



## Revenue and Transportation Interim Committee

### 59th Montana Legislature

#### SENATE MEMBERS

JIM ELLIOTT--Chair  
GREGORY BARKUS  
JERRY BLACK  
KIM GILLAN  
SAM KITZENBERG  
KEN TOOLE

#### HOUSE MEMBERS

KARL WAITSCHIES--Vice Chair  
JILL COHENOUR  
CYNTHIA HINER  
BOB LAKE  
DAVE MCALPIN  
PENNY MORGAN

#### COMMITTEE STAFF

JEFF MARTIN, Lead Staff  
LEE HEIMAN, Staff Attorney  
DAWN FIELD, Secretary

# MINUTES

November 15, 2006

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.

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 ELLIOTT, Chair

SEN. GREGORY BARKUS  
SEN. JERRY SEN. BLACK  
SEN. KIM GILLAN  
SEN. SAM KITZENBERG  
SEN. KEN TOOLE

REP. JILL COHENOUR  
REP. CYNTHIA HINER  
REP. BOB LAKE  
REP. DAVE MCALPIN  
REP. PENNY MORGAN

### MEMBERS EXCUSED

REP. KARL WAITSCHIES, Vice Chair

### STAFF PRESENT

JEFF MARTIN, Lead Staff  
LEE HEIMAN, Staff Attorney  
DAWN FIELD, Secretary

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

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

### **COMMITTEE ACTION**

The Revenue and Transportation Interim Committee:

- approved the September 8, 2006, minutes, as written;
- adopted the LFD revenue estimates, as amended;
- approved a bill draft request for HJR 2 for drafting; and
- approved the LSD version of LC 0043 for drafting.

### **PART ONE - MORNING PORTION TAPE 1 - SIDE A**

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

00:00:01 SEN. ELLIOTT called the meeting to order at 8:09 a.m. The secretary took roll, REP. WAITSCHIES was excused. The September 8, 2006, minutes were adopted as written on a unanimous voice vote.

#### **MONTANA ECONOMIC OUTLOOK**

00:01:47 **Dr. Paul Polzin, Bureau of Business and Economic Research, University of Montana**, presented his report: *WHAT'S GOING ON? NATURAL RESOURCE BOOM IN Montana: HOW LONG CAN IT LAST?* (EXHIBIT #1).

- the cause for the natural resource boom is worldwide in nature - not local;
- the fastest economic growth is occurring in China and India and not the traditional markets such as the United States and Japan;
- economic and political instability due to immature third world countries will be a factor in determining how long this trend will last;
- the trends in commodity pricing and energy are due to demand factors (long term), rather than supply factors (short term); and
- a projected shortage of electrical power generation will ensure Montana's participation in energy development but factors such as generation and transmission siting and permitting will impact Montana's level of participation and growth.

#### **TAPE 1 - SIDE B**

00:34:53 In response to a question from SEN. GILLAN about certain gaps in data, Dr. Polzin said that when the federal government makes changes in its statistical reporting system, it is difficult to compare data from before and after the change and that is why data is lacking in certain areas.

00:35:31 SEN. GILLAN said that another economic analysis of the benefits of energy development indicate that while higher prices is good for income growth, it also has a dampening effect on the economy because of increased prices for other products. Dr. Polzin confirmed that this is the case.

