



## Revenue and Transportation Interim Committee

### 61st Montana Legislature

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JEFF ESSMANN  
CHRISTINE KAUFMANN  
JIM PETERSON  
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#### COMMITTEE STAFF

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

# MINUTES

## The Agricultural Land and Forest Land Reappraisal Subcommittee

April 29, 2010

Room 102, State Capitol  
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.

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#### **SUBCOMMITTEE MEMBERS PRESENT**

SEN. JIM PETERSON, Chair  
SEN. RON ERICKSON  
REP. CYDNIE (CARLIE) BOLAND  
REP. HOLLANDSWORTH  
REP. BRIAN HOVEN

#### **SUBCOMMITTEE MEMBERS ABSENT/EXCUSED**

REP. MIKE JOPEK

#### **STAFF PRESENT**

JEFF MARTIN, Research Analyst  
LEE HEIMAN, Staff Attorney  
DAWN FIELD, Secretary

#### **AGENDA & VISITORS' LIST**

Agenda, Attachment #1.  
Visitors' list, Attachment #2.

## **COMMITTEE ACTION**

The Agricultural Land and Forest Land Reappraisal Subcommittee approved the February 18, 2010, meeting minutes, as written.

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

00:00:01 SEN. PETERSON called the meeting to order at 8:00 a.m. The Secretary noted the roll, REP. JOPEK was excused (Attachment 3).

00:02:30 SEN. ERICKSON moved to approve the February 18, 2010, meeting minutes, as written. The motion passed on a unanimous voice vote.

## **INFORMAL REVIEW AND APPEALS PROCESS RELATION TO VALUATION OF AGRICULTURAL LAND - DEPARTMENT OF REVENUE**

- **Status of AB 26 informal review and tax appeals of agricultural land and property tax revenue implications (*The Department of Revenue provided information and documents to members and staff in a tabbed notebook format.*)**

00:03:07 Cynthia Montel Moore, Administrator, Property Assessment Division, Department of Revenue (DOR), reviewed statewide 2009 AB-26 totals (**EXHIBIT 1**) and statewide 2010 AB-26 totals (**EXHIBIT 2**). Ms. Moore said that the majority of open cases are in Flathead County. Ms. Moore referred to the back side of EXHIBIT 1 and EXHIBIT 2 for information regarding County Tax Appeal Board (CTAB) activity in 2009 and 2010.

00:07:50 Ms. Moore summarized changes in taxable value for each county. She said that applications for the 2010 Extended Property Tax Assistance Program (EPTAP) closed April 15, 2010. (**EXHIBIT 3**).

00:09:14 REP. HOVEN asked when the AB-26 filing period for 2010 closes. Ms. Moore said June 30. She discussed a letter from DOR Director Dan Bucks to Kevin Larkin, President, Montana County Treasurer's Association, regarding clarification of AB-26 informal review for tax years 2009 and 2010 (**EXHIBIT 4**). She said copies of the proposed rule on property tax assessment reviews were provided to members in their folder (**EXHIBIT 5**).

00:11:03 SEN. PETERSON asked if property owners are being notified that they have until June 30 to file a late AB-26. Ms. Moore said once the rule is effective, notice will be posted on the DOR website and the DOR will issue news releases and information at county offices. SEN. PETERSON said it is important to get the word out because many property owners don't know about this opportunity.

00:13:07 SEN. ERICKSON said he would like to see notice published on the front pages of newspapers and that he hopes that the DOR will go the extra mile to make this work.

00:14:24 REP. HOLLANDSWORTH said many constituents are not satisfied with the informal review. He asked if these taxpayers are eligible to refile and if the burden of proof lies with the taxpayer or the DOR. **C.A. Daw, Chief Legal Counsel, DOR**, said that if a property owner went through the process in 2009

and the review was finalized, they may not refile. He said that generally, the burden of proof lies with the taxpayer but that there are exceptions, depending on what the taxpayer presents.

