MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON SENATE BILL 516

Call to Order: By **CHAIRMAN JIM ELLIOTT**, on April 19, 2005 at 10:30 A.M., in Room 335 Capitol.

ROLL CALL

Members Present:
Sen. Jim Elliott, Chairman (D)
Rep. Christopher Harris (D)
Sen. Kim Gillan (D)
Sen. Sam Kitzenberg (R)
Rep. Bob Lake (R)
Rep. Dave McAlpin (D)
Rep. Karl Waitschies (R)

Members Excused: None.

Members Absent: None.

Staff Present: Jeff Martin, Legislative Branch
Kyanne Kelly, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing & Date Posted:
Executive Action: SB 516

CHAIRMAN ELLIOTT informed the Committee that there would be three sets of amendments discussed during the duration of the Free Conference Committee, one by the Department of Revenue, one by **REP. HARRIS**, and one by **REP. LAKE.**

Motion: REP. LAKE moved that SB 516 BE AMENDED WITH SB051610.AKJ.

EXHIBIT(frs84sb0516a01)

Discussion: REP. HARRIS requested that the movement be postponed until all of the amendments had been discussed, so that they could vote on them accordingly.

Jeff Martin, Legislative Fiscal Division, explained that there were certain portions of all three of the amendments which were similar. He expressed that on the handout he had provided, Amendments 1, 3, and 5 were similar. He thought that Amendment 2 might be a better wording for the amendment.

EXHIBIT(frs84sb0516a02)
EXHIBIT(frs84sb0516a03)

REP. LAKE withdrew his motion without objection.

CHAIRMAN ELLIOTT pointed out that on the amendments, in the upper left hand corner there was a title. He asserted that DOR 2 would be the first revision and the original would be DOR 1.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 5.3}

CHAIRMAN ELLIOTT spoke to DOR 1. He informed the Committee that Amendment 5, on DOR 1, would put industrial disputes directly into mediation. He explained that Amendment 6 was **REP. LAKE'S** amendment.

REP. LAKE clarified that his amendment would conform the 180 days for dispute resolution and the 180 days for the individual's right to obtain the final Department of Revenue decision on a dispute.

{Tape: 1; Side: A; Approx. Time Counter: 5.3 - 9}

CHAIRMAN ELLIOTT continued, explaining that Amendment 7 was a technical amendment that clarified the 60-day mediation period. Amendment 8 would be taken in conjunction with Amendment 10, which would eliminate the one-year time limit and would eliminate the penalties associated with the one year time limit. Amendment 9 was cleanup and Amendment 11 would put in the federal rules of civil procedure, designed to accelerate the discovery process.

REP. HARRIS explained the relevant provisions on DOR 2. He pointed out that Amendment 11, in the first section, imposed the preliminary discovery disclosure equally and in a similar time frame for both parties. His amendment would eliminate the provision in Subsection 8, Page 3, of the DOR Amendments.

{Tape: 1; Side: A; Approx. Time Counter: 9 - 11.2; Comments: The tape is barely audible.}

CHAIRMAN ELLIOT agreed with **SEN. HARRIS'** amendments and requested that DOR 1 not be considered.

SEN. GILLAN asked if, with the inclusion of the DOR 1 and DOR 2 pre-hearing procedures, they could have testimony from the Department of Revenue and from the representatives of the Treasuries.

Dave Ohler, Chief Legal Counsel for the Department of Revenue, briefly explained Amendment 11. He expressed that the purpose of the bill was to speed up the appeals process with respect to property taxes for large taxpayers. He indicated that Amendment 11 would speed up the discovery process and the appeal by requiring both sides to exchange all information they have at the outset of the appeal. He informed the Committee that the language for Amendment 11 was drawn from the federal rules for civil procedure, which is different than Montana rules.

{Tape: 1; Side: A; Approx. Time Counter: 11.2 - 14.1}

Ronda Carpenter-Wiggers, Representing the County Treasurers Association, expressed that the amendments they had suggested, those of **REP. LAKE,** addressed the technical amendments but did not change the philosophy of the bill. She asserted that the Department of Revenue's amendments would substantially change the philosophy of the bill. She felt that this was inappropriate since there had been no public hearing on the amendments. She insisted that an attorney would know to ask for discovery. The change, in her opinion, was a huge revision of the bill and did not have an appropriate public hearing.

{Tape: 1; Side: A; Approx. Time Counter: 14.1 - 16.4}

CHAIRMAN ELLIOTT agreed that attorneys would know about discovery but that they also knew how to be dilatory. He expressed that one of his main concerns in the major property tax field, was that they are dragged out by the partes involved.

