

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

August 27-28, 2008
Ruidoso Convention Center
Ruidoso, New Mexico

The third meeting of the Revenue Stabilization and Tax Policy Committee (RSTP) was called to order by Representative Edward C. Sandoval, chair, at 9:28 a.m. at the Ruidoso Convention Center in Ruidoso, New Mexico.

Present

Rep. Edward C. Sandoval, Chair
Rep. Anna M. Crook
Sen. Dianna J. Duran (8/28)
Rep. Keith J. Gardner
Rep. Roberto "Bobby" J. Gonzales
Rep. William J. Gray
Sen. Bernadette M. Sanchez
Rep. Daniel P. Silva
Sen. H. Diane Snyder
Rep. Thomas C. Taylor

Absent

Sen. Carlos R. Cisneros, Vice Chair
Sen. Mark Boitano
Sen. Kent L. Cravens
Rep. George J. Hanosh
Sen. Timothy Z. Jennings
Rep. Ben Lujan, Speaker of the House
Sen. John Arthur Smith
Sen. James G. Taylor

Designees

Sen. Leonard Lee Rawson
Rep. Henry Kiki Saavedra
Rep. Luciano "Lucky" Varela

Rep. Janice E. Arnold-Jones
Sen. Sue Wilson Beffort
Rep. Donald E. Bratton
Rep. Nathan P. Cote
Sen. Phil A. Griego
Sen. John T.L. Grubestic
Sen. Stuart Ingle
Sen. Gay G. Kernan
Sen. Cisco McSorley
Sen. Steven P. Neville
Rep. Andy Nunez
Rep. John Pena
Sen. Nancy Rodriguez
Sen. John C. Ryan
Sen. William E. Sharer
Rep. Don L. Tripp

Guest Legislator

Rep. W.C. "Dub" Williams

(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

Cleo Griffith, Drafter, LCS

Tim Crawford, LCS

Guests

The guest list is in the meeting file.

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

Wednesday, August 27

Local Officials' Report

Lonnie Ray Nunley, mayor, Village of Ruidoso, Tom Armstrong, mayor, Village of Ruidoso Downs, Tom Battin, chair, Board of County Commissioners, Lincoln County, and Sandi Aguilar, executive director, Ruidoso Valley Chamber of Commerce, all welcomed the committee and presented the issues of concern to their constituents.

Mayor Nunley spoke about the flooding that had occurred prior to the special session of the legislature and caused severe damage to the communities of Ruidoso and Ruidoso Downs. He thanked the legislature for its quick response in providing much-needed funding to rebuild roads and bridges. He noted that the Ruidoso Downs racetrack is doing the best business it has done in years and expressed his community's concern that the legislature will do what needs to be done to make certain the racetrack remains in the community. He spoke about the wastewater treatment plant and noted that \$6.8 million has been made available through legislative appropriations to finish the plant. The plant needs to be completed as soon as possible because costs are rising so quickly that delaying completion will only increase the costs of the wastewater treatment plant. As it is, if costs of materials increase appreciably, more money will be needed before the plant can be completed. Mayor Nunley offered the committee a tour of the flooded area of the community if time allows.

Mayor Nunley noted that most bridges in Ruidoso were opened within two days of the flooding, by either clearing debris or constructing temporary crossings where needed. A few bridges took a week to 10 days to prepare crossings. The Federal Emergency Management Authority (FEMA) sent 12 to 15 people in to help assess damage and plan recovery. He lauded the response of the state homeland security people, especially Don Scott.

The next speaker was Mayor Tom Armstrong. He encouraged the legislature to support tax relief for the racetracks, which will enable them to become profitable and remain in the area. R.D. Hubbard, principal owner of the racetrack, was present throughout the meeting. Mayor Armstrong noted the impact the racetrack has on employment in the area. Almost all employment in the Village of Ruidoso Downs and much of the employment in Ruidoso is either directly or indirectly dependent on the racetrack and its good financial health.

Mr. Battin also expressed his appreciation to the committee for the rapid response of the legislature as well as the federal government following the flood. There was a great deal of work that had to be done immediately after the flood to rescue people who were stranded and to assess the damage and apply for appropriate aid. There was damage along the Rios Ruidoso, Hondo and Bonito.

Chairman Battin also informed the committee that Stuart Ashman, secretary of cultural affairs, had recently been to the area to announce the Spencer Theater partnership among the Lincoln County community, Eastern New Mexico University (ENMU) and the Cultural Affairs Department to provide a campus for the ENMU branch from grounds and buildings of the Spencer Estate and to make the Spencer Theater a state facility. He noted the community is very excited about the potential of the partnership and would like the legislature to ensure the continued support of the campus and theater plans. He spoke also of a new clinic in Capitan, a fire station in Glencoe and new pumper trucks for several communities. He noted that the county still will be seeking \$485,000 from the state to match the \$1 million already obtained for a district court complex.

For 61 years, since 1947, the racetrack has been the anchor of the tourism and prosperity of Lincoln County. He suggested that there be a "level playing field" as far as taxation of the tribes and Ruidoso Downs. The casino cannot support the track, but it must to keep purses healthy and tourists coming to town. There of course is limited business for the track and casino because of the location. The track has requested a graduated tax rate so that smaller racetracks will be able to compete better with tribal competition.

