



## Revenue and Transportation Interim Committee

### 60th Montana Legislature

#### SENATE MEMBERS

JIM ELLIOTT  
JEFF ESSMANN  
KIM GILLAN  
CHRISTINE KAUFMANN  
JIM PETERSON  
ROBERT STORY JR

#### HOUSE MEMBERS

TIMOTHY FUREY  
GALEN HOLLENBAUGH  
MIKE JOPEK  
BOB LAKE  
PENNY MORGAN  
JON SONJU

#### COMMITTEE STAFF

JEFF MARTIN, Lead Staff  
LEE HEIMAN, Staff Attorney  
FONG HOM, Secretary

# MINUTES

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

September 19, 2007

Room 137, Capitol Building  
Helena, Montana

#### COMMITTEE MEMBERS PRESENT

SEN. JIM ELLIOTT  
SEN. JEFF ESSMANN  
SEN. KIM GILLAN  
SEN. CHRISTINE KAUFMANN  
SEN. JIM PETERSON  
SEN. ROBERT STORY JR

REP. TIMOTHY FUREY  
REP. GALEN HOLLENBAUGH  
REP. MIKE JOPEK  
REP. BOB LAKE  
REP. JON SONJU

#### COMMITTEE MEMBERS EXCUSED

REP. PENNY MORGAN

#### STAFF PRESENT

JEFF MARTIN, Lead Staff  
LEE HEIMAN, Staff Attorney  
FONG HOM, Secretary

## **Visitors and Agenda**

Visitors' list, Attachment 1  
Agenda, Attachment 2

## **COMMITTEE ACTION**

- The committee approved the minutes of the June 21 meeting.
- Sen. Peterson was voted as chair of the committee and Sen. Gillan was voted as vice chair.

## **CALL TO ORDER AND ROLL CALL**

00:00:32 The meeting was called to order by Sen. Elliott at 8:08 a.m. The secretary called roll (**Attachment 3**). Rep. Morgan was excused.

## **Approval of Minutes**

00:02:10 The minutes of the June 21 meeting were approved unanimously upon the motion made by Rep. Lake.

## **Election of Officers**

00:03:01 SEN. ELLIOTT opened nominations for chair of the Revenue and Transportation Interim Committee. Rep. Lake said that it was understood that he should not serve as chair of the committee. He said that the work of the committee should move on, and he nominated Sen. Peterson as chair. It was moved that nominations be closed and Sen. Peterson was voted unanimously as chair of the Revenue and Transportation Committee.

Sen. Story nominated Sen. Gillan for vice chair, and Rep. Jopek nominated Rep. Hollenbaugh for vice chair. Sen. Peterson closed the nominations and asked for a roll call vote. Sen. Elliott asked for a brief recess before the committee voted.

00:12:14 Sen. Peterson reconvened the meeting. Rep. Jopek withdrew his nomination of Rep. Hollenbaugh. Rep. Lake requested that it be in the minutes that the rotation of chair and vice chair go from a Senate Republican to a Senate Democrat, to a House Republican to a House Democrat, and that would be the rotation established for this committee from this point on. Sen. Gillan was voted unanimously as vice chair.

00:14:40 Jeff Martin said that public comment follows each agenda item. Public testimony at the end of the meeting allows any interested person to discuss anything that is within the purview of the committee.

## Public Comment

There was no public comment at that time.

## **HJR 61 Study: Linkage between Federal and State Income Taxes - Jeff Martin, Research Analyst, LSD**

- 00:17:11 Mr. Martin provided a brief summary of conformity with federal law for individual income tax and corporation tax purposes. Some of the points were:
- This study is not concerned on whether or not to conform but to look at the degree of conformity.
  - There are two types of conformity: rolling and fixed date. Rolling conformity is where the state automatically conforms to federal tax law. Fixed date conformity is tied to federal law as of a specific date.

Mr. Martin said that recent federal tax law changes have led some states to decouple from certain provisions of the federal income tax. States are constrained by revenue requirements and balanced budget requirements and some of the federal tax law changes may impose a burden on state budgets. Whether a particular state may agree or disagree with the federal tax law changes, they may be constrained by budget requirements not to adopt certain revisions in the federal income tax code. Mr. Martin gave some examples of consequences of nonconformity and said that straying too far from federal tax provisions may lead to a degree of complexity for the taxpayer.

## Questions

- 00:23:25 SEN. STORY asked Mr. Martin if Montana was a rolling conformity state through statute or is it because it uses adjusted growth income as a starting point? Mr. Martin said that the state is tied to the statutorily Internal Revenue Code of 1986, as amended.
- 00:24:33 SEN. ELLIOTT asked about the constitutionality of Montana following the federal law without conformity every biennium. Mr. Martin said that is something that the committee needs to look into. The Constitution prohibits the state from surrendering its taxing authority, and whether automatic conformity to the federal law falls under that prohibition is something that the committee will look into in more detail in the study.
- 00:26:38 REP. COHENOUR, sponsor of HJR 61, said that one reason she introduced the study resolution was because the federal government had miscodified a provision. When that happened, it affected Montana's tax code without the state having a say. She said that when the Legislature allows automatic conformity, it is abdicating its responsibilities under the Constitution. Rep. Cohenour said that she had a bill revising the state's conformity provisions but it came late in the

session but she thinks that it is imperative that the Legislature take control of the tax code under the Constitution.