Ronda Carpenter-Wiggers shared **CHAIRMAN ELLIOTT'S** concerns. She felt that they agreed on the problem but that the conclusion of the problem was where they differed.

CHAIRMAN ELLIOTT did not understand their objection to accelerating the discovery period.

Ms. Carpenter-Wiggers expressed that their concern was that it was a major change to the bill without allowing the public input. She expressed that the Treasurers would feel more comfortable with the language if there was a process in which all parties could give their input.

CHAIRMAN ELLIOTT asked who the Treasurers were that responded to the amendments.

Ms. Carpenter Wiggers named off those who had been able to respond to her.

{Tape: 1; Side: A; Approx. Time Counter: 16.4 - 18.2; Comments: The tape is quiet and hard to distinguish at times. }

REP. HARRIS appreciated the concerns of the Treasurers. However, the federal rules of discovery have been extremely well expressed in his opinion. He reiterated that the bill would speed up the discovery process, which was the main objective.

REP. LAKE agreed that it might speed up the process but he saw it as also expanding the Department of Revenue's power. He felt that there was a bill in place that the counties could work with, without having to add more amendments. He did not want to see the structure of the lead bill changed and he felt that the amendment would do that.

CHAIRMAN ELLIOTT directed a question to the Department. He wanted to know how the amendments would affect the home owner and small taxpayer.

Dan Bucks, Director of the Department of Revenue, responded that in the **CHAIRMAN'S** version of the amendment, DOR 1, the discovery procedures would not come into play unless an individual was represented by legal counsel. He expressed that in **REP. HARRIS'** version that section was deleted, and it would apply in a forma sense, across the board. It was his understanding that the issue could be handled informally, and it would be if **REP. HARRIS'** amendment was accepted. In this instance, either party who sought sanctions under this procedure would have to go to court. He asserted that the Committee had the choice of which version to choose and the Department would make it work.

{Tape: 1; Side: A; Approx. Time Counter: 18.2 - 22}

REP. HARRIS asked if it was true that Amendment 11 would only apply to cases of actual litigation, where the case had proceeded to court.

Mr. Bucks clarified that it would apply in the proceedings before the appeals court.

{Tape: 1; Side: A; Approx. Time Counter: 22 - 22.6}

SEN. GILLAN requested that someone from the State Tax Appeal Board give their opinion of Amendment 11.

Greg Thornquist, Director of the State Tax Appeal Board, did not have the amendment but, as he understood things, the DOR amendments would essentially level the playing field. Under the amended rules, he indicated the discovery time would apply to all parties. The concern he expressed was if someone would be represented by a real estate agent, someone who would not be privy to the rules of evidence in civil procedures. This might put an onerous burden on an individual. He informed the Committee that they could help these people by sending out an adopted format of how the procedures would take place, but it might force someone to get an attorney.

CHAIRMAN ELLIOTT asked if it would be possible to amend the bill so that it would not affect the small taxpayer.

REP. HARRIS expressed that they were discussing one particular tax program.

{Tape: 1; Side: A; Approx. Time Counter: 22.6 - 24.9}

Mr. Ohler spoke, but it was inaudible on the tape.

REP. HARRIS made the suggestion that they take a recess to talk over the amendments. He commented that one reason to apply this discovery time across the board was, if a party would have an extra witness, the rules should apply equally.

REP. LAKE inquired if the civil laws gave equal representation to both parties.

REP. HARRIS saw a disparity in the fact that there were not equal rules for all in the amendments. He asserted that there were similar rules between the Montana Rules of Civil Procedure and the federal rules. He restated that the federal rules would speed up the process.

{Tape: 1; Side: A; Approx. Time Counter: 24.9 - 28.2}

Motion: REP. LAKE moved that SB 516 BE AMENDED TO INCLUDE SB051610.AKJ.

Discussion: Mr. Martin suggested, with respect to Amendment 2, that it might be better if the DOR amendment stated in Amendment 5 "except as provided in Subsection 7". The purpose of this would be to take the 180 day dispute resolution down to the 60-day mediation.

REP. LAKE replied that he did not have a problem with that change.

Mr. Martin commented that Amendment 4, on **REP. LAKE'S** proposal would be different than the ones provided by the Department of Revenue. He went through and explained what the differences were between the two sets of amendments.

REP. HARRIS asked if Mr. Ohler could see a substantive difference between **REP. LAKE'S** Amendment 4 and his Amendment 7.

Mr. Ohler did not see a substantive difference.

REP. HARRIS suggested **REP. LAKE'S** Amendment 4 be adopted and that they strike the Department's Amendment 7. He followed up by asking if there was any difference with Amendment 5.

