



Revenue and Transportation Interim Committee

60th Montana Legislature

SENATE MEMBERS

JIM PETERSON--Chair
KIM GILLAN--Vice Chair
JIM ELLIOTT
JEFF ESSMANN
CHRISTINE KAUFMANN
ROBERT STORY JR

HOUSE MEMBERS

TIMOTHY FUREY
GALEN HOLLENBAUGH
MIKE JOPEK
BOB LAKE
PENNY MORGAN
JON SONJU

COMMITTEE STAFF

JEFF MARTIN, Lead Staff
LEE HEIMAN, Staff Attorney
FONG HOM, Secretary

MINUTES

September 10, 2008

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. JIM PETERSON, Chair
SEN. KIM GILLAN, Vice Chair

SEN. JIM ELLIOTT
SEN. JEFF ESSMANN
SEN. CHRISTINE KAUFMANN
SEN. ROBERT STORY JR

REP. MIKE JOPEK
REP. BOB LAKE
REP. PENNY MORGAN
REP. JON SONJU

COMMITTEE MEMBERS EXCUSED

REP. GALEN HOLLENBAUGH
REP. TIMOTHY FUREY

STAFF PRESENT

JEFF MARTIN, Lead Staff
LEE HEIMAN, Staff Attorney
FONG HOM, Secretary

Visitors

Visitors' list, Attachment #1.

COMMITTEE ACTION

- The Committee approved the minutes of the July 10 and 11, 2008 meetings.
- The Committee tabled LC9997.
- The Committee approved LC8001 with the change in definition of Municipality as presented, LC8003, LC8004, LC9995, and LC9996 for purposes of preintroduction. The Committee also approved LC0115 for purposes of preintroduction to include an appropriation and an effective date to read "upon passage and approval".
- The Committee adopted the draft final report of the SJR 31 Subcommittee.
- The Committee requested that a letter be sent to the staff and members of the Education and Local Government Interim Committee requesting that the issue of governance be addressed during their one-day education training at the beginning of the 2009 session.
- The Committee requested a bill draft for purposes of preintroduction that would recommend that four countries be added and two countries taken off in tax havens.
- The Committee authorized the Department of Revenue to prepare and publish the Clearinghouse Information for the Department of Revenue Biennial Report.
- The Committee requested a letter be sent to the Department of Transportation asking them to either hold a public hearing on the proposed rules for outdoor advertising control MAR 18-120, or explain their reasons for not doing so, and to give each member a copy of those rules.

CALL TO ORDER AND ROLL CALL

00:00:01 SEN. PETERSON called the meeting to order at 8:05 a.m. The secretary took roll. Rep. Hollenbaugh and Rep. Furey were excused. The July 10 and 11, 2008 minutes were approved.

AGENDA

Montana Department of Transportation reports - Jim Lynch, Director

00:07:10 **Performance Programming Process and Asset Management System**
Mr. Lynch gave a presentation on Performance Measurement Driving Investment Decisions (**Exhibit 1**). He said that there is strong indication from Washington, D.C. that a performance measurement standard will be a requirement and all 50 states will have to spend federal dollars based on a performance measurement standard driven by the state and approved by the U.S. Department of Transportation.

Mr. Lynch gave a summary of the Asset Management System and details of their performance programming process. He finished his presentation with some scenarios and outcomes on their roadways throughout the state.

Questions

00:51:24 SEN. STORY said that the gas tax, at both the federal and the state level, is a declining source of revenue. He said that Mr. Lynch talked about alternate sources of funding. What are some of the things that other states are looking at that might apply here for bolstering the state trust fund? Mr. Lynch said that some states are looking at selling their assets to a private party to operate or having toll charges for roadways. Other states are talking about raising gas taxes.

SEN. STORY said that there are two main draws on the Montana Trust Fund: 1) paying the highway patrol out of the gas tax; and 2) ethanol subsidy. He asked Mr. Lynch if either of those have been seriously looked at. Mr. Lynch said there is a \$6 million cap in the production of ethanol. He said that he agrees with the argument that the highway patrol is a highway function, but it is a highway related program.

01:10:39 SEN. ELLIOTT said that as far as earmarks are concerned and the allocation of highway moneys, how is the allocation made to the states and are there earmarks within the allocation or are they extraneous to the allocation? Mr. Lynch said that Montana has been fortunate that the majority of our earmarks are above the line. It is revenue that they would not normally receive under the funding mechanism of the Highway Trust Fund.

01:13:21 SEN. ESSMANN said that he noticed on one of the slides that Mr. Lynch indicated that if all of the earmarks went into the core, it would improve the Department's pavement management performance by up to 7%. He asked if this committee should be looking at legislation that would require that any earmarks coming in be in the core or should it be projected? Mr. Lynch said that that is being discussed nationally, whether there should be some parameters and sideboards on earmarks to make sure that they are actually programs that fit within state construction programs.