#### Questions

00:31:28

SEN. ELLIOTT asked Rep. Cohenour how she would address the fact that since the Legislature meets bi-annually, would the state be in conformity with the Constitution one year and potentially out of conformity in the second year? Rep. Cohenour said that the bill would have kept the state in conformity for the two-year period. During that time frame, the state would conform. The Revenue and Transportation Interim Committee would look at all of the tax changes at the federal level to see how those changes affected the state and draft a bill for the following session to say whether or not the state is going to accept those tax changes.

SEN. ELLIOT asked if the Legislature would have ceded its authority to tax if a federal tax law were enacted in the off year. Mr. Martin said that if that bill had been adopted, there would have been a fixed date conformity to federal law, which would have been 2006. Whatever changes the federal government would have made in the meantime would not become part of the state's tax code unless the Legislature specifically authorized it.

SEN. STORY asked Rep. Cohenour if Montana goes to a fixed date system, would that be one more thing that people would have to look at if they wanted to do business in the state? Rep. Cohenour said that she thinks that has already happened. She said that Mr. Martin talked about the way that some states might conform to certain parts and not to others. Most multi-state corporations have an accounting firm that does that for them and it is based on what is currently going on.

#### Public Comment

There was no public comment at this time.

00:36:00

SEN. PETERSON said it was suggested that Mr. Martin prepare a white paper for the committee on the subject of conformity and that the white paper be made available in early 2008 giving the committee more information to base further discussion with regard to the study resolution.

SEN. STORY suggested putting together a panel of tax practitioners and people from the Department of Revenue to discuss conformity, what are the good points of conformity, and what are the drawbacks. He said that every time the federal government changes the tax code it impacts revenue in the state, sometimes positive and sometimes negative.

There was a discussion on using a panel forum approach consisting of tax practitioners from other states that have fixed date conformity, tax practitioners who prepare returns for small businesses, and people from the Department of Revenue to discuss reasons for conformity, what are the good points of conformity and what are the drawbacks. It was suggested that people from the Multistate Tax Commission come and speak to the committee because they work on conforming states to one another. Sen. Elliott mentioned that he would like to see a list of where the state conforms with the federal government and where it does not conform. He also said that he thinks that a panel forum could turn into a very large panel because each of the committee members, individually and as a party, would want to have representatives who would reflect different political points of view. He suggested having people come up to the podium and give testimony during one of the committee meetings.

SEN. PETERSON asked that the members give the chair and vice chair suggestions on who the committee should hear from, have presentations from NCSL and representatives of various practitioners, a Q&A session, public comment, and input from staff for the December meeting.

#### Public Comment

No public comment at this time.

#### Revenue Report - Terry Johnson, LFD

00:52:17 MR. JOHNSON presented the General Fund Status for 2007 Report (**EXHIBIT 1**) to the committee. He discussed:

- the General Fund Ending Balance
- the General Fund Balance Components
- the General Fund Revenue
- General Fund Disbursements showing total reversions, budgeted reversions and unanticipated reversions.

#### Questions

REP. HOLLENBAUGH asked Mr. Johnson which agencies had revisions. Mr. Johnson said that six agencies had significant reversions: the Office of Public Instruction, Department of Public Health and Human Services, Department of Corrections, Department of Natural Resources, the Legislative Branch, and the Judicial Branch.

- General Fund Balance Adjustments

#### Questions

SEN. STORY asked about the \$7 million figure for general fund balance adjustments. Mr. Johnson said that one of the large adjustments included an

oversight by the State Auditor's Office last fiscal year in which it booked an insurance payment of \$15M as prior activity in 2007.

REP. JOPEK, referring to the \$61.2 million general fund revenue, asked if that number was consistent with what the Legislature saw in April 2007. Mr. Johnson said that the \$61 million was measured against the HJR 2 revenue estimate. During the regular session, the Legislative Fiscal Division recommended to the Senate Tax Committee, House Tax Committee, and leadership in the House and Senate that the revenue estimates could be increased by \$63 million. Mr. Johnson said that the Legislature did not adjust the revenue estimates.

REP. JOPEK asked Mr. Johnson if LFD would be making new projections or new recommendations in the future. Mr. Johnson said that those numbers are the preliminary official fiscal year 2007 numbers. He said that the books officially closed on June 30, 2007. The Legislative Auditor will audit the financial records and make recommendations for adjustments, if needed. If the auditors don't find anything in their audit, then the books will go down as the official revenue collections for fiscal year 2007.

