



## Revenue and Transportation Interim Committee

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### 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

December 7, 2007

Room 137, Capitol Building  
Helena, Montana

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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#### **COMMITTEE MEMBERS PRESENT**

SEN. JIM PETERSON, Chair  
SEN. KIM GILLAN, Vice Chair  
SEN. JEFF ESSMANN  
SEN. CHRISTINE KAUFMANN  
SEN. ROBERT STORY JR

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

#### **COMMITTEE MEMBERS EXCUSED**

SEN. JIM ELLIOTT

#### **STAFF PRESENT**

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

#### **Visitors and Agenda**

**CALL TO ORDER AND ROLL CALL**

00:00:08 Sen. Peterson called the meeting to order at 7:34 a.m. The secretary took roll visually. Sen. Elliott was excused.

**Perspectives on state conformity with federal income tax laws**

00:01:42 **Harley Duncan, Executive Director, Federation of Tax Administrators**, gave a presentation on State Income Tax Conformity (**EXHIBIT 1**). He said that conformity contributes to the administration of tax, that it has valuable attributes not only from a state perspective but from an individual taxpayer's perspective, and maintaining policy control with state elected officials can have an impact on revenue flows.

00:33:16 **Dan Bucks, Director, Department of Revenue**, talked about automatic conformity and fixed date conformity to the Internal Revenue Code. He discussed the constitutional issue and the practical policy issue. The constitutional issue is that legislative power and responsibility may not be delegated to private organizations or to the federal government. He said that by automatically following the Internal Revenue Code, the Legislature is delegating authority to the U.S. Congress to make policy for the state of Montana. It is okay if the state does it as of a fixed date because they know what that code is as a Legislature, but they don't know what Congress is going to do in the future. There is a risk of challenges to the income system on the basis of whether or not there is a delegation of authority. There is also a view that it may not be good policy for the state Legislature to cede its authority to Congress.

**Questions**

00:52:54 Rep. Lake asked what happens under a fixed date conformity. Mr. Bucks said that if the forms had a fixed date and if Congress changed things in the meantime, the Department can issue worksheets as supplements instead of redoing the form itself.

Sen. Peterson asked Mr. Duncan to respond to Director Bucks' suggestion of adopting the date the Legislature meets with a two-year window. Mr. Duncan said that while recognizing that he didn't have the full benefit of the institutional history and culture of Montana, he thinks Mr. Bucks' suggestion has merit. Looking at that two-year window, it increases the control of the elected officials over the tax code. The next few years are going to be ones of fairly substantial turmoil for the federal tax code because of the alternative minimum tax, the

expiration of the tax cuts that were enacted in 2001, and the issue of the federal estate tax if the nation continues to experience a weakening economy. Whatever a state can do to insure that it is in the best position possible to manage that and not cause disruptions at the state level is going to be important.

01:03:25 Sen. Kaufmann asked Mr. Bucks if conforming or not conforming has significantly increased the workload of both this committee and the tax committee with the fixed date modified approach? Mr. Bucks said that it does not affect the Department's work.

01:06:51 **George Olson, Montana Society of Certified Public Accountants**, spoke on HJR 61. He said that Doug Young of Montana State University outlined criteria that constitutes a "good" tax system. One criteria was that the system should have low administrative and compliance costs. Mr. Olson said decoupling would add complexity in both administrative and compliance costs to an already complicated system. Without conformity, different tax treatment would be a problem for federal and Montana purposes and that a lack of conformity would inhibit accountants' ability to plan for their clients. He said that Society's preference would be automatic conformity because you can't plan beyond those two years. Since Congress meets more often than the state legislature, they can respond more quickly to changes. He said taxpayers of Montana who can and should be able to do their own returns, the simpler they can make it, the better off they are.

#### Questions

01:19:39 Sen. Kaufmann said that if there is a federal policy that the Legislature doesn't like, the Legislature might choose nonconformity. She asked if Mr. Olson's concern is the fact that there is a point in time where there is a systematic review by the Legislature that is going to increase the number of times that the Legislature chooses not to conform and is Mr. Olson recommending that the state not look at federal policy as to whether or not it is good policy for Montana. Mr. Olson said that his point is, it does need to be looked at carefully on an annual basis. He said that if you have a mandate to change it, you will look for something to change.

#### Public Comment on issue of conformity between state and federal law

No public comment at this time.