- 00:18:45 SEN. PETERSON referred to testimony given by Bert Guthrie at the February Subcommittee meeting regarding the reappraisal of his property. Mr. Guthrie had said his appraisal differed considerably from his neighbors. SEN. PETERSON asked if the DOR considers actual production data from a property owner and if so, how would it affect the outcome. Mr. Daw said there is a certain amount of room in the system to consider productivity data from the producer, in addition to the county average.
- 00:21:36 REP. HOVEN thought that productivity was based on a soil sample from that particular farm. SEN. PETERSON said that productivity is based on a county average, which is calculated from a combination of Farm Service Agency (FSA) records and Natural Resource and Conservation Service (NRCS) numbers. He said that some producers have filed AB-26 forms because their individual productivity numbers are so different from the county numbers. He said these producers want the opportunity to prove their productivity and to be taxed accordingly.
- 00:23:37 **Dallas Reese, Property Assessment Division, DOR,** said the NRCS information is a soils-by-soils estimate of production and that the DOR uses a county adjustment factor to determine production of agricultural land. That information is combined with a 12-year countywide average production number or a production estimate provided by the landowners to make an adjustment to every soil within that county, based on that countywide adjustment factor. Mr. Reese said the DOR does not have the ability to capture individual producers' income and expense information, which would be the only way to make adjustments on a farm-by-farm basis.
- 00:25:19 SEN. ERICKSON asked if a new soil survey is done when a farm is divided. Mr. Reese said the NRCS has identified all of the soil types in each county, so even if a farm's boundary changes, the soil type information remains the same. SEN. ERICKSON said that in the Missoula area the types of soils vary greatly. Mr. Reese said that the NRCS attempts to get a soil sample from every privately owned parcel within a county and that the survey is based on those samples. The number of samples gathered is based on the topography and climate of a particular area and additional samples are taken from areas with rapid changes or unique climatic conditions.
- 00:29:33 REP. HOLLANDSWORTH said soil survey results vary from county to county, even though the counties may have the same soil types. He said there are other problems with the current way soil surveys are conducted. Mr. Reese said that the same scientific formula is used for all soil surveys and that the NRCS is in the process of doing edge matching between survey areas to ensure seamless transition between boundaries. Mr. Reese said that the NRCS precipitation model is being updated to get more accurate information also. He said that the information available now is very good and that in instances where he has been

able to compare a producer's actual information with DOR information, they have been very close.

00:34:03 REP. HOVEN said that the soil sampling protocol does not require that a certain number of samples be taken in a particular area, which could result in an entire township going without a soil sample. Mr. Reese said while that was possible, it was very unlikely that would happen. He said that the NRCS can't conduct a soil survey on federally-owned properties unless a contract is in place with the operating agency but that every effort is made to include all private lands. REP. HOVEN asked if there is a map showing the specific locations of where each sample was taken. Mr. Reese said he believed he could get a map from the NRCS showing that information.

SEN. PETERSON said he would like to see such a map. He asked if there is a consistent process, used statewide, that will make an adjustment to the productivity for an individual producer. Mr. Reese said that surveys are not always updated and that old information is being used in many cases but said that he has found, in comparing a producer's actual data with DOR data, that the information usually is very close. If a producer is able to demonstrate that his land is very different and that the soil survey is not accurate, the DOR will try to identify those areas and make an adjustment. He said that adjustments are not made for an individual producer unless a very strong case is presented by the producer.

00:44:52 REP. HOVEN asked when a producer has crop insurance data for the last ten years but has no soil documentation to show why his production differs significantly from DOR data, if an adjustment would be made. Mr. Reese said if a significant difference is present, the NRCS would be involved to determine what is wrong. REP. HOVEN asked what constitutes a "significant" difference. Mr. Reese said a difference of 5 bushels per acre would be considered significant.

00:46:20 SEN. PETERSON asked, regarding the AB-26 issue:

- How are the County Tax Appeal Boards (CTABs) addressing this issue?
- Has the DOR provided training in order to have consistency between counties?
- Can a CTAB make a decision to allow an adjustment without the approval of the DOR?

Mr. Daw said CTABs and the Montana State Tax Appeal Board (STAB) are independent of DOR. He said that the STAB provides training and materials to the CTABs. Mr. Daw said that the DOR reviews CTAB decisions but, if the county commissioners in that county are happy with the CTAB's decision, the DOR doesn't object.

00:49:35 SEN. PETERSON asked about the timeline for resolving the outstanding AB-26 's. Mr. Daw said that about 75% of them are complete but that certain areas will take time to work through.

