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Revenue and Transportation Interim Committee

61st Montana Legislature

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

MINUTES

Agricultural and Forest Land Subcommittee of the Revenue and Transportation Interim Committee

February 18, 2010

Room 137, 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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COMMITTEE MEMBERS PRESENT

SEN. JIM PETERSON, Chair
REP. ROY HOLLANDSWORTH
SEN. RON ERICKSON

REP. CYDNIE (CARLIE) BOLAND
REP. BRIAN HOVEN
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 #1.

CALL TO ORDER AND ROLL CALL

00:00:01 SEN. PETERSON called the meeting to order at 8:00 a.m. The Secretary took roll, all members were present (ATTACHMENT #3). SEN. PETERSON said that legal action filed the previous week with regard to the agricultural land reappraisal process could affect the implementation of the phase-in.

SUBCOMMITTEE MEMBERS' GOALS AND OBJECTIVES FOR REVIEWING THE PROCESS

00:03:12 REP. HOLLANDSWORTH said his concern is how the Department of Revenue (DOR) did its classification when there was a change in land use. He said that it appears that not every piece of land was treated the same, which has caused problems. He said certain areas were more affected than others.

00:04:19 REP. BOLAND said her main concerns are fair taxation of the land and the taxpayer's ability to pay.

00:04:58 REP. HOVEN said that he was satisfied with the methodology approved in the 2009 session and has been quite surprised at what has happened since then. He said that there needs to be a process to fix the inequities that have occurred.

00:05:54 SEN. ERICKSON said that overall, he is satisfied with the process because if agricultural and forest land had been appraised at market value, rather than productivity value, taxes would have been much higher.

00:07:05 REP. JOPEK said, on the phase-in, that he didn't know how to have discussion on the phase-in because of the lawsuit. He said that even though some mistakes may have been made, overall he would give the Legislature and the DOR credit for doing a good job.

00:09:52 SEN. PETERSON said he has two main areas of concern: the productivity reappraisal based on the new formula, and the phase-in process. Regarding the productivity reappraisal, SEN. PETERSON said that the Farm Service Agency's (FSA) maps were combined with the Natural Resource and Conservation Service (NRCS) maps and that there have been problems as a result of that. He said that some producers had filed AB-26 forms but that many had not because they did not understand the issue. There needs to be a process in place for the first year or two to clear up the problems. He discussed the phase-in of reclassified land and land with a change in productivity. He would like the DOR to address how the phase-in actually works. He said that the problems have become severe enough to cause certain stakeholders to file legal action. He said that Jeff Martin's February 11, 2010, memo clearly explains the issue and the questions that must be answered. He said communication with producers about productivity has also been a problem.

MEMO TO REVENUE AND TRANSPORTATION INTERIM COMMITTEE ON PHASE-IN CALCULATION AND VALUE BEFORE REAPPRAISAL FOR AGRICULTURAL LAND, INCLUDING DEPARTMENT OF REVENUE COMMUNICATIONS WITH LEGISLATORS AND AGRICULTURAL GROUPS ON PHASE-IN OF AGRICULTURAL LANDS

00:20:18 **C.A. Daw, Chief Legal Counsel, Department of Revenue (DOR)**, distributed a packet of DOR reports. He discussed statements made by Director Bucks at the December 2009 RTIC meeting and a January 25, 2010, memo (**EXHIBIT 1**) from the Director, both of which related to how the value before reappraisal (VBR) was done on lands with productivity changes only. Mr. Daws said that a meeting was held with LSD staff to clear up the confusion and he explained how the phase-in values for this type of land would be achieved. He said that the DOR memo to the RTIC was intended to clarify how the process would be handled for producers who had filed an AB-26 form and for producers who did not file an AB-26 form in 2009. Mr. Daws said he has directed DOR staff to withhold further comment because it is now in the judicial forum.

Mr. Daw said that the DOR considers the reappraisal complete and closed, with the exception of any appeals or reviews, and that the DOR does not intend to go back and reappraise property. He said that overall, the DOR's objectives were met and are acceptable with respect to the requirements of the reappraisal process. He said that individual appeal cases would be dealt with according to law.

00:31:51 SEN. PETERSON asked how the VBR is calculated on a typical field or a partial acreage on that field, and how that could affect the rest of a field. Mr. Daw said that for every parcel of property subject to phase-in, there is a value before reappraisal.