01:16:47 **Update on Highway 2**
Mr. Lynch gave an update on Highway 2. He said that the Environmental Assessment has been completed on Highway 2.

Questions

01:17:49 SEN. STORY asked if that was an earmark within or above the core program? Mr. Lynch said that it was an above the line earmark.

01:18:46 SEN. PETERSON said that once you have issued the Environmental Assessment of the construction of the 4-lane highway, will that take a federal earmark to go forward and will that be above the core, or within the core? Mr. Lynch said that at this point, they don't know. The first thing they need to do is revisit SB 3 and try to get a handle on what that means. He said that there is no difference between above the line earmark or a core earmark as far as your obligation to spend.

01:21:02 REP. LAKE asked if there was going to be earmarked federal funds directed to the interstate or main highway bridges that fall outside of the Department's normal highway funding? Mr. Lynch said that there is a push in Washington, D.C., to put additional money into bridge construction.

01:27:32 **Status of Denton to Lewistown road**

SEN. PETERSON said that this agenda item was put on at his request. He related the tragic accident that occurred on the road between Denton and Lewistown. Mr. Lynch said that he receives a report on what happens on Montana highways every Monday. Every time there is an accident on any Montana highway, they look for reasons why the accident happened. He distributed car accident statistics and photographs of Montana Highway 81 but could not give any information on that particular accident because that is under the purview of the Montana Highway Patrol.

01:43:50 **MDT staff succession planning and effect on department operations**

Mr. Lynch reported on the Department of Transportation's activities regarding retirements that are taking place in the Department. He said that as they look forward, the number of state employees who are eligible to retire by the year 2012 is a little over 500. Mr. Lynch gave a brief overview of their reorganized HR Department and how the changes have helped in filling those positions that were made vacant by the retirees.

BREAK

Board of Investments' policy of maintaining the principal value of shares in the state short-term investment pool

02:12:24 **Greg Petesch, Director of Legal Services, LSD**, discussed a letter to Sen. Dave Lewis analyzing the Board of Investments' policy regarding maintaining the principal value of shares in the state short-term investment pool at the time of

withdrawal without regard to the market value of the underlying investment
(Exhibit 2).

Questions

02:14:21 SEN. STORY asked what did the statute that Mr. Petesch referenced contemplate? Mr. Petesch said that the statute says a warrant can only be issued in the amount of principle and accrued income that you were entitled to.

Memorandum on Board policies and procedures related to STIP

02:16:23 **Carroll South, Executive Director, Board of Investments**, discussed his memorandum **(Exhibit 3)** clarifying the Board of Investments' policies and procedures for management of the Short Term Investment Pool (STIP).

Questions

02:26:07 REP. LAKE asked if that cash account was a secure account that can't be consumed by management expenses? Mr. South said that the paper that they receive from the Bank of New York shows the total amount of cash in the pool. He said that after the trustee and others are paid, the state will get almost \$11 million.

02:29:37 SEN. STORY said that part of his concern is that in a couple of months the Committee will be doing the revenue estimate. The \$140 million that is on the books has some solid assets behind it, but because the senior creditors are going to hold on until most of the value is recovered and it becomes more of a cash flow issue. When we sit down in to do the revenue estimate, what do we put in for an ending fund balance of money that is available in the next biennium? Mr. South said that the methodology to restructure is complicated because there are junior creditors as well as senior creditors. The junior creditors are looking at the underlying portfolio and saying, if we let this drag on and let the cash come in, there is going to be enough money to pay all the seniors with some left for us. They went to a UK Court because the Bank of New York was getting two different sets of instructions. The seniors said, hold the foreclosure sale and we'll use our notes to buy them. The juniors said no, Bank of New York don't do that. We don't want foreclosures. The Bank of New York didn't know what to do, so they went to the UK Court and the UK Court found that, yes, senior creditors had the ability to force the Bank of New York to sell all the underlying securities on a foreclosure sale, but you don't have the ability to tell them no. Once they are restructured, there will be a new company and there will be new securities issued

to replace those with maturity dates. That can't be done as long as the junior creditors are there because they still own a piece of the action.

Mr. South said, regarding the revenue estimates, you have to look at the pro rata share of the general fund to STIP and take the pro rata share times \$140 million. That would tell you what the potential loss itself would be to the general fund. But given the fact that if there is a loss, they will amortize it out of income. Then you would have to look at what the reduced income to the general fund out of STIP would be, not out of principle costs, but the reduced income based on 20 to 25 basis points over a period of time to pay off any loss.

SEN. STORY said if the senior creditors changed their old paper into new paper, they still have the underlying assets to turn into cash and then real estate isn't short term cash and you are still in the position where you have some investments in the STIP that can't be liquidated in rapid succession for value. Mr. South said that if you are discussing liquidity, it is important to know that STIP is about \$2.4 billion, of that, \$140 million is not liquid but that leaves over \$2 billion liquidity.

