



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

December 3 and 4, 2009 Meetings

December 4, 2009

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
REP. BILL NOONEY

STAFF PRESENT

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

Visitors List and Agenda

Visitors' list, Attachment 1
Agenda, Attachment 2

COMMITTEE ACTION

CALL TO ORDER AND ROLL CALL

00:00:01 Sen. Gillan called the meeting to order at 8:05 a.m. The secretary noted the attendance visually. All committee members were present.

AGENDA

Montana Department of Transportation Reports - Jim Lynch, Director

00:01:46 Mr. Lynch gave an update on the transportation of oil sands equipment through the state (**Exhibit 10**).

Questions

00:10:32 Rep. Barrett said that in the original plan, 60 turnouts were already in place. Doubling that number to 123 means that they will have to construct turnouts. Are those turnouts already in place? Mr. Lynch said that some additional turnouts will have to be constructed.

00:12:35 Sen. Erickson asked about the schedule for return trips. Mr. Lynch said that they will have to submit a plan for return trips.

Environmental Review Process for Transportation Project - Todd Everts, Lead Staff for the Environmental Quality Council, Legislative Services Division

00:13:56 Mr. Everts said that at the September meeting, the committee had several questions regarding permits, the scope of review, and actions that would be subject to the Montana Environmental Policy Act (MEPA).

Mr. Evert said that the MEPA has two purposes: evaluate the impacts of a state agency's action, and involve the public in the decision making. Not

all actions are subject to an MEPA review. The level of environmental review is determined based on the significance of the impacts to the human environment.

Federal and Montana Department of Transportation's Review of Amtrak Rail Service - Jim Lynch, Director

00:18:07 Mr. Lynch reported on the Amtrak passenger rail service in Montana (**Exhibit 11**).

Federal Stimulus Spending on Highway Projects - Jim Lynch, Director

00:36:52 Mr. Lynch gave an update on the ARRA Projects (**Exhibit 12**).

Federal Reauthorization of Transportation Funding - Jim Lynch, Director

00:48:09 Mr. Lynch said that the federal reauthorization of transportation funding was delayed. MDT is working with the congressional delegation to get the new bill out as quickly as possible.

Public Comment

None.

--Break--

Fiscal Year 2010 General Fund Revenue Collection Update - Terry Johnson, Principal Legislative Fiscal analyst, Legislative Fiscal Division

01:10:46 Mr. Johnson gave an update on the general fund revenue collection focusing on Fiscal Year 2010 (**Exhibit 13**).

Questions

01:31:44 Sen. Tutvedt asked about the differences between the pessimistic view and the middle view? Mr. Johnson said that Global Insight provides three alternatives: a baseline forecast; an optimistic scenario; and a pessimistic scenario. He said that Global Insight does not provide the same level of

detail for a pessimistic scenario as they do for the baseline. Some of the data variables that they use in Montana are not available in the pessimistic view.

- 01:36:21 Rep. Barrett asked if the estimates were wrong because of bad estimates from Global Insight? Mr. Johnson said that Global Insight has been tracking what is going on with the recession. There was a major surprise in capital gains, which dropped \$700 million. They did not project that level of decline. In addition, rents, royalties, and partnership income fell by about the same percentage amount as capital gains.
- 01:39:53 Sen. Essmann said that he has lost confidence in Global Insight's projections. He asked if it was possible to compare Global Insight's forecasts with actual data. Mr. Johnson said that the data they get from Global Insight provides a national forecast on inflation rates, income levels, employment levels, and all kinds of national variables. In addition they provide a regional forecast specifically for Montana by looking at the wage and salary projections.
- 01:43:28 Rep. Jopek asked about the process leading up to next November's revenue estimates. Mr. Johnson said that the Legislative Fiscal Division has implemented a new process sending of out monthly revenue updates along with written text explaining what the numbers mean. The LFD has also implemented a long-term forecast, although it is not as detailed as the forecast for next November, which is a long-term forecast to 2015.
- 01:47:33 Sen. Erickson asked how much of Montana's corporate tax is coming from major corporations? Mr. Johnson said that estimating corporate tax is difficult because taxpayers can adjust estimated payments and can claim refunds at different times throughout a given cycle. The last two cycles, LFD quantified corporate tax payments data by sector. In fiscal year 2009, LFD was comfortable with that methodology. Recent collections do not support that methodology and LFD has abandoned that temporarily and used an extrapolation process of current year receipts. Mr. Johnson said that in an analysis before that showed 18% of tax collections came from

domestic corporations and the rest from multi-national corporations.

