

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

November 19-20, 2007
State Capitol, Room 322
Santa Fe, New Mexico

The sixth meeting of the Revenue Stabilization and Tax Policy Committee (RSTPC) was called to order by Senator Timothy Z. Jennings, chair, at 9:15 a.m. in Room 322 of the State Capitol in Santa Fe, New Mexico.

Present

Sen. Timothy Z. Jennings, Chair (11/19)
Rep. Edward C. Sandoval, Vice Chair
Sen. Mark Boitano
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Sen. Dianna J. Duran
Rep. Keith J. Gardner (11/19)
Rep. Roberto "Bobby" J. Gonzales
Rep. William J. Gray
Rep. Ben Lujan, Speaker of the House
Sen. Bernadette M. Sanchez
Rep. Daniel P. Silva
Sen. John Arthur Smith
Sen. H. Diane Snyder
Sen. James G. Taylor
Rep. Thomas C. Taylor

Designees

Sen. Ben D. Altamirano (11/20)
Sen. Sue Wilson Beffort
Rep. Henry Kiki Saavedra
Rep. Luciano "Lucky" Varela

Absent

Sen. Kent L. Cravens
Rep. George J. Hanosh

Rep. Janice E. Arnold-Jones
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 Nuñez
Rep. John Pena

Sen. Leonard Lee Rawson
Rep. Debbie A. Rodella
Sen. Nancy Rodriguez
Sen. John C. Ryan
Sen. William E. Sharer
Rep. Don L. Tripp

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

Staff

Tim Crawford
Doris Faust
Cleo Griffith
Pam Ray
Doug Williams

Guests

The guest list is in the meeting file.

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

Monday, November 19

Verde Realty — Santa Teresa Tax Increment for Development District

Peter Mallery, lobbyist, introduced Jack Darnall, vice president, Verde Realty, who then presented information about Verde Realty's proposed Tax Increment Development District to be located in south central New Mexico near the Mexico and Texas border in the Santa Teresa area.

State Tribal Gaming Representative Report

David Norvell, chair, Gaming Control Board (GCB), introduced John Monforte, executive director, GCB, and Georgene Lewis, state tribal gaming representative. Mr. Monforte gave some background on the GCB and its limited jurisdiction in matters of tribal gaming. Ms. Lewis gave some data, all found in her handout, on the status of tribal gaming in the state.

Tribal Gaming Compact — Gaming Tribes Updates

Of the three panelists invited, only Governor Charles Dorame of the Pueblo of Tesuque was able to attend. Governor Dorame is the chair of the New Mexico Indian Gaming Association (NMIGA). Governor Dorame gave a thorough report on the tribes that have entered into the 2007 amendments to the 2001 Tribal-State Gaming Compact. The NMIGA represents the state's 11 gaming tribes (pueblos of Acoma, Isleta, Laguna, Ohkay Owingeh, Sandia, San Felipe, Santa Ana, Santa Clara, Taos and Tesuque and the Jicarilla

Apache Nation). He emphasized that the communities surrounding gaming tribes reap economic benefits from the gaming activity on tribal land. Seventy-five percent of employees of tribal gaming facilities are not tribal members. The state has gained \$419 million from tribes in revenue sharing and other fees since 1995 when the first compacts were entered into. During the same period, racetracks with gaming machines have paid the state \$250.6 million. Although racetrack gaming taxes currently exceed revenue sharing to the state, this situation will change when the third quarter 2007 payments are received by the state. The third quarter 2007 remittances from the tribes will be the first payments pursuant to the enhanced revenue sharing provisions of the 2007 compact. The pueblos of Nambe and Picuris are contemplating beginning gaming operations and will increase the revenue sharing realized by the state. Tribal median income has risen since 1990 from \$18,568 to \$28,499 in 2000. Poverty levels have dropped from 27.5 percent to 19.6 percent in the same period. Education levels have risen. Tribes are developing and prospering as a result of the economic boost provided by gaming in those communities.

