



Revenue and Transportation Interim Committee

61st Montana Legislature

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July 22, 2010

TO: Revenue and Transportation Interim Committee

FROM: Jeff Martin, Legislative Research Analyst

SUBJECT: Overview and Options for Estimating General Fund Revenue

This memorandum summarizes the legislative process for estimating revenue for legislative appropriation. It also presents options for improving the process.

The Buck Never Stops

The Revenue and Transportation Interim Committee (RTIC) is required to develop the initial biennial revenue estimates for each legislative session. Section 5-5-227, MCA, provides in part that:

- (2) (a) The committee must have prepared by December 1 for introduction during each regular session of the legislature in which a revenue bill is under consideration an estimate of the amount of revenue projected to be available for legislative appropriation.
- (b) The committee may prepare for introduction during a special session of the legislature in which a revenue bill or an appropriation bill is under consideration an estimate of the amount of projected revenue. The revenue estimate is considered a subject specified in the call of a special session under 5-3-101.
- (3) The committee's estimate, as introduced in the legislature, constitutes the legislature's current revenue estimate until amended or until final adoption of the estimate by both houses. It is intended that the legislature's estimates and the assumptions underlying the estimates will be used by all agencies with responsibilities for estimating revenue or costs, including the preparation of fiscal notes.

The RTIC adopts the revenue estimates in November of the year preceding the next regular session. As a practical matter, the RTIC cannot adopt the estimates much earlier than mid-November because the Department of Revenue's income tax data tape is not available until November 1 (October 15 is the general deadline for taxpayers who requested an extension of time for filing an income tax return). Revenue estimates are made for the current fiscal year and the two fiscal years of the next biennium.

Staff of the Legislative Fiscal Division and the Governor's Office of Budget and Program Planning (OBPP) each present assumptions and corresponding revenue estimates for the RTIC's consideration. In the past, the RTIC has initially adopted the revenue estimating assumptions of the Legislative Fiscal Division and may make changes to those assumptions and revenue

estimates based on information presented by OBPP, economists from the Montana University System, and, occasionally, other experts.

A major component of the revenue estimate is the individual income tax. A substantial portion of the individual income tax estimate is driven by state economic growth factors provided by IHS Global Insights. Below is a description for estimating individual income tax revenue from the Legislative Fiscal Division's financial report for the 2011 biennium.

The income tax forecast for fiscal years 2009 through 2011 is comprised of four steps:

- collect calendar year 2007 income data from the tax returns;
- develop calendar growth factors for each income and deduction component and apply them to the base components in the 2007 income tax data;
- convert calendar year data to fiscal year data; and
- adjust the resulting fiscal year data for audits, credits, legislation, and other special events.

In November 2008, the Revenue and Transportation Interim Committee met and developed the assumptions and the resulting revenue forecast for all state revenues. Many of the income tax growth factors were based on IHS Global Insight October forecasts for wages and salaries, interest income, dividend income, capital gains, retirement income, business income, as well as other income tax items.

The forecast also contained estimates of income tax audits, credits and adjustments for:

- the one time \$140 property tax credit which was claimed in April 2008;
- excess refunds in FY 2008;
- the acceleration of income revenues by the withholding of mineral royalties in FY 2008; and
- other minor legislative impacts.

The November, and subsequent months, IHS Global Insight economic forecasts contained major downward revisions in the growth factors used to forecast Montana income tax. As a result, the LFD applied some of these lowered growth rates to revise its estimate of individual income tax.¹

Legislative Resolution

The resolution containing the RTIC's revenue estimates must be preintroduced by December 15, 2010. See Rules of the Montana Legislature (61st Legislative Session, 2009), Joint Rule 40-40(5)(a). Joint Rule 30-60 provides:

Estimation of revenue. The Revenue and Transportation Interim Committee shall introduce a House joint resolution for the purpose of estimating revenue that may be available for appropriation by the Legislature. (5-5-227, MCA).

For the last several sessions, the revenue estimating resolution has been introduced as House Joint Resolution No. 2 (HJR 2).

Introducing the resolution in the House of Representatives makes sense in a perfect world. The House is the first chamber to act on appropriations, and the body working collectively on the

¹"Fiscal Report 2011 Biennium, Statewide Perspectives", Vol 1, (Legislative Fiscal Division, Helena, Montana, June 2009), p. 27. Available on the Internet at leg.mt.gov/css/fiscal/reports/2009-session.asp.

expenditures and expected revenue would have some assurance that it has passed a balanced budget.

Joint Rule 40-200 establishes transmittal deadlines for legislation. The table below shows the transmittal deadlines of different types of bills during the 2009 legislative session:

Type of Bill	Transmittal from the First Chamber	Amendments Returned to the First Chamber
General	45th legislative day	73rd legislative day
Revenue Estimating Resolution	60th legislative day	82th legislative day
Appropriation	67th legislative day	80th legislative day
Revenue	71st legislative day	82nd legislative day

The House is required to transmit the revenue estimating resolution to the Senate by the 60th legislative day. Under this transmittal deadline, the House would have an estimate of revenue at least a week in advance of passing the appropriation bills. On the other hand, the Senate is required to return to the House amendments to appropriation bills before it is required to return amendments to the revenue estimating resolution.