- 00:36:36 SEN. GILLAN asked if Dr. Polzin could provide a percentage estimate of what the impact may be. He said that the best indicator would be that Montana has had four straight years of 4% growth, which hasn't occurred since the 1970s, so in terms of statewide data, the pluses have outweighed the minuses.
- 00:37:18 SEN. GILLAN, referring to comments by Dr. Polzin that Montana had not seriously suffered under the 2001 recession, recalled that Montana had to call a special session in 2001 to deal with a significant budget shortfall. She asked Dr. Polzin to comment. Dr. Polzin said that Montana was affected by the recession, just not to the same extent as the rest of the nation was. Certain areas of the state, such as Bozeman, was more impacted than the rest of the state.
- 00:38:51 REP. MCALPIN asked why healthcare was not taken into account in Dr. Polzin's report. Dr. Polzin said that the basic sector are those industries that receive funds from outside the state, such as agriculture, wood products and non resident travel. Overall, Montana does not get a significant amount of healthcare revenue from non residents, with the exceptions of Billings and Missoula.
- 00:40:33 REP. LAKE asked if the biotech corridor in western Montana has had a stabilizing effect on the Montana economy as it has moved from a natural resource to more of a technology based economy. Dr. Polzin said yes, because the natural resource boom affects only a small number of Montana counties.
- 00:42:45 SEN. TOOLE said that Montana's natural resource economy has traditionally included timber sales. He asked why Dr. Polzin's report didn't include numbers for timber production or sales. Dr. Polzin said that the wood products industry is suffering because of the limited availability of federal timber, even though industry has remained relatively stable for the last five years.
- 00:44:19 SEN. TOOLE asked how Canadian trade policy has affected Montana's timber industry and if the effect has been more severe than the effect from the lack of federal timber. Dr. Polzin said that he did not know.
- 00:44:41 SEN. TOOLE asked what other industries Dr. Polzin used to determine similar corollaries. Dr. Polzin said that even though he has tried, it is difficult to quantify factors such as in-migration, amenity migration, and retirees and he has not been able to integrate them into his mode.
- 00:45:18 SEN. TOOLE asked if federal tax policy or tourism, for example, were considered. Dr. Polzin said that tourism was included but that it was difficult to determine a net migration flow and retiree factor.
- 00:46:13 SEN. TOOLE said that he is very curious as to why growth doesn't correlate by locality. He said that he would argue that Ravalli County for example, does not have a lot of oil revenue coming in but that it remains one of the counties with the highest growth. He asked about the income flows of other growth counties that do not benefit directly from the natural resource industry. Dr. Polzin agreed that Ravalli County's growth is not due to natural resource revenue and listed two other high growth counties whose growth is due to other factors:

- Gallatin County -- manufacturing, non resident travel, and Montana State University; and
- Missoula County -- healthcare, manufacturing, University of Montana, and trucking.

00:48:45 SEN. TOOLE said that the framework of the overall presentation is that the natural resource base is what ought to be the focus on in determining trends for the Montana economy. He asked if that adequately explains the other sectors of growth in the high growth counties. Dr. Polzin said that looking at the basic industries is still the best way to predict the economic growth of each county.

00:50:21 SEN. ELLIOTT asked what percentage of the Montana economy is dependent on federal spending. Dr. Polzin said that federal subsidies to farmers and ranchers was not included as a part of this report but that federal employment is a major basic industry in Montana because the federal government owns so much property in the state.

### **INTRODUCTION TO REVENUE ESTIMATES**

00:52:08 Mr. Martin reviewed the agenda and meeting materials to be used for the revenue estimating process.

00:56:47 SEN. ELLIOTT said that the procedure used to adopt the estimates would be to make a motion to adopt the estimates after the presentation has been made, then follow with questions and discussion on the various sectors of the estimates. He said that the estimates could be amended through the amendment process. The estimates would be given final approval once the amendment process is complete. *(25.2 tape 1 - side b)*

### **Significance of Revenue Estimates to the Budget Process**

00:58:32 **Clayton Schenck, Fiscal Analyst, Legislative Fiscal Division (LFD)**, said that LFD staff has worked diligently in compiling the numbers in order to give the Legislature a high level of confidence in the revenue estimates. Mr. Schenck introduced LFD staff that assisted in compiling the estimates: Terry Johnson, Jim Standaert, Roger Lloyd, Cathy Duncan, and Mike Allen.

01:00:26 **Judy Paynter, Governor's Office, Office of Budget and Program Planning, (OBPP)** introduced OBPP staff that compiled the executive revenue estimates: Marla Larson, Katie Genadek, and Matt Slonaker. Ms. Paynter said that the members of both staffs worked well together.

01:01:18 SEN. ELLIOTT thanked LFD and OBPP staff for the difficult and accurate work done in preparing the estimates.

01:01:31 Mr. Schenck said that the access to information issue between the Department Of Revenue (DOR) and LFD created a healthy debate on the importance of the revenue estimating process, the need for precision, and if there can be a high level of confidence in the revenue estimates. Mr. Schenck emphasized the importance of accurate revenue estimates and said that RTIC has the unique authority to establish the estimates that eventually become the right side of the

budget equation. The amount budgeted for spending is entirely determined by HJR 1, which is initiated by this Committee through the revenue estimating resolution.

Mr. Schenck said that a balanced budget is a constitutional requirement and that in his opinion, the revenue estimating process to meeting that requirement is often understated. The revenue estimates are dependent on an extremely dynamic environment of economy and other factors, so the ability to create accurate estimates is critical. State statutes have established confidentiality requirements for tax data and LFD uses its limited amount of authority to create the most precise estimates possible.