- **Eligibility of owners of agricultural land, residential and commercial property, and forest land to file an informal review with DOR for 2010 tax year**

00:54:17 Mr. Daw said that the DOR will allow appeals to be filed through June 30, 2010, by anyone who did not appeal the 2009 valuation. He said that the adjustment would be applied to tax year 2010 and forward. No adjustments will be made to the 2009 taxes paid.

00:55:43 SEN. PETERSON asked what type of informal review will be available to property owners once the June 30 deadline passes. Mr. Daw said no review will be available unless the property owner receives a new property valuation notice from the DOR.

01:01:52 SEN. PETERSON asked if DOR is willing to work with RTIC on the appeals process. He said that thought needs to be given on how to create a mechanism that would allow for annual changes or adjustments so that taxpayers would not have to wait for the next reappraisal cycle. Mr. Daw said that the tax system and policy is a legislative product, so the DOR would work with the legislative branch on this issue.

**Public Comment**

No public comment was given.

**VALUATION OF RECLASSIFIED AGRICULTURAL LAND**

01:07:57 Mr. Daw said the DOR has received questions about what the DOR's rules provided with respect to the change in agricultural land classifications and whether that triggered a calculation of the Value Before Reclassification (VBR) versus a retention of a VBR. He discussed DOR rules 42.20.501 and 502 in Tab 2 of the binder (**EXHIBIT 6**).

01:11:40 SEN. PETERSON noted that the old information is not printed on the VBR form and asked how a landowner would know if a VBR has been changed. Mr. Daw said that the taxpayer has to inquire at the DOR but that the forms will be changed to include the old VBR information and a calculation sheet. He said taxpayers will have to be diligent because it is a complicated process.

01:13:37 SEN. PETERSON asked when the updated forms will be available. Mr. Daw said that the 2010 forms will contain the information but that the calculation worksheet probably won't be available until later. SEN. PETERSON asked what options will be available to taxpayers in the meantime. Mr. Daw said that the taxpayer should discuss it with the DOR.

**Public Comment**

01:17:23 **Angela Hawks-Swartz, Chester**, discussed a county road that travels through her property and the reclassification of that land. She asked if the reclassification would make her ineligible for the phase-in. SEN. PETERSON agreed that could be a problem and asked the DOR to respond.

01:20:13 Mr. Reese said that the DOR, in this reappraisal cycle, was able to more accurately identify field boundaries across the state. He said that past practice

was to identify and value road the same as adjoining land but that the DOR now identifies roads and values them at lower value. He said that even though a reclassification has occurred, the land will still be subject to phase-in provisions using a different method of calculation. SEN. PETERSON asked why county roads would be assessed as grazing land. Mr. Reese explained why the roads were valued as grazing land and said that the DOR attempted to assign the lowest value it could, in order to err on the side of the taxpayer.

01:26:54 **Harold Blattie, Executive Director, Montana Association of Counties MACo),** said that counties do not own road right-of-ways. He said there are exceptions but, generally speaking, the underlying property of a county road is still owned by the landowner.

01:28:38 SEN. PETERSON asked Mr. Reese to clarify, given what Mr. Blattie said, that land under a county road will continue to be classified and taxed as agricultural land. Mr. Reese confirmed that to be the case.

#### **USING COUNTY AGRICULTURAL PRODUCTION STATISTICS TO VERIFY AGRICULTURAL LAND VALUES**

01:29:49 Mr. Reese directed members to Tab 2 of the DOR notebook, specifically to a table relating to grazing land acres, value, and productivity (**Page 1 - EXHIBIT 7**). He said that the table is a comparison of the 2009 reappraisal to averages from 2008. He noted that the agricultural Advisory Committee predicted that grazing land would not change significantly on a statewide basis, which proved to be the case. He said the red numbers indicate decreases in production and the black numbers indicate an increase in production. Mr. Reese said that several areas were or will be adjusted for reasons including elevation, salinity, and other factors.