02:37:44 SEN. PETERSON asked if the Department of Administration uses Generally Accepted Accounting Principles and asks you to report that loss in your financial statements? Mr. South said that they are in the process of doing their financial statements and they don't have a loss. There is no legitimate basis on which they would arbitrarily pull a number out of the air and say this is a loss.

02:39:31 SEN. ESSMANN said that the conclusion he draws is that they may not have an immediate front end liquidation. He asked if Mr. South has projected a reduction in income over the next five to seven years that would then affect this Committee's task during revenue estimate? He asked Mr. South to speculate where that reduction income is going to occur. Mr. South said that he is not willing to speculate on what the loss might be because that serves no purpose, but as he states in his memo, what they would do is amortize it over a period of time that would keep the STIP yield at a competitive rate.

02:43:06 SEN. STORY asked what percentage of the STIP is state general fund? Mr. South said that they invest the Treasurer's Fund in a big lump sum that includes not only the general fund but all other state accounts that don't retain their own interest. Their investment account is included in that as well, and as of yesterday,

the Treasurer's Fund was about 27.5% of the pool.

02:44:07 SEN. GILLIAN asked if Mr. South could give the committee some sense whether he is getting a lot of phone calls from local governments and what is he telling them on what the current situation is with regard to Mr. Petesch's letter. Mr. South said that he did not see Mr. Petesch's memorandum until late Thursday afternoon but they have had a couple of emails that were forwarded to him asking him what he makes of them. That is when he decided to write his memo and requested that MACo to send his memo out to the same people that received Mr. Petesch's letter. They did have a small county bail out and they are monitoring the situation on a daily basis and have not seen any unusual activity except for the one county that bailed out.

02:45:44 SEN. STORY asked Mr. Johnson how the state accounts for the state general fund share of the \$140 million. Mr. Johnson said that the balance is what the par value of the investments are. In this particular case, whatever pro rata share the general fund owns of the STIP pool, that is booked into your fund balance. Based on what Mr. South is saying, if there is a potential loss, and if you never write that loss down, your balance never changes. It is carried at that par value so that it doesn't affect your fund balance. It affects the revenue flow but not your fund balance.

02:55:01 REP. JOPEK asked how STIP has done in the 35 years that it has been in existence. Mr. South said that STIP has been around for 35 years and the first problem that we've ever had was this last November when local governments bailed out. He said that local governments, up to that point in time, used STIP like a bank because it was very convenient for them. They could put in \$100 million one day and take it out the next. He said that from his personal perspective, it is a policy decision for the Legislature whether you want to provide this service to local governments. If local government participation is going to cause heartburn relative to what happens to the state, then the policy decision might be, is this a service you want to provide?

No Public Comment

2008 fiscal year-end general fund status report - Terry Johnson, Principle Fiscal Analyst, Legislative Fiscal Division

03:01:44 Mr. Johnson gave a presentation on the Fiscal Year 2008 actual revenues and

expenditure information. He provided the committee with a PowerPoint presentation (**Exhibit 4**) and a written report (**Exhibit 5**). His presentation was broken into two components:

- what actually happened in 2008 with the anticipated revenues compared to what actually came into the state treasury
- switch gears from a one-year perspective to the 2009 which is the two-year perspective

Questions

03:23:49

REP. MORGAN asked Mr. Johnson why he did not show any increase or decrease in the corporation tax. Mr. Johnson said that he took all of the larger components that deviated the most from the estimate, and in the case of corporate income tax, they were right on estimate.

03:36:26

SEN. STORY asked if the settlement money from VISTA and PPL goes into the general fund, or does it go into the interest and income in the school fund? Mr. Johnson said that it is called interest and income and goes into the Guarantee Account.

SEN. STORY asked why that would go into the school fund. **Roger Lloyd, Fiscal Analyst, LFD**, said that the Constitution says that any other grants unspecified is considered as school trust land. Those areas under the dams and some of the pools are then considered as school trust lands for the deposits of revenue.

03:38:13

SEN. ELLIOTT asked Mr. Lloyd if the payments have any relation to the amount of land under the reservoirs. Are they negotiated settlements? Mr. Lloyd said that those are negotiated settlements.

03:40:11

SEN. STORY asked Mr. Johnson how I-155 works. If the voters can institute something on passage and approval on November 4, how does that tie into the Legislature's responsibility to appropriate and balance the budget? Mr. Johnson said that the initiative does not appropriate money because an initiative cannot do that. The initiative allocates a portion of the insurance tax revenue to a state special revenue account and it is effective upon passage and approval, and if it is adopted, money will flow into that state special revenue account and sit there until appropriated by the Legislature.

03:42:53 SEN. ESSMANN asked Mr. Johnson a question on the biggest contingent liability is the State Old Fund and the outcome of that litigation. He asked how long has that case been languishing before the Montana Supreme Court? Mr. Johnson said that he does not have the details and Ms. Wilkinson of LFD tracks that but he can get a brief summary of that if he would like.