SEN. STORY asked Mr. Johnson how LFD deals with audits when they are put into the system. He asked if the \$27 million audit revenue was a result of underpayments of one year, was it an accumulation of several years, and how does one carry that forward? Mr. Johnson said that audit revenue can be multi-year.

REP. LAKE asked Mr. Johnson if the audits were money in your pocket, settled audits, or anticipated audits? Mr. Johnson said that that was settled audits.

01:30:41 • General Fund Balance Change Fiscal 2007 Summary.

Questions REP. LAKE asked if anything was going to be done to correct the coding errors that seem to have significant impacts on LFD's ability to project. Mr. Johnson said that in defense of state agencies, they record many transactions on the state accounting system but the amount of errors are relatively small. He said that he didn't think that there is anything that can be done to mitigate some of those errors, but the important thing is that those errors are detected.

01:35:00 • General Fund 2009 Biennium Outlook with Special Session Action

Questions

01:41:53 SEN. STORY asked Mr. Johnson about the Legislative Branch revision of \$3.2

million. Mr. Johnson said that the Legislature appropriates the costs of the regular session, but those costs carry forward not only for 2007, but into 2008 and 2009. The reverted amount is a true statement but the Legislature is reauthorized to use \$2.4 million of that in 2008 and 2009.

SEN. PETERSON asked Mr. Johnson if the accounting practices used by the agencies are consistent from one agency to another? Mr. Johnson said that there is consistency because the Department of Administration is required under Title 17, to follow generally accepted accounting principles. He said that individual agencies can have more detail or less detail in recording some of their financial activity but that doesn't change the requirement that they have to conform to generally accepted accounting principles.

REP. JOPEK commented that a lot of information on the income tax portion is a wild card where the capital gains portion remains strong. He asked Mr. Johnson if the next projection coming out in November of next year will be a starting point that the committee can get a better picture on whether or not the capital gains portion remains strong. Mr. Johnson said the committee will be provided periodic updates throughout the interim on how the current year revenues are doing for fiscal year 2008. In November 2008, the LFD will be making revenue estimating recommendations for fiscal years 2009, 2010, and 2011.

**Memorandum re: May 2007 Special Legislative Session Fiscal Policy Triggers - Terry Johnson, Legislative Analyst, LFD**

01:52:47 Mr. Johnson discussed the two-page memorandum (**EXHIBIT 2**) regarding May 2007 Special Legislative Session Fiscal Policy Triggers.

**Questions**

02:03:27 SEN. STORY said the Legislature has created a precedent that allows an adjustment of the general fund balance, and, if the law says that the income tax credit should not go forward, which it is, that is not right. He asked Mr. Johnson what the committee should do with those two issues before them. Mr. Johnson said that the \$8 million error can be corrected from an accounting standpoint. He said that the underlying issue is, where does it stop and what is the Legislative Auditor going to do with it? The Legislative Audit Division is required to audit the state's financial records. Mr. Johnson said that he has options but they are not very good options.

REP. JOPEK asked if the trigger in HB 9 would have been met with or without the \$8 million adjustment? Mr. Johnson said that if you take the definition of revenue, yes; but if you take the definition of revenue under generally accepted

accounting principles (GAAP), then the trigger would not have been met. The \$8 million is a transfer under GAAP, and transfers are one of items that are excluded from the definition of revenue under GAAP.

REP. JOPEK asked for a clarification on the trigger amount of \$1.802 billion, that if he took \$8 million out of it, he would still be \$28 million over the trigger amount. Mr. Johnson said that the \$1.838 billion is the more general definition of revenue that the Administration could use under the language that is in HB 2. He said that when you look at the definition of revenue that is contained in HB 9, when it makes reference specifically to General Fund Revenue per GAAP as well as making a reference to Title 17, then that revenue is no longer \$1.838 billion, but drops to \$1.769 billion. HB 9 refers to revenue as defined by GAAP.

02:11:52 SEN. GILLAN asked if a representative from the Governor's Office could comment on Rep. Jopek's question.

Dan Bucks, Director, Department of Revenue, said that the Administration stands by the announcement that the Governor made on July 27 that the \$140 income tax credit would be returned to Montana citizens. He said that they do not agree with the analysis here, that the intent of the Legislature was to return extra funds that were available to the taxpayers of Montana.

There was a discussion regarding the intent of the Legislature and if the law was drafted properly or not and if it is the responsibility of the Administration or the courts to interpret the law, whether the Executive Branch's analysis was a legal analysis. Lee Heiman, LSD Legal Counsel, said that Title 17 indicates that the agencies in the government must abide by GAAP.

SEN. PETERSON asked that Amy Carlson provide a comment as well as a copy of her analysis to the committee.