01:38:04 REP. HOLLANDSWORTH said several counties experienced large increases in productivity and asked what information was used to determine the increase. Mr. Reese said that productivity information comes from the soil survey and the valuation formula information came from Montana agricultural statistics and the lease per animal unit month. He said that most of the increases were caused by the increase in the animal unit month (AUM) lease costs and that the DOR is trying to involve the NRCS in order to make adjustments in areas of concern. He said that the NRCS takes forage and soil samples, which are used to predict production for that specific site, so information is specific to locations and soils but that he wasn't certain if specific lease information was used.

01:41:20 SEN. PETERSON asked how landowners in counties that border one another but whose parcels vary greatly will be able to get adjustments made. Mr. Reese said that the productivity from adjoining soil survey areas should be similar and if not, the NRCS should be notified. He listed several reasons that differences could occur.

01:45:42 Mr. Reese discussed 2009 summer fallow farmland information (**Page 2 - EXHIBIT 7**).

- 01:48:19 SEN. PETERSON asked what happens if the fallow land is put back in production and if fallow land is considered an every other year rotation. Mr Reese said the DOR, if notified of the changes, will adjust the classification for the following tax year if fallow land is cropped or grazed. Mr. Reese said that the DOR factors rotation of fallow land into its formula.
- 01:51:26 Mr. Reese discussed 2009 irrigated land productivity and values (**Page 3 - EXHIBIT 7**).
- 01:55:37 Mr. Reese reviewed 2009 non irrigated hay land information (**Page 4 - EXHIBIT 7**).
- 01:56:48 SEN. PETERSON referred to the crop land productivity formula and the fact that productivity is based on county averages. He said that along county lines there may be a great deal of difference in productivity and asked how adjustments are made. Mr. Reese said the DOR makes adjustments on a county by county basis but is exploring a method to blend the numbers together. He said the DOR would appreciate guidance on this issue.
- 02:00:01 REP. HOVEN asked if there is language stating that producer data can't be used. Mr. Reese said it isn't completely clear and discussed a situation in Cascade County as an example.
- 02:01:57 REP. HOLLANDSWORTH said it should be the producers responsibility to bring in corp insurance records as proof and that the data should be able to be used.
- 02:02:46 SEN. PETERSON asked if the DOR has discussed this with the agricultural Advisory Committee. Mr. Reese said no, because this issue came up after the final report was issued.
- 02:03:48 SEN. PETERSON asked that the DOR provide the Subcommittee with the formulas used to calculate the land values by the different categories discussed. Mr. Reese said he would provide the formulas.
- 02:04:11 REP. HOVEN asked if there are plans to reconvene the Advisory Committee to review its recommendations and the impact of the recommendations. Mr. Reese said it has been discussed but no decision has been made.

#### **Public Comment**

- 02:05:08 Mr. Blattie commented about using actual production history, individual crop insurance information, and his concern that under certain circumstances, use of that information could result in creating a reward for poor farming practices and harming efficient producers.

#### **PROCEDURE TO PHASE-IN AGRICULTURAL LAND VALUES ON LAND THAT HAD A CHANGE IN PRODUCTIVITY ONLY**

- 02:31:14 Mr. Daw explained the proposed rules for agricultural land with a productivity change only (**EXHIBIT 8**) and said that the proposed rules are intended to correct

the value before reappraisal (VBR). Mr. Daw said the rule would be implemented for the 2010 tax year and the balance of the current cycle.

#### **Public Comment**

- 02:39:26 Harold Blattie, landowner, discussed the tax obligation with and without proposed rule 42-2-828 (**EXHIBIT #9**). He said the rule would apply only if an entire parcel did not have a change in use and that he thought the valuation formula should apply to all parcels.
- 02:44:45 SEN. PETERSON asked Mr. Daw to respond to Mr. Blattie's concern. Mr. Daw said that the DOR did look into that but because of technology limitations of its computers, the complexity of the issue, staff availability, and the timeframe involved, it did not adopt that as part of the rule.
- 02:48:22 **Mike Green, Montana Farm Bureau Federation, Montana Taxpayers Association, and the Lucas family**, asked to address Mr. Blattie's concerns as a part of his formal presentation. He said his presentation deals with the proposed rules change and goes to the heart of the issue being discussed.