#### Public Comment on other issues

01:23:09 **John Youngberg, Montana Farm Bureau**, talked about the PPL lawsuit and the

State Lands issue. He said that he asked Director Sexton if the farmers and ranchers would be required to pay taxes on the land running underneath a navigable stream and she said that under the Constitution, you have to pay. The problem, Mr. Youngberg said, is that he and his members have been paying taxes on the land underlying those streams ever since property taxes were started.

### Questions

01:26:59

Sen. Lake asked if farmers or ranchers might have to start fencing the land around navigable streams. Mr. Youngberg said that question and the questions of easements for a fence across a stream that is state land and if it is a government entity, who is to pay, are ones that they are not sure of.

**Anthony Johnstone, Attorney General's Office**, discussed the Department of Natural Resources and Conservation's position on leases or licenses uses as they determine them, the differences between the types of uses that irrigators make of Montana's navigable river beds and the PPL lawsuit, the uses that Montana's farmers make of the streambeds and the valuation that the DNRC places on those uses, and the issue of the tax system that PPL raised. Mr. Johnstone said that the Department of Revenue tracks taxes based on a mapping system, and the maps may or may not show that your land includes parts of a river that the state owns as a navigable river. If a river is navigable, the deed will say that the landowner only owns the river up to the banks of the of the river and therefore there is a natural line at the banks of the river that define where the state's lands begin and where the state is entitled to ownership on behalf of the school trust. Where the landowner owns it privately, the state has no obligational right to possess that land. Finally, in terms of the navigable rivers, that is the federal constitutional test in terms of what the state received at statehood. The Montana Constitution in 1889, and again in 1972, took those lands, put them into the school trust, kept them open for all the public to use, and requires that full market value be paid.

01:32:51

Rep. Lake asked Mr. Johnstone what the relationship is on the north half of Flathead Lake of which the rest of the Lake and Kerr Dam is controlled by the Salish-Kootenai Confederated Tribes. Does the state get any reimbursement for the land under Flathead Lake that represents commerce for the Salish-Kootenai Confederated Tribes? Mr. Johnstone said that the Salish-Kootenai Confederated Tribes get substantial amounts of rent from PPL under a federal settlement reached in the licensing process. Flathead Lake is not at issue in the PPL lawsuit. The DNRC has had a policy for years of leasing streambed uses and ranchers and farmers already are in agreement in licenses of minimal fee

charges for the few square feet that they use.

01:36:43 Sen. Essmann said that he would be interested in the Department of Revenue's appraisal process that covers the area of taxation of the state trust lands, when making references to assessing property to the banks. He asked what do they consider the bank, and to which point do they assess the bank, is it the high water mark or is it the customary low water mark. He said that he would like to get a clear answer on that and then this committee could review, at a future meeting, a statute that clearly exempts portions of navigable water or waterways which serve as public rights away from taxation to resolve that issue. Mr. Bucks said that he did not have an answer to his question in terms of the actual measurement of high water mark or low water mark, but he will get an answer to Sen. Eassmann as soon as he can.

01:39:23 Sen. Story asked Mr. Bucks if someone has a section or two of land and a navigable stream ran through one of the sections, is the taxable value of those two sections any different. Mr. Bucks said he does not have an answer to that question. The last time the state comprehensively classified agricultural land in the state for tax purposes was in 1963. The Department is now engaging in the first comprehensive reappraisal process reclassifying lands that can be done with the state of the art technology and the interaction with the taxpayer owners that has been done in 44 years.

01:42:50 **John Youngberg, Montana Farm Bureau**, commented about land under streams designated as state lands that is sovereign land and does not receive fair market value. Mr. Youngberg said that if he has a diversion that is part state land, can somebody else bid on that piece of state land? How is that going to be handled. If he has the best place to put his dam for his irrigation ditch, can somebody else come in and bid and raise that value because it is state land.

**BREAK**

02:01:20 Terry Johnson, Principal Fiscal Analyst, Legislative Fiscal Division (LFD), distributed a spreadsheet on individual income tax components. Sen. Story said that the reason that he asked for this to be put into a pie chart is because of the question of how much capital gains affects the revenue. When you look at those bar graphs, you don't realize that the wages and salaries is 60+ of the income tax and the other ones, while they are important, a lot smaller percentages, when you look at the makeup of the individual income tax in a The pie chart shows a better perspective of the importance of each component.