02:18:53 Amy Carlson, Office of Budget and Program Planning, provided an explanation of the memorandum from David Ewer to Janet Kelly and Paul Christofferson regarding HB 9 - Intent of Section 6(1)(b)(ii) (**EXHIBIT 3**). She said that the analysis focused on revenue estimates and the definition of revenue estimates as opposed to the definition of revenue under GAAP.

#### Questions

02:21:34 SEN. STORY asked Ms. Carlson how HJR 2 tied into that. He said that the purpose of HJR 2 is different than what the law required. The law required that you close the books and use that number.



REP. JOPEK said that when he looks at HJR 2, there is another \$61 million that will be coming in. He asked Mr. Bucks if there will be a tax credit next tax year that homeowners can claim? Mr. Bucks said that there is \$36 million that will be returned to Montana taxpayers as a \$140 property tax credit on income tax returns filed in 2008.

SEN. STORY asked Mr. Bucks if the interpretation of OBPP's memo was made to accomplish the purpose of what the legislative intent was or to avoid the situation that has occurred here. Mr. Bucks said that he thinks that the legislative intent was, that if there was recorded an extra fund balance, to allocate \$30 million more to the schools and \$36 million to tax relief. He said that is what they believe the intent is and that the laws can be interpreted that way and that they are proceeding on that basis.

The committee discussed whether to ask for an attorney general's opinion or ask the legislative legal staff for an opinion. Sen. Essmann said he was concerned about the process used by the Executive Branch to resolve this issue. He said that between the time of the July 25 memo and now, there was a special session. If the Governor had added that to the call, the Legislature could have agreed as to what the intent was, disposed of it then, and not have to deal with it in legal opinions for the next couple of months. He said that apparently they are using two sets of books, but which set is the one that they are going to have confidence in?

SEN. GILLAN asked Mr. Johnson to summarize the default position. Mr. Johnson said that the triggers of \$30 million and the \$140 tax credit will take place in fiscal year 2008. The Legislative Auditor will not audit the 2008 books until the fall of 2009.

SEN. STORY asked Mr. Martin if HB 9 was permanent legislation or a one-time shot? Mr. Martin said that this item was put on the agenda because Mr. Johnson, LFD, noted that the triggers have been met, and to remind the committee that they have a responsibility under HB 9 to look at how to deal with this credit in the future. The committee is required to determine whether some adjustment needs to be made to the multiple, to continue it as a trigger or to make it as a permanent tax credit. He said that the committee would be well-served if it had a good understanding of the legal implications of this particular section, how that would shake out in future committee action and how it may affect the ultimate disposition of the credit. The committee should ask for a legal interpretation because of the different interpretations of what the statute says.

03:15:10 SEN. PETERSON said that he would like to direct Mr. Heiman, staff attorney, to give a legal analysis of both HB 2 and HB 9, and submit that to the committee and to the budget office for their response.

Questions SEN. ELLIOTT asked Mr. Bucks when the credits will be going out. Mr. Bucks said that they are scheduled in the next two weeks to get the income tax form to the tax preparers for them to start adjusting and changing their software code, sometime in November they will finalize the printed form for mailing in December.

SEN. STORY asked Mr. Bucks if the Department would have to adopt any rules to administer the tax credit or if the statute was all that he needed. Mr. Bucks said that he was advised that rules on HB 9 were being prepared but he is not prepared at this time to comment.

There was general consensus from the committee that the committee direct Mr. Heiman, staff attorney, to prepare a legal analysis of HB 2 and HB 9, how they were written and how they are applied and submit that analysis to the committee and to the Office of Budget and Program Planning.

Public Comment

None at this time.

**DEPARTMENT OF REVENUE REPORT - Dan Bucks, Director**

03:26:25 Mr. Bucks distributed and discussed the Department of Revenue's report to the committee members **(EXHIBIT 4)**.

Questions

03:33:03 SEN. STORY said that he and his constituents in his district were under the impression that agricultural people weren't qualified for the \$400 rebate. He asked Mr. Bucks if he had heard the same. Mr. Bucks said that that is something that the Department has tried to focus some publicity on, that that is incorrect. He said that a provision in HB 9 for the \$400 rebate, but not for the \$140 credit, that says if the residence in which you reside is owned by a corporation or other business entity in which you have at least a 20% interest in that business entity, you meet the ownership requirement for the home. If you meet the other occupancy standards, you will receive the tax credit.

SEN. STORY asked Mr. Bucks to discuss homes that are in trust. Mr. Bucks said that it depends upon the terms of the trust and the Department would have to look at each situation individually.

### **Report on Legal Cases of Major Importance - Dan Bucks, Department of Revenue**

03:49:23 Mr. Bucks said that the cases they report on are liquor license cases, state tax cases, and centrally assessed property cases and summarized several cases of significance for which decisions had been made.