BREAK

HJR 61 - State income tax conformity - Lee Heiman

03:59:44 Mr. Heiman discussed LC9997 (**Exhibit 6**), to revise the conformity of Montana individual income tax and corporation income taxes with the Internal Revenue Code.

Motion

04:05:02 Sen. Kaufmann **moved** that LC9997 be approved for draft legislation for purposes of preintroduction.

Public Comment

04:05:33 **Mike Green, Montana Taxpayers Association**, clarified the Montana Taxpayers Association's preference that the Committee take no action on LC9997. He said that if the Committee believes that this constitutional issue needs to be addressed, their preference would be that the Committee introduce legislation for a constitutional amendment which would specifically authorize the Legislature to incorporate and follow federal law, including future amendments in order to avoid constitutional issues in the future.

04:09:18 **George Olsen, CPA, Galushia Higgins and Galushia and The Montana Society of Certified Public Accountants**, said that a good tax system should have low administrative and compliance costs. The Montana Society of CPAs believes that changing from rolling conformity with federal income tax law would be at odds with that criteria.

04:14:20 **Joseph Shevlin, CPA**, said that if LC9997 is passed, it will add complexity to tax laws. Compliance issues will increase dramatically and whether those are intentional or brought about by interpretation of the differences in complexity, it will exist. Administration costs will increase. Mr. Shevlin urged the committee to vote no to LC9997.

Motion

SEN. ELLIOTT **moved** to table LC9997. The motion **passed** with Sen. Kaufmann voting nay.

HJR 61 bill draft to recodify individual income tax statutes - Lee Heiman, Staff Counsel,

LSD

04:28:14 Mr. Heiman gave a presentation on LC9996 (**Exhibit 7**).

Motion

04:33:12 REP. LAKE **moved** LC9996 for purposes of preintroduction. The motion **passed** unanimously.

SUBCOMMITTEE REPORTS

SJR 31 subcommittee draft final report - Lee Heiman

04:35:09 Mr. Heiman gave a presentation of SJR 31 Subcommittee draft final report (**Exhibit 8**).

Motion

SEN. STORY **moved** to adopt draft final report of SJR 31 Subcommittee. SEN. ESSMANN asked Mr. Heiman if he would work with Mr. Standaert in getting the Mr. Standaert's charts into the final report. The motion **passed** unanimously with information to be added to the final report.

No public comment

04:41:03 SEN. GILLAN said that there will be a one-day education training for legislators before the 2009 session begins put on by the Education and Local Government Committee. SEN. STORY said that the first thing that should be included in that discussion is what the legislator's role, if any, would be in public education in Montana. He said that it would help legislators understand their place in the system when it comes to governance of education and funding of schools.

Motion

04:44:52 REP. LAKE **moved** to send a letter to the staff and members of the Education and Local Government Interim Committee requesting that the issue of governance be addressed during their one-day education training at the beginning of the 2009 session. The motion **passed**.

Update on HB488 Subcommittee Meeting - Sen. Gillan

04:47:22 SEN. GILLAN gave an update of HB488 Subcommittee's meeting held September 9, 2008:

- Department of Revenue's simulation model on property reappraisal mitigation
- the HB488 Subcommittee would like to poll members of the committee to see which types of mitigation policies that they are leaning towards
- a probable meeting to be held in December
- Rep. Stahl gave a presentation on the need for some significant changes in the way the state mitigates reappraisal

Update on the RTIC/LFC joint subcommittee proposed study

04:54:58 SEN. GILLAN said that the joint subcommittee met to discuss a bill draft to examine the effects of changing demographics in Montana.

Mr. Martin said that an important element is providing an appropriation for the study. The RTIC/LFC Joint Subcommittee decided that the bill should be introduced in the House with an appropriation for staff support, operation of the committee, and contracted services.

SEN. GILLAN said that the ballpark amount was \$250,000 to \$300,000. It was discussed that it could be done in-house, adding new staff people with some portion contracted out. The \$250,000 to \$300,000 involved meetings both in and out of Helena and additional FTEs for Legislative Services and Legislative Fiscal Divisions.

LC0115: Creating a demographic, economic, and government trend analysis interim committee

Mr. Martin gave an overview of LC0115 (**Exhibit 9**) that looked at creating a demographic, economic, and government trend analysis interim committee to conduct a study of the potential long-term effects of demographic, economic, social, and other trends in Montana on state and local governmental programs and services and on state and local revenue systems.

SEN. GILLAN said that if this bill draft is adopted today, there needs to be an appropriation of \$250,000 to \$300,000. She asked if this bill draft would need a conceptual amendment regarding appropriations. SEN. STORY said that she is correct.

Motion

05:12:10 REP. LAKE **moved** to adopt LC0115 for purposes of preintroduction and to include an appropriation to cover the costs of that committee.