Ms. Aguilar spoke about the effect that moving the Ruidoso Downs racetrack and casino would have on the local population. She estimated that 1,500 people would be forced to move to find work elsewhere. Mr. Battin suggested that the tax rate should mirror the tribal tax rate in the 2007 amended compacts. This would mean that smaller racetrack casinos would pay a 10 percent tax on the \$10 million in net take from gaming machines and the higher rate of 26 percent would apply to casinos at racetracks when the net take exceeds \$14 million. A much lower amount would apply to racetracks whose casinos had net takes lower than \$10 million. His understanding is that the Mescalero Apache Tribe does not oppose graduating the gaming tax on racetrack casinos in a

manner equivalent to that in the compacts. The only other racetracks this might apply to are Sun Ray in San Juan County and the new Raton track.

Representative Williams noted that the acquisition of the Spencer Theater by the state will promote greater cultural opportunities for community members. Mrs. Spencer, who left her estate grounds and facilities to ENMU, expressed her wishes that ENMU would begin a performing arts academy at the location.

A discussion of indigent funds for medical care at hospitals developed. There was a question about whether the state took excess indigent funds from counties. It was noted that one year unencumbered and unexpended indigent funds were "swept up" by the state for use, but that was a one-year occurrence. The state in return allowed expansion of the use of indigent funds for more than hospitalization and providing health care solely for indigent people because counties had levied a tax to pay for indigent care, but some counties had minimal indigent care expenses so they built up reserves. The legislature changed the law to allow this money to be spent for some other limited purposes.

Mayor Nunley responded to a question from the committee regarding the county's ability to enter and clean up property, especially for fire protection. A provision has been adopted by Ruidoso and Lincoln County to have a 100-foot defensible area. It was pointed out that hot, rapidly moving fires can cross more than one-fourth of a mile of cleared and cleaned area, and the city and county noted that it is helpful to have the authority to enter onto noncompliant property owners' land to clear it and bill them. Mr. Battin noted that due to U.S. Forest Service work force reductions, more of the burden of reducing undergrowth and other fire fuel will fall to the municipalities and counties. Mr. Hubbard discussed the success of his racing enterprise and requested the committee members to endorse the legislative proposal that allows the graduated gaming tax based on the amount of revenue generated by a racetrack's gaming machines. He noted that he has never turned a profit at Ruidoso, but might be able to do so if the taxes are graduated. He has been contemplating moving the track closer to a larger population center so that his gaming machine use will increase. Ruidoso Downs and Billy the Kid Casino bring in about 10 percent less than it costs to run the track and affiliated businesses.

Regional Water Treatment Plant Update

John Underwood spoke about the wastewater treatment plant progress and the damage done by the flood. Deputy city manager Bill Morris is in charge of coordinating the flood damage response. Of the 12 bridges that were washed out, six have been repaired and the remainder have temporary crossings to allow residents to leave their homes as necessary. Seventy-five percent of the sewer and water lines in the upper canyon area will have to be replaced due to washouts. Parts of the river have changed course and that means that permanent structures have to be built over the new course. Many of the sites where bridges must be restored are in the temporary replacement phase. Next will come another better temporary fix that should last for the winter. Finally, in

the spring, the construction of a new bridge will begin. The final bridges will be built to withstand flooding as was seen this year.

Mr. Morris continued that the repair work will require a 25 percent match for federal funds equating to \$4 or \$5 million.

When asked about fire evacuation routes, Mr. Morris said there are routes designated through U.S. Forest Service land and he is still determining what other options may be available. In responding to a question regarding sewer and water rate increases, Mr. Morris expressed his feeling that it is unlikely that the rates would decrease again. For those who are not receiving services due to the flood, the monthly fees will be waived, although domestic solid waste and fees pledged to repay bonds will not be waived. There is also considerable cleanup necessary at the current wastewater treatment facility to return it to working order.

Mr. Underwood discussed the status of funding for the new wastewater treatment facility. Increased rates are now paying for the general obligation bonds that Ruidoso and Ruidoso Downs have issued. In "Phase 1A", \$7 million will be spent. The total cost is \$40 million now, double the initially estimated costs. The estimated costs a year or two ago was \$30 million. Because there is a cold water fishery in the Hondo Valley, the water must be very clean when returned to the stream. The new plant must be completed by January 2010 or sanctions will be levied on the communities. Ruidoso will have to pay its entire portion of the debt incurred for the wastewater treatment plant. It is considering imposing a one percent gross receipts surtax for environmental purposes and dedicating it to repay the wastewater plant bonds. It is anticipated that the tax would raise \$2 million per year. It would raise much of it from tourists through use of facilities. It would require legislation. The new plant will be very high-tech and will require renegotiation of joint powers agreements among the community partners. Mr. Underwood will be seeking passage of a water and wastewater authority act to allow the villages of Ruidoso and Ruidoso Downs to manage the plant after it is built. The flood was an unanticipated setback. One of the high-tech items in the plant will be the micro-membrane filters that will be required to be used. The plant was basically designed around the filters that were identified as being necessary to provide the purity of water required by state and federal regulations. Currently in Ruidoso, the gross receipts tax rate is 6.8325 percent and in Ruidoso Downs between 7.4 and 7.5 percent. The Mescalero Apache Tribe has entered into a contract to become a user of the new wastewater treatment plant. The communities are looking at Indian Health Service funds to provide some of the money for the plant, if possible.