#### **UPDATE ON THE STATUS OF LUCAS ET AL. V. MONTANA DEPARTMENT OF REVENUE**

##### **• Petitioners**

- 02:49:17 **Mike Green, attorney, Crowley Fleck Law Firm, representing Charles Lucas, Lucas Ranch Inc, Montana Farm Bureau Federation and the Montana Taxpayers' Association**, discussed a PowerPoint slide presentation (**EXHIBIT 10**) containing the history of lawsuit, the filings and status, and the basis for the lawsuit. Mr. Green said the court was asked to clarify that all agricultural producers affected by the erroneous VBR calculations and phase-ins would be covered, and to clarify that taxpayers could participate and benefit, even if the taxpayer did not pay their taxes under protest in either the first or second half of the tax year.
- 03:10:06 SEN. PETERSON referred to the change in original acres between the two sections (*Lucas v. Montana DOR*) and asked how the change in acreage occurred. Mr. Green said he could not answer that question at this time because of formal discovery limitations but generally speaking, many changes resulted from different use of a mapping boundary.
- 03:11:51 REP. HOVEN asked if Mr. Green was saying that just because the map changed by 3 acres, the DOR will not phase in the value on that piece of property. Mr. Green said, in essence, yes, but that the technical answer is more complicated than that.
- 03:13:37 REP. HOLLANDSWORTH said that digital mapping was done all across the state two years ago and that landowners given the new maps to review.

##### **• Department of Revenue**

- 03:14:30 Mr. Daw discussed DOR's update of *Lucas v. Montana DOR*. He said that DOR's proposed solution will encompass all affected taxpayers, regardless of whether they paid their taxes under protest for the second half of 2009. He said that Mr.

Lucas's parcels in question went from \$40.96 per acre in 2002 to \$93.00 in 2008. He said that the policy question is, do these parcels deserve phase-in for another six years, when these changes occurred in much earlier times. He said the phase-in process perpetuates these kinds of issues for another six years. Mr. Daw said that DOR binder contains the DOR response to the lawsuit (**EXHIBIT 11**) and an affidavit from Mr. Reese (**EXHIBIT 12**).

- 03:19:01 SEN. ERICKSON asked, statewide, how many similar instances are there to what happened with Mr. Lucas's property. Mr. Daw said he did not believe it was a common occurrence but that Ms. Hawks-Swartz's issue with county roads was likely quite common. He said the vast majority of the issue involves large grazing properties.
- 03:21:28 SEN. PETERSON asked about the timeline for the lawsuit. Mr. Daw said it is under the control of the judge. SEN. PETERSON asked how the lawsuit will affect an individual taxpayer who wants to protest his taxes based on the phase-in question. Mr. Daw said he didn't think it would affect other taxpayers, because they would either protest their taxes or not and that the DOR intends to fix the phase-in on the productivity only changes without regard to the lawsuit.
- 03:24:07 REP. HOVEN asked Mr. Daw if he agreed with Mr. Lucas's assessments regarding the differences between sections 13 and 14 of his property. Mr. Daw said he has not had a chance to verify that example but initially, some of the numbers don't balance out. In terms of a general concept, Mr. Daw said that one property probably will be treated differently than the other after the DOR remedy.
- 03:27:27 In response to a question from REP. BOLAND, Mr. Daw explained how the new VBR will be calculated and phased-in. He said that if only productivity changes on a parcel, the DOR will fix it and the issue goes away.
- 03:29:56 SEN. PETERSON asked, in areas where there is a change, if new tax notices will be mailed out to the landowners. Mr. Daw said yes, that affected landowners will get new notices. He said that the notice will include an explanation of why there was a change and that he hoped the rule would be easily understood by taxpayers.
- 03:30:51 REP. HOVEN asked why the DOR rule would not affect section 14 of the Lucas property. Mr. Daw said that section 14 changed in boundaries and in acreage and that Rule 501 and 502 say that, only if nothing changes, is the prior VBR used.
- 03:31:46 SEN. PETERSON asked why the DOR retained outside counsel for the lawsuit. Mr. Daw said that DOR staff attorneys have a lot of experience in tax law, but they have little with class certifications.
- 03:32:50 SEN. PETERSON asked Mr. Daw to confirm that the old and new VBR information will both appear on future tax statements. Mr. Daw said that the new VBR will be printed on the form but wasn't sure that the old VBR would be clearly

labeled as such. SEN. PETERSON said the difficulty for taxpayers is that the old VBR is not on the tax notices and that unless the taxpayer is very astute, he may not realize that the VBR changed and is or is not being phased in. He asked how that would be clarified in the 2010 tax notices. Mr. Daw explained the language in the proposed rules that would address this issue. He said he thought that the old value is printed on tax notices and that the taxpayers should be able to pick that information out. He said that the 2010 assessments will be mailed out beginning June 1, so taxpayers should have time to file an AB-26 form.