Mr. Schenck said that the revenue estimating process is extremely sophisticated and exhaustive and that a number of sources are used to compile the estimates. The significance of getting the estimates right and the ominous possibility of getting them wrong guides staff to err on the side of caution.

Mr. Schenck said that both staffs are very knowledgeable and experienced and over the years, have begun working more closely together, which is why the estimates have been closer together than in the past. Common modeling and checking each others work has improved the quality of the assumptions, as well as developing more complex and scientific procedures and sources for developing the estimates. It is the hope of LFD that this explanation will improve the confidence level of legislators in the estimates.

## **TAPE 2 - SIDE A**

Mr. Schenck said that politics and policy do enter into spending issues but limiting the revenue estimates is neither a policy nor a political issue. It is establishing budget limits based on estimated revenues from existing law. The Legislature and RTIC are very significant players in setting budget priorities for the state and LFD staff believes it is serving both well by developing accurate estimates, which is why significant resources have been invested in the process. However, ultimately it is the Legislature that has to take ownership of the estimates. The LFD and OB PP don't consider this a matter of which staff "wins" but rather a matter of presenting the estimates and allowing this Committee, as legislators, to make a decision based on the information presented to them.

Mr. Schenck encouraged the Committee to question staff on how the estimate was determined and what information and methodology was used. Gaining an understanding of how the estimate is derived will only increase the level of confidence in the estimates. Also, with the large budget surplus facing the state, there will be many demands. This only increases the level of care with which the estimates should be examined.

01:10:29 SEN. ELLIOTT said that the final vote on the revenue estimates is the official assumption for the 2007 Legislative Session.

## **Overview of Significant Assumptions**

- 01:11:02 **Terry Johnson, Principal Fiscal Analyst, LFD**, said that he would summarize each revenue category in order to provide a context of what the numbers mean in terms of the overall budget. He noted that for the three-year period covered by his report, there is only about a \$30 million dollar difference between LFD and OBPP recommendations. He said that his presentation would be given in two sections: the first would deal with information on the 2007 biennium and the second would address the 2009 biennium. Mr. Johnson presented his report on the status of the General Fund (EXHIBIT #2).
- 01:15:45 Page 2, slide 3 -- Current 2007 Biennium Outlook: \$294 million improvement over the estimate from the 2005 special session;
- 01:17:20 Page 2, slide 4 -- Fund Balance - What Changed: a summary of what changed between the 2005 special session and today;
- 01:19:49 Page 3, slide 5 -- Revenues - What Changed: over 90% of the additional revenue came from individual and corporate income tax;
- 01:20:49 Page 3, slide 6 -- Revenue Outlook - 2009 Biennium: a comparison of the changes which occurred between the 2007 biennium to 2009 - a \$202.453 million change;
- 01:23:00 Page 4, slide 7 - Where the Revenue Comes From: the major sources are individual income, corporate, and property tax and amount to almost 65% of the total revenue stream into the general fund account.
- 01:24:31 Page 4, slide 8 -- Revenue Pattern Through the 2009 Biennium: shows yearly changes dating back to 1995;
- 01:31:04 Page 5, slide 9 -- General Fund Outlook 2009 Biennium: bottom line is that there will be approximately \$821 million in available funds; and
- 01:35:43 Page 5, slide 10 -- Structural Balance 2009 Biennium: LFD projects that there is \$412 million available for one time fund balance spending.
- 01:39:41 REP. MORGAN asked, in reference to the National Conference of State Legislatures (NCSL) recommendation that 3% - 5% be set aside for reserve account, why LFD did not choose 5%. Mr. Johnson said that in previous bienniums the amount of reserves set by the Legislature has actually been much lower than the recommended 3% but that in recent years, the Legislature has slowly been increasing the amount of reserves. Based on the numbers and the fact that the Budget Director planned to recommend a reserve of \$100 million, LFD staff felt that 3%, which would create a reserve amount of \$110 million, is an adequate number to set aside.
- 01:44:28 Regarding slide 10, SEN. BARKUS asked how LFD decided how to divide the remaining balance into what should be set aside for on-going initiatives and one-time initiatives, and if there was a specific revenue source that entered into the decision. Mr. Johnson said that the LFD recommendation for one-time initiatives

was based on the difference between what was estimated for the 2007 biennium and what actually occurred in 2007. These additional funds were not planned for in the budget, so are available for one-time spending.