Consensus Revenue Forecast — Post-Session Update

Rick Homans, secretary of taxation and revenue, Jim Nunns, tax policy director, Taxation and Revenue Department (TRD), Laird Graeser, chief economist, Department of Finance and Administration (DFA), and Norton Francis, chief economist, Legislative Finance Committee (LFC), presented the pre-session forecasts with comments on changes that have occurred since the forecast in July. Handouts containing the details of the

comments are in the meeting file. In July, the economists saw a modestly expanding economy in New Mexico embedded in the national economic woes. Now they see moderating to falling oil and gas prices. On August 14, the day before the special session, economists announced downward revisions of the revenue estimates. Another forecast will be available in October and the final forecast will be presented at the RSTP's December 15-16 meeting. The August numbers showed a \$203.1 million decrease in general fund revenue from the July forecast. Severance tax bond revenue was projected on August 14 to be down by at least \$12 million under the July forecast.

Mr. Graeser gave some background on the process of generating consensus revenue forecasts. The process was initiated in 1978 when the TRD was created and the Bureau of Revenue was subsumed into it. There have been 88 formal forecasts since then, and Mr. Graeser believes this is the longest continuous period for any state to have produced revenue forecasts. A consensus forecast allows the executive and the legislature to enter each session with one forecasted revenue number. Both Al Maury and Bo Olcott previously were members of the consensus group. The economists are career state employees, except for the LFC economist, who is an at-will employee of the legislature. Usually, the error has been no more than three percent. The 2007 estimate was 16.7 percent below revenue. These are much less predictable times, but it is best to have an underestimate rather than an overestimate. The consensus group tends to use conservative estimates to predict estimates close but not above the actual revenue expected. Mr. Graeser said that it takes six to eight hours of debate to achieve consensus usually. That is followed by emails adjusting the various components of the estimate.

National inflation appears to be running at about six percent. Inflation in gasoline retail prices, food or many medical services has not been reflected in the gross receipts tax revenue realized by the state because these sectors do not pay gross receipts taxes. Home energy prices have inflated and gross receipts taxes are collected on that sale. A mild recession is forecast nationally for late 2008 and early 2009. These are generally easier to identify retrospectively. Page five of the handout shows the trend anticipated by Global Insight.

Secretary Homans noted that the fiscal year (FY) 2008 forecast will come in fairly close to the December 2007 forecast. It may have looked earlier in the year as if the state would have revenue greatly exceeding the forecast, but current events clearly are demanding reduction in projected revenue. Income taxes may be down by one percent. This is in part due to the final reduction in the income tax rate going into effect on January 1, 2008 and it will be reflected in the first half of FY09. State Land Office lease sales will be down by \$2.3 million. Tribal revenue sharing has exceeded estimates so far for FY09. The economists predict that oil and gas tax revenue will peak in FY09, but the high point may actually be in late FY08. Natural gas production appears that it will slow by as much as 1.3 percent in FY09. Oil and gas prices are expected to continue to moderate through FY10 and on into FY13. The expected \$99.2 million increase in nonrecurring funds will allow the state to maintain reserves at 10 percent. As the state depends on a volatile source of revenue such as oil and gas taxes, it is necessary to

maintain 10 percent minimum reserves in case the production or the price of oil and gas falls unexpectedly during the year.

Mr. Francis discussed energy revenues and the positive effect they have had on keeping a positive revenue picture for the state. He reiterated that the state is seeing a decline in natural gas production at this time, which is a larger contributor to severance taxes than oil. A discussion of the difference between prices on San Juan natural gas, based on contract prices, versus the spot price of natural gas on the NYMEX ensued. There is usually a three percent minimum difference in the prices daily. Even though the spot price is down, San Juan producers will still get their contract price. It just so happened that the July forecast was based on the peak price of oil and gas before it started to slip. The current natural gas price is \$8.50 and it is anticipated to increase during the winter months. Part of the difficulty in the forecast is that it is based on the market prices and not the prices on the ground as represented by San Juan Basin prices. It was noted that the San Juan County economy usually is inverse to the national economy.

Mr. Graeser noted that San Juan County is becoming a retirement destination. Construction and mining employment can be used to indicate the health of the economy rather than oil and gas production employment. Due to this changing economy, the boom and bust cycles have mellowed. There is still a relatively small multiplier effect in the local economy.

A discussion ensued of the explanation of how the tax credit adopted in the special session will be disbursed. Secretary Homans was applauded on his efforts to provide clear information to the taxpayers. A point was made regarding the questioning of the consensus estimate process and results. Every legislator wanted to have a separate estimate made by LFC for various purposes during the session. The October estimates will be used to create agency budgets.