- **Legislative Services Division**

03:37:42 **Jaret Coles, Staff Attorney, Legislative Services Division (LSD)**, said he prepared a response to several questions at the February meeting from SEN. PETERSON (**EXHIBIT 13**). Mr. Coles reviewed several key points of his response.

03:40:45 REP. HOVEN asked Mr. Green if the Lucas lawsuit address both the phase-in of productivity changes and the mapping changes. Mr. Green said yes.

### **PUBLIC COMMENT**

03:41:50 **Ron Devlin, rancher, eastern Montana**, commented on his AB-26 process and interaction with the local tax appraiser and said the issue is being made more complicated than it needs to be. Regarding the phase-in of productivity changes, Mr. Devlin said that that productivity is determined by soil type, climate, and weather factors and that with a few changes in productive value due to weather, the soil type on his family's property hasn't changed since the early 1900s. He said he doesn't think the focus should be on changing baseline productivity and suggested that productivity should be baseline flat. He said the only variable in the system from there on out is how to determine the productive value of that unit using a consistent formula. Mr. Devlin discussed a few examples of reclassification, one being a parcel of his family's land that was changed from 22.5 acres to 21.8 acres. He said that even though the land is still cultivated land and the change was not a significant change, the land was still reclassified as a new piece of property. He said it should be a simple process and that he hopes legislation in the 2011 session will straighten this out. He predicted that, if word gets out to eastern Montana ranchers and farmers that they can protest their taxes until June 30, that there would be very long line at the local courthouses.

### **SUBCOMMITTEE DISCUSSION OF AGRICULTURAL LAND REAPPRAISAL AND OPTIONS**

03:47:28 SEN. PETERSON thought there is more work for the Subcommittee to do. SEN. ERICKSON said a major concern of his is what Mr. Devlin discussed: that productivity should not be phased in. He said he would like a committee bill to address that for the next cycle. REP. HOLLANDSWORTH said he is concerned about the effect of the mapping changes on landowners and wondered if the landowner should be liable for changes, since they are due to governmental policy changes and not of the landowner's choosing. SEN. ERICKSON said he also is concerned about the mapping changes and the effect they have had and may continue to have on the taxpayer.

03:50:19 SEN. PETERSON listed several topics he would like to continue to study:

- Informal versus formal protest and the filing of an AB-26, including the ability of a landowner to request an informal or formal review based on circumstances beyond the producer's control.
- Clarification on exactly what information the DOR plans to include on a tax assessment notice and what information should be on the notice in order to adequately inform taxpayers.
- Additional analysis of the productivity issues, as discussed by Mr. Devlin, including the formulas used.
- Determine if the DOR is willing to work with a broad stakeholder group on this issue and use the institutional knowledge that is available. Include consideration of establishing a production baseline number for producers.

03:57:05 REP. HOLLANDSWORTH asked to have examples of assessment notices and copies of the formulas used at the next meeting. SEN. PETERSON said Mr. Reese will supply the formulas.

03:58:18 REP. HOVEN said he wants to pursue the phase-in issue and having a productivity baseline number.

**Public Comment and DOR Comment**

03:59:36 Mr. Daw said the DOR would welcome public input into the forms design process but that the Subcommittee members need to keep in mind that on a year-by-year basis the trigger is different so long range, rather than short range planning, would be necessary.

**OTHER BUSINESS -- MEMBER TOPICS -- SCHEDULE NEXT MEETING -- INSTRUCTIONS TO STAFF**

04:01:08 SEN. PETERSON said he would consult with staff and set the date and agenda for another Subcommittee meeting.

**ADJOURNMENT**

04:02:37 With no further business before the Subcommittee, SEN. PETERSON adjourned the meeting.

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