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## Revenue and Transportation Interim Committee

### 61st Montana Legislature

#### SENATE MEMBERS

KIM GILLAN--Chair  
RON ERICKSON  
JEFF ESSMANN  
CHRISTINE KAUFMANN  
JIM PETERSON  
BRUCE TUTVEDT

#### HOUSE MEMBERS

ROY HOLLANDSWORTH--Vice Chair  
DICK BARRETT  
CYDNIE (CARLIE) BOLAND  
BRIAN HOVEN  
MIKE JOPEK  
BILL NOONEY

#### COMMITTEE STAFF

JEFF MARTIN, Research Analyst  
LEE HEIMAN, Staff Attorney  
FONG HOM, Secretary

# MINUTES

February 19, 2010

Room 137, Capitol Building  
Helena, Montana

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.

An electronic copy of these minutes and the audio recording may be accessed from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side column of the home page, select *Committees*, then *Interim*, and then the appropriate committee.

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.

#### COMMITTEE MEMBERS PRESENT

SEN. KIM GILLAN, Chair  
REP. ROY HOLLANDSWORTH, Vice Chair

SEN. RON ERICKSON  
SEN. JEFF ESSMANN  
SEN. CHRISTINE KAUFMANN  
SEN. JIM PETERSON  
SEN. BRUCE TUTVEDT

REP. DICK BARRETT  
REP. CARLIE BOLAND  
REP. BRIAN HOVEN  
REP. MIKE JOPEK

#### COMMITTEE MEMBERS EXCUSED

REP. BILL NOONEY

#### STAFF PRESENT

JEFF MARTIN, Research Analyst  
LEE HEIMAN, Staff Attorney  
FONG HOM, Secretary

#### Visitors

Visitors' list, Attachment #1.

### **COMMITTEE ACTION**

- The committee decided that proxies will be accepted in writing or by email.

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

00:00:02 SEN. GILLAN called the meeting to order at 8:04 a.m. The secretary took roll visually. Rep. Nooney was excused.

#### **Adoption of the December 3 & 4, 2009, Meeting Minutes**

00:01:52 SEN. PETERSON moved to adopt the minutes of the December 3 and 4, 2009, meetings as written. The motion passed.

#### **Proxy Vote Discussion**

00:02:58 **Jeff Martin, Lead Researcher, LSD**, asked how the committee wants to handle proxy votes, which was not acted upon at the organizational meeting.

SEN. PETERSON **moved** that the committee accept proxies in writing or by email. The motion passed.

### **AGENDA**

#### **SUBCOMMITTEE REPORTS**

00:06:10 **AGRICULTURAL AND FOREST LAND SUBCOMMITTEE - Sen. Peterson**  
The Agricultural and Forest Land Property Reappraisal Subcommittee met on February 18, 2010. The subcommittee heard an update from the Department of Revenue on the reappraisal of agricultural land. Sen. Peterson discussed the lawsuit filed by Charles Lucas, the Montana Taxpayer's Association, and the Montana Farm Bureau against the Department of Revenue over agricultural land reappraisal. Copies of the lawsuit will be provided to committee members.

#### **Questions**

00:13:40 SEN. ESSMANN said that in previous reappraisal cycles, taxpayers have been allowed to file AB 26s in subsequent years. He asked Sen. Peterson if the practice will continue. **Sen. Peterson** said that there will be an opportunity for this cycle of producers to file AB 26s. It is not clear what rules the Department will be using going forward.

#### **RESIDENTIAL AND COMMERCIAL SUBCOMMITTEE - Rep. Barrett**

00:20:19 The Residential and Commercial Property Reappraisal Subcommittee met on February 18, 2010. Larson Silbaugh, Department of Revenue, gave a presentation on the quality and methods of commercial reappraisals. Lee

Heiman, Staff Attorney, reported on other states that provide for deferred payment of property taxes. The subcommittee discussed the status of the AB 26 appeals, the revenue losses to counties due to the appeals, and what the counties can do to recover this year's lost revenue.

### **Questions**

00:28:09 REP. HOVEN asked if there was any discussion of residential property reappraisal in the Whitefish area. **Rep. Barrett** said that the committee did not discuss it directly but that the subcommittee did discuss property tax assistance programs and the redesign of the programs.