As noted above, the RTIC's estimate, as introduced in the Legislature, constitutes the Legislature's current revenue estimate until amended or until final adoption of the estimate by both houses. General fund revenue estimates adopted by the RTIC were \$1,915.651 million for fiscal year 2009, \$1,873.585 million for fiscal year 2010, and \$1,941.532 for fiscal year 2011.

In February 2009, the House Taxation Committee revised the revenue estimates for many of the general fund revenue sources. Although the revenue estimates for some sources were increased, they were offset by fairly large reductions in the revenue estimates for individual income tax, corporation license tax, and oil and natural gas production taxes. Under the individual income tax, the Committee reduced the growth factors for a variety of income indicators, including wage and salary income; interest income; dividend income; rent, royalty, and partnership income; net business income; capital gains and losses; and IRA and pension income. Under the corporation license tax, the Committee reduced the level of U.S. profits and the percentage change in tax liability by industrial sector.

The revised assumptions reduced total general fund estimates for the 3-year period (fiscal years 2009 through 2011) by 4.4% and for the biennium (fiscal years 2010 and 2011) by 5.6%, or about \$214 million, from the estimates adopted by the RTIC. The resolution was reported out of the House Taxation Committee.

The resolution was rereferred to the House Taxation Committee in mid-March. The Committee again revised the revenue estimates, reducing general fund revenue estimates for the 3-year period (fiscal years 2009 through 2011) by 5.1% and for the biennium (fiscal years 2010 and 2011) by 6.6%, or about \$250 million, from the estimates adopted by the RTIC. The resolution

was reported out the House Taxation Committee.

The resolution failed to meet the first transmittal deadline and "died in the process".

Although neither house of the Legislature adopted the revenue estimating resolution in 2009, the estimates recommended by the House Taxation Committee became the official revenue estimates of the Legislature when the second Committee report was adopted.

The revenue estimates adopted by the Legislature are typically based on existing law prior to the start of the legislative session. Following each legislative session, the Legislative Fiscal Division prepares the *Legislative Fiscal Report* for the biennium. The report provides an in-depth analysis of the state budget adopted by the Legislature. The report, among other things, provides detailed information on the appropriations for each agency and program contained in the general appropriations act (House Bill No. 2) and in other legislation. It also provides the legislative revenue estimates and underlying economic assumptions that are included in HJR 2.

In order to track revenue collections and the status of the general fund balance, the Legislative Fiscal Division makes adjustments to the HJR 2 revenue estimates based on legislative changes to tax laws and other revenue sources. According to the latest projections by the Legislative Fiscal Division, general fund revenue collections for the biennium will fall short of estimated revenue, as adjusted for legislation, by about 9.8%.

The revenue estimating resolution also died in the process in 2005 and 2007. In 2007, the resolution died in the House Taxation Committee. As such, the RTIC's estimates were the Legislature's current revenue estimates.

In 2005, the House of Representatives did not concur in the Senate amendments to the resolution, and the resolution died in the process. As such, the Senate estimates were the Legislature's current revenue estimates.

Since the Legislature assumed the responsibility of developing the official revenue estimates for the purposes of achieving a balanced budget, the revenue estimating resolution has moved through the entire legislative process relatively unimpeded, except for the last three sessions. In each of those three sessions, the resolution has stalled in the House of Representatives at one phase of the process or another.

The mechanisms are in place in statute and rule for the resolution to move through the process in an orderly manner. Statute allows each chamber to revise the estimate based on its interpretation of currently available information. The rules provide for the timely action on the revenue estimates in relation to the budget.

However, nothing prevents a recalcitrant chamber of the Legislature from derailing the process for whatever reason. The derailment is not necessarily a fatal flaw, but the budget may be balanced more "by coincidence" than by an informed decision.

2009 Legislation to Revise the Process

Two bills were introduced last session to facilitate the passage of the revenue estimating resolution. Sen. Bob Story introduced Senate Bill No. 28 by request of the Revenue and Transportation Interim Committee. That bill would have required that the resolution be introduced in the Senate and that the Revenue and Transportation Interim Committee's revenue estimate would be the Legislature's current estimate until both houses "concur in a final estimate".

The idea behind the legislation was to split the responsibility of developing the expenditure and revenue components of the budget between the two chambers. Under this proposal, the resolution would conceivably have the same transmittal deadlines. However, using the RTIC's November estimate as the current estimate until concurrence in a final estimate may affect information contained in fiscal notes.

Sen. Dave Wanzenried introduced Senate Bill No. 210 that would have referred a constitutional amendment to the voters of Montana to require passage of a revenue estimating resolution in order to comply with the requirement for a balanced budget. The referendum would have amended Article VIII, section 9, of the Montana Constitution as follows:

Section 1. Article VIII, section 9, of The Constitution of the State of Montana is amended to read:

"Section 9. Balanced budget. Appropriations by the legislature shall not exceed anticipated revenue. Anticipated revenue shall be determined by passage of a revenue estimating resolution by the legislature."