SEN. PETERSON said that at the December RTIC meeting, Director Bucks indicated that where productivity only applied, that the DOR would recalculate the value before reappraisal. Mr. Daw said that producers who filed an AB-26 in 2009 or with their county tax appeal board would receive an adjustment, and that producers who did not would receive an adjustment in the 2010 calculations.

00:39:11 SEN. PETERSON asked how the DOR will notify producers. Mr. Daw said that the DOR has not determined how exactly this will be done but that all taxpayers will receive a new tax notice in 2010, including information on their right to file an AB-26 form. He said he did not know if there would be a special notice.

00:41:55 SEN. PETERSON asked if the DOR would consider reissuing assessment notices for all agricultural land used in this current year to determine the actual value before reappraisal for the 2002 value. Mr. Daw said the DOR does not have the authority to do that, that the reappraisal cycle is over and, unless directed by the Legislature to do so, a redo would not happen.

00:45:21 SEN. PETERSON said that reassessment would not reopen the reappraisal process, but would report a beginning point VBR so that producers would better understand the reappraisal process. Mr. Daw said it would reopen the entire AB-26 process to every producer in the state, as well as to certain residential

property owners. He said it would take legislative action to do that and that unintended consequences would be of concern.

00:47:42 SEN. PETERSON asked if DOR has considered getting a third party evaluation of the process to make sure it is being done correctly. Mr. Daw said the DOR did bring in an expert and that if someone else wants to commission a study, the DOR books are open.

00:54:21 REP. HOLLANDSWORTH asked how much FSA information is public record. Mr. Reese said that through a freedom of information act, the DOR obtained certain FSA information regarding types of land use and grazing and farming standards. He said the information was used to determine which class of agricultural land a producer's land would fall in.

PUBLIC COMMENT ON AGRICULTURAL LAND AND FOREST LAND REAPPRAISAL TOPICS

00:57:49 **Loren Hawks, land owner and producer, Liberty County**, said he would like the DOR to clarify the Department's intentions regarding re-appraisals. Mr. Hawks also discussed how AB-26 forms are being handled. He explained his claim and said it has been three months since he filed but that his claim has not been responded to.

01:01:43 **Harold Blattie, land owner and producer, Stillwater County**, said that even though production and acreage maps were sent out to landowners, many still did not understand the consequences and effects of the assessment notices. Mr. Blattie explained how hay, grain, and pasture land production values are established. He said his opinion is that while the DOR properly applied the valuation formula, the soil survey information was incorrect, resulting in the over-valuation of a great deal of land. He said that the tons of dry matter production on pasture land is based on soil surveys from NRCS, most of which are greatly overstated, and that hay and grain production value is based on harvested acres, rather than 100% of the acreage.

01:14:25 REP. JOPEK asked how old county soil maps are. Mr. Blattie said it depends on each county and that his county's maps date back to the 1950s. He said that structure of soil does change, particularly when salinity is involved. REP. JOPEK agreed that farming practices have a tremendous effect on soil.

01:18:06 SEN. ERICKSON asked what a fair solution would be for unharvested acres. Mr. Blattie said that he did not know what more the DOR could have done to prepare taxpayers. He said that the Agricultural Land Advisory Committee chose the most reliable information.

01:20:47 SEN. PETERSON said there is a paper calculation of productivity based on soil samples and DOR's formula. He asked how the discussion can be reopened so producers understand the process and correct the error. Mr. Blattie said he did not know how to translate the data in a better way because the decisions made were based on the best information available at the time. He said it would be helpful to allow producers to supply more actual production history.

- 01:24:03 **Bert Guthrie, Ralston Cattle Company, Teton County**, said the taxable value of property in Teton County increased by 16% and that the taxable value of his ranch property increased by 74%; even though there has been no change in his land use since 2002. Mr. Guthrie asked if productive capability has been factored in by the DOR, including the many variables that determine production on a certain piece of ground, such as grasshoppers or drought. He said the actual costs of production are missing. He said even though productive value has increased minimally, production costs have increased almost two-fold. Mr. Guthrie said that many long-time operators in his area have sold out completely or have gone to a conservation easement to stay on the land. He said that the increase in taxes will impact his profit margins.
- 01:36:23 **Rhonda Wiggers, Montana County Treasurers Association (MCTA)**, said that the county treasurers are very concerned about the certified taxable values. Ms. Wiggers said that with the lawsuit, many property owners will file protests for the second half of their tax bill, which will significantly affect county governments and that treasurers don't know what to do.
- 01:44:02 REP. JOPEK said that people who don't pay under protest aren't entitled to an adjustment. He asked Ms. Wiggers to clarify whether county treasurers are adjusting people's tax bills, whether or not they had filed a protest. Ms. Wiggers said yes.
- 01:47:20 SEN. PETERSON asked Mr. Daw for a response. Mr. Daw said his staff has determined that second half taxes can be paid under protest but that there are certain mechanisms in place to deal with protested taxes. He said that the DOR does not anticipate a large increase in second half protested taxes because of the plan to fix the phase-in value issue. Mr. Daw said the lawsuit is not a class action suit at this time, which makes a difference. Mr. Daw said that he would work with Mr. Hawk personally to get his appeal addressed. He said that the protest process is taking longer than usual, due to the thousands of protests filed.
- 01:55:04 BREAK
- 02:07:28 SEN. PETERSON reconvened the Subcommittee.