Sen. Peterson asked Mr. Johnson if wage and salary disbursements includes

federal or are just local and state. Mr. Johnson said it includes state, local, and federal wages and salaries.

### **SJR 31: Study of School Funding and Property Taxes**

#### **02:04:20 Overview of SJR 31 Study - Sen. Essmann, Sponsor**

Sen. Essmann distributed a copy of SJR 31 to the committee (**EXHIBIT 2**). After giving a brief overview of his bill, Sen. Essmann said that he would like the committee to give direction to staff to begin initial modeling design efforts.

#### **02:16:15 Update of SJR 31 - Jeff Martin, Research Analyst, LSD**

Mr. Martin discussed the draft SJR 31 study plan (**EXHIBIT 3**) and the proposed schedule of meeting dates.

#### **02:20:16 Committee Discussion**

Rep. Morgan thought that the Committee should look at facilities that had been used by high schools and no longer are, could be used by a grade school and vice versa. Sen. Story said that it was his understanding that there are some people from Montana State University that are looking at the same information that Dr. Swanson had presented, and are doing an analysis of that. He thought that might be a something that the Committee could also look at. Sen. Peterson said that Dr. Miles Watson and Doug Young have already compiled data and it might be helpful they could give us some of that information.

### **Legal Analysis - Lee Heiman, Legal Staff, LSD**

02:34:39 Mr. Heiman said that he was asked to look at the statewide equalization district that was in Senate Bill 554. He discussed his memo on levying different property tax mills against different classes of property (**EXHIBIT 4**).

### **Questions**

02:42:22 Sen. Story asked if the 40 mill or 55 mill in statewide levies were applied to different tax bases. Mr. Heiman said that he didn't think so but he can't recall seeing that. He said that he could check.

02:44:07 Sen. Essmann said there will not be a restructuring of education funding for the property tax system without a public vote and a guarantee that what is attempted to be accomplished will stay in place so that the goals would be achieved. He said that there was a companion constitutional amendment to SB 554 that a statewide levy would not be assessed on Classes 3, 4 and 10 property, which is agricultural, residential, and commercial property, and forest land. The committee would have to request a constitutional amendment so that Classes 3, 4 and 10 would not be subject to the statewide equalization district levy and

serve as the guarantee that a statewide property tax levy would not come back on those classes of property.

## **SCHOOL FUNDING OVERVIEW**

### **02:47:02 Budgeted Funds of School Districts - Madalyn Quinlan, Chief of Staff, Office of Public Instruction**

Ms. Quinlan discussed the budgeted funds of school districts and the sources of revenue (**EXHIBIT 5**). She said that they tried to focus on the revenue side of school funding issues as opposed to the formula itself, and how districts receive their allocations.

Ms. Quinlan explained base budget funding. She said that the school funding formula for the general fund budget, in order to secure equalization, require that all school districts adopt the base budget that is defined for that district by the formula. They have a general fund maximum budget. The base budget is 80% of the maximum budget. Because it has shifted, it is no longer a straight 80%. They now have new funding pieces in the puzzle: the Quality Educator Payment, the At Risk Student Payment, and the Indian Education for All and American Indian Achievement Gap Payment. Fiscal year 2006 was the first year for those payments and those were 100% state funded. The pieces that are driven by student counts, the base budget is roughly 80% of the maximum budget in that area. All districts must adopt the minimum. They also have a provision for the schools to exceed the maximum, so based on changes from last session, the law now says that the highest that a budgeted district can adopt is either the greater of the previous year's budget or the maximum budget that is defined by the funding formula.

### **Questions**

**03:00:27** Rep. Furey asked Ms. Quinlan to explain the total state share that she said was 60%. Ms. Quinlan said that for the current year, the total state share of general fund budget is 63.6%; \$579 million is 63.6% of the \$910 million that districts budgeted. Ms. Quinlan said that state funding is 48% of the total \$1.3 billion of school budgets.

**03:03:38** Rep. Sonju asked if the base budget of 80% has always been there. Ms. Quinlan said that it has always been 80%. She explained that when the formula was first put in place, they gave school districts five years to come up to the 80% because there were some school districts that were actually adopting budgets that were less than the base budget.