#### **Questions**

04:00:12 SEN. ELLIOTT asked DA Daw, Legal Counsel, Department of Revenue, what the legal basis was for the case before the Supreme Court on taxing the interest earned on state and local bonds issued in other states. Mr. Daw said that it was a commerce clause issue and may be a privileges and immunities clause issue. The real question is whether the state when it is acting in a proprietary function to issue these bonds is exempt from that kind of scrutiny because of sovereign immunity. Mr. Martin said that the Multistate Tax Commission has written an amicus brief on the appeal and it is in State Tax Notes and highlights the issues involved in the case.

REP. SONJU requested that Mr. Bucks go through the process of the State Tax Appeal Board. He asked if there are penalties and interest on top of the protested taxes. Mr. Bucks said that he did not believe that there are any penalties, just interest earned in the Short-term Investment Pool.

REP. SONJU asked if the taxpayer would get the interest back if the decision went the taxpayer's way and if the decision went in favor of the Department, what percentage is their interest? Mr. Bucks said that the protested property tax accounts are held locally and interest is earned locally.

REP. SONJU asked if a taxpayer loses its case, what would be the penalty interest. Mr. Bucks said that there isn't a penalty interest, that when the money comes out of the protest fund, whoever prevails gets the principle and interest.

SEN. KAUFMANN asked Mr. Bucks to review the Fulton Fuel case. Mr. Bucks said that the terms of the settlement were favorable to the state and the five counties that were involved. The settlement agreement provided for an up front payment of \$1.4 million and the remaining \$392,000 in January of 2008. He provided a brief history of the case.

### **Report on Compliance and Collections**

04:10:26 Mr. Bucks discussed the report on compliance and collections for fiscal year 2007. He said that the chart on page 4 shows total collections of \$58.964 million.

#### **Questions**

04:13:53 SEN. ELLIOTT asked if there were any significantly large audit receipts and were any refunds issued to companies who overstate their income. Mr. Bucks said

that there were significant assessments that occurred mostly in the corporate area and that there were some substantial refund claims that were audited.

SEN. STORY referred Mr. Bucks to page 3 of the report "Accounts Receivable and Collections \$57.7 million", and said that Mr. Johnson had reported earlier that the excess money had already been collected. He asked if Mr. Bucks knew how much of that \$58 million is in the bank or if some of that is still owed? Mr. Bucks said that the \$58 million is in the bank and they don't count it as a collection until it is paid. The accounts receivable is from prior debts or debts that are not paid on time and there can be a case where there is an audit and it is not paid immediately, but paid later in the year. Those are not added because there can be some double counting. Audit collections is money that has been paid to the state.

### **Abusive Tax Shelters**

04:17:39 Mr. Bucks gave a brief background on how tax shelters came about and what the Department is doing to solve the abusive tax shelters used by corporations and some individuals. Mr. Bucks said that the Department was asked to join with the Multistate Tax Commission to encourage companies and individuals to correct their use of abusive tax shelters.

#### Questions

None at this time.

### **Fire Season Tax Relief**

04:24:35 MR. BUCKS reviewed the section of the report on the fire season. He said that they were trying to reach landowners and property owners who have experienced property losses due to fire. He said that if timber is destroyed, you have a 50% reduction for 20 years on property taxes that start the year after the fire. For people who lose the use of a structure or building due to any kind of situation, wildfire being one of them, their taxes are prorated as of the date of the loss of use of the building.

#### Questions

04:26:22 SEN. STORY asked Mr. Bucks if there was a similar program for grazing land. Mr. Bucks said that the Legislature has not provided for that in law.

SEN. STORY asked, that if someone has forest land and the trees were burnt and they are logged, do they still get the reduction. Mr. Bucks said that there is a property tax reduction even if there was some salvage of the timber.

### **CPA Report**

04:28:23 Mr. Buck said that the CPA Report is an information item. The Montana CPA

Society had some constructive criticisms of the Department. He talked about the Department's letter of response to the Society and that they were trying to set up a meeting with the society to work through the issues which they had raised.

### **Energy Conservation Credit**

04:29:25 Mr. Bucks said that there was discussion of both how the energy conservation credit was being administered by the Department and the need to improve the rules and information on the credit. He said that the statute is not easy to administer and that the Department is working with the Department of Environmental Quality on updating rules. He said that they will also be actively using their website as a source of information for the public and will also try to improve the forms by giving taxpayers examples of non-qualifying items.

### **Questions**

None at this time.

### **Participation Rates on Property Relief Program**

04:32:56 Mr. Bucks said that the section on Participation Rates on Property Relief Program is an addendum to the Reappraisal Report. There are mitigation measures for reappraisal that was adopted that involved the property tax system directly.

### **Questions**

04:35:08 SEN. STORY said that he has a constituent who qualifies for the disabled veterans program but has to apply for it every year. He wanted to know if the Department could look at ways to send out notifications to disabled veterans to remind them that they have to re-apply for participation in this program. Mr. Bucks said that he would look into doing a notification system that if you qualify and participated in the program, a reminder will be sent out that re-application is needed.

