014.

Secretary Giron then discussed the impact of revenue reductions on the DOT's capital program and operations budget. To date, there still exist $368 million in GRIP projects that do not have funding, and an additional $235 million in projects have been delayed from road fund shortfalls. However, federal stimulus funding will make up about $163 million of that shortfall. In addition, the DOT will be submitting applications for funding projects, including the Interstate 10/Interstate 25 interchange in Las Cruces, the Mesa del Sol interchange in Albuquerque, the Paseo del Norte interchange in Albuquerque, the U.S. Highway 64/87 project and the U.S. Highway 491 project on the Navajo Nation. Other projects are still under discussion, he said.

The future of GRIP funding is uncertain, as remaining bonds and severance tax bond proceeds are committed and federal highway funding is not determined. The DOT is assuming relatively flat funding around $300 million from the federal government's statewide transportation improvement program (STIP). That money is allocated by formula after current debt service payments are made of approximately $100 million. The remaining money distributed to each state transportation district would only cover the cost of one large project, said Secretary Giron.

The current shortfall to the federal Highway Trust Fund has been fixed, temporarily, with Congress approving $7 billion to the fund. However, revenue increases will still be needed at the federal level to sustain current funding levels.

The operational budget impacts on the DOT from revenue reductions have been significant. The DOT reduced road-fund-supported activities by almost $50 million in fiscal year 2009, and the department is planning $40 million in cuts from the current budget year. For fiscal year 2011, the DOT will be submitting a flat budget of about $360 million. Because of existing commitments to meet federal highway matches, the majority of reductions will be in the department's operations, including reductions in contract maintenance, heavy equipment replacement, field supplies and no requests for wholly state-funded construction projects. Finally, Secretary Giron discussed ongoing funding gaps for maintenance of current infrastructure, including $200 million annually in road and bridge maintenance and $50 million annually for bridge replacement.

Questions and comments from committee members included:

- state road maintenance is a critical issue;
- a lawsuit is holding up $33 million in funding for an Interstate 10 project;
- some penalty assessments should be distributed to the State Road Fund; and
- the use of prevailing wages in highway projects increases costs.

Raton Racetrack and Casino Update

David Norvell, chair, Gaming Control Board (GCB), and Michael Moldenhauer, representing the Raton racetrack and casino, discussed with the committee the status of the Raton facility. Mr. Norvell described the process the GCB went through to determine that the Raton casino application met statutory requirements. Since the approval, however, the GCB has been concerned that there has been little physical progress on the facility; there are no buildings under construction and the track is not progressing. The casino license was granted conditionally, based on the applicant meeting certain benchmarks, including having 60 race days in 2010, beginning on Memorial Day.

Mr. Moldenhauer said that the casino is scheduled to open in late 2009 or early 2010, and that the first race meet is scheduled for the Memorial Day weekend in 2010. Race purses will be generated by casino operations initially, he said. He said that the development of the racetrack and casino will spur much more economic development in the area. A master plan is being developed with Raton to build new hotels and restaurants. New development will strengthen the local economy.

A committee member said that horse owners want assurance that there will be adequate infrastructure for their horses before races begin next year. Mr. Moldenhauer said that bricks and mortar are just a small part of the entire project, and that construction will begin soon. The size of the racetrack/casino will be approximately 50,000 square feet, with 600 slot machines. The total cost for the project will be around $40 million, he said. The racetrack and barns for the 2010 season will be temporary buildings, and permanent buildings will be constructed next year. The total investment in the Raton area could reach as high as $100 million.

Committee members asked about many details of the construction, temporary structures, security, employment and training and financing of the racetrack/casino. Additional committee comments focused on ways to keep the horse racing industry viable and discussion of expected tourism to the area as a result of the new facility.

There being no further business, the committee adjourned at 12:44 p.m.