EFFECTS ON LOCAL TAXING JURISDICTIONS

- 02:07:53 **Status of AB 26 review and tax appeals, potential property tax revenue**
Cynthia Monteau Moore, Acting Property Assessment Division Administrator, DOR, presented a status report on the AB-26 appeals process (**EXHIBIT 2**), including County Tax Appeal Board appeals. Ms. Moore said that DOR staff is meeting with individual taxpayers, which has dramatically reduced the number of appeals moving on to county tax appeal boards.
- 02:10:58 SEN. ERICKSON asked about a constituent's concerns regarding his decades-old cabin lease on Placid Lake.
- 02:12:20 **Chuck Pankratz, PAD Region 2 Manager, DOR**, explained how values for leased properties are determined, saying that improvements made to the

property and comparable land sales in each particular area would be considered. SEN. ERICKSON asked how the AB-26 process is going for cabin leases. **Scott Williams, Region 1 Manager, DOR**, said the DOR is statutorily required to value them as fee simple property. He explained that, if no activity has taken place in a specific area to use as a comparison, then the DOR uses sales of comparable property in similar areas with similar amenities to set the value.

02:20:29 SEN. PETERSON asked about the effect on revenue from AB-26 reviews.

02:21:02 **Alan Peura, Deputy Director, DOR**, discussed a two-page spread sheet analysis tracking the impact to the taxable value resulting from Property Tax Assistance Program (PTAP), Disabled American Veterans (DAV) Property Tax Benefits, and Extended Property Tax Assistance Program (EPTAP); as well as changes occurring because of AB-26 claims and appeals (**EXHIBIT 3**). He said that the taxable value has decreased by \$6.6 million, or less than a 1% change statewide. Of that decrease, about 42% is due to property tax assistance programs and 58% due to all of the other reasons.

02:27:11 SEN. PETERSON asked Mr. Peura about alternatives available to local governments regarding appealed and protested taxes. Mr. Peura said that DOR staff is in full agreement with Mr. Heiman's memo of February 18, 2010, (**EXHIBIT 4**) that local governments do not have the authority to recertify values. He said that they do have the authority to create a protested tax levy.

02:29:21 REP. JOPEK asked about the status of the EPTAP program. Mr. Peura referred to a spreadsheet on the status of the program in each county (**EXHIBIT 5**). He said that approximately 35,000 EPTAP applications were mailed out, 7,900 have been returned, and that 3,406 applications have been granted EPTAP eligibility. He said that the process is almost complete and does not expect the numbers to change much. REP. JOPEK said that the Subcommittee heard testimony from MCTA saying that regardless of whether a taxpayer pays under protest or not, if the taxpayer has gone through the AB-26 process, they will grant any money due back to the taxpayer. He asked how or if the mill levy provision can be implemented under those conditions. Mr. Peura said that the special mill levy is restricted to the amount in the protested tax fund, so if additional refunds are granted, that money would not be recoverable to local governments.

Feasibility of recertifying taxable values and revising mill levies for the current tax year

02:37:48 **Jaret Coles, Staff Attorney, LSD**, reviewed Lee Heiman's memo regarding the feasibility of recertifying taxable values and revising mill levies at this stage (**EXHIBIT 6**).

Loss of taxing authority for local governments - replace protested payments

02:46:21 Mr. Coles discussed a second memo prepared by Mr. Heiman on the effect on local mill levy authority of diminished property tax revenue caused by a loss of taxable value resulting from AB-26 and other valuation of property, and availability of protested taxes (**EXHIBIT 4**).