### **Restaurant Beer and Wine Licenses**

04:39:34 Mr. Bucks discussed the restaurant beer and wine licenses. He said that the 2007 Legislature doubled the number of licenses available. There were over 500 lottery entrants for the right to apply for a license. He discussed the question regarding preference for the unsuccessful applicants and how that will work going forward.

### **Questions**

04:43:55 SEN. STORY asked if the Department anticipates any legal challenges to the process where some people who originally were at the top of the list find out that they are now off of the list? Mr. Bucks said that they don't anticipate any challenges and in those instances, the people were probably busy with

applications in the areas where they did win and where they did have a valid preference.

In response to the question on standard deductions, Mr. Bucks said that of the income tax returns filed by Montanans in 2005, 59.3% took the standard deduction on the state returns and 58.9% took the standard deductions on the federal returns. He said that for people who take the standard deduction on state and federal returns, the \$400 refund will not be taxable income.

#### Public Comment

No public comment at this time.

#### Highlights of National Conference of State Legislatures - Jeff Martin, LSD

04:47:21 Mr. Martin talked about information presented at the National Conference of State Legislatures annual meeting in August. He attended a session on property tax reform which he thought would be beneficial to the committee for House Bill 488 study and the SJR 31 study. He heard a presentation on reform by Professor Andrew Reschovsky and received permission to present that to the Committee (**EXHIBIT 5**). Mr. Martin told the committee that this presentation is for informational purposes so that they can see how other people are thinking about property tax reform.

05:12:58 Mr. Martin discussed the NCSL resolutions that were adopted in the Budget and Revenue Committee (**EXHIBIT 6**), the resolution on Fiscal Federalism (**EXHIBIT 7**) that may be pertinent to the HJR 61 study on conformity with federal income tax, and the resolution on free online tax preparation and filing.

Mr. Martin said that a session on federal spending surpluses and deficits ("In the Year of Living Dangerously") provided data on spending, tax revenue, and deficits. He said that the federal highway trust fund (**EXHIBIT 8**) may go broke in fiscal year 2009.

#### Questions

None at this time.

#### Department of Transportation reports - Jim Lynch, Director

05:36:27 Mr. Lynch distributed information on highway safety (**EXHIBIT 9**); an overview of bridges in Montana, a report that the Montana Department of Transportation prepared to brief the Governor after the bridge collapsed in Minnesota; Mr. Lynch's testimony on highway funding and the future of the highway program presented to a congressional hearing in Minnesota at the request of Secretary Mary Peters, U.S. Department of Transportation; and a copy of a news release

from Sen. Max Baucus, in what they were doing as far as moving the aviation bill forward and why that is significant related to the shortfall of revenue in the federal highway trust fund that Mr. Martin talked about.

Questions

06:23:49

REP. LAKE asked if the statistics that Mr. Lynch gave are based on miles traveled or are they based on the percentage change from last year. Mr. Lynch said that the numbers that he gave were based on numbers and not on vehicles miles traveled. The study on deadliest roads were based on vehicle miles traveled.

SEN. GILLAN asked Mr. Lynch about the effects of the graduated driver's license. Mr. Lynch said that they are now getting those students who have gone through that program. He said that he would do some research on tying any decreases in the numbers to graduated driver's license.

SEN. ESSMANN said that many of his constituents use the intersection of Gabel Road and Zoo Drive and there were some complaints about the traffic light. He asked if Mr. Lynch could provide a timeline analysis of what went on in that process so that if a similar incident arises, they would know how to expedite that. Mr. Lynch said that when the Department of Transportation is authorized to install a traffic light, the net effect has to be a benefit to the community. They review every single intersection in the state system annually based on accidents and that is monitored closely. He said that their responsibility is to reduce the injuries related to accidents. The situation on Gabel Road and Zoo Drive was an urban project and they came to the MDT and requested the installation of a light. MDT worked with the city to develop the intersection. MDT was blamed for building an intersection bigger than what they needed. MDT offered options but it was decided to move forward with the original plan.

REP. SONJU asked Mr. Lynch if he was aware of the 2 cents per gallon optional gas tax proposed in the Flathead area and if Mr. Lynch had talked to the county commissioners about that? Mr. Lynch said that he had talked with them when he was chairman of the Transportation Committee for the Chamber of Commerce and that they had been looking for ways in which to fund some needs in their program.

REP. SONJU said that he wanted to know if the Flathead area had lost money because some of the issues Mr. Lynch talked about for roads. Mr. Lynch said that they haven't lost money.

SEN. STORY said that with the concern for bridges, he understands that

Montana wants to get the most money that they can get. He asked if Montana gets so much money for bridges because of the number of bridges in Montana and is it good policy and in the interest of the national transportation system that we try to maintain the same share of bridge money as we do with road money? Mr. Lynch said the national highway system has to be evaluated as a whole. He said that the bridge share is 37% of the trust fund allocated for bridges and that the best way to take care of the infrastructure in Montana is to allow more flexibility with that core dollar that goes back to the states and requires states to provide a reasonable and responsible asset management system that can be defensible and build and maintain roads based on that asset management system, not on politics.