Discussion

05:12:55 SEN. STORY said that subsection (12)(c) talks about the Department of Revenue providing individual income tax data to a contractor who is doing data analysis. Subsection (12)(d) says that the Department of Revenue may not provide federal tax return information to any person. SEN. STORY said that the question of the Department of Revenue not providing any individual's federal tax return information needs to be clarified.

Mr. Heiman said that this involves the language from SB 76 from last session where it was a confidentiality of state and federal tax information. The state cannot provide federal tax information, and information that the state gets from the government cannot be provided to other entities. Mr. Heiman went on to say that when an individual is doing his taxes and he fills out a form that asks what his federally adjusted gross income was, and he puts a number in there even though he took that off his federal income tax form, it is now on the state tax information and the Department can, under certain circumstances, give that information out.

05:15:33 SEN. STORY said that "passage and approval" would probably be a better effective date, and as soon as the Legislature starts wrapping up and the interim committees are appointed, this interim committee could be functioning in May.

Mr. Martin commented that because the members are appointed by the chair of the Revenue and Transportation and Finance committees and not by leadership, those two committees meet in June. They could probably meet shortly after the session, elect a chair, get the appointments, and then be ready to go. The way this was envisioned is that the committee could actually work beyond September the year following the legislative session because it terminates June 30, 2011, and the final report isn't required until December 1, 2010. In terms of timing, Mr. Martin said he didn't know why these committees couldn't meet in May to elect presiding officers and then get the appointments made.

PUBLIC COMMENT ON LC0115

05:27:30 **Dan Bucks, Director, Department of Revenue**, said that the reference to

federal tax information is only to that information supplied to them by the Internal Revenue Service and they are prohibited from providing it for any purposes other than tax administration. They do not recognize research or the policy needs of the legislature as having any status in the use of that information. Since October of 2006, the federal authorities have informed them that they are prepared to prosecute state tax agency employees for improperly disclosing this federal tax information.

Motion

REP. LAKE **moved** for a substitute motion to change the effective date in LC0115 to read "upon passage and approval". The motion **passed**.

BILL DRAFTS TO CLARIFY CERTAIN PROVISIONS OF MONTANA STATUTES

LC 8003 - Clarifying nontaxable amount of gross value of product under metal mines tax

05:32:36 Mr. Martin discussed LC8003 (**Exhibit 10**).

Motion

05:34:53 REP. MORGAN **moved** that LC8003 be approved for purposes of preintroduction. The motion **passed** with Sen. Peterson as sponsor.

No Public Comment

LC 8001 - Standardizing tax increment financing district statutes

05:36:17 Mr. Martin gave a presentation on the sections contained in LC8001 (**Exhibit 11**) and discussed the proposed changes in the definition of "Municipality" (**Exhibit 12**).

Public Comment on LC8001

05:47:43 **Kevin Nelson, Billings**, said that the downtown Billings district sunsetted after 35 years. At the last work session meeting there was a proposal to reinstitute that TIF district in January. Now the City of Billings is bringing that TIF back, and with bonding, they would have a downtown TIF for 60 years. He asked if the Committee would consider a possible statute that would put a timeline on when they could bring a district back after it has sunsetted.

Questions

05:52:26 SEN. ELLIOTT asked if the title of LC8001 is too narrow to limit the time that a TIF can exist. Mr. Martin said that he tried to make the title as narrow as possible for the purpose of making corrections to errors and omissions and not to provide a vehicle for broader policy changes.

Motion

05:53:50 SEN. STORY **moved** to adopt LC8001 for purposes of preintroduction with the change in definition of Municipality as presented. With no further public comment, the motion **passed** with Sen. Essmann as sponsor.

LC9995 - Clarify distribution of certain motor vehicles fee revenue

05:57:17 Mr. Heiman discussed LC9995 (**Exhibit 13**).

Motion

REP. LAKE **moved** to approve LC9995 for purposes of preintroduction. The motion **passed** with Sen. Story as sponsor.

06:05:03 Mr. Martin distributed a memo from Kris Wilkinson, Fiscal Analyst, Legislative Fiscal Division, in response to Sen. Essmann's question on Workers' Compensation litigation in the Satterlee Case for the Committee's information.

No Public Comment

LC8004 - Revise the effect of the revenue estimating resolution under 5-5-227, MCA

06:06:50 Mr. Martin discussed the changes to 5-5-227 as contained in LC8004 (**Exhibit 14**).

Questions

06:07:53 REP. LAKE asked if LC8004 needs an effective date. Mr. Martin said no because it will be effective in October of next year and won't apply to this year's revenue estimate.

Motion

06:08:00 SEN. ELLIOTT **moved** to approve LC8004 for purposes of preintroduction. The motion **passed** with Sen. Story as sponsor.

BREAK

06:27:58 SEN. PETERSON said that it was pointed out that there is an issue with regard to LC8004. On page 2, paragraph 3, there may need to be some clarification regarding the wording that is being struck. Mr. Martin said it was something that Terry Johnson pointed out and he wanted the Committee to be aware of it. He said that Sen. Story and he can work it out if necessary. The problem is whether the bill reads that this committee's revenue estimate is the estimate and any amendments will not become part of the Legislature's final estimate.