02:53:32 SEN. PETERSON asked, given fact that levies are set based on the taxes assessed and because there is no real provision for counties to regroup in first year, how will that gap be filled. Mr. Coles said that there is no provision for the filling the gap in 2009 but that mills will be adjusted in 2010 to make up for the difference. SEN. PETERSON said he is concerned about the gap and the treasurers' discretionary authority. Mr. Coles said he would research the discretionary authority of county treasurers. SEN. PETERSON asked him to consider three issues: if a taxpayer did not file an AB-26 in November but decides to pay under protest in May, what legal basis there is for that taxpayer to receive money back, and if the Court establishes a class in order to have it apply to all taxpayers.

Public Comment

02:58:44 Ms. Wiggers, MCTA, said that the DOR clarified for her certain information but said she is not sure county treasurers have a clear understanding of what is happening on the ground. She explained that when DOR finishes its AB-26 claims, new values for properties are sent out and that the treasurers issue new tax bills. She explained how the special tax protest refund levy was created in 15-1-402, MCA, and how it can be used.

03:02:15 Mr. Blattie, MACo, said that if a property value changes, the county treasurer must issue a new tax bill. Mr. Blattie said there is not a mechanism in the law to fix the revenue gap in the first year.

METHODS USED TO DETERMINE AGRICULTURAL LAND PRODUCTIVITY

03:04:31 Dallas Reese, DOR, discussed a memo regarding spring wheat productivity factors (**EXHIBIT 7**). Mr. Reese said that the process was recommended by the Agricultural Land Advisory Committee to make adjustments to spring wheat productivity. Mr. Reese discussed slides regarding productivity formulas for summer fallow farm land (**EXHIBIT 8 & EXHIBIT 9**).

03:12:20 REP. HOLLANDSWORTH asked if this information was in packets mailed to producers. Mr. Reese said there was reference to the valuation formula but that the accompanying instructions were complicated, which confused the issue.

03:12:58 REP. JOPEK asked if the crop share variable applies to dry land hay. Mr. Reese said that a 25% crop share is used. REP. JOPEK asked if the same formula applied to irrigated land. Mr. Reese said that there are also water cost allowances included.

03:14:13 REP. HOVEN asked what happens when a producer has no irrigation water. Mr. Reese said that the maps in the original mailing overstated water availability, and in response to that, individual producers in each county were consulted and adjustments were made to reflect actual productivity.

03:16:46 SEN. PETERSON asked about situations in which a producer's harvested acres do not equal the total number of acres in the field. Mr. Reese said that agricultural statistical information is used which, over time, balances out to show actual production. SEN. PETERSON asked how an individual producer could be

certain that his production levels are accurate. Mr. Reese said that the DOR is making better use of GPS mapping technology in current appraisals and that if several producers come forward with the same issue, it can be corrected, but it is difficult to make an adjustment for a single producer. He noted that Montana law directs the DOR to value the land under "average management practices", so good farmers aren't penalized and poor farmers don't get an advantage.

- 03:22:49 SEN. ERICKSON asked about capitalization rate for agricultural land and for forest land. Mr. Reese said the agricultural cap rate was established by the 1993 Legislature, based the Agricultural Land Advisory Committee's recommendations; and that it has not been adjusted since 1993. Mr. Reese said that forest land has different statutory requirements and that the cap rate for forests is recalculated each appraisal cycle. The cap rate for the 2009-2014 reappraisal cycle is 8%.
- 03:25:59 Mr. Reese discussed the formula used to determine grazing carrying capacity for animal units per month (AUM) (**EXHIBIT 10**).
- 03:30:47 SEN. PETERSON asked a series of questions relating to how AUMs are formulated: if the formula has been tested on state lands with grazing leases, has the formula been proven to be consistent, and if private land owners are being over-assessed AUMs because of public wildlife. Mr. Reese said that SEN. PETERSON raised valid questions and they would be included on the list of issues to be addressed by the next Agricultural Land Advisory Committee. Mr. Reese also discussed the statutory agricultural land valuation formula for grazing land (**EXHIBIT 11**).
- 03:36:08 REP. HOLLANDSWORTH asked how frozen land was factored in. Mr. Reese said the DOR is interested only in the carrying capacity of the land. DOR to required use a 1,000 pound animal in its calculations but he has learned that the average poundage today is about 1200 pounds, which made a difference in carrying capacity. He said he was able to resolve the difference by working with the producer.
- 03:37:40 Mr. Reese discussed a slide regarding irrigated land (**EXHIBIT 12**) and reviewed the statutory agricultural land valuation formula for irrigated farm land (**EXHIBIT 13**). He said that the water allowance is exclusive to irrigated lands.
- 03:41:12 SEN. ERICKSON asked Mr. Reese if he is confident in the current methodology being used. Mr. Reese said that the method will stand the test of time. He said, in his opinion, that it is a solid, equitable, and fair method.