00:32:33 REP. JOPEK said that information on what is working and what isn't in the extended property tax assistance program (EPTAP) would help in resolving those issues in the Whitefish area. He said that he had made that request for information at the last meeting and is making that request formally again today.

00:35:29 SEN. GILLAN asked whether the Department of Revenue can get that information for the committee.

00:35:53 **Alan Peura, Deputy Director, Department of Revenue**, said that in the Department of Revenue's packet there is information that shows the number of EPTAP applications that were mailed, the number of applications that were returned, and the number of people that were deemed eligible from those returns. The Department will continue to analyze the data.

### **Public Comment**

00:49:38 **Harold Blattie, Executive Director, Montana Association of Counties**, discussed recertification of values and Lee Heiman's memo on recertification. Mr. Blattie said that 15-10-420, MCA, allows a taxing jurisdiction to levy less than the authorized amount.

00:55:26 **Rhonda Wiggers, Montana County Treasurers Association**, discussed the process after an AB 26 is filed. She said that with the lawsuit that is out there, they would like some direction from the Department of Revenue and the Legislature on whether those agricultural protests will be perfected due to the lawsuit or whether they will need to file in District Court within 90 days in order to perfect it. They would like some clarification and direction before the May taxes are due so they know how to handle them.

00:59:55 SEN. GILLAN asked if Ms. Wiggers had formally requested the Department of Revenue for clarification. **Ms. Wiggers** said that they have not but will put that

request in a letter with a copy to the committee.

**SJR 16 STUDY OF UNINSURED AND UNDERINSURED MOTORISTS - Mari Kindberg, Rates Bureau Chief, Montana Insurance Commissioner**

01:02:19 Ms. Kindberg gave a presentation on the SJR 16 study of uninsured and underinsured motorists (**Exhibit 1**).

**Public Comment**

01:18:29 **Bruce Spencer, Property Casualty Insurers Association of America**, commented on the use of credit information under 33-18-605, MCA.

(Via Phone)

01:22:44 **Joe Schmidt, Billings, Montana**, said that the documents that he provided to the committee deal mainly with the mandate that everyone needs to have insurance. He feels that the mandatory law should be repealed.

01:39:18 SEN. ERICKSON asked Ms. Kindberg how MileMeter.com could be licensed in Montana. **Ms. Kindberg** said that the Insurance Code, Title 33, lays out procedures. There is no fee to file their rates and forms, but there is a fee to obtain a certificate of authority.

**BREAK**

**DEPARTMENT OF HIGHWAYS REPORT - Jim Lynch, Director, Department of Highways**

01:55:48 Mr. Lynch reported on the federal reauthorization of transportation funding which expired on September 30, 2009. He said that the Department has been operating under a continuing resolution, which means that Congress has given them appropriation and obligation authority to spend a certain amount of funds for a short time period.

02:08:05 Mr. Lynch reported on the State Highway Special Revenue Account (**Exhibit 2**). He also discussed Indirect Cost Recovery by Source (**Exhibit 3**).

**Questions**

02:24:17 SEN. ESSMANN asked Mr. Lynch to provide a breakdown of the number of people working in Helena, the number of people working in the field, and what the personnel budget and overhead is. **Mr. Lynch** said that he can provide that breakdown to the committee. He said that their personal services' budget is \$137 million. Under the recovery act, they were budgeted another \$12 million to cover construction and engineering.

02:26:01 SEN. KAUFMANN asked about savings in personal services. **Mr. Lynch** said

that what they save strengthens the state highway special revenue account.

02:28:26 REP. HOVEN asked about the impact of the stimulus money this construction season. **Mr. Lynch** said that at this point it is up to the construction industry. In 2009, MDT had a record in contractor payments.

**INDIRECT COST ALLOCATION PROGRAM - Candi Beaudry, Planning Director, Montana Metropolitan Planning Organizations, and Roger Millar, Director, Planning and Grants, Missoula**

02:35:25 Ms. Beaudry discussed the impact of indirect cost charges (IDC) to the Metropolitan Planning Organizations in the state (**Exhibit 4**).

