

September 9, 2018  
Richard B. & Kathryn J. Schreiber  
Carol Beyer-Ward & Mike Ward

Senator Mark Blasdel, Vice Chair  
Senator Duane Ankney  
Senator Dick Barrett  
Senator Cyndie (Carlie) Boland  
Senator Jill Cohenour  
Senator Brian Hoven  
Representative Tom Jacobson, Chair  
Representative Becky Beard  
Representative Jim Hamilton  
Representative Greg Hertz  
Representative Alan Redfield  
Representative Bridget Smith

Dear Members of the RTIC

The agenda for your September 13, 2018 RTIC meeting states that you will, among other things, be considering the HJ 22 Agricultural Property Taxation Study Draft Final Report. Since the meeting agenda does not appear to allow time for “public comment” regarding HJ 22, we are sending you this email concerning certain aspects of the proposed Draft Final Study (DFR) that we wish to bring to your attention.

Overall the DFR is very well done and a source of much useful information regarding your agricultural property taxation study. Its apparent author, Megan Moore, is to be congratulated for her fine work. There are, however, certain very limited aspects of the DFR that we wish to bring to the Committee’s attention. They are:

1. The DFR appears to recommend a draft bill to amend MCA 15-7-202 that it identifies as “LCag00”. At page 25 the DFR characterizes LCag00 as a bill “...intended to simplify and clarify section 15-7-202 without making any policy changes.” Such a characterization fails to recognize that draft bill LCag00 proposes a fundamental change to MCA 15-7-202 by adding a new requirement for agricultural classification of parcels of less than 20 acres.

At present, MCA 15-7-202 provides that a parcel of less than 20 acres is eligible for agricultural classification if: (1) it is “actively devoted to agricultural use” and (2) it produces not less than \$1,500 in annual gross income from the raising of agricultural products. Proposed LCag00 would add a new and entirely different requirement for agricultural classification, a vague and open ended requirement that parcels of less than 20 acres must be “used primarily” for raising agricultural crops. If no policy change is intended by LCag00 then its addition of a “used primarily” requirement should be deleted and the present section 15-7-202 requirements for agricultural classification of parcels of less than 20 acres left in place. It should not be recommended to the Legislature as involving mere simplification and clarification and not making a policy change. Indeed, unless approved by Committee vote, the DFR should not

contain a copy of LCag00 thus indicating or implying its acceptance and recommendation by this Committee to the Legislature.

2. The DFR begins with a statement of “Background” on page 1, paragraph 4 that incorrectly states that three State Tax Appeal Board rulings invalidated the Department of Revenue’s administrative rule “...that allowed a taxpayer to provisionally qualify for agricultural classification even if the income requirement was not met as long as the taxpayer had 100 fruit trees or 120 vines.” In fact, a reading of the three State Tax Appeal Board decisions, Goodspeed v. DOR, Beyer-Ward v. DOR and DOR v. Yeager, shows the Board invalidated DOR’s then new administrative ruling seeking to add an acreage requirement for agricultural classification and approved of and enforced DOR’s then long-standing administrative rule allowing for provisional agricultural classification. The Board ordered DOR to reinstate its provisional agricultural classification of the then immature Goodspeed vineyard and then immature Beyer-Ward orchard. The Yeager orchard was already mature and the case involved no issue of provisional agricultural classification and was resolved by the Board finding DOR’s minimum acreage rule invalid and ordering DOR to classify the Yeager parcel as agricultural, not residential. Accordingly, paragraph 4 should be deleted from page 1 of the DFR.

3. As presently drafted and perhaps simply due to the fact that the Committee is still meeting, the DFR fails to clearly identify the matters regarding property tax classification that, after study and consideration by the Committee, were brought to vote and the outcome thereof. To date the only proposed policy change pertaining directly to small vineyards and orchards endorsed by Committee vote is a draft bill designated as LCag01 regarding provisional agricultural classification that passed unanimously with a 12-0 vote. A number of other motions came to a vote and did not pass. They should be identified as failed motions. Instead, the DFR has identified some of them as appropriate for further consideration. Any final report by the RTIC to the Legislature should clearly identify the proposals discussed and considered by the Committee and their disposition.

Thank you for your consideration of our concerns.

Respectfully submitted,

Richard B. and Kathryn J. Schreiber  
Carol Beyer-Ward and Mike Ward

.cc: Megan Moore

Ms. Moore, We find no email address for Sen. Cohenour or Rep. Smith and would be most appreciative if you can provide them with a copy of our email. Thank you for all your courtesies and fine work on HJ 22.

