



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

June 29 and 30, 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
REP. KARL WAITSCHIES, Vice Chair

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

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

COMMITTEE MEMBERS EXCUSED

REP. CYNTHIA HINER
SEN. KIM GILLAN

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 May 2, 2006, minutes as written;
- approved sending a letter to the Economic Affairs Committee asking it not to take action on proposed legislation regulating the collection and use of social security numbers