02:54:03 Ms. Beaudry said that the Metropolitan Planning Organizations want to work with the Department of Transportation to develop legislation to deal with indirect costs.

02:55:24 **Roger Millar, Director of Missoula City/County Office of Grants**, said that there is no objection to the Department of Transportation recovering their costs, but there is a concern on how the IDCs are recovered.

02:59:27 **Andrew Finch, Senior Transportation Planner, City of Great Falls**, said that the impacts of IDC on local governments needs to be examined.

**Questions**

03:02:12 REP. BARRETT asked how the money is allocated. **Mr. Millar** said that prior to 2006 and prior to the IDCs being charged, the indirect costs of operating the Department of Transportation were covered by the state and, to some extent, by federal gas tax dollars. **Mr. Lynch** said that the benefit of using a rate is that they spread costs over the entire program so the percent of their indirect costs to deliver the federal program are much higher for urban programs than it is on other programs. Director Lynch said taking away indirect costs is not going to increase the amount of money that communities get. If there is a direct pass through from the federal government to a local government, there is no indirect cost rate.

03:15:54 SEN. ESSMANN asked about the statutory requirement to run money through the Department of Transportation. **Director Lynch** said that it is a federal law and the federal funds go to the Department.

03:28:45 SEN. GILLAN asked the Department of Transportation to make easy to read examples on indirect costs for the committee.

**Application of administrative rule related to classification of nonproductive mining claim for property tax purposes - Lee Heiman, Committee Staff Attorney, Jeff Lovely and Mitchell Lovely, property owners**

03:31:24 Mr. Heiman distributed and discussed the Class 3 Property and a Nonproductive Patented Mining Claim, subsection (1)(a) and how that is described for Class 3 property (**Exhibit 5**). Mr. Heiman said that a property owner has an unpatented mining claim that is within one mile of a property that would change its classification.

**Questions**

03:36:42 SEN. GILLAN asked if the cabin is on his property or adjacent property. **Mr. Lovely** said that it was on a property that is a mile away from his.

SEN. GILLAN asked if he had filed an AB 26? **Mr. Lovely** said that they did but it was filed late and they were not able to be successful this year.

**Response from the Department of Revenue**

03:38:41 **C.A. Daw, Chief Legal Counsel, Department of Revenue**, said there are mining claims in developed areas. The statute says that if the surface of these mining claims is susceptible to recreational or developmental uses, the Department of Revenue should tax them if those uses are available at the mining claims. The Department decided that Mr. Lovely's area allowed for building and development to justify the fact that it has multiple use. A 1988 State Tax Appeal Board decision that invalidated that rule was never taken off the books. Enforcement of that particular rule did not trigger this case. What triggered this case is the development in the Rimini area.

**Questions**

03:43:26 SEN. ERICKSON asked Mr. Lovely if all of his mining claims have been reclassified. **Mr. Lovely** said that for 2009, there was just one.

03:45:07 SEN. TUTVEDT asked Mr. Lovely if there is anything else that is close to his property. **Mr. Lovely** said that there is a cabin within a mile and maybe four or five cabins within 2 miles.

**Discussion**

03:51:00 SEN. GILLAN said that at the next meeting, the committee will ask the Department, having heard the discussion today, to come back and inform the committee whether they would consider changing the rule and what is their best and final position on this.

03:51:53 SEN. KAUFMANN asked Mr. Daw if there is an exception to the deadline for the AB 26. **Mr. Daw** said that the Department is hesitant to reopen the AB 26 process for the 2009 year for people who didn't file on time because there are a lot of people that wanted to file AB 26s but didn't file on time. On the other hand they have counties coming in saying that they are panicked about the budget implications because there were people that did file on time. Unless the law changes, the Department will not change its stance in this particular case because the property can be developed and is being developed.

03:56:14 SEN. KAUFMANN said that she would be happy to work with Mr. Lovely and report back to the committee if it wishes.

--Lunch --

04:59:05 Sen. Gillan reconvened the meeting at 1:02 p.m.