01:52:40 Rep. Hoven said that one area that looks promising is withholding. He asked Mr. Johnson about the breakdown between the private sector and the public sector. Mr. Johnson said that withholding payments are not categorized. Total withholding tax collections are received on a monthly basis.

01:56:50 Sen. Gillan asked if reversions are factored into the \$5 million from 2009? Mr. Johnson said that they were. Reversions in fiscal year 2009 were about \$100 million.

Committee Revisits Property Tax Circuit Breakers Study

02:01:54 Rep. Barrett said he would like the Department of Revenue to analyze a proposal that would consolidate all four existing property tax assistance programs, examine a need for a special provision for disabled veterans, make the threshold apply to 80% of the property tax bill with a 20% co-payment, and include renters which means that it will have to be done on the income tax side.

02:03:43 Sen. Essmann suggested researching a way to get rid of the notch effect by using an abatement of some percentage amount of the property taxes up to a certain income. He thinks that there needs to be a co-pay so that there is some participation in the passing of mill levies in local government elections.

02:05:28 Rep. Jopek said that he would like the Department to do an analysis on the extended property tax assistance program to see what the fluctuations are, how many people are taking advantage of the EPTAP program in the \$250 range and higher.

02:08:57 Sen. Tutvedt said that the committee could look at how to fix the notch effect in the programs we have now. Mr. Martin said that within the existing programs, collapse the income ranges and extend it out, you will

still have some notch effect but it could be reduced.

Sen. Tutvedt said that he is not sure structurally how to take those notches out in a revenue neutral way so that there is less of a notch.

Sen. Gillan asked the Department of Revenue to do a scenario that is not revenue neutral and then go up or down from revenue neutral to see how effectively it deals with the notch effect.

--Break--

Montana Department of Revenue Property Reappraisal Status Reports - Dan Bucks, Director

02:22:31 Mr. Bucks gave a report on Department of Revenue activities (**Exhibit 14**).

State Revenue Effect of Post-session Property Reappraisal Values - Terry Johnson and Jim Standaert, Legislative Fiscal Division

02:58:33 Mr. Johnson discussed the memorandum dated September 24, 2009, (**Exhibit 15**) that was sent to the Legislative Finance Committee regarding the reappraisal values that were used during the session for HB 658 versus the reappraisal values that were provided to the committee in September.

Questions

03:01:49 Sen. Essmann said that some commercial property was reappraised using an income approach and some were based on a cost approach. Based on information sent to him by Mr. Peura, it looked like the general rule was an income approach should be used unless there was some other factor involved. **Randy Wilke, Department of Revenue**, said that the income approach is the preferred method of valuing commercial property. If the income information is available and is of high quality, then they should be using it. If the information is not available, then the default is the cost approach.

03:10:27 Sen. Peterson said that most agricultural producers don't fully understand the new valuation process based on soil type and how that relates to productivity. They questioned the fact that when they go back and look at the base year versus the current year, if there are changes, particularly in land use, that gets phased in immediately. If there are no changes in land use, that change in valuation due to productivity should be phased-in over six years. It appears on a general basis that about 80% of the increase is in the current tax year and 20% appears to be phased in. Sen. Peterson said that it is clear that the old base was upgraded based on the new formulation. He said that they need to revisit this and do the right things for the right reasons.

Public Comment on Residential

03:18:19 **Debbie Biolo, Whitefish, Montana**, distributed a printout of her property assessment with an attachment showing her tax calculations (**Exhibit 16**). She said that she is here to ask for help in resolving what has resulted in her property tax increase of 423% by the year 2014. Ms. Biolo submitted a written summary of her comments, along with other reappraisals for the record (**Exhibit 17**).