SEN. STORY asked about how MDT determines the impact of putting in a light traffic system. He talked about the Laurel interchange and the complications of that traffic light system. Mr. Lynch said that there are things that MDT can do to help communities and also help light systems. There are new techniques and new programs that allow us to do light synchronization and look at the effects of one light and what it will do to another one.

SEN. ESSMANN asked Mr. Lynch if he was tracking whether the gas tax receipts are decreasing because of decreased demand for the fuel because of gas prices. Mr. Lynch said that they track it very closely and have not seen large increases in gas tax revenue.

SEN. ELLIOTT asked about the reciprocity agreement with Idaho for licensing vehicles in Montana. Mr. Lynch said that they researched the law and there is a reciprocity agreement between Idaho and Montana. Sen. Elliott asked if vehicles in Idaho not licensed in Montana can still work in Montana without having to get a Montana license. Mr. Lynch said that he did not know that because that falls under the purview of the motor vehicle division in the Department of Justice. Sen. Elliott requested that the MDT's attorney write him a letter of opinion on the reciprocity.

SEN. STORY said that one of the things that the Department of Transportation brought at each meeting a status sheet on the state highway fund. He asked if Mr. Lynch could provide a status sheet at the next meeting. Mr. Lynch said that they still do status sheets and he would be happy to bring one to the next RTIC meeting.

Public Comment

06:47:29 Cary Hagreberg, Montana Contractors Association, said that the MCA is alarmed



about the increasing costs of highway construction that is resulting in fewer highway projects that can be funded with the available money. He thinks that it is imperative that the Legislature start looking at where those funding shortfalls are going to occur and how to address them.

Mr. Lynch, MDT, said that it is true that because of the increase in highway construction costs, fewer miles of roadway are built. He said that the number of contractors bidding their projects has decreased. He said that an area that is generally ignored is the private sector involvement in the future of the highway system in Montana.

### **Property Reappraisal - Dan Bucks, Department of Revenue**

06:54:51 Mr. Bucks said that the reappraisal policy goal of this administration is to recommend to the committee and to the Legislature mitigation measures that will insure that the reappraisal process is tax neutral statewide and that there is no increase in property taxes because of the change in values of property.

Randy Wilke, Administrator, Property Assessment Division, Department of Revenue, discussed "Property Reappraisal" (**EXHIBIT 10**). Mr. Wilke also gave an update on agricultural land and forest land reappraisal.

### **Questions**

07:29:11 SEN. ESSMANN said that the mass appraisal process involves some detailed analysis because there are so many parcels. It seemed to him that the models that DOR uses would throw out sales that DOR considers to be aberrant on the low side, an example distress seller situations, but that there wasn't a corresponding review of an aberrant sale on the high side. He asked Mr. Wilke if the model would take that type of situation into account this reappraisal cycle. Mr. Wilke said that he believes that not only do they analyze and not allow sales that are distress sales and try to look at the terms of the sale, try and see how it fits in with other sales in the area, and if it is out of the norm, they are not included.

SEN. ESSMANN asked if DOR reviews high-end values as well as the low-end values? Mr. Wilke said that they review both the high- and the low-end to look for unusual value results.

SEN. ESSMANN said that he would like a follow up at a future meeting of an example of how DIR does that.

REP. JOPEK asked Mr. Wilke if his division was looking at other states for mitigation strategies? Mr. Wilke said that the responsibility in the division is to

make sure that they find the market value or the productivity value for all property. He said that what occurs after that is a policy consideration of the Legislature and the Governor. He said that there will probably be an analysis of information from other states and it is the responsibility of his division to make sure that the data is there for everyone to analyze.

Sen. Story asked Mr. Bucks if the Department or the governor had any thoughts on the length of the appraisal cycle, which was three years and is now six years. Mr. Bucks said that the Department has not looked at that but it is an interesting idea and they will factor that in as to the length of the appraisal cycle and how that affects what they are required to do.

SEN. STORY asked Mr. Bucks what the ups and downs of shortening or lengthening the cycle are. Mr. Bucks said that there is an administrative impact of doing the cycle faster. He said that they can look at the administrative and cost impacts of a shorter cycle.

SEN. STORY said that Mr. Bucks announced at the last meeting and reiterated at this meeting that the goal of the administration is to keep the reappraisal revenue neutral. He asked what Mr. Bucks meant by revenue neutral, if that was revenue neutral by class, revenue neutral in the three classes that are going to be reappraised, or within a class, and are they going to start seeing proposals that state that they will stay revenue neutral in the class but the only people who will be adjusted are Montana residents and the out-of-state people will be seeing the full effect of the reappraisal. Mr. Bucks said that in dealing with property classification, there would be serious constitutional questions about treating those who are from out of state differently from those who are in state in terms of a property classification system and he did not think that that would be an option. He said that they are looking at the differences in value for different kinds of property. They are looking principally at class four residential and commercial property and at agricultural land and forest land. He said the goal is statewide neutrality but within those categories.