SEN. PETERSON suggested that Mr. Martin and Sen. Story get this clarified and that the clarification be discussed at the introduction of the bill.

MONTANA DEPARTMENT OF REVENUE REPORT - Dan Bucks, Director

06:31:41 Mr. Bucks gave a report on the Department of Revenue's activities (**Exhibit 15**):

- Tab 1: Reappraisal Cycle - Memo and Answers to Sen. Story

Questions

06:42:00 Sen. Story asked if the percentage of 3.4% was close to what Mr. Bucks is seeing in Montana? Mr. Bucks said that he is seeing a slightly smaller number. The bread and butter house prices are stable and steady. He said that there is a different market condition in the high end resort homes in western Montana.

SEN. STORY asked if anyone has gone back over the last six years and pulled numbers to see what they think happened during their reappraisal cycle for the value of their property? Mr. Bucks said that they have not done that but they could take a look.

06:44:14 SEN. PETERSON asked if Mr. Bucks has gone back to 2002 and compared this national data to see how consistent they are with Montana at that time and how that might relate to what we should expect here. Mr. Bucks said that they could also look at that.

SEN. PETERSON asked if Mr. Bucks is confident that when this committee has their meeting in mid-November or late-November, he will have the preliminary numbers for us. Mr. Bucks said that right now, if the committee meets on November 17, the Department will have data for the committee to utilize at that

time.

06:48:12 SEN. ELLIOTT said that low outliers and high outliers were discussed in relationship to neighborhood appraisals at the HB 488 Subcommittee meeting. He asked Mr. Bucks to comment on that. Mr. Bucks said that his understanding is that they value each neighborhood. If they do not have sufficient data on a neighborhood to value the property in that neighborhood because there are not enough sales, they then go to comparable sales in comparable neighborhoods in as close a jurisdiction as possible.

- Tab 2: Tax credit for planned gifts made to qualified charitable endowment
- Tab 3: Report on countries that may be considered tax havens

Motions

07:00:25 SEN. STORY **moved** for a bill draft request for purposes of preintroduction that would recommend that four countries be added as tax havens and two countries taken off.

Discussion

SEN. KAUFMANN asked if there was a reason that the list is in law rather than in the administrative rules. Mr. Martin said that the original bill draft has a general description of what a tax haven is and the Legislature thought it was better to have the actual listings of tax havens and then require the Department of Revenue to report to this committee on those countries that either were or were not tax havens.

The motion **passed** unanimously with Sen. Peterson as sponsor.

- Tab 4: Section 5-1-210, MCA, clearinghouse information for DOR Biennial Report

Questions

SEN. STORY asked if this was a requirement for all departments or just for the Department of Revenue. Mr. Bucks said that other agencies receive this request as well.

Motion

07:06:26 REP. MORGAN **moved** to authorize the Department of Revenue to prepare and publish the Clearinghouse Information for the Department of Revenue Biennial Report. The motion **passed**.

- Tab 5: Tax Increment Financing District Report
- Tab 6: Tax Compliance: summary results from Realty Transfer Certificate Compliance Initiative; total non-resident and resident RTC collection by payment bracket; non-resident RTC collections by payment bracket; and resident RTC collections by payment bracket

Questions

07:13:58 SEN. ESSMANN asked if Mr. Bucks has done any analysis that relates to amounts collected versus the size of the dollar amount of the transaction? Mr. Bucks said that he has requested that analysis be done.

- Tab 7: Intuit, publisher of Turbo Tax, sending a report to their customers regarding errors to their software.
- Tab 8: Litigation Update
- Tab 9: News release of the Center for Science and Public Interest (CSPI) that sued the MillerCoors Company to stop them from marketing alcoholic energy drinks
- Tab 10: The Department of Revenue's response to the question of "Would the Department of Revenue consider using a separate form for gathering income-tax related information instead of using the Realty Transfer Certificate?"

No Public Comment

Administrative rule review - Lee Heiman, Staff Attorney

07:27:29 Mr. Heiman gave a presentation on rule review (**Exhibit 16**) on the following:

Department of Revenue

- Liquor Licensing Rules - MAR 42-2-795

- Prepaid Wireless Telecommunications Providers - MAR 42-2-797
- Alcohol Consumption at Brewery Sample Rooms - MAR 42-2-798
- Reduced by Government Action - MAR 42-2-794
- Property Reappraisal Plan - MAR 42-2-796

Department of Transportation

- Outdoor Advertising Control - Mar 18-120

Discussion on the Department of Transportation's rule change

SEN. PETERSON asked if it was unusual to have extensive, comprehensive rule changes and have no public hearing on them? Mr. Heiman said no, that when he first saw the title of the rule, he thought it was a 2-page document to correct errors and was surprised that it said no public hearing. There is a provision that people can ask for a public hearing and it could be forced if ten or more people request it.