Rep. Sonju asked how the 80% figure was attained. Ms. Quinlan said that if you

had two similar school districts, the disparity between the lowest and the highest spending district would be 25% based on the federal impact aid formula. There was a federal precedent for that kind of limitation and that drove the formula design. The goal is that 100% is 25% greater than the 80% limitation.

Rep. Lake asked what would be the state share of the base funding if we moved everyone back to the state share of the base. Ms. Quinlan said that the state share would be 80% of the base budget.

03:08:57 **Non-Levy Revenue - Madalyn Quinlan, Chief of Staff, Office of Public Instruction**

Ms. Quinlan talked about non-levy revenue for school districts (**EXHIBIT 6**). She described what the schools anticipate in non-levy revenue. She noted the ones that are worth the Committee's attention and which ones are minor in that they might be there some years and not others, or they might be with some school districts and not others. The block grants are locked down. That is not based on the school districts' best estimate, that is based on what they are told that they will receive.

Questions

03:12:43 Sen. Story asked Ms. Quinlan to explain why it is called non-levy revenue. Ms. Quinlan said that the money is not attached to a mill levy but some of it is based on previous mill levy distributions.

03:15:32 Rep. Jopek asked what percentage of total school revenue is represented by property taxes. Ms. Quinlan said that it is roughly 30%.

03:16:50 **School Revenue Sources - Dan Dodds, Department of Revenue**

Mr. Dodds gave a brief overview of the revenue sources that currently fund school districts and revenue that could be raised by a sales tax (**EXHIBIT 7**).

Questions

03:27:46 Sen. Peterson asked Mr. Dodds how much do the 95 mills contribute. Mr. Dodds said that the property tax going to the general fund is about \$187 million.

03:29:20 Sen. Kaufmann asked Mr. Dodds to explain how the state percentage of 50% was calculated. Mr. Dodds said that the difference is that the percentage that Ms. Quinlan gave the Committee was just for the districts' general fund. The state contributes a larger percentage to the district general fund than to some of the other ones.

03:33:06 Sen. Essmann said that in his presentation to the Senate Taxation Committee on his bill, he developed information about sales taxes in surrounding states. He said our sales tax rate is constitutionally capped at 4%. Other states' tax rates are 50% to 70% higher so there is still an economic incentive for people from surrounding states to come and make those big ticket purchases here.

03:37:18 **School Funding Models and Parameters - Jim Standaert, LFD**

Mr. Standaert discussed School Funding Models (**EXHIBIT 8**), the map on Mill Value Per Elementary ANB FY 2004 (**EXHIBIT 9**) and the map on When Centrally Assessed is Removed from Tax Base (**EXHIBIT 10**). He said that staff from the Legislative Fiscal Division, the Office of Budget and Program Planning, the Department of Revenue and the Office of Public Instruction have been meeting with Jeff Martin of the Legislative Services Division trying to figure out what this committee needs to get its work done. He went through existing school funding models and new models and how they can be used in analyzing legislation.

Questions

04:03:42 Rep. Morgan asked if reservation schools are included. Mr. Standaert said that the reservation schools would probably be some of those eight or 12 as shown on the bottom.

04:03:59 Sen. Essmann said that if he took the two colored maps provided by Mr. Standaert and apply the impact of the GTB to these maps, would it increase the rating of some of these poorer districts in terms of the color. Mr. Standaert said that that was correct. The maps only show the wealth, they don't show the GTB dollars that they get.

04:08:12 Sen. Essmann said that some of the stakeholders were not happy with losing access to the existing tax base. He asked Mr. Standaert is he could build the models on the levy side and run a variable percentage from zero to 100 so that the Committee can look at models with different classes, split 80/20 or 60/40. Mr. Standaert said that he could do that.

04:09:12 Jim Standaert talked about the Department of Revenue's chart showing the distribution of the change in taxes paid as a result of reappraisal on residential property (**EXHIBIT 11**) and the chart that shows one of the mitigation efforts (**EXHIBIT 12**) and the impact on the taxpayers as a result of a change. Mr. Standaert said that the process doesn't end with the school models. They feed the data to Department of Revenue and once legislation has been decided upon, then the Department gives him new taxable values which are put in the model

and then the whole process starts over.