## **TAPE 2 - SIDE B**

- 01:46:54 SEN. ELLIOTT asked for confirmation that the additional revenue is due mainly to income tax. Mr. Johnson said yes and referred to the graphic on slide 5, saying that graph shows that the estimate for income and corporation tax was obviously very low but that the remaining estimates were quite accurate.
- 01:48:53 REP. LAKE asked about the potential for supplemental funding. Mr. Johnson said that approximately \$40 million in supplementals was included in the estimates from the 2005 special session and that there is an additional \$17 million in the current revenue estimate over and above the \$40 million. The executive budget is to be released today and the next step will be to look at what LFD has determined and compare it to what the executive budget is requesting.
- 01:50:56 REP. LAKE asked if additional reimbursements have been calculated as well, such as the funds not expended by agencies and returned to the general fund. Mr. Johnson said that this type of reimbursement has been factored in.
- 01:52:25 REP. LAKE asked, regarding slide 6, if the 5.05% increase in property tax is based on the current classification rates and does not include a potential property tax reduction. Mr. Johnson said that all of the LFD recommendations are based on current state and federal law. REP. LAKE said that the Governor has announced plans for significant property tax reductions and that one must assume that this category will be reduced accordingly. Mr. Johnson said that was correct, but that the revenue estimates that become HJR 2, if adopted, will stay as current law revenue estimates. HJR 2 is never adjusted for the impacts of legislation and can only be changed through the fiscal note process.
- 01:54:37 SEN. TOOLE asked for a more detailed explanation of the property tax category. Mr. Johnson said that property tax is primarily derived from the 95 mills assessed against statewide taxable value. There is a small amount of nonlevied value and a small adjustment for counties that have vocational technical centers. SEN. TOOLE said that he wanted it to be clear that the political discussion about property tax relief focuses on residential property taxes, which primarily result from local property tax mills.
- 01:56:13 SEN. BLACK asked how the amount of the reserve account was determined. Mr. Johnson said that the reserve amount is calculated by taking 3% of the anticipated revenue.
- 01:56:59 SEN. ELLIOTT asked if the increase in property tax is primarily due to new construction and new valuation. Mr. Johnson said yes.

## **Comparison of Fiscal Division and Executive Branch Revenue Estimates**

- 01:58:19 Mr. Johnson directed the Committee to the *REVENUE ESTIMATE RECOMMENDATIONS* binder prepared by LFD (EXHIBIT #3), specifically to Tab 7: LFD Comparison to Executive, a color-coded side-by-side comparison of each source of revenue listed by fiscal year. He said that the last three columns indicate the total difference, which is about 1/2 of 1% for the three-year period.
- 02:01:43 Mr. Johnson said that there are several reasons that the LFD and OBPP estimates are so close: both offices use many of the same data sources, they use many of the same professional contacts, both offices work cooperatively and share the work load and information as the process allows, that both use the same simulation model for individual income tax which is a significant portion of the revenues, and that the two offices hold frequent meetings throughout the process. Mr. Johnson said that the most significant differences occurred in the corporate income tax and oil and natural gas production tax categories. He cautioned the Committee to remember that the estimates are only estimates and that many changes can occur within the three-year time frame.
- Mr. Johnson said that LFD has identified four significant issues (EXHIBIT #4) that RTIC needs to be aware of because of potential significant impacts on the revenue stream. Mr. Johnson discussed each of the four issues: Montana capital gains income, audit revenue, common school interest and income, and tobacco settlement income.
- 02:16:48 REP. COHENOUR asked where the audit revenue is listed in the revenue estimates. Mr. Johnson said that it shows up in four different categories: individual income tax, corporate income tax, telecommunications tax, and consolidated oil and gas; totaling \$90 million in three years.
- 02:18:23 Regarding capital gains income, SEN. BARKUS asked Mr. Johnson for a percentage of what comprises capital gains, such as equity or real estate. Mr. Johnson said that SEN. BARKUS' question indicated the exact problem that LFD experiences when trying to break down this tax category. The data is available only in aggregate form and is all but impossible to break down further. Mr. Johnson said that in 1997, LFD, OBPP, and DOR gathered enough funding to conduct a study on this tax category. The study looked at all of the individual capital gains returns that were filed. The process is very labor intensive and is one of the issues that DOR Director Dan Bucks will discuss later in the meeting.
- 02:20:19 SEN. BARKUS said that capital gains tax collections are of great concern to him and that with current economic trends in real estate and housing, there could be a serious decline in this tax category. He said that if it dropped back to the amount collected in 2000, it would be decrease of \$600 million. Mr. Johnson said that could be the case but that he could not estimate what the net result would be without running the scenario through the simulation model. He said that capital gains is a complicated tax to work with, due to factors such as the tax credit created by SB 407. Mr. Johnson said that he also was nervous about this tax category, that he was reluctant to predict what direction it would take, and that he is frustrated by the lack of data.