REP. LAKE asked if the Department of Transportation is going to distribute that rule change? Mr. Heiman said that it has been published in the Administrative Rule Manual. REP. LAKE said that since we are the oversight committee, should we not be included in at least notice of this rule?

It was discussed whether or not the committee was receiving the Department of Transportation's rules. SEN. PETERSON said that the question is, as the committee looks at the list of signage, which is extensive, it strikes him as odd that no public hearing is contemplated for this kind of rulemaking change.

Motion

SEN. KAUFMANN **moved** that the Revenue and Transportation Interim Committee send a letter to the Department of Transportation asking them to either hold a public hearing on the proposed rules for outdoor advertising control MAR 18-120, or explain their reasons for not doing so, and to give each member a copy of those rules.

Questions

SEN. ESSMANN asked Mr. Heiman if this Committee has the authority to suspend rules? Mr. Heiman said that in certain circumstances, under certain procedures, this committee can delay the implementation of how departments adopt rules but the committee does not have the authority to suspend

department rules or stop their rulemaking except for specific reasons, of which policy is not one of them.

SEN. ESSMANN asked if, for example, could the Committee delay implementation of the rule until after they have prepared an Economic Impact Statement? Would that be within this Committee's purview? Mr. Heiman said yes. He also said that he has a list of activities that the Committee can go through and have a discussion.

SEN. STORY said that for future references, that when the Department of Transportation is giving their presentations, the Committee could hear their rule issues at that time.

The motion **passed** unanimously.

Discussion on the property tax relief multiple under HB 9

07:39:00 Mr. Martin said that the last time this topic was discussed, there did not seem to be a consensus in making recommendations to change the relief multiple.

SEN. STORY asked if the Committee decides to do something about the multiplier, does it have to be done by a certain point in time? Mr. Martin said that it says if the committee determines a change is justified, the committee shall request a bill to change the relief multiple.

SEN. STORY said that right now the statutory relief multiple is zero. If we wanted to take some portion of the \$200 million that has shown up since we last met, that the intent is to put a multiplier in there to use up that money in the next income tax cycle. Mr. Martin said that it would be a balance between anticipated revenue and anticipated expenditures.

SEN. ESSMANN said that we don't have any projections on future spending at this point. He doesn't see how we can deal with the issue under the statute. To his knowledge he doesn't know if the Finance Committee has anything in future present law adjustments at this point.

SEN. PETERSON asked if the committee wanted to address this issue at this time? SEN. STORY said that when this committee meets in late November, the Governor's budget will be out, we will be doing the revenue estimate, and at that

point in time, they will have a handle on the present law adjustment, and can calculate if in fact there needs to be a proposal to the Legislature to rebate some of the money to the taxpayers.

It was the general consensus of the committee to defer the issue of property tax relief multiple until the November 17 meeting.

Outline for Final Report - Jeff Martin, Research Analyst, LSD

07:43:21 Mr. Martin discussed the items to be included in the Final Report (**Exhibit 17**).

Discussion

REP. LAKE asked if there should be some comment regarding the presentation that Mr. South had given us as far as how the exposure of the state is on the short term investment and how it relates to our revenue estimates. Mr. Martin said that would be appropriate under the revenue estimating reports.

SEN. PETERSON said that Mr. Martin's outline is okay for the final report.

Public Comment under purview of this committee

07:49:09 **Kevin Nelson, Billings resident**, discussed his concerns about areas designated as blighted areas and the South Billings Boulevard TIFD where there is a proposed construction for a Cabela's store. He distributed and discussed the packet of information on the proposed TIFD (**Exhibit 18**).

Questions

08:04:18 SEN. ESSMANN said that the information discussed today was not brought forward at a meeting that he had attended with Mr. Nelson and other neighborhood residents. Basically the discussion at that meeting was that this TIF district and the agreement that the City made with the developer that all the tax increment funds from this district are going to pay for the costs of making commercial improvements for a period of time. As a result of that, it was the feeling of those people in attendance of the meeting that no funds would be available for redevelopment of the surrounding neighborhood of which you are a resident. He asked Mr. Nelson if that was correct. Mr. Nelson said that the opinion is that Cabela's is going to take all of the tax increment dollars. The plan that the City put forward lists several projects but doesn't list the King Avenue Project and now the feeling is that a bill at \$500,000 per year is going to be

generated and they will have a \$5.36 million bond to pay off. You are down the road 10 years before any of the projects would be funded because there won't be any money left because of the agreement the City and Cabela's had entered into.

Mr. Nelson asked the Committee if it would be possible to add language in the law that would allow for citizens to participate when these decisions are being made. Currently, all you can do is submit your information to the Department of Revenue. You don't have a way to explain yourself or be heard. You don't even know if in fact, did the Department receive the proper information, did the Department understand the information that you sent. There is no public comment, there is no public review, there is nothing available for public participation when items of significant public interest are being handed down.