The New Mexico Partnership

Clarke Krause, CEO, and Ray Mondragon, board member, presented information on the New Mexico Partnership (NMP), an economic development group. The NMP looks for companies to enhance and sustain New Mexico's economic vitality. It is a public/private partnership that helps the relocation and expansion of companies. They believe that their efforts have increased jobs in New Mexico by 5,282 since July 2007. Of those jobs, 996 were located in rural communities. Mr. Krause noted that they have seen some of the tax incentives adopted by the legislature work well. The high-wage jobs tax credit and the rural jobs tax credit have been especially useful in attracting businesses. He noted that all actions of the legislature should be reviewed to determine what effect the action will have on attracting businesses to the state. New Mexico is well situated to develop a renewable energy economy as the national economy slows. Fifty percent of the site visits by companies looking for a place to set up a business are renewable energy companies looking for a site. These companies are international companies, as well as New Mexico companies and other national companies. Once the

federal government passes more renewable energy tax credits, more companies will want to develop here. Schott Solar choosing New Mexico is a big win for the state. These companies are looking for a good solar resource, space and water. Media companies are also coming to New Mexico. Video game production and program development companies have been looking at New Mexico. Eclipse Aviation had 650 employees and now these families will be seeking other employment. Hewlett Packard and Fidelity also have come into the state and have used the high-wage jobs tax credit to their advantage for employees making over \$36,000 per year. Four hundred jobs will be added in addition to the 858 jobs already planned. Fox-Con, a Mexican company, is anticipating creating a site at Santa Teresa near the border crossing. Currently, the company people 30,000 employees in Mexico.

Fred Mondragon, secretary of economic development, noted that the need is now on economic development infrastructure. He noted that the setback experienced by Eclipse will be temporary and it will retool and be back in business in three to five months. The company was selling its planes for \$2.1 million each, but in reality it was costing about \$2.8 million to build. The company was producing one jet per day, but had planned to produce two to four jets per day. One thousand two hundred workers are still employed, but the rest are seeking work elsewhere. Mr. Mondragon noted that the state had invested about \$19 million in Eclipse, but the private sector had invested many billions of dollars.

A discussion ensued of the need for the LFC as well as the RSTP to receive more information on the tax credits that are being used by various companies. It is difficult for the legislature to determine which credits truly benefit the companies and the state without further information. The committees will work more closely with the Economic Development Department (EDD) to obtain more information on tax credits.

Community colleges and the New Mexico university system have responded well to the needs of new employers to provide training to new employees. Most of the companies are hiring most of their employees from within New Mexico. Even Fidelity has chosen to hire locally. Problems that are appearing are drug-related and avoiding those with criminal records. Some employees do not show up for interviews and appointments for drug testing. These are issues that must be dealt with in New Mexico's population. Preapprenticeship programs are being created to help move New Mexico residents into apprenticeship positions.

Review of Tax Increment Development Districts (TIDD) and the Tax Increment for Development Act (TIDA)

Terrence Moore, manager, Las Cruces, spoke first about the TIDD Las Cruces has formed. He noted that he had experience in Florida as a city manager, and he worked with many TIDDs there. He noted that this will be the first TIDD to have base revenue that is above zero in New Mexico. The purpose of the TIDD is to revitalize an established area of Las Cruces, the downtown area. A TIDD is a way to engage sufficient financial resources to revitalize an area that has fallen into stagnation or has

deteriorated. It is a way to invest in neighborhoods. It allows a 25-year period while bonds are being paid off to implement the revitalization. Florida has been using tax increment financing since 1969 and there are several hundred districts there now.

The baseline tax level will be developed by the TRD. Both Dona Ana County and Las Cruces have authorized the TIDD. The structure of the TIDD is a five-member board appointed by the governing bodies that formed the TIDD or the governing body itself. The terms will be staggered, with some of the first terms being four years, others six years. At the end of the first term, TIDD property owners and resident electors will vote on the members of the board. Mr. Moore suggested that the better way to start the board is to have the members of the governing bodies be the first TIDD board members and to allow an adjunct member who is nonvoting and not a county commission or a city council member. The council can then limit the spending to agreed upon, necessary projects and this would allow for incremental tax revenue to be realized as soon as possible. The state and the community of Las Cruces will realize increased jobs and controlled economic development.

As yet, Dona Ana County has not determined the amount of gross receipts and property taxes it will forego for that part of the TIDD that is outside of Las Cruces. The city of Las Cruces has dedicated 75 percent of gross receipts tax revenue to the TIDD. The TIDD is requesting the state to dedicate 75 percent of gross receipts taxes also.

Mr. Francis and Mr. Graeser suggested some changes to the TIDA. Mr. Francis suggested that the LFC be added to the distribution list of information disseminated by TIDDs to their local governments. Mr. Francis noted that, currently, there are three city councilors on the board of Mesa del Sol. Mr. Graeser noted that the state has no membership on the TIDD boards and recommended that such a position be included in the law for the DFA or a designee.