## **TAPE 3 - SIDE A**

- 02:46:55 **Chris Tweeten , Chief Civil Counsel, Office of the Attorney General (AG)** said that he was available to answer questions relating to the tobacco settlement (LFD Issues list - EXHIBIT #4).
- 02:47:13 REP. MCALPIN asked what the likelihood is that the tobacco companies will withhold a portion or all of the master settlement payment. Mr. Tweeten reviewed the provisions of the settlement agreement and explained that certain adjustments can be made to the agreement (EXHIBIT #4, number 4). Mr. Tweeten said that Montana is at risk of losing millions of dollars, that litigation is in progress with the companies that are withholding settlement money, and that calculating the tobacco payment will be very difficult because of this situation. Mr. Tweeten said that there is a potential remedy and that the AG's office is hopeful that an agreement can be reached between the states and the participating manufacturers but recommended that these payments be approached with a certain amount of care until the issue is resolved. .
- 02:54:57 Mr. Tweeten said that there also is positive news and reported that an adjustment scheduled to kick in in the next biennium will increase the amount of money that Montana will get an additional \$60 - \$70 million over the next seven to eight years.

### **MOTION TO ADOPT LFD ASSUMPTIONS AND CORRESPONDING ESTIMATES**

- 02:57:51 REP. COHENOUR **moved** to adopt the LFD general fund revenue estimates, the nongeneral fund revenue estimates, and the preliminary ending fund balance for the HJR 2 resolution. The **motion passed** on a unanimous voice vote.

### **Analysis of Differences Between LFD and Executive Branch General Fund Estimates**

- 02:58:42 REP. COHENOUR asked for an explanation of the differences between LFD and OBPP corporate income tax numbers. Mr. Johnson said that the calculation looked at the amount collected in fiscal years 2005 and 2006 and what sector the particular corporation was involved in. Based on an analysis of the 2005 and 2006 payment information, a specific growth factor was applied to each sector to project the future growth rate for 2007, 2008, and 2009. A final adjustment to the number was made by including the audit recommendations, as well as anticipated unusual refund activity.
- 03:02:31 **Marla Larson, OBPP, Governor's Office**, asked the Committee to look at Table 1 in the Corporate License Tax section on page 76 of OBPP's revenue estimates (EXHIBIT #5). She said that both estimates show substantial slowdown is predicted in this category. LFD believes that the slowdown will occur more quickly than does OBPP, which is what accounts for the differences in the estimates.

### **Analysis and Recommendations Related to Nongeneral Fund Revenue Sources**

- 03:05:58 Mr. Johnson referred the Committee to the Nongeneral Fund Revenue Estimation Table on page 11 of the LFD revenue estimates (EXHIBIT 3). He said that individual estimates from nongeneral fund sources are important to the

budgeting process. Also, there are a number of trust accounts from which the legislature appropriates investment earnings. All of these estimates provide good information to the various appropriations committees when making budget decisions. The table on page 11 is a summary of all of the nongeneral fund revenue sources that are estimated independently.

- 03:08:58 SEN. GILLAN asked if an adjustment to gas tax receipts would be necessary due to the high cost of gasoline at the pump and if a reduction in consumption had occurred when the prices were so high. Mr. Johnson said that historical patterns and current fiscal year data indicate that there has not been a big change in consumption.
- 03:10:53 REP. LAKE asked why the coal trust interest is projected to drop. Mr. Johnson said that the 2005 Legislature capped the permanent trust with the creation of the Economic Development Trust, so now the principal portion that is invested is stable.
- 03:12:04 REP. LAKE asked if the definition change for cigarettes will impact the tobacco tax revenues. Mr. Johnson said that he did not consider that factor when calculating the estimate. SEN. ELLIOTT said that the impact would be small.
- 03:13:07 SEN. BARKUS asked how SEN. KITZENBERG's announcement that he is changing parties will affect the makeup of RTIC and if the committee can still be considered politically balanced. SEN. ELLIOTT said that SEN. KITZENBERG has not officially declared his change in political parties so the Committee is still balanced. SEN. BARKUS said that he is concerned about the integrity of the Committee due to this issue. SEN. ELLIOTT said that he is also concerned and had consulted with the Code Commissioner on this matter.
- 03:13:53 SEN. BARKUS said that he is concerned that the estimate for corporate license tax is too low and the estimate for personal income tax is too high.
- 03:14:12 SEN. GILLAN said that when the voters approved the cigarette tax, it was thought that there would be a reduction in consumption. She asked Mr. Johnson to comment on that and also on the impact, if any, of illegal cigarettes being brought into the State as a result of the tax. Mr. Johnson said that a reduction in consumption has occurred, as predicted.
- 03:16:24 SEN. GILLAN asked if the rumor that cigarettes are being sold illegally in Montana on the black market have impacted cigarette tax revenues. Mr. Johnson said that he could not comment on the black market rumors but that he was expecting a faster decline in cigarette sales than has happened and that there may prove to be a small uptick in consumption.
- 03:17:22 SEN. ELLIOTT said that prior to 2001, not all of the corporate tax receipts were deposited into the general fund. He asked what changed. Mr. Johnson said that prior to HB 124, a portion of corporation income tax on financial institutions was returned to the county in which institution was located. House Bill 124 changed