03:29:45 **Turner Askew, Flathead County**, said that he has a similar problem with his appraisals going up dramatically. He said that looking at the analysis, the trend is not what you are appraising at.

03:31:31 **Judy Pettinato, Whitefish, Montana**, distributed her written comments (**Exhibit 18**) to the committee.

03:37:06 **Harold Blattie, MACo**, distributed and discussed the packet of information regarding property tax assessments and valuations from Lake County (**Exhibit 19**).

03:47:06 **John Sinrud, Government Affairs Director, Northwest Montana Association of REALTORS, Inc.**, distributed and discussed real estate tax bills from a few residents of Flathead County (**Exhibit 20**).

Mr. Sinrud distributed and discussed a packet that contained copies of Request for Informal Review from a few residents of Flathead County who were not happy with their assessment/appraisal (**Exhibit 21**).

Mr. Sinrud distributed and discussed a copy of an email he received from Elsa Putzler regarding mobile homes (**Exhibit 22**).

04:00:25 **Joe Roberts, Montana Association of Realtors**, said that it is important to hear from affected homeowners. He said that the evidence indicates that there are serious problems with the implementation of the reappraisal process.

Public Comment on Commercial

04:08:42 **Dwaine Iverson, Toole County**, commented on how commercial property is valued in rural areas and the need to find a way to value property that is identical and therefore valued the same.

04:13:09 **John Sinrud, Government Affairs Director, Northwest Montana Association of REALTORS**, distributed and discussed email correspondence from Mike Workman and Cherie Hansen regarding the reappraisal process on commercial property (**Exhibit 22**).

--Lunch--

Reconvened at 12:54 p.m.

Public Comment on Agricultural Reappraisal

04:49:24 **Mary Whittinghill, Montana Taxpayers Association**, said that the Montana Taxpayers Association will ask the Department to work with the stakeholder groups and develop some new language that is more consistent regarding the administrative rules dealing with timber.

Ms. Whittinghill distributed and discussed a redacted agricultural assessment notice (**Exhibit 23**).

- 05:01:03 **Nancy Schlepp, Montana Farm Bureau Federation, Montana Grain Growers, and Montana Wool Growers**, distributed written comments from the Montana Farm Bureau Federation (**Exhibit 24**) on two Department rules: using the highest soil level when a soil survey is not available, and what happens during a drought. She also discussed agricultural phase-in values.
- 05:04:35 **Errol Rice, Montana Stockbrokers Association**, said that some of the phase-in has created some concern, and in some cases, that in situations of mixed management where you may have some leasing opportunities on neighboring property there could be an impact on some producers who are trying to lease property from those whose values have gone up significantly.
- 05:06:53 **Harold Blattie, a landowner in Stillwater County**, talked about the way the values were phased in for his property in Stillwater County. He distributed and discussed an photograph of his property and his assessment notice (**Exhibit 25**).
- 05:12:47 **Robert Story, Senator, Senate District 30**, said that a validation study of agricultural land needs to be done. It is apparent that phase-in has become more front-loaded than expected. The Revenue and Transportation Committee should create a working group for agricultural land.
- 05:26:00 **Rhonda Wiggers, Montana County Treasurers**, commented on the Department of Revenue's "2009 Reappraisal Reactions - Cumulative Results". The county treasurers are in favor of all the issues being fixed.
- 05:29:08 **John Sinrud, Government Affairs Director, Northwest Association of Realtors**, said that how free market appraisers do appraisals would be an excellent way for the committee to figure out how sellers and buyers come up with a price in their appraisal. He said that the Department belongs to the IAO and they follow the Uniform Standard of Professional and

Appraisal Practice (USPAP), yet not every appraiser within the Department of Revenue has to be a licensed appraiser.