Mr. Graeser discussed the proposed DFA rules for a TIDD approval process. Included are criteria and guidelines for submission of applications and uniformity of information provided. An annual report will be required from each TIDD. Deadlines for submission of information that is required and to whom the regulations apply are also included in the rules. The rules include a methodology for creating TIDDs, so that it is not necessary to retrain TIDD proponents and principals for each submission of an application. Also included are guidelines for the State Board of Finance and the information it will require to approve or review a new application.

Mr. Moore noted that Las Cruces has created one TIDD that will exist for 25 years. Mesa del Sol has four TIDDs, each with a different date to issue bonds, so that each bond issue will extend over 25 years, but the total time that there will be a TIDD at Mesa del Sol will extend for a period longer than 25 years.

There were two TIDD bills considered in the 2008 regular session, but neither was adopted. It appears that there is agreement that the following should be included in a bill:

1. state representation on TIDD boards and during the TIDD application process;
2. dissemination of information needs to be more explicit as to when and to whom information should be sent;
3. the purposes for which bond proceeds may be used need to be clarified and tax revenue should be restricted to use for bond repayment only;
4. the question of whether greenfield development versus redevelopment should be clarified and set to rest; and
5. continued research and evaluation of TIDD activity in New Mexico needs to be explicitly defined.

Richard Minzner, representing SunCal, spoke about the greenfield issue. He noted that each area where a TIDD is anticipated is different, and that decisions should be based on the merits of each proposal. Trying to establish one-rule-fits-all will inhibit the creation of good projects in the state. He noted that there is no requirement in the state law except that there be no net impact on the local communities in which the TIDDs locate. Both SunCal and Mesa del Sol are being careful to comply with the need for "no net impact" as a part of the contract they have entered into with the local governments. This requires that the remaining taxes derived by the state and local governments are adequate to cover the costs of services provided to the newly developing areas.

Robert Hearn from the Quality Growth Alliance of Dona Ana County noted that the developer retains control over the TIDD board with little state or local oversight. The public receives little more than promotional information from TIDD boards. He mentioned that the interest paid over a 25-year period on \$5 million in bonds will be \$1.2 billion, or two to three times the original cost of the infrastructure purchased and installed. In that 25 years, the infrastructure will begin to need expansion or repairs and will always need maintenance. Hopefully, most upkeep will not require large financial input until the bonds are retired. Very few states use sales tax to finance TIDDs. Most states do not permit greenfield TIDDs.

Sheila Duffy, Mesa del Sol, discussed the planned economic development and job creation aspect of Mesa del Sol. She noted that Mesa del Sol does have four TIDDs, but each will only exist for the 25-year period during which the bonds are being paid off. She estimates that there are about 3,000 current jobs in construction of the TIDD and when the TIDD is fully built, there should be at least 8,000 jobs created. No bonds have been issued yet because there is limited revenue for repayment right now. She noted the request from the DFA and LFC to receive reports and information from Mesa del Sol on its progress and will provide those documents at the same time that documents are provided to Albuquerque. The purpose of a TIDD is to use future dollars to build a quality development up-front. The cost and the risk are primarily on the developer. She reminded the committee that the TIDD may not take credit for retail sales that will occur

in the area within the TIDD. Ms. Duffy pointed out that "no net impact" means no net expense to the local government to provide normal services.

Questions about the incentives that are used in other states, especially the surrounding states, in conjunction with TIDDs were posed by the committee. The members were also concerned about tracking the personal income tax revenue and corporate income tax revenue resulting from the TIDD activity. Mr. Hearn expressed a concern of his group that all expansion money of the governments where TIDDs locate will be tied up in repaying the bonds so that there is no additional money for expansion of services. Mr. Minzner noted that SunCal is not in opposition to a state presence on the board of a TIDD. As to a moratorium on the use of greenfields in TIDDs, he felt that currently there is nothing in the law requiring that a TIDD only be a redevelopment project. Mr. Minzner feels that instead of well-planned development, requiring redevelopment will promote the quickest, least costly development, which is to develop residential areas, not to develop a new community where jobs are available close to homes. All TIDDs must meet the "no net expense" or "no net impact" test, unless it is required in the contract of the TIDD. Ms. Duffy noted that Mesa del Sol is required to provide work force housing for 20 percent of the work force that will be located in that TIDD. Mesa del Sol has no problem with increased state oversight. She believes it would be no problem for Mesa del Sol to provide the public with information.

New Mexico Horsemen's Association Update

Terry Walker, president, New Mexico Horsemen's Association (NMHA), Susan Vescovo, vice president, NMHA, Pat Bingham, executive director, NMHA, and John Lee Thompson, lobbyist, NMHA, presented an update on the status of the racing industry from their point of view. They began by thanking Ruidoso Downs for having the track back in racing condition so quickly after the flood damaged it.

Background on the NMHA was given by Mr. Walker. There are 5,000 members and horsemen have a large impact on the state's economy. There are 1,500 to 2,000 racehorses in the state and a large number of people are employed at the tracks and taking care of the horses at other locations. During the days that there was damage at the Ruidoso track, horses were moved to Albuquerque to be housed. "Lineage Day" was postponed and will occur at Ruidoso over the weekend.