Public Comment

- 03:43:18 Mr. Guthrie said he appreciated Mr. Reese's analysis but said Mr. Reese avoided the cost of production, other than for irrigation. He said that Mr. Reese addressed the gross figures but neglected to address the net figures.

03:43:55 Mr. Hawks said, regarding land productivity value, that the bushels per acre assigned at the very starting point of the valuation formula is a problem. He said that a more fair and equitable way of determining this would be to use a person's ten-year average production history from federal crop insurance reports because that information is based on the yields of what is actually being produced over a ten-year cycle. Mr. Hawks agreed that cost of production needs to be included in the formula.

ANALYSIS OF THE PHASE-IN OF AGRICULTURAL PROPERTY

03:47:54 Mr. Martin said that his February 11 memo (**EXHIBIT 14**) was written in response to Director Bucks' January 25 memo to the Revenue and Transportation Interim Committee regarding phase-in calculation and value before reappraisal (VBR) (**EXHIBIT 1**). He said there was a certain amount of confusion about the memo as the issue was resolved after a meeting between LSD and DOR staff. Mr. Martin said that the DOR calculated a VBR for reclassified land and will, based on its reconsideration of rules for land that had a change in productivity, recalculate the VBR for those lands only. Mr. Martin said that one issue remains, which is how the DOR calculated the VBR for reclassified lands.

03:50:40 SEN. PETERSON said that this is an outstanding issue but that because it is part of the lawsuit, he is unsure what can be done at this point.

Public Comment

03:51:10 Mr. Blattie said that he agreed that change of use should be immediately phased in but that, in his case, the entire parcel was being reclassified.

03:52:12 Mr. Hawks said that he has an 80 acre parcel of tillable land in this cycle, the size and use was changed to reflect 76 acres of tillable land and 4 acres of county road. He said he is concerned that the updated maps will trigger a reclassification, even though there has been no change.

03:54:09 SEN. PETERSON asked Mr. Daw how these types of discrepancies can be resolved and if the DOR could adopt a process to fix the problems. Mr. Daw said, for this cycle, that as far as he knew, these issues have been fixed. For future cycles, he said, either new rules can be adopted or the legislature can give direction to change the rules. He said the difficulty is that the computer doesn't always properly read the maps and that field inspections may sometimes be required.

03:59:33 REP. HOLLANDSWORTH said that the county road issue needs to be addressed. Mr. Daw said, thanks to updated maps, that the DOR is much better now about not taxing people for property not susceptible to production. He said that it had consequences as well.

04:01:16 Mr. Hawks clarified that in his situation, the four acres taken out for county road is now classified as grazing land and he was taxed on it.

FOREST LAND ADVISORY COMMITTEE TIME LINE

04:02:06 Mr. Reese reviewed the Forest Land Valuation Advisory Council proposed work plan (**EXHIBIT 15**). SEN. PETERSON said that the House and Senate appointments to the next advisory committee have already been made. Mr. Reese said that the 2009-2014 cycle work is completed and that there is no need for the advisory committee to meet and that he wasn't sure what should be done about the House and Senate appointments.

PUBLIC COMMENT

04:05:54 No public comment was given.

SCHEDULE NEXT MEETING -- AGENDA ITEMS -- INSTRUCTION TO STAFF

04:06:02 The Subcommittee agreed to meet again. The members discussed the potential impact of the lawsuit and agreed that it was unclear what action could be taken because of the lawsuit.

04:10:04 SEN. ERICKSON referred to page 3 of Mr. Martin's memo (**EXHIBIT 14**) and suggested that RTIC consider legislation to clarify administrative rules 42.20.501 and 42.20.502.

04:12:34 REP. HOVEN said that he would like to address the county road issue in the 2011 session. SEN. PETERSON said he would like to discuss calculation of productivity on paper as opposed to what is on the ground and how to deal with that. REP. JOPEK said that issues other than the lawsuit should be considered and to focus on what other solutions could be pursued. SEN. PETERSON agreed.

ADJOURN

04:16:10 With no further business the Subcommittee, SEN. PETERSON, adjourned the meeting. The next meeting will be held in conjunction with the Revenue and Transportation Interim Committee.

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