**SJR 37 STUDY OF MARRIED FILING JOINTLY - Jaret Coles, Staff Attorney, LSD**

05:01:16 Mr. Coles gave a report on individual income tax filing options and the benefits and drawbacks in revising Montana's rate schedules (**Exhibit 6 and Exhibit 7**).

**Public comment**

None.

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

05:57:42 Director Bucks introduced Cynthia Monteau Moore as the new Property Assessment Division Administrator.

Director Bucks gave an update of the Department of Revenue's activities (**Exhibit 5, Tab 4**).

**Questions regarding informal reviews**

06:09:07 SEN. PETERSON asked what process will the Department use to notify the landowners that they now have until June 30 to ask for informal reviews. **Mr. Bucks** said that it begins with these kinds of public announcements that they will be making.

06:17:05 SEN. ESSMANN said that last interim, the Department had a special project involving matching realty transfer certificates and tax returns on sales of property by non-residents. He asked Mr. Bucks to give an update of that project at the next meeting. **Mr. Bucks** said that he will provide a report.

06:20:22 **Mr. Bucks** said that the Montana Supreme Court has upheld the Department of Revenue's authority to adopt the rules to determine whether or not a local jurisdiction had in fact created a qualified TIF applicable to Montana laws.

06:31:05 **Mr. Bucks** gave a report on the tax season. The processing is occurring at a fast rate this year, both for electronic and paper tax returns.

### **Questions**

06:38:54 SEN. ESSMANN said that there is a fairly aggressive advertising campaign for the Department's e-filing services. He asked for advertising costs, particularly in the largest urban counties, at the next meeting.

06:40:29 **Steve Austin, Administrator for Citizen Services Resource Management Division, Department of Revenue**, said that the Department advertised that their offices are open and available to the public in local newspapers in Missoula, Great Falls, Helena, and Billings. They also had public service announcements on the radio and television for the electronic filing program. He said that the newspaper advertising is about \$14,000 to \$15,000, and the PSAs are probably in the range of \$30,000.

06:42:17 SEN. PETERSON asked about the checking account balance for the state. **Mr. Bucks** said that the data is on SABARS and is checked by the budget director weekly. The cash balance is available in the statewide accounting system on a daily basis.

06:43:43 SEN. TUTVEDT asked if Mr. Bucks could email that data to the committee. **Mr. Bucks** said that there are a variety of revenue flows that happen and in terms of what those revenue flows are, they could provide different information but he would like to work with the budget office and try to clarify what it is that is of greatest interest.

06:49:13 **Mr. Bucks** said that Montana is one of eleven states that is in the initial implementation of modernized eFile for individual income taxes.

06:53:49 SEN. ESSMANN said that at the subcommittee meeting, he requested some information from the Department on dollar volume of AB 26s that were still out. **Mr. Bucks** said that he will get a report on that as soon as possible.

### **Public Comment**

None.

## **ADMINISTRATIVE RULE REVIEW - Lee Heiman**

06:55:21      **Mr. Heiman** gave a report on Rule Review (**Exhibit 8**).

### **Public Comment**

07:01:47      **Kevin Nelson, Billings, Montana**, commented on the tax increment financing districts and the 95 mill money that is being redirected within a TIF district. The 95 mills provides for school equalization. He asked the committee to consider requesting a draft bill to remove the 95 mills from a tax increment district and use the money for school equalization.

07:07:52      **Wayne Stahl, District 35**, said a GTB is based on the number of students divided into taxable value. Because that 95 mills is missing and if the TIF district is big enough in your school district, the state would then pay you guaranteed tax base funds because your student to taxable value ratio is low. The 95 mills should be reapplied and the TIF district should pay those to the schools so that other people in the state won't have to pay twice for that school to operate in that district.

### **OTHER COMMITTEE BUSINESS**

07:10:00      The letter from the committee to David Ewer, budget director, was reviewed. Sen. Gillan said that the second paragraph of the letter is basically the text of the motion that was passed. The general consensus of the committee was that it was okay.

07:12:17      SEN. GILLAN said that the subcommittees will meet April 29th.

### **Adjournment**

07:12:26      With no further business before the committee, SEN. GILLAN adjourned the meeting at 3:16 p.m.

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