The amendment would have required the Legislature to pass a revenue estimating resolution. The only other legislation that the Legislature is required to pass is a general appropriations bill (Article V, section 11(4) of the Montana Constitution).

A question was raised in the Senate Taxation Committee as to whether the amendment would be self-executing, that is, would the Legislature have to provide a process for the passage of the revenue estimating resolution. The mechanism exists under 5-5-227, MCA, outlining the Revenue and Transportation Interim Committee's duties. Section 5-5-227(3), MCA, could be amended as follows:

(3) The committee's estimate, as introduced in the legislature, constitutes the legislature's current revenue estimate until amended or until final ~~adoption~~ passage of the estimate by both houses pursuant to Article VIII, section 9, of the Montana constitution. It is intended that the legislature's estimates and the assumptions underlying the estimates will be used by all agencies with responsibilities for estimating revenue or costs, including the preparation of fiscal notes.

During executive action on the bill, one senator commented that the voters may not fully comprehend the purpose of the amendment and that they expect the Legislature to consider revenue estimates as a matter of course. However, Article VIII, section 9, is silent on how anticipated revenue is determined.

Both bills were tabled by the Senate Taxation Committee.

Options for Consideration

There are several options that the Revenue and Transportation Interim Committee could consider in revising the revenue estimating process:

- Recommend legislation that would require that the revenue estimating resolution be introduced in the Senate.
- Recommend to the Legislative Council that it propose to the Joint Rules Committee that the joint rules be amended to require the introduction of the resolution in the Senate (Joint Rule 30-60).
- Recommend to the Legislature that it adopt a constitutional referendum requiring the passage of a revenue estimating resolution under Article VIII, section 9, of the Montana Constitution.
- Recommend to the Legislative Council that it propose to the Joint Rules Committee that the joint rules of the Legislature be amended to provide for a joint subcommittee of the Legislature to consider the revenue estimating resolution.

The options to have the revenue estimating resolution introduced in the Senate would not take effect until the 2013 legislative session. Under current rules, the preintroduction of bills must be made by December 15 before the session. In addition, the RTIC and the Legislature would have to consider the policy implications of separating between the chambers the consideration of the expenditure and revenue components of the budget.

These two options would not guarantee that the resolution would move any more smoothly through the Legislature. If members of RTIC are interested in these options, staff would prepare proposals.

Amending the state constitution to require the passage of a revenue estimating resolution would ensure that the resolution would move through the process in the same manner as the general appropriations act. If the referendum were approved by the voters, the Legislature could revise how the resolution moves through the process, but the suggested change to 5-5-227, MCA, noted above, should be sufficient. If members of the RTIC are interested in this option, staff would prepare a bill draft for the next meeting.

Again, the provisions of the constitutional amendment, if approved by the voters, would not take effect until the 2013 legislative session.

The establishment of a joint subcommittee to consider the revenue estimating resolution could be accomplished this interim by amending Joint Rule 30-60 by inserting the following language, which is similar to the language related to joint committees for appropriation bills (Joint Rule 30-50):

The revenue estimating resolution must first be considered by a joint subcommittee composed of designated members of the Senate Taxation Committee and the House Taxation Committee, and

then by each committee separately.

There are six joint appropriations subcommittees, but the option for the resolution may involve only one joint subcommittee to deal primarily with the major revenue sources. The subcommittee could review the latest state economic forecasts and take testimony on the significant assumptions used to develop estimates for the individual income tax, the corporation license tax, and oil and natural gas production taxes, among others. The subcommittee could also review federal legislation that may have an effect on state general fund revenue collections.

This option would not ensure that the resolution moved through the Legislature, but it would establish a collaborative effort between the chambers to adopt the resolution. A timeline would have to be established for the joint subcommittee to make a recommendation to the House Taxation Committee. Absent a change in the transmittal deadline for the revenue estimating resolution, recommendations to the House Taxation Committee should be made well in advance of the 60th legislative day.

Following the pattern of joint appropriation subcommittees, the joint subcommittee would consist of six members, except in the case where one chamber had a tie in membership, in which case the subcommittee would consist of seven members. Without a provision to the contrary, the chair of the subcommittee would be a senator.

Moving this option forward would involve the Revenue and Transportation Interim Committee asking the Legislative Council to recommend to the Joint Rules Committee that the rule be included for consideration by the Legislature.

The Council is scheduled to meet September 9, 2010. If the Committee is interested in pursuing this option, staff would prepare a proposal for the Committee's consideration at a teleconference meeting later in August.

Another option would be to distance to some extent the determination of the revenue estimate from the legislative process. However, that option may best be considered next interim by a more in-depth study of how to improve the revenue estimating process.

Finally, the RTIC should discuss the type of information and public testimony it believes appropriate in adopting the initial revenue estimates. The discussion could occur at the September 15-16, 2010, RTIC meeting.

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