Oil Conservation Division — Oil and Gas Regulatory Issues

Mark Fesmire, director, Oil Conservation Division (OCD) of the Energy, Minerals and Natural Resources Department (EMNRD), presented a reasoned discussion of the activities the OCD is now involved in regarding regulation of pits holding waste from the oil production process. Mr. Fesmire gave background information regarding the need for enhanced regulation of oil waste pits. He noted that the concern of the EMNRD is to prevent ground water contamination from poorly maintained and monitored pits. Mr. Fesmire provided data that indicated there had been 2,582 spills from oil production operations in New Mexico, 800 of which had resulted in some amount of ground water contamination and 400 of which could be linked directly to poorly maintained waste pits. No operators have challenged or contested the findings of the OCD regarding these spills. He noted that there are two kinds of pits: drilling pits and workover pits. Mr. Fesmire reminded the committee that the prevention of spills and ground water contamination is many times less expensive than remediation after contamination occurs. Flora Vista's water supply has been contaminated by oil production, and Lovington also had to flush its system due to contamination. The costs of controlling waste and pollution should be included in the price paid for gas or oil. There was a great deal of concern among committee members regarding the process and the perceived outcome of the pit rule hearings. It was suggested that the driving force behind the new pit rules are residents who do not understand the importance of the oil and gas industry to New Mexico's economy. However, it is clear that the OCD believes that there are some problems with the way pits are being used, monitored and maintained that require regulatory attention.

Public Comment

Several members of the public spoke in response to Mr. Fesmire's report. Comments were made that emphasized the recent decline in natural gas prices. There also has been a significant decline in the rig count in Utah, and it was suggested that the number of oil rigs in use in New Mexico would plummet if the OCD tightens up on pit oversight and requirements in New Mexico. Committee members noted that there are rumors that New Mexico will lose rigs to other states if regulatory pressure is placed on the industry. Other comments included

a concern that regulatory parameters were based on the cleanup difficulties faced in other states or on climatic concerns from other areas of the country, all of which cannot be equated to conditions in New Mexico. Committee members also suggested that regulators and the oil and gas industry need to work together to come to a reasonable accommodation that allows the industry to operate profitably and maintain a quality environment. Another member of the public, Ron Fellabaum, San Juan Casing Service, Farmington, expressed to the committee that increased regulatory oversight and monitoring by the OCD would be more effective than the increased stringency of regulations. More severe regulations might cause him to close his doors, although the business has been a going concern for 50 years. Other speakers were Henry Valdez, Scorpion Drilling, Farmington, and Tucker Bayless, manager, Robert L. Bayless Oil and Gas Producer, San Juan. Johnny Micou, from Santa Fe County, discussed the issues related to drilling for oil or gas in the Galisteo area of that county. The people in the area do not want to have to clean up contaminated water; they want the water to remain uncontaminated. He spoke of meetings drawing overflow crowds and petitions that have been circulated to obtain signatures against the Galisteo drilling. David Bacon, energy consultant, discussed the effect that Tecton's drilling proposal will have on reducing land values. Theo Coburn discussed the possible effect of endocrine system disruption from oil or gas production contamination of ground water.

Small County Assistance Fund Distribution Adjustment

Tasia Young and Jim O'Neill from the New Mexico Association of Counties presented a change to the formula on which distributions from the Small Counties Assistance Fund are determined. An error was made in the formula determining the distributions to small counties, and that error needs to be corrected. A bill containing a correction to the formula will be presented to the committee in December for endorsement.

State Treasurer's Office Legislative Proposal — HB 532

Mark Valdes, deputy state treasurer, and Joelle Nevy, chief investment officer, State Treasurer's Office, presented an updated proposal of HB 532 from the 2007 legislative session. In 2007, the bill was endorsed by the RSTPC and the Investments and Pensions Oversight Committee. The Short-Term Investment Fund created in Section 6-10-10.1 NMSA 1978 is amended to allow more investors to participate in the fund and to allow investments to be placed for up to 36 months rather than for a limit of six months. The name of the fund is changed to the "Participating Government Investment Fund". The bill will be presented in the list of bills to be considered for endorsement by the RSTPC in December.

National Laboratories Partnerships with Small Businesses Annual Report

Mariann Johnston, economic development team leader, community programs office, Los Alamos National Security, LLC, provided the committee with an update on the use of the laboratory partnership with small business tax credit. Los Alamos National Security was first eligible to claim the tax credit beginning in July 2007. Sandia National Laboratories has been operating the New Mexico small business assistance program since early in the decade. Now the goal is for both labs to join together to provide small business technical assistance to build business capacity and technical capabilities.