Mr. Ohler replied that there was not. He indicated that it was identical to Amendment 9 in the Department's amendments. However, Amendment 6 from **REP. LAKE'S** amendment would preclude Amendment 10 from the Department's amendment. He clarified that under **REP. LAKE'S** amendment, it was clear that the one-year procedure would only apply to property tax appeals. While Amendment 10 from the Department would strike Subsection 5, which would take away that provision.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 8.5}

Motion: REP. HARRIS moved that SB 516 BE AMENDED TO INCLUDE 1, 3, 4, AND 5.

Discussion: REP. LAKE asked if there was a reason he did not want to adopt Amendment 2 with the suggested language change.

REP. HARRIS agreed that he should adopt Amendment 2 with the changes.

Substitute Motion/Vote: **REP. HARRIS made a substitute motion that SB 516 BE AMENDED TO INCLUDE AMENDMENTS 1 THROUGH 5. Motion passed unanimously.**

{Tape: 1; Side: B; Approx. Time Counter: 8.5 - 9.5}

CHAIRMAN ELLIOTT understood that Pennsylvania Power and Light (PPL) Montana had gone to District Court, instead of the State Tax Appeal Board (STAB), and asked STAB to hold-up on the hearing until the District Court had ruled on a motion.

Mr. Bucks recalled the incident. He agreed that it procedurally could have happened, where the Court has had to address a matter of law before STAB could proceed.

CHAIRMAN ELLIOTT asked when STAB took the case.

Mr. Buck replied that they had gotten the case in 2002 and PPL vacated their action in Court and decided to proceed with the STAB hearing in 2004-2005.

CHAIRMAN ELLIOTT clarified that action was taken in 2004-2005 on a property tax case that occurred in 2002.

Mr. Buck restated that the hearing had been in 2004 and the decision was rendered in 2005.

{Tape: 1; Side: B; Approx. Time Counter: 9.5 - 12}

CHAIRMAN ELLIOTT indicated that his point was that the recalcitrant party was not helped. He suggested that **REP. HARRIS** move his amendments.

Motion: **REP. HARRIS moved that SB 516 DO PASS AS AMENDED.**

Discussion: **SEN. GILLAN** suggested that the Committee recess.

{Tape: 1; Side: B; Approx. Time Counter: 12 - 13.7}

SEN. GILLAN offered **REP. HARRIS'** amendment with a substitute amendment that would place a three-year timeframe on the discovery time.

Substitute Motion: **SEN. GILLAN made a substitute motion that SB 516 BE ADOPTED AS AMENDED WITH THE ADDITION OF A THREE-YEAR TIME FRAME.**

Discussion: **REP. HARRIS** stated that he would vote for the substitute motion.

REP. WAITSCHIES asked if the three year timeframe would be three years from the time of the appeal or three years from the time litigation starts.

SEN. GILLAN did not know and was open to suggestions.

REP. WAITSCHIES indicated that he would like to set the timeframe from the time of the appeal. He believed that the extended timeframe in the current bill was two years.

SEN. GILLAN asked if any of the Committee members would prefer the three years to include the six-month extension.

Mr. Bucks commented that they had three specific impacts from the three-year timeframe from the time of appeal: 1) increased costs of litigation for the Department and both parties, 2) a three year deadline would give someone a target to drag the process out to, and 3) people would want to move the deadline back if the process was not sped up by it. He thought that the inability to consolidate cases was the greatest difficulty.

REP. HARRIS followed up by asking, if the amendment was such that there would be no deadline on cases involving three consolidated years, would it be workable. He also asked if anyone would suggest that the Department would be abusing that by consolidating cases that did not need to be consolidated.

Mr. Buck responded that if there was an exception to the timeline which would allow the consolidation of three or more years it would be workable. He indicated that the Department is accused of things all the time so he could not project what they might be accused of from these changes.

{Tape: 1; Side: B; Approx. Time Counter: 13.7 - 21.6}

CHAIRMAN ELLIOTT asked what the smallest cases were that came before the State Tax Appeal Board.

Mr. Thornquist informed the Committee that the smallest cases would be the basic residential property tax appeals.

CHAIRMAN ELLIOTT followed up by asking how long they took to reconcile.

Mr. Thornquist indicated that they took varying amounts of time depending on their complexity.

CHAIRMAN ELLIOTT asked if they drag on.

Mr. Thornquist explained that the only time that they were dragged out was when the Board needed more information by the Department of Revenue or the taxpayer. Usually though, he insisted that they were not lengthy.