the distribution of that tax and now 100% of corporate tax is deposited into the general fund.

03:18:20 REP. LAKE asked about the difference between the LFD and executive estimate amounts for the oil and gas production tax. Mr. Johnson said that a number of factors have to be taken into account, such as production levels for both commodities, the prices received for both, and the effective tax rate, which is a critical factor. Also, there are tax holidays for certain types of oil and certain types of natural gas, so as new production comes on, that production is taxed at a lower rate. The effective tax rate has to account for this. LFD looks at an incredible amount of detail in order to find out when the tax holiday rate will change to the full tax rate for companies. Based on that, LFD came up with an overall average effective rate. Forecasts from other sources are also used in projecting this number.

03:21:15 REP. LAKE asked that OBPP also respond to his question. **Katie Genadek, OBPP**, said that OBPP staff used a similar methodology. She referred the Committee to pages 90 and 91 of the OBPP estimates (EXHIBIT #5) and explained the methodology used by the Governor's Office (page 91). Ms. Genadek said that Table 4 on page 90 indicates projected production levels and pointed out that production levels are expected to stabilize over the next few years.

03:25:07 SEN. ELLIOTT said that capital gains and losses account for about 9% of income and asked what proportion of income tax comes from capital gains. Mr. Johnson said that because a taxpayer may have a number of different types of income it would be very difficult to make that assessment. He said that he would probably apply an average of the effective tax rate to that particular piece of income.

03:26:27 Mr. Martin said that Roger Lloyd, LFD, would address RTIC regarding updated timber estimates. **TAPE 3 - SIDE B Roger Lloyd, Senior Fiscal Analyst, LFD**, said that he had updated timber estimates from the Department of Natural Resources and Conservation (DNRC) and asked for the Committee's concurrence in applying them to the revenue estimates. REP. COHENOUR said that the information should be considered a friendly amendment.

### **Final Adoption of Assumptions and Corresponding Revenue Estimates -- HJR 2**

03:27:53 Sen. Elliott said that the question has been called on the motion to adopt the revenue estimate. The **motion carried** on a unanimous voice vote. SEN. ELLIOTT assigned REP. COHENOUR and REP. LAKE as cosponsors until it is known which party will control the House.

03:29:53 REP. LAKE asked for clarification on if including the DNRC updated timber estimates required an amendment before final adoption of the estimates. REP. COHENOUR said that she considered it a friendly amendment to the motion. REP. LAKE said that the motion was on the floor before the DNRC information was added. SEN. ELLIOTT said that the motion would be reopened. SEN. BLACK said that he would like to know what updated figure is.

- 03:30:56 Mr. Lloyd said that the figure is a reduction in timber sale revenue of \$3.5 million over the three-year period. REP. LAKE **moved** to reconsider the Committee's action. The **motion passed** on a unanimous voice vote.
- 03:31:29 REP. COHENOUR **moved** to add the revised timber sales estimate. The **motion passed** on a unanimous voice vote.
- 03:32:12 REP. COHENOUR **moved** to adopt the revenue estimate as amended. The **motion passed** on a unanimous voice vote.
- 03:33:04 REP. LAKE moved to request a bill draft for the HJR 2 revenue estimate resolution. The **motion passed** on a unanimous voice vote.