### **COMMITTEE DISCUSSION**

04:12:23 Sen. Essmann said that the most critical question that he had asked Mr. Standaert in terms of the modeling work he has to do is, would he have the capacity to build in blended access to different bases and plug in different numbers, and run a variable comparison. Mr. Standaert said that it depends on how much revenue you have but if you want to continue to have the GTB system operate below the base like we have now, we can do that because it is going to take a lot of money to get rid of it. If you did get rid of it and you had the money to do it, you could then institute a GTB system above the base which is something Sen. Ryan has looked at, or you could apply it to other funds.

Sen. Morgan asked what industrial meant when talking about taking the industrial part out of the tax base. Mr. Standaert said that the definition is up to the Committee and what the Committee wants to take out of the school tax base.

Sen. Story said that the first question is, what is the problem and why are we here. He said that the school funding issue is driven by lawsuits and the way the state has funded education, and the state is still in the midst of a lawsuit that had to do with the question, is the current funding system adequate? Sen. Story said that he does not believe that you can do both equity and adequacy unless you have a lot of money. If you have to spend a certain amount of money per student to get to adequacy in one district, then you have to spend that same amount of money in another district.

### **Public Comment**

None at this time.

LUNCH

### **COMMITTEE DISCUSSION ON THE ROLE OF THE SUBCOMMITTEES**

05:37:22 There was discussion on subcommittees. The questions of budget constraints, staff time, schedule of subcommittee meetings versus full committee meetings, and the importance of each subcommittee having enough meetings to accomplish what they want were brought up. Sen. Story said that the Property Reappraisal Subcommittee could travel and hold meetings at different locations to get the comments from people living in that area. It was suggested by Sen. Peterson that both subcommittees meet for most of the day on February 7 and the full committee meeting on February 8. The subcommittees could then decide on how they want to handle future meetings.

## DEPARTMENT OF REVENUE (DOR) REPORTS - Dan Bucks, Director

05:58:27 Mr. Bucks discussed the Department of Revenue Report (**EXHIBIT 13**). He discussed the concerns about the filing season due to problems with the federal alternative minimum tax.

### Questions

06:11:54 Rep. Jopek asked if Director Bucks had any thoughts on small businesses using software in which they may generate their own forms. Mr. Bucks said that the Department is meeting to discuss the software issue. He said that it depends on whether or not they go with some offsets. If the changes in federal law involves only the alternative minimum tax which does not carry over to our state return, the software changes would affect the software vendors for the federal tax calculations, not the state tax calculations.

Mr. Bucks reported on:

- PPL Decision and Litigation Update;
- \$400 Refund Update;
- Tax Compliance Update;
- Status of ORION - Property Computer Conversion;
- Other reports: Randy Wilke, Property Assessment Division, Department of Revenue, Memorandum on navigable rivers and streams; and
- Electronic Filing Progress Report and Implications or services to citizens and businesses, Department of Revenue efficiency and policy information for legislators .

### Questions on electronic filing progress report

06:37:10 Sen. Essmann said that in the last regular session they spent time dealing with privacy and filing information. He asked Mr. Bucks if he could explain the "look up" function, which he assumes is intended to provide media access to look at his previous return information, how do we preserve privacy of the individual in that kind of database system when other people may want to access that information. Mr. Bucks said that protecting the security of this data is the number one priority as you move into the electronic world. Besides the general security features, there will be authentication procedures to follow in order to be able to get into the data that will insure that you are the person who is authorized to access that data.

Mr. Bucks discussed:

- Report on meeting with Montana Society CPAs regarding tax administration.
- Update on Development of Tax Increment Financing Rules.

Mr. Bucks talked about a letter from the City of Billings (**EXHIBIT 14**) to the Committee on the recent disputes with the DOR over tax increment financing districts and the proposed rules, and the DOR's legal opinion on their authority for tax increment financing districts (**EXHIBIT 15**).

06:49:41 **Dave Hunter, Deputy Director, Department of Revenue**, talked about the Department's draft set of rules which have not been formally noticed. He said that this was an informal process to try to agree on language and once that is completed, they will then start the formal rule notification process. He discussed the timeline of the TIFDs, submission of documentation, notification of bonding, definitions, and boundary amendments.

06:55:16 Sen. Story asked Mr. Hunter what would be the advantages of altering a boundary as opposed to creating a new district. Mr. Hunter said that the advantage was that you can use the increment in the already existing district to fund economic development in the part that is amended. If you created a new district, it would have a taxable value of that year but not increment. If you were to rely only on that increment to fund the infrastructure development, you would have a long time before you could fund significant development.