Ms. Vescovo encouraged the committee to support NMHA's efforts to include account wagering in the Horse Racing Act. It is a system where people who are consistent wagerers at tracks set up an account from which bets are paid. There are many horsemen who do not get the money that has been wagered on their horses. Account wagering in the state would keep money in New Mexico and prevent it from being set up in offshore accounts. Advanced deposit wagering, also known as "ADW", would allow bets to be placed from a location other than the track where the race is occurring. The track where the horse is run acts as a bank, and a wager can be activated by a phone call or email. Winnings are credited to the account and losses are debited from it.

Ms. Vescovo spoke about retainage at the track. The net retained, after bets and expenses are paid, is divided so that half goes to the track for operations and half goes to purses. This may amount to \$75 to \$76 million. When questioned by the committee about whether account betting or ADW would reduce the attendance at the tracks, Ms. Vescovo felt it would enhance interest in the track and not necessarily reduce attendance. She thought that those who live farther away from the track would be able to participate, even though they would be unable to make it to the track. To encourage attendance at the tracks, certain telephone area codes or local exchanges could be blocked. An account wagering bill was introduced several sessions ago.

Gaming Tax Issues

Len and Chery Stokes presented an issue to the committee dealing with the desire of the community to keep the Downs at Ruidoso Downs. Mr. Stokes is a rancher and water rights consultant and Mrs. Stokes is the proprietor of a shoe store in Ruidoso. They commented that the loss of the track would make the Ruidoso area more similar to Cloudcroft. The track has had three owners, the Eliseo family, the Jockey Club and Mr. Hubbard. The track was almost closed under the Eliseos and then again under the Jockey Club, which ran both Ruidoso Downs and Sunland Park. They wanted to let the committee know that if Ruidoso Downs moves from the area, 30 to 75 percent of the businesses in Ruidoso would have to move also. They commented on the need for the track to become profitable and encouraged the committee members to favorably support the graduated tax bill that was presented to the legislature in the 2008 legislative session.

Equine Specimen Testing — Adequacy of New Mexico's Oversight, Testing Program and Facilities

Arnold Rael, chair, State Racing Commission (SRC), Julian Luna, executive director, SRC, Tom Bagwell, director, New Mexico Department of Agriculture, and Dr. Warren Hyde next presented. Mr. Luna introduced the panel and Mr. Rael gave a short history of racing in New Mexico. He noted that racing began in 1938 in Albuquerque, and Raton was the first commercial track to open for horse racing. Agriculture in the South Valley of Bernalillo County, Belen, Las Cruces and Espanola supported the industry. Now breeding farms in New Mexico for quarter horses and thoroughbreds are a growing industry. Horse sales, such as the one held here at Ruidoso over the Labor Day weekend are great economic boons to local communities. Breeders are expecting increased purchase prices for their horses. Many people are employed by the industry. Local and state taxes are paid on the sales. Now races such as the All American Futurity are simulcast throughout the U.S., Europe and other countries overseas.

Mr. Luna began the discussion of drug testing and its importance in maintaining the integrity of horse racing. It is a high priority of the SRC. There is no testing lab in New Mexico because the state has not been willing to invest the needed money in creating the quality of lab that is necessary to provide the results as consistently and quickly as needed. New Mexico now contracts with the lab at Iowa State University through a contract with that lab. Dr. Hyde is the head of the Iowa State laboratory that processes New Mexico's samples.

Mr. Bagwell noted that New Mexico State University (NMSU) has been investigating the possibility of beginning an equine specimen testing laboratory to be housed at NMSU. Right now, there is a joint powers agreement with the SRC that gives NMSU the authority to contract with Iowa State to process the specimens. That contract will last for another three years. The volume of samples submitted by the state would not be adequate to make a lab profitable. However, once the lab is established, it would seek out other states with racing industries and the need for reliable testing. It will take about 10,000 samples to make the lab profitable; now New Mexico only generates 3,000 to 4,000 samples annually. The lab would have to be a center of excellence or no other states would contract with it and the reputation of the state's racing industry would rely on the quality of the testing from the lab. The lab would have to meet national standards. This will require state-of-the art equipment in the lab and state support for the first seven to 10 years.

There would have to be general obligation bond appropriations to provide some construction money for a lab and a revenue stream would have to be dedicated from the horse racing industry and state appropriations to run the lab.

Dr. Hyde, who is in charge of the veterinary medicine laboratory at Iowa State University, spoke about the philosophy of supporting drug testing to keep the standards of the racing industry high in New Mexico. Routine testing does not identify where problems are found and ongoing research is needed to resolve the problems that develop in the industry. Testing is important for the safety, health and well-being of the horses and also helps to ensure the safety of the jockeys. There are only two labs worldwide that can do some of the more difficult tests, such as tests for anabolic steroids in equines. Racetracks around the country and the world rely on leading-edge science to keep on top of the needs of the industry. Tracks in Iowa, Kentucky, New Mexico, Virginia and Trinidad and Tobago use the facilities at Iowa State University. Dr. Huber, the state chemist, rechecks findings of Dr. Hyde. Dr. Flint Taylor is the state veterinarian. Eddie Fowler, member, SRC, noted that a similar number of horses run in New Mexico and Oklahoma. Stalls are about 800 during off-peak times at Sunland Park and increase to 1,500 horses on site during peak times.