{Tape: 1; Side: B; Approx. Time Counter: 21.6 - 24.5}

CHAIRMAN ELLIOTT declared that his community had lost between 10%-11% of their revenue stream. He noted that they wanted the resolution quickly but would not sacrifice getting what they want for speed. He asserted that the bill would not be in front of the Committee if it were not for PPL and the protest which they had launched. He saw no sense in resolving this issue if it hurt the common taxpayer of the State of Montana. He was not willing to sacrifice a just decision for expediency. He was not in favor of the bill although he would favor the amendments if the bill had to go forward. He asserted that he was angry.

Mr. Bucks expressed that the bill would encourage appeals, costing more for litigation. The general impact would be reducing money and increasing the number of appeals. He also informed the Committee that the Department was in negotiations with PPL on its appeal. He was very concerned about the impact of this legislation on his ability to represent the State, county, and school districts that are affected.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 2.5}

Substitute Motion: **SEN. GILLAN made a substitute motion that SB 516 BE AMENDED TO INCLUDE REP. HARRIS' AMENDMENTS AND TO INSERT IN LIEU OF THE CLAUSE THAT STRIKES OUT ANY TIMEFRAME, 3 YEARS FROM THE APPEAL TO STAB WITH THE THREE YEARS NOT APPLYING TO CONSOLIDATED CASES THAT HAVE GONE THREE OR MORE YEARS.**

Discussion: **REP. WAITSCHIES** wondered if there was any way to make the discovery process pertinent only to the property tax field.

REP. HARRIS noted that it was his intent to have it apply to property tax fields only.

Mr. Ohler indicated that the way the bill read now it would apply to all fields that proceed under the Department of Revenue for conflict resolution.

{Tape: 2; Side: A; Approx. Time Counter: 2.5 - 5.9}

REP. HARRIS thought that the language would take care of **REP. WAITSCHIES** concerns.

SEN. GILLAN indicated that she wanted to include the language to limit the bill to property tax fields only.

REP. WAITSCHIES inquired if they were segregating out **REP. HARRIS'** amendment that dealt with the penalty provision.

SEN. GILLAN replied that they would want to keep the penalties and have the three-year timeframe.

{Tape: 2; Side: A; Approx. Time Counter: 5.9 - 10}

REP. HARRIS' amendments would leave everything in the bill with the changes that Amendment 1 would come out so there would be a change on Page 1, Line 12, stating that the timeframe would be three years. It would also take out the strike on Line 2, from "additional penalty" to "additional Refund." Then, on Amendment 2, the insert would put in "providing for discovery and pre-hearing proceedings." Amendment 3 from **REP. HARRIS'** amendments would be removed and Amendments 4, 5, 6, and 7 would be adopted. Amendment 8 would not change at all and Amendment 9 would stay in. Amendment 10 would be removed and the changes proposed by **SEN. GILLAN** would be adopted. There would still be language on the six-month extension and Amendment 11 would be included with the language that it would only apply to the property under 15-2-301, A-1C.

REP. HARRIS felt that the amendments were clear and was comfortable with them.

SEN. GILLAN knew that the solution was imperfect and was disappointed that there was no compromise. She thought that if it was not changed it would be vetoed by the Governor.

Substitute Motion: REP. LAKE made a substitute motion that SB 516 BE AMENDED CONCEPTUALLY ON LINE 8, PAGE 10, CHANGING THE "ONE YEAR" TO "THREE YEARS".

Discussion: REP. MCALPIN thought that Amendment 11 was in the true spirit of the bill, to streamline the process. He noted that it was a proven way to move things faster. He opposed the substitute motion.

REP. HARRIS added that they had heard from the Department about complicated cases which involve three or more years. He also opposed the substitute motion.

CHAIRMAN ELLIOTT opposed the amendment as well. He noted that his district was one of the only ones that would be affected.

Vote: Motion failed 2-5 by roll call vote with SEN GILLAN, SEN. ELLIOTT, SEN. KITZENBERG, REP. MCALPIN, AND REP. HARRIS voting no.

{Tape: 2; Side: A; Approx. Time Counter: 10 - 21.1}

Question was called on the original motion of **SEN. GILLAN.**

Vote: Motion carried 6-1 by roll call vote with REP. LAKE voting no.

{Tape: 2; Side: A; Approx. Time Counter: 21.1 - 21.9}

Motion/Vote: REP. HARRIS moved that FREE CONFERENCE COMMITTEE REPORT ON SB 516 DO PASS AS AMENDED. Motion carried 6-1 by roll call vote with REP. LAKE voting no.

{Tape: 2; Side: A; Approx. Time Counter: 21.9 - 23.4}

ADJOURNMENT

Adjournment: 12:00 P.M.

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SEN. JIM ELLIOTT, Chairman

_____
ANNIE GLOVER, Secretary

_____
BRITT NELSON, Transcriber

JE/ag/bn

Additional Exhibits:

EXHIBIT(frs84sb0516aad0.PDF)