SEN. ELLIOTT asked if there would be any condemnation proceedings against any property? Mr. Nelson said that there are condemnation proceedings going on at this time.

SEN. ELLIOTT said that there is a law on the books that says that a city cannot condemn property and turn it over to a private entity within a certain number of years. Mr. Nelson said that he doesn't believe that they are condemning the property to turn it over to private investment. What they are doing is condemning those trailers because they need that space for widening King Avenue East.

SEN. ELLIOTT asked Mr. Heiman what the law says about types of TIFs for areas of urban blight or underdeveloped land? Mr. Heiman said that urban renewal is for land that is going down in value.

SEN. ELLIOTT asked if there were any prescriptions regarding the urban renewal TIF? Mr. Heiman said that urban renewal is for curing blight. The City has to make this determination of whether the area is blighted. The Department of Revenue can't make that determination of whether it is a blighted area or not. All they can do is make sure that the City has made a determination of blight and then check it off that it has been done.

REP. MORGAN said that this is the first time she has seen the entire district and part of what is included in that TIF district affects one of the smaller schools which has a nice tax base and is not an area of blight. She said that when the City does something like this, it is a misuse of what the TIF was designed for.

Mr. Nelson said that he asked the Department of Revenue if there was a process where he can challenge their ruling and present this information to them in a hearing of some kind. Right now there is no administrative hearing, you do not have any course of action.

REP. MORGAN asked Mr. Bucks if he realizes the amount of revenue that the state will be losing if this project goes through? Mr. Bucks said yes but that is not a criteria that they can utilize in their approval process.

REP. MORGAN asked Mr. Bucks to explain the procedure of approving or disapproving a project. Mr. Bucks said that the Department of Revenue requires local governments to submit documents that indicate that they have followed the Department's check list of steps. If a local government submits a statement of blight for an area, the Department checks that off as being submitted. The Department does not have the authority to second guess the local government's judgment as to whether or not it is a blighted area. The Legislature has not delegated that authority to the Department or to any other agency. The recourse of a citizen, when they believe that the law has not been followed, is in the courts.

SEN. PETERSON asked Mr. Bucks if this committee has the authority to request a public hearing prior to their final certification of the property value in this district? Mr. Bucks said that there is no public protest procedure laid out for the Department on certification of any districts and he is unaware of any statutes that lays out a protest procedure. He would have to consult counsel as to whether or not there is any requirement under the Administrative Procedure Act that we do that in these particular instances.

SEN. STORY asked Mr. Heiman if anyone could go to court on this issue to see if the City had applied the law properly. Who would be the affected parties in Mr. Heiman's view that would have a standing to go to court? Mr. Heiman said that any person owning property within the district, or any government entity, would have standing to bring the suit.

SEN. STORY asked if Mr. Bucks' staff could look into the concept of the city creating an SID and bonding the SID to pay those off with city general fund revenues, as well as revenues from developers, and when the TIF is up and running, and then reimbursing the city general fund with the TIF money. Mr.

Bucks said that the question of how funds are expended locally is under the purview of the Department of Administration. It may be appropriate to raise that question there. He said that if there is anything that looks like a refund to one of the jurisdictions and not to the others of which the state is one, that is an issue that deserves some review.

SEN. PETERSON said that it seems the only remedy might be challenging the process at the local level given the way the statutes are written. He said there probably isn't much they could do until the Legislature meets. Mr. Nelson said that he concurs with that and that is why he brought this information forward because people are not aware of how some of these districts are created by the cities and hopefully this will be information that can be used in the future.

08:37:51 **Randy Wilke, Department of Revenue**, answered a question that was asked by Sen. Essmann regarding comparable properties. Comparable sales approach is the approach where information from sold properties is used to make adjustments to unsold properties. The system uses five comparable properties. The high and low are dropped and the weighted average is determined using the other three properties. That value is identified for the property in question. They don't use that sales comparison approach for income property.

SEN. ESSMANN said that he had some questions on commercial class four properties. He asked Mr. Wilke what cap rates are they using for net income to extrapolate the value? Mr. Wilke said the Department is just beginning the process of doing the income modeling. There are a variety of ways of determining that rate, everything from dividing income by a sale of property, rate of return, rate on return, and effective tax rates.

Next meeting date

08:41:15 The next RTIC meeting is scheduled for November 17 and 18, 2008, with the primary focus on property reappraisals.

There was discussion regarding proxy voting. Sen. Story said that because of the general rule that if you are not here to hear the information, a committee member should not be voting. He said that in regards to information on revenue estimates, what you hear on general estimates is what you hear on the day you vote.

It was decided that there will be a half day meeting on November 17 and a full day meeting on November 18, and then tentatively schedule a meeting December 1 and 2, 2008.

Adjournment

08:57:20 With no further business before the Committee, SEN. PETERSON adjourned the meeting at 5:02 p.m.

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