## **PART TWO - AFTERNOON PORTION**

### **ESTIMATED COST OF PROVIDING USABLE SUPPORTING INDIVIDUAL INCOME TAX SCHEDULES TO THE LFD AND BUDGET OFFICES**

- 00:00:36 **Dan Bucks, Director, Department of Revenue (DOR)**, provided information regarding the cost of capturing information from federal schedules for revenue estimating purposes (EXHIBIT #6). Director Bucks discussed the costs for the necessary equipment, software, rent, and ongoing staff and said that the total cost would be \$947,737 for the first year and approximately \$435,000 per year thereafter.

### **DISCUSSION AND ACTION OF LC0043 TO REVISE AND CLARIFY LFD AND BUDGET OFFICE ACCESS TO TAX INFORMATION**

- 00:06:20 Lee Heiman, Staff Attorney, LSD, distributed the updated version of LC 0043 - November 15, 2006 9:22 a.m. (EXHIBIT #7). Mr. Heiman said the bill draft has changed slightly since the September meeting and pointed out that on page three, subsection (3) was stricken. He said that striking this subsection would provide that the information given to LFD and OBPP would be unaltered. Mr. Heiman also discussed a change on page 10 - Section 4(4)(b) - to clarify that LFD and OBPP is to receive corporate tax data, including some tax data that is not within that title. Mr. Heiman said that the major changes are that the penalty provision has been cleaned up and that language has been rewritten to deal with "wrap around federal data". Mr. Heiman said that this is a complicated issue and that additional adjustments may be needed.
- 00:11:29 REP. COHENOUR said that the Internal Revenue Service (IRS) reviewed the last two proposed bill drafts on this issue and did not approve of either one. She asked if the IRS will have issues with this version. Mr. Heiman said that he attempted to deal with IRS objections in this version but that he could not guarantee that the IRS would not object.
- 00:12:13 Mr. Schenck said that this is a policy issue for legislators to decide and that it is essential that legislation is considered to ensure access to tax data. Mr. Schenck said that LFD encourages the Committee's serious consideration of LC 0043.

- 00:13:26 Director Bucks distributed a summary sheet listing the four major categories of concern to DOR regarding the access to information issue (EXHIBIT #8). He also distributed the DOR version of LC 0043 - 11/15/2006 12:43 p.m. (EXHIBIT #9). Director Bucks used the summary sheet (EXHIBIT #8) to discuss and highlight the policy issues in and the differences between the two bill drafts (EXHIBIT #7 and EXHIBIT #9). (35.5)
- 00:26:45 SEN. ELLIOTT asked Mr. Heiman to discuss the privacy concerns mentioned by Director Bucks. Mr. Heiman said that his opinion differs from that of the Director and that a critical factor to consider is that the information is being transferred from state entity to another entity within state government and not outside state government. Mr. Heiman said that in his opinion, this type of information transfer falls under what is allowed under state law because the information will remain confidential within the state agencies that need the information for state use. He said that confidential information is already shared between state agencies for other purposes, such as child support enforcement actions.
- 00:29:28 SEN. BARKUS asked Mary Whittinghill, Montana Taxpayers Association (MTA), to state the association's position on LC 0043. Ms. Whittinghill asked which version she was to address. SEN. ELLIOTT directed her to use the LSD version of LC0043 prepared by Mr. Heiman. Ms. Whittinghill said that the association does not have an opinion on the LSD version. SEN. ELLIOTT allowed her to discuss the DOR version LC 0043. Ms. Whittinghill said that she had not had an opportunity to review the bill draft in detail but that said that MTA believes that the Supreme Court ruled that corporate tax records are to remain confidential, regardless of if it is publically traded. She said that MTA has not taken an official position at this time on either bill draft.

#### **TAPE 4 - SIDE A**

- 00:31:43 SEN. BARKUS said that he did not support LC 0043 as a committee bill and that it should have the purview of the full Legislature.
- 00:32:38 REP. LAKE asked why the same LC number is being used for the two bill drafts, particularly since they are two different documents. Mr. Heiman said that the original version of LC 0043 was drafted by LSD and was used as the basis for a compromise bill between LFD and DOR. He said that DOR has a separate bill draft request on this issue in addition to the bill draft discussed at the meeting.
- 00:33:56 REP. LAKE asked for clarification that there will be two separate bill drafts with different LC numbers. Mr. Heiman said that was correct, that the end result could be an RTIC bill and a DOR bill.
- 00:34:30 Mr. Martin provided a brief history of the information sharing issue between LFD and DOR. He said that the issue originated from a question regarding the disclosure of corporate tax data to fiscal analysts. Additionally, there were concerns from the Legislative Finance Committee and RTIC regarding sufficient access to individual income tax data in order to supply detailed analysis to the

committee. DOR has voiced its concerns regarding the information access issue and has requested its own bill draft to deal with this issue.