Sen. Story said that he understands the advantage for doing that but a city could keep amending and expanding increment districts for eternity. Mr. Hunter said that is part of the reason why the Department suggests that this be something that the Legislature might want to look at in the next session. It is clear in the Urban Renewal District law that cities have the authority to amend the Urban Renewal plan and that the boundaries are adopted as part of the plan. They argue that that gives them the authority because they can amend the plan to amend the boundaries. That was probably not anticipated when the original law was created and probably deserves some legislative scrutiny.

06:59:14 Rep. Sonju asked the Department about the specifics in rulemaking. Mr. Hunter said that the proposed rules only contain procedural items that provide direction on how to proceed with the tax increment districts. There are tax increment districts proposed by local governments on which the Department has to act on. The Department needs some clarification for both the administration of and how local governments can proceed. Mr. Hunter said that the procedural clarifications that are in the rules are also in HB 832.

Rep. Lake said that theoretically a city could expand to the point where the revenue flow to the state is severely restricted. He asked if this was something

that could be discussed in the next legislative session. Mr. Hunter said that the Department shares that concern and their original position was, they did not believe that boundary amendments could be made. Local governments convinced the Department that, in fact, they had that authority under existing law and that the Department should rethink its position. The Department has taken the position in court that they have the authority not to certify a district if it doesn't meet the clear letter of the law. These rules set out some procedures of how to establish values for boundary amendments because the Department has to either allow the submissions that some cities are going to put in front of us in the next several months with boundary amendments, with major economic development projects, with bond issues attached to them, or the Department will have to deny them. If the cities are denied, they most likely are going to sue, along with the developers, saying that the Department has exceeded its authority.

07:08:32 Rep. Jopek said that it appears that certain areas are becoming more creative in developing TIFs. One of the things that he is particularly concerned about is the possibility that the flow of revenue to the schools may stop because the flow of revenue goes to the local government, which the local government uses that money for the plan. Rep. Jopek asked if Mr. Bucks knows if the schools are engaged in this discussion. Mr. Bucks said that the schools have not been involved directly in these discussions but the Department would welcome the schools' participation. He said that what Rep. Jopek described is another concern that the Department has that the local governments assured them does not happen. He said that if he understood Rep. Jopek correctly, if a tax increment district refunds money to the original jurisdiction, i.e., a school district, that district should take that money and refund it to all the jurisdictions, including the state.

Sen. Peterson suggested that the Committee add this as an agenda item for the next meeting and get the right people here to answer those questions.

07:12:14 Rep. Morgan said that she does not have a problem with what Mr. Bucks is trying to accomplish in the rulemaking. She said that she has a problem with the boundary change issue. In light of the fact that that seems to be a controversial one, Rep. Morgan said that more people should be involved and more research should be done. She asked Mr. Bucks to not include making a decision in the boundary change issue before the Committee's next meeting. Mr. Bucks said that the Department will give Rep. Morgan's request full consideration, that they will not address the boundary change issue one way or the other.

07:16:22 Sen. Peterson said that this issue will be on the agenda for February's meeting. He also requested that stakeholders be at the meeting.

Mr. Bucks discussed:

- Restaurant beer and wine license update and potential future issues;
- Mineral royalty income withholding implementation update;
- Other reports: corporate tax and issues of allocation of corporate tax; and
- Reading material about energy drinks that contain alcohol, health concerns and underage drinking

Public Comment on information from Department of Revenue

None at this time.

Public Comment with regard to TIFs

07:33:40 **Alec Hansen, Montana League of Cities and Towns**, said that the League of Cities and Towns is involved in the TIF issue. He said that the letter from the City of Billings questions whether or not the Department has the authority to write rules. Mr. Hansen said there are numerous cases where rules have been invalidated for improper authority or going beyond the scope of authority. That is an issue that has to be decided. Mr. Hansen said that when a boundary change goes in, that particular piece of property is subject to the original term of the TIF. It is more efficient to add one or two small pieces of property for 5 or 6 years than to create a new district that could last from 15 to 40 years if you issue bonds.

**DEPARTMENT OF TRANSPORTATION UPDATE - Jim Lynch, Director**

07:37:48 Mr. Lynch said that at the last Revenue and Transportation meeting, Sen. Story asked for a report on the condition of the state special revenue fund and what is happening in the construction environment in Montana, and Rep. Essmann had requested an update on the Zoo Drive/Gable Drive signal.