Discussion

- 05:34:08 There was a discussion on forming a working group to study commercial and residential property tax assessments and a working group to study agricultural assessments.
- 05:43:11 Sen. Tutvedt and Rep. Jopek said that they liked the idea of working groups.
- 05:48:55 Mr. Bucks said that informal reviews are not a problem, they are a solution. They are the way to resolve issues because the property tax system in Montana is complicated and appraisals are complicated.
- 05:54:00 Sen. Peterson said that from his perspective, the DOR staff is working hard to get this right. The key is, take what we have heard, analyze it through the working groups, and perhaps get a third party validation to help us in the agriculture area.
- 05:56:56 Sen. Erickson commented on the Department of Revenue's measuring the quality of reappraisal. We should be complimenting the Department of Revenue on the kind of work that was done in this whole process. Sen. Erickson is also in favor of the working group concept.
- 06:03:19 Sen. Tutvedt asked Mr. Bucks when would the AB26s have to be done so that counties could get that data and reset their mills and be made whole?
- 06:04:26 Mr. Bucks said that they need to know the results within the next few months to make it work if they were to do a re-certification. They need to determine first of all if a re-certification was necessary in certain counties and get that done. **Scott Williams, DOR**, said that if he was to make an estimate of how long, hopefully they would be able to get those completed within the next three or four months.

Department of Revenue's Response to Agricultural Valuation Issue

06:11:41 Mr. Bucks said that the documents that Mr. Heiman gave the committee states that "a current year reappraisal value is the same as the 2003 reappraisal value of the property if there is no new construction, destruction, land splits, land use changes, land reclassifications, land productivity changes, improvement grade changes, and other changes made to the property during the 2003 or subsequent tax years." If any of those items happen, they are put on the tax rolls the next January 1 after they are discovered. There is a separate rule on the calculation of value before reappraisal that is used for purposes of deciding what is or what isn't phased in. This is language that applies to all of the reappraised classes on the six-year cycle: agricultural, commercial, and residential. If someone converts a house from residential to commercial, that is a change of use and is immediately implemented on January 1. The comparable part in agriculture is changing from grazing to farming.

Mr. Bucks said that the Department is working through substantial data and requests of farmers on the accuracy of the soil surveys. There are some areas that they have begun to identify that needs to be looked at carefully and be refined, which would happen through the AB26 process. He is hopeful that they will be able to do some of the refinements.

06:20:49 Sen. Peterson asked Mr. Bucks if he is going to re-run every land parcel under every land ownership, and where there was no change in classification, recalculate the base year. Mr. Bucks said that the Department is re-running the calculations on parcels that had no change in size, no change in use, and no change in classification, the only change is the land productivity change. The Department has concluded that this is the correct thing to do at this particular stage. It would apply to about 1/4 of the parcels.

06:24:44 Sen. Kaufmann said if there were some changes or recalculations made that benefits landowners, meaning they pay less taxes, where does that money get made up? Mr. Bucks said that if the taxpayer applies for and

receives a refund, that comes out of the county's reserve budget. If that becomes so large that the county cannot finance that, the Department, under certain thresholds, can recertify those values that would enable a supplemental levy with the second half taxes. He said they need to look at the standards for recertification.

06:26:48 Sen. Essmann said that for people missing the window on the informal review process in the first year, that window was opened in the next year so people can go back and seek corrections that then could be incorporated in the certification for counties and cities later in the year. He asked if the Department intends to follow that practice this time? Mr. Bucks said that he will review that with his staff. Counsel advises him that informal reviews are triggered by assessment notices. The timelines are set by the Legislature. Once the window of appeals closes, there are statutory constraints on what the Department can do. However, the Department does have authority to correct clear errors, not matters of appraisal judgment.

Department of Revenue's Response to Commercial Reappraisal Issue

06:30:23 Mr. Bucks said that most of what he has heard today are cases to be addressed in the normal informal review process. There are matters of discussion as to calculation of cap rates. Mr. Iverson's examples from north central Montana laid out some of the challenges of being able to value commercial properties in the more rural areas.

Department of Revenue's Response to Residential Reappraisal Issue

06:43:33 Mr. Bucks said that most of the cases that were heard are cases of fact and are handled through a review process. Mr. Bucks discussed the situations that was heard by the committee regarding property in Flathead County and on Whitefish Lake. He said that the Department's appraisal of residential property in the state is accurate and uniform and meets the standards for appraisal and for the study of appraisal.