- 00:38:06 SEN. ELLIOTT said that the DOR bill could be considered as a committee bill if it was adopted by RTIC but that his intent was that if a bill is approved, he would prefer it to be the LSD version. He said that as Chair, he would not entertain any amendments to either bill draft and that any changes would have to be done through the legislative process. The motion today will be limited to the bills, as currently written.
- 00:39:13 REP. COHENOUR said that the issue extends back to the 2003 Legislative Session when the House Tax Committee requested information from DOR. The estimates were not accurate and frustrated the legislators in their efforts to create fair tax policy. If fair taxation is the goal, then staff, at the very least, has to have increased access.
- 00:41:40 REP. COHENOUR asked that LFD, OBPP, and DOR staff continue to work cooperatively on this issue. SEN. ELLIOTT said that work will continue and that there is still time for compromise and change.
- 00:42:57 Mr. Schenck said that DOR has taken the position that corporate tax information statute is unclear and that if this is not clarified, it will not provide corporate income tax data in the next session. DOR and included language in the Memorandum of Understanding to that effect. It is critical that something be done in order to avoid another incident in the next biennium regarding corporate tax information.
- 00:44:11 Director Bucks clarified that DOR's concern is due to the ambiguity in the current corporate tax information sharing statute regarding how the name, address, and identifying information of corporations may be used. If this is not clarified legislatively, DOR will continue to provide the tax data but not the name, address, and identifier information.
- 00:45:50 REP. COHENOUR asked DOR to respond to Mr. Heiman's comments on the privacy issue. Director Bucks said that the distinction is that taxpayers submit private information for the purposes of determining tax liability and that the question is, should the entire return be available to other agencies that don't have responsibility for assessing tax liability. The United States Congress has made the distinction between tax administration purposes and other purposes and has authorized some information exchange for limited governmental purposes, such as for child support enforcement cases. There is a difference between the limited information sharing in that type of situation and what the LFD is asking for, which is that LFD and OBPP receive the entire income tax return.
- 00:49:05 SEN. ELLIOTT asked if Title 15 contains language that gives the taxpayer the expectation that only DOR is able to access this information. Director Bucks said that current state law says that a taxpayers name, address, social security number, or tax id number will not be shared but added that the statute addressing corporate confidentiality requirements is somewhat ambiguous.

SEN. ELLIOTT asked if the language identifies who is not to share the information and with whom the information is not to be shared with. Director Bucks said that the law specifies that the Department of Revenue will not share this information and also specifies that names, addresses, and identification numbers will not be shared. That, combined with the general confidentiality, creates an expectation of privacy. Montana's Constitution is relatively new and no one knows how the privacy clause would be interpreted within this context.

00:51:09 REP. COHENOUR **moved** to approve LC 0043 - November 15, 2006, 9:22 a.m. version - (EXHIBIT #7) as a Revenue and Transportation Interim Committee bill. The **motion passed** on a 10-1 voice vote, with SEN. BARKUS voting no.

#### **ASSIGN COMMITTEE SPONSORS FOR COMMITTEE BILLS**

00:52:50 SEN. ELLIOTT assigned all bill drafts approved by the Committee as follows:

- LC 0195 - to revise authority for committee to create revenue estimates for special session -- REP. MORGAN will sponsor.
- LC 0196 - clarifying distribution of revenue for heavy vehicles -- REP. MCALPIN will sponsor.
- LC 0197 -- clarify allocation of certain drivers license fees -- REP. HINER will carry.
- LC 0043 - to revise and clarify LFD and OBPP access to tax information - - SEN. GILLAN will carry.

#### **PUBLIC COMMENT**

00:59:09 Director Bucks distributed copies of updates on two DOR legislative requests approved by the 2005 Legislature:

- EXHIBIT #10 -- additional FTE for DOR to increase taxpayer compliance rates; and
- EXHIBIT #11 - additional FTE for DOR to increase collections of delinquent income tax receivables.

#### **ADJOURNMENT**

01:04:34 SEN. ELLIOTT thanked RTIC, LFD, and OBPP staff for a job well done. He also extended his thanks to the Legislative Finance Committee, the Legislative Services Division, and to Director Bucks and DOR staff. With no further business before the Committee, SEN. ELLIOTT adjourned the 2005-06 Revenue and Transportation Interim Committee.

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