SEN. PETERSON asked when can the committee begin talking about the mitigation strategies if the goal is revenue neutral, and how does that affect the mitigation strategy's relationship to the timeline of not knowing the impact until mid-summer of 2008? Mr. Bucks said that you can discuss the pros and cons of mitigation strategies before the data is available. He said that the cycle for reappraisal is such that the new values are not available until late in the interim because that is the way their reappraisal process works.

SEN. STORY said that the reappraisal schedule might be something that the committee might look at as they go through the next reappraisal and move it back a year so that the committee would have that information now instead of a year from now.

REP. JOPEK said that it is easy to figure out which regions in the state will be having difficulty with reappraisal. He asked for suggestions on getting the committee onto the mitigation dialogue so they can discuss the ideas that Mr. Martin and Mr. Bucks presented earlier. Mr. Martin said that is a good idea and that what he had presented earlier might be used by the committee in evaluating mitigation strategies. He said that one of the things that the committee should evaluate is the unintended consequences of adopting a particular strategy. There will be opportunities for good solid discussions on various alternatives that this committee might consider before the next session.

#### Public Comment

None at this time.

#### Committee Discussion

08:06:44 SEN. PETERSON said that the committee needs to think about how they want to address the studies. He said that there are two major studies: property tax reappraisal and tax reform and school funding. He asked if the committee wants to form subcommittees or have the whole committee deal with them.

#### SJR 31 Study - Jeff Martin

08:11:09 JEFF MARTIN, LSD, Lead Researcher, discussed his memo dated September 19, 2007, to the committee regarding a summary of SB 554 and the SJR 31 study resolution (**EXHIBIT 11**).

#### Discussion on Subcommittees

08:19:19 SEN. PETERSON asked the committee if they wanted to form subcommittees for SJR 31 or would the committee prefer full committee participation.

The committee discussed the pros and cons of forming subcommittees, staff availability, and staff time, and the budget of the committee. Sen. Peterson asked committee members to submit their subcommittee preference and he and the vice chair would make those appointments. Sen. Elliott suggested that if there was agreement on forming a subcommittee that they meet on the second day of the committee's next two-day meeting and then meet the first day of the two-day meetings so that they can then report to the full committee.

SEN. PETERSON said that the next meeting is December 6 and 7 and that the Montana Taxpayers Association is meeting the afternoon of the 6th. This committee is invited to the meeting. What he is hearing is that the full committee meets for half a day, go to the Taxpayers Association's meeting, and reconvene on the second day.

SEN. STORY asked Madeline Quinlan if she thought that it was feasible for getting a product out regarding education issues. Madeline Quinlan, Office of Public Instruction, said that she could see the working group getting organized in terms of what they need to set up if a particular focus is in increasing the state share for the general fund budget. She said that she would be relying on the Fiscal Division to be looking at changes in taxes by property class and how that affects the valuation of a particular school district. She thinks that there are some areas of school funding that have been discussed at great length and other areas on the policy side that need more investigation.

SEN. PETERSON asked Ms. Quinlan if it would be helpful to have the subcommittees available to participate at some level in the next couple of months to work on the models that she has suggested, or would that hinder the process? Ms. Quinlan said that it would make sense to get the subcommittees set up and for them to have whatever contact they can for updating and getting the models set up as well.

SEN. PETERSON asked Jim Standaert, LFD, if he had any comments about the process and how to proceed in an efficient manner. Mr. Standaert said that the subcommittees should be formed and that they should start on the models and go from there.

SEN. STORY asked Mr. Standaert if he had a good basis for a model that will deal with some of the issues in school funding that have been talked about when moving money around at this magnitude. Mr. Standaert said that they could be ready by the December meeting with a fairly good model. In terms of how it will affect the schools, it will affect the mills. It will not affect the money to the schools. You have to figure out what is going to happen to the mills and how it will affect the local taxpayers in each district.

#### **Administrative Rule Review - Lee Heiman, Staff Attorney**

08:56:57 Mr. Heiman discussed his memo to the committee (**EXHIBIT 12**) on administrative rule activity.

#### **Adoption of Meeting Schedule**

08:59:33 SEN. ELLIOTT moved to adopt the meeting schedule leaving the meeting date of September 10, 2008, open because of possible conflict with the Water Policy Committee. Sen. Story said that the September meeting is important and all members of the committee should be there because that is when legislative recommendations will be made. The motion passed unanimously on a voice vote.

**Adjournment**

09:02:45 SEN. PETERSON adjourned the meeting at 5:10 p.m.

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