Pit Rules

Robert Gallagher, president, New Mexico Oil and Gas Association, gave an impassioned presentation about the industry's concern about the overzealousness of the OCD in developing rules to regulate wastewater and other products held in lined pits on oil and gas production sites. There appears to be considerable concern that additional regulatory burdens will be so great that marginally successful oil and gas businesses will no longer be economically feasible.

According to Karin Foster, Independent Petroleum Producers, the federal Small Business Regulatory Relief Act requires regulators to identify the economic impact of the rules they propose. The rules must protect "correlative rights", defined as the right to capture oil and gas from a property. The correlative rights doctrine also imposes a duty on a correlative right to exercise that right without waste or negligence. This is a corollary to the "rule of capture", which states that there is no liability for drainage of oil and gas from under the lands of another so long as there has been no trespass and all relevant statutes and regulations have been observed. Ms. Foster also noted that the OCD has a fund with approximately \$300,000 in it from fines. Mr. Fesmire noted that the money is used for emergency repairs and replacement of vehicles and other equipment acquisition and maintenance. The OCD received over \$40,000 in fines in 2007.

The committee recessed at 5:05 p.m.

Tuesday, November 20

The meeting was reconvened by Representative Sandoval at 8:36 a.m.

Taxation and Revenue Department Legislative Proposal

Jan Goodwin, secretary of taxation and revenue, and Jim Nunns, policy director, Taxation and Revenue Department (TRD), presented only one new proposal. It consisted of changes to the personal income tax that would combine several state tax credits and eliminate some confusion in filing personal income tax returns, especially for low-income families. It does away with the standard exemption, the low-income credit tax rebate and the New Mexico low- and middle-income tax credit, but provides an equivalent credit that can be accessed based on earnings through tables inserted into the law. This should simplify tax returns of low-income families.

SunCal Companies — TIDD

Will Steadman, president, New Mexico division, SunCal Companies (NMSCC) gave a general overview of the TIDD that NMSCC is proposing to create on the west mesa of Bernalillo County and Albuquerque. Vanessa Alarid, governmental affairs manager, and Luisa Casso and Owen Fabian were also present to respond to questions regarding financing and other matters.

SunCal is also located in northern and southern California and Nevada. It is a privately held company. Boris Eloff is the master plan developer. Luisa Casso spoke about

the economic development that is planned for the TIDD. The business that will be sought for development will provide export of goods and services from the state. The TIDD will allow the infrastructure to be placed prior to development of the commercial ventures and residential housing. The goal is to develop more jobs on the west side to reduce the need to cross the river for employment. Businesses also will be sought that will require inputs that will cause development of support businesses in the area. The plan is to have 29,000 to 30,000 new permanent jobs in 15 years. There should be initially 3,000 construction jobs per year. Bernalillo County adopted the TIDDs proposal on October 9. The first four TIDDs are requesting that 70 percent of the state gross receipts taxes from within the TIDDs be dedicated to the TIDDs, that 50 percent of the Bernalillo County property tax from within the TIDDs be dedicated and that 22 percent of Bernalillo County's local gross receipts taxes from within the TIDDs also be dedicated to infrastructure and other support of the TIDD. A total of nine TIDDs are now planned, most within the unincorporated county area. The TIDDs will issue property tax bonds and gross receipts tax bonds, as well as short-term 30-day bonds. SunCal is anticipating that \$946.3 million will be available from the combination of short-term and long-term bonds. After Thanksgiving, SunCal will continue negotiating with Bernalillo County regarding the tax increments that will be authorized and will make another presentation on December 11. After the county approves a plan, SunCal will present its plan to the State Board of Finance for approval before taking it to the legislature for approval during the 2008 short session.