Committee Discussion

- 06:39:06 There was a discussion regarding a forestry land advisory group to re-evaluate appraisals on forest land. Mr. Bucks said that he sent a letter to the Vice President and General Manager of the Stolz Land and Lumber Company (**Exhibit 26**) regarding the work plan for the creation of the Forest Land Advisory Council. In House Bill 658 all of the function of the forest land advisory council relates to the next appraisal cycle, not to the current appraisal cycle.
- 06:45:37 There was a discussion regarding a working group on whether to study issues for both commercial and residential property together. Sen. Essmann said that the questions for residential issues mainly involve application of the sales comparison, whereas most of the issues that have been brought forward for class four commercial property has a different skill set involving application of the income approach.
- 06:46:51 Rep. Barrett said that another reason for treating residential separate from commercial is that the high taxes might prevent people from staying in their homes. As Rep. Jopek suggested, we should be paying attention to circuit breakers and how assistance programs are being used.

Public Comment

None.

--Break--

- 07:09:14 **HB 657 STUDY OF OIL AND GAS TAXATION PROPERTY** - Jeff Martin,
Lead Staff
Mr. Martin gave a report on the natural gas pipeline property in Montana (**Exhibit 27**).

Questions

- 07:23:14 Sen. Gillan asked how the Supreme Court decision affected Omimex. Mr. Martin said that because of the court decision, from tax year 2004 to tax year 2008, Omimex' property was reclassified as class eight personal

property. There is still an ongoing dispute on the valuation of its property because the company asserts that DOR didn't have the authority to centrally assess that property. The State Tax Appeal Board has made a determination that Class 8 property can be centrally assessed. They will review whether the Department of Revenue applied the proper procedures in that central assessment.

Public Comment

- 07:27:04 **Dave Galt, Executive Director, Montana Petroleum Association**, said that there is still some concern on the Association's part for the interpretation of SB 489 and how it applies to exploration and production companies. They are in the middle of protesting property taxes.
- 07:27:33 **Tom Ebezery, Attorney, Devon Energy Production Company, L.P.**, said that there was a determination that Devon was moved to a different category pertaining to the Bear Paw Pipeline. It was his understanding that there was a protest of that. They hope to work with the Department to get some resolution of this issue.
- 07:29:18 **Gene Walborn, Department of Revenue**, said that Omimex has petitioned for a judicial review of the STAB decision and there will not be a STAB hearing in December. Mr. Walborn said that the definition of a pipeline carrier in statute is linked to the federal definition of a pipeline carrier. A pipeline carrier means a person providing pipeline transportation for compensation. If you do that, the statute is clear that it is class nine, and they believe that Omimex and Devon do provide that service and that is why there is a 2009 appeal.
- Explanation of Unitary Valuation - Lee Heiman, Legal Staff**
- 07:31:26 Mr. Heiman said the definition of unitary valuation is a method for determining market value of a centrally assessed company. It involves appraising a going concern as a single unit, wherever located, and ascertaining the part of the value in the state. Unitary valuation is used in almost every state for determining the value of property that crosses

taxing jurisdiction lines and state lines.

Department of Revenue Reports - Dan Bucks, Director, Department of Revenue

07:39:16 Mr. Bucks referred the committee members to the remaining topics found in the Department of Revenue binder (**Exhibit 14**) and discussed the following:

07:39:52 Tab 4, Unclaimed Property Program

07:53:40 Tab 5: One Stop Licensing

08:02:01 Tab 6: Compliance

08:07:56 Tab 7: Litigation Report.

08:10:01 Mr. Bucks discussed the changes in the Montana income tax forms.

Committee Wrap Up

08:11:00 Sen. Gillan instructed the committee to think about property circuit breaker design, formation of working groups, how to proceed with regard to the uninsured motorists, and the married filing jointly study. The committee's next meeting will be February 18 and 19, 2010.

ADJOURNMENT

08:13:24 With no further business before the committee, Sen. Gillan adjourned the meeting at 4:18 p.m.

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