07:38:00 **Zoo Drive/Gable Drive Signal.** Mr. Lynch gave a brief background and update of the signal light issue with the City of Billings. The City of Billings received one bid for \$301,000 from the only bidder. Mr. Lynch said that he can provide copies of the documents on this issue if the Committee wanted them.

07:43:00 **Reciprocity Agreement with Idaho.** Mr. Lynch discussed reciprocity with Idaho, saying that Idaho does not require Montana employees who are employed in Idaho to put Idaho license plates on their vehicles, but the fact that the state of Montana has never had a reciprocity agreement to allow the same thing, Montana still needs to follow the law and require the Idaho employees to get Montana plates if they work in the state.

## Questions

07:44:53 Rep. Sonju asked Mr. Lynch if the state is interested in a reciprocity agreement with Idaho. Mr. Lynch said that if there is interest in establishing an agreement, he would need to talk to both Sen. Elliott and the company in Montana about having Montana enter into a reciprocity agreement with Idaho. He would have to confer with his legal counsel concerning the process, is that something that the Department can do or is that something that has to be done by the executive or the Legislature.

Sen. Story cautioned that because Montana shares a lot of border with Idaho that we don't open the floodgates to something that we are not anticipating.

### 07:46:08 **Status on Construction Program and Revenue Fund - Department of Transportation, Jim Lynch, Director**

Mr. Lynch gave a presentation on the status of the Department's construction program (**EXHIBIT 16**). Mr. Lynch talked about the Highway State Special Revenue Account (last page of Exhibit 16). He said that the Department of Transportation maintains this account so that they can meet the infrastructure needs and maintain the assets they have at the level of above satisfactory to the motorists in Montana without having to go back to the taxpayers and ask for a gas tax increase.

## Questions

08:00:55 Sen. Essmann asked Mr. Lynch about the use of hybrid vehicles that could potentially impact revenue from the gasoline tax. He said that Oregon is doing a pilot project to look at charging people by the mile in which they drive rather than the gallon of gas that they buy. Mr. Lynch said that Congress established two commissions to look at other ways to fund the Highway Trust Fund other than just gas taxes. Mr. Lynch thinks that there is a need to restructure the Highway Trust Fund and look at those programs funded by the Trust because some may need to be funded through the General Fund of the U.S. Government. Another problem is the abuse of dyed fuel. He estimates that about \$12 million is lost every year in fuel fraud.

08:05:44 Sen. Kaufmann asked Mr. Lynch about beneficiary programs that are not directly related to users. Mr. Lynch said that the real dollars are in the state program. There are many programs that probably should not be funded through the Highway Trust Fund but some that come to mind are the transit program, fuel tax credit, and the Community Enhancement Program. These are good programs but probably should not be funded through the Highway Trust Fund.

08:20:52 Sen. Peterson talked about the Department of Transportation letting bids on a more regular schedule than on Congressional schedules. Mr. Lynch said that you can't spend money that you don't have. There are two options being discussed: bid the project, award them, and not make payments until the federal dollars come in; or bid the projects but don't award them. Mr. Lynch discussed the option of bidding a project and awarding it. The problem is that the construction company could immediately bill for mobilization costs and overhead costs according to the contract document, so the project will actually receive bills from contractors 30 days after they have been given a notice to proceed on non-contract items. If the Department did that, they would be expending cash that they do not have a commitment from the government that they are going to receive.

08:24 Sen. Kaufmann asked about the new roundabouts and are there any plans for more roundabouts. Mr. Lynch said that roundabouts are good for congestion and for safety. The safety performance of a roundabout reduces the number of accidents and injuries occurring at signal light intersections.

Public Comment

None at this time.

**OTHER COMMITTEE DISCUSSION**

08:26:00 Sen. Peterson said HB 9 and the issue of TIFs will be on the agenda for the next meeting. Rep. Hollenbaugh asked if Mr. Martin would let the members of the committee know if there is any resolution on the TIF issue before the next meeting. Sen. Story said that the issue of the tax return forms needs to be looked at as well as Sen. Cobb's lawsuit on the tax credit.

**ADJOURNMENT**

Sen. Peterson adjourned the meeting at 4:10 p.m. The next meeting is February 7 and 8, 2008.

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