Comments from the committee included acknowledgment of the increased revenue that will come to the state as a result of the expedited new development. Bernalillo County will also see increased local gross receipts taxes and an expanded property tax base. The number of units to be built over a 15-year period should be 20,000, whereas, currently, New Mexico is seeing 5,000 to 7,000 new units in that period. Water rights held by SunCal are senior rights. School districts will retain all of their property taxes levied. SunCal would presume that if taxes increased, a TIDD would still retain 70 percent of the increased revenue collected from within the TIDD. Competition among TIDDs in the Bernalillo County area, especially Mesa del Sol and the SunCal project, could cause slower development of both in terms of attracting businesses and causing growth on the time line established. Concern was also voiced that even though most states have some form of TIDD authorization, the TIDDs are generally used as an urban renewal tool, whereas in New Mexico location of a TIDD is not limited to inner city blighted areas, but is being used simply as a tool to drive planned economic development and residential communities. Concern about the lack of uniformity among tax increments retained that have been authorized for the current TIDDs was expressed. More uniformity should be sought in the future. Infrastructure as contemplated by the Tax Increment for Development Act (Chapter 5, Article 15 NMSA 1978) means "public improvements", such as wastewater systems, domestic water systems, parks and open space improvements or roadways, but does not include construction of commercial or residential buildings and will be further limited in the plan adopted by Albuquerque, Bernalillo County and the State Board of Finance. The definitions used by SunCal will be compared with those used by Mesa del Sol.

Alan Armijo, chair, Bernalillo County Commission, noted that the county has been working with SunCal. He noted that there are no longer large tracts of land for planned development in Bernalillo County, except in the areas where Mesa del Sol and SunCal have chosen to develop.

Property Tax Limitation — Suggested Responses

Richard Anklam, executive director, and Tom Clifford, research director, New Mexico Tax Research Institute, presented information on limitations currently in law on increases in property taxation. They noted that yield control and the three percent limit on residential property values have been implemented. The three percent limit helps to control the assessed value of property, but this can cause an increase in tax rates to generate the needed revenue for county and municipal budgets. Yield control limits the increase in municipal and county budgets over the level in the prior year. It controls the amount of revenue that a local government can collect. Bond issues, however, are not included in this limitation. Taxes must be collected to cover bonds issued. New purchasers of residential property have property tax increases that are considerably more than taxes paid by previous residents. Usually, property taxes paid in the first year after purchase are at the prior owner's rate because the assessment is usually completed prior to purchase. However, in the next year, the assessor will value the property based on the value of comparable residences in the area. This can raise the valuation considerably and cause the taxes to increase. To reduce the tax burden, especially for low-income people, the low-income and elderly tax rebate could be expanded to cover more people. It was noted that all rebates or other methods of tax relief for a portion of the population only shift the tax burden to other people so that the amount of revenue needed is still collected. It causes a shift to higher rates for those who still must pay property taxes. Industrial revenue bonds and other tax reduction incentives for businesses also cause shifting of the tax burden to those without the incentives. Commercial property taxes that are forgiven or reduced can be a substantial sum.

Members of the committee noted that over a six-year period, there is roughly a 45 percent turnover in residential home ownership. A county-by-county review of the effects of the three percent limit was requested to be presented at the next RSTPC meeting.

Mr. Anklam and Mr. Clifford gave a thorough presentation of the issues that have arisen from the implementation of a three percent limitation on the increases in valuation of residential property, provided the property is not transferred in the tax year.

Assessor's Draft Legislation

Karen L. Montoya, Bernalillo County assessor and chair of the New Mexico Assessor's Association, explained two proposed bills for which the association is seeking the RSTPC's endorsements. One is a \$6 million appropriation to the Property Tax Division of the TRD to oversee the installation of computer-assisted mass appraisal systems in all counties, at the TRD and at the Department of Finance and Administration that will allow these entities to be connected and to aid in the valuation of real property.

The second bill, similar to House Bill 1087 sponsored by Speaker Lujan in the last legislative session, allows sales affidavits to be used by protestors in property tax protests. Some changes in format were made to clarify the language of the bill.

Property Tax Limitation Draft Legislation

Senator Boitano presented a draft of a proposal to prevent increases in property valuations over the next two property tax years and do away with the need to value property at its current and correct value if transferred in those years. The valuation would be based on the 2004 property tax year valuation of the property.

In those two years, Senator Boitano is hopeful that the legislature will devise a more equitable scheme for limiting property tax increases. He believes that approximately 42 percent of the property owners in the state have been adversely affected by the property tax limitation. He would like to give them some relief. There is a great deal of public concern in the Albuquerque area over the increases in property taxes that some new property owners are experiencing.

The bill will be reviewed and amended slightly and then brought to the committee for endorsement in December.

Adjournment

The committee adjourned at 1:26 p.m.