Iowa State's testing lab can perform immuno assay tests and liquid and gas chromatography analysis. All samples submitted are sent to the Iowa State testing lab. Currently, the SRC is taking and submitting about 6,700 tests per year. With a new track anticipated to come on line in 2010, that number will increase. Extra funding will be necessary to process those samples. Of those New Mexico equine samples submitted, there were five that tested positive for anabolic steroids, 10 tested positive for cortico steroids and many other compounds have been tested for over the last few years. Beginning January 1, 2009, no more steroids will be permitted to be used on horses on New Mexico tracks. It will be important that all jurisdictions prohibit the same compounds and use the same standards. If a horse is found to have a class III drug in its urine, it will lose all winnings and the owner will lose its license. An owner is banned if its horses are found more than one time to have illegal substances in their urine. Class I

drugs are the most forbidden; class IV drugs are those of least concern. Everyone gets penalized: the owner, trainer and jockey.

Minutes of July 2-3, 2008 Meeting

The minutes of the July 2-3, 2008 meeting in Taos were adopted as written without objection.

Recess

The committee recessed at 5:52 p.m.

Thursday, August 28, 2008

The committee was reconvened by Representative Sandoval, chair, at 9:11 a.m.

State Racing Commission — Update

Mr. Rael continued providing background of racing in New Mexico. He discussed the choice of Raton as the next horse racetrack to be licensed in New Mexico. There will be 60 race days, 1,500 stalls and racing will take place in the summer. Because of the increased regulatory and oversight required to cover the Raton track, the SRC will be seeking enhanced funding from the legislature. Larry Delgado, the newest member of the SRC, spoke of the surprise he felt when he became aware of the financial impact of racing in New Mexico. Mr. Fowler spoke about the progress in the industry and noted that the number of instate breeding horses is increasing constantly. In Bernalillo County there are stud farms, especially in the South Valley. Also, in the Hondo Valley, stud farms are increasing in number. One farm, owned by the Yates family, produces quarter horses that are among the best in the world. Thoroughbreds are also developing in strength, especially at Sunland Park. The choice of Raton was because it filled a gap in the northeast corner of the state.

With the new Raton track the testing demands will increase in the state. Currently, one-third of the SRC budget covers the costs of equine specimen testing. The new track will increase that cost by \$100,000 to \$200,000 per year.

There will be a hearing about the application from a Lordsburg group that has submitted an application for a track in that corner of the state. Even though the decision about the Raton track was made on August 25, 2008, the SRC still must hold a hearing on the Lordsburg application. The newest tribal gaming compact limits the state to no more than six racetracks. The five current tracks generate purses of \$46 million. The medical investigators that work in the industry must be highly trained to assist in keeping the races as clean as possible.

Bill Hayles of the Zia Track in Hobbs said that track would generate \$24 million this year. The new track to be built in Moriarty, where the Downs at Albuquerque will move, will cost \$55 to \$65 million. Because the Downs at Santa Fe is within an 80-mile radius of Moriarty, Santa Fe would have to require, pursuant to federal law, approval from Moriarty to begin simulcasting again. Because the Downs at Albuquerque would

not give the approval, Santa Fe was not considered as the last track to be opened in New Mexico.

The SRC will be seeking a budget expansion for a new financial specialist and also for more investigators. Drug testing of jockeys will have to be increased.

Raton will race quarter horses two years old and older for 60 days. Ruidoso's races are to quarter horse racing what the triple crown races are to thoroughbred horses. The members of the committee discussed how the flow of people from Texas and points east to Ruidoso is important to the economies of the towns in eastern New Mexico.

The races at the state fair will still be run, but the races at other times of the year will cease when the license is moved to Moriarty.

Gaming Control Board Update

Dave Norvell, chair, Gaming Control Board (GCB), introduced the other members of his panel that included John Montforte, executive director, GCB, Georgene Lewis, state gaming representative, Don Dutton and Demesia Padilla, CPA, members, GCB, Greg Saunders, central monitoring system, and Frank Baca, attorney, GCB. He continued that even though the economy seems to be in decline, the gaming revenues are so far unaffected. He noted that there will be some bills from the GCB on compulsive gambling that will be introduced in the upcoming session.

Mr. Montforte began by explaining that the GCB discovered that some machines at Zia Park and Sunland Park were manipulated by a player in a way that returned the bet money to the player. Sunland Park lost about \$24,000 and Zia lost about \$8,000 because by then the method was understood and the perpetrator was being observed. The court decided that the law does not cover cheating by manipulation of a gaming machine, so the law will need to be changed to cover similar situations in the future. The machines were misused or used in an unorthodox manner to control the operation of the machine.

Mr. Montforte informed the committee that there are now 62 employees at the GCB. One law enforcement officer conducts audits and one other officer covers tribal situations. The oversight of tribes is mainly to monitor tribal gaming and to review the gaming documentation received from the tribes. The handout has more detailed information about the operation of the GCB. There are currently five gaming sites at racetracks, 57 sites at nonprofit organizations, 89 bingo operations and 13 tribal gaming locations. Buffalo Thunder, which opened shortly before the special session, has 1,200 gaming machines. The Navajo tribal casino on I-40 at Churchrock will open with 370 gaming machines. There will also be table games.

The "net take" for licensees regulated by the Gaming Control Act in FY07 was:

Racetrack gaming operators	\$248,578,412
Nonprofit gaming operators	\$11,662,016.

The "net win" for tribal casinos was \$711,147,695 in the last fiscal year.

Gaming taxes paid in FY07:

Racetracks	\$64,630,387
Bingo and taffle	\$125,361
Nonprofits	\$1,166,202
Manufacturers/distributors	\$1,294,002.

Revenue sharing from tribal casinos for FY07:

Tribal casino revenue sharing	\$66,880,148
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Pursuant to the 2007 compacts, tribes must disclose to the state how they are using their compulsive gambling prevention money. Four tribes under the 2001 compact can still maintain that information as confidential. Racetracks must identify how the money they are required to set aside is used.

Several problems occurred in the last year; most are still ongoing but no longer a crisis situation. The Fort Sill Apache site at Akela Flats between Deming and Las Cruces is evidently on hold until the details of what the tribe can do can be worked out. The move of the Downs at Albuquerque to Moriarty will have to comply with the provisions of the Gaming Control Act to be licensed to offer gaming machines for operation. A cybercafe in Las Cruces was allowing illegal gambling. The company tried to sell illegal gambling through cybercafes through sweepstakes sales. The expectation is that these operations will pop up around the state until they are all shut down.

The GCB is requesting funding for electronic fingerprinting equipment. The tribes have asked the state to partner with them to do background investigations of employees and would like to do the fingerprinting electronically to save time. The process will provide the state with additional information on who the tribes are hiring in their casinos.

Mr. Saunders assured the committee that the machine manipulation that was discovered can no longer happen. The board was asked how many machines are operated on tribal land.

The status of the Fort Sill Apache operation at Akela Flats is:

- a restaurant and smoke shop are operating;
- a poker tournament was held; the house was not the bank;
- the location is not eligible for Class III gaming unless it enters into a compact and is theoretically barred from gaming of any sort by the terms of acquisition of the land it had put in trust;
- the tribe has no compact; and
- the tribe is in litigation in Oklahoma against the Department of Interior (DOI), claiming that the agreement between Fort Sill Apaches and the DOI allows the tribe to game on the Akela Flats property.

Ms. Lewis commented that the Pueblo of Pojoaque will continue to operate Cities of Gold as well as Buffalo Thunder and expects a six percent increase in revenue in the current year.

Mr. Montforte noted that there were no known cases of Class II gaming machine use in New Mexico by the tribes at this time. He has heard that some tribes are considering opening third and fourth gaming establishment sites with Class II machines only. This would then not be part of the compact limitation to two sites. Fort Sill Apaches are planning a Class II gaming machine site at Akela Flats from the information available.

There is a new central monitoring system in place. This system will allow machines of any manufacture to be installed. No barrier exists regarding the manufacture of machines. Some machine manufacturers will not get licensed in New Mexico because of limited sales and the high price of a license. Gaming machines are required to pay out 80 percent of the intake of the machine. The GCB will provide the committee with a map of the locations of all of the gaming sites in the state. Ms. Padilla noted that, with the nonprofits and bingo and raffle operations, there is a lot of "hand-holding" needed to keep them in compliance with the rules. This is especially true because their work forces are predominantly volunteers.

In response to a committee question, Mr. Norvell pointed out that a tribal gaming enterprise is one entity that could have several facilities at various sites on the tribe's land. For instance, the Pueblo of Pojoaque has seven gaming facilities at this time. These are the casinos and gaming machines at the tribe's gas stations and sports bar. The tribes have requested that the GCB help them with electronic fingerprinting. This will cost \$40,000 for software and \$80,000 in recurring costs. The tribes pay \$1.5 million in regulatory fees that are supposed to reflect, according to federal law, the actual amount of regulatory costs incurred by the state on behalf of tribal gaming.

The Downs at Ruidoso and the Billy the Kid Casino

Mr. Hubbard, Bruce Rimbo, consultant, and Anne McGovern, general manager of the Downs at Ruidoso, gave an update on activity at the track in the past year. Labor Day weekend, the weekend following the meeting, will be the end of the race meet for the track for 2008. This year saw the bets increase above last year at the track, even with the four or five days that the track had to close due to the flooding from the rivers and streams in the area. The net win from the casino is decreasing, especially since the opening of the casinos at the Inn of the Mountain Gods and other locations on the Mescalero Apache Tribe's land.

Ms. McGovern showed slides of the extent of the flood at the downs and the damage that resulted. Restoring the facility to a condition for racing to resume took only four or five days.

A more thorough discussion ensued of the legislative proposal that the track would like to present to the legislature in the upcoming session to graduate the gaming tax based on the net take of the gaming operator licensee.

Adjournment

The committee adjourned at 11:43 a.m. A tour of Ruidoso Downs was offered to members of the committee following lunch. The stalls and other areas of the track were toured and viewed by the members, although most of the discussion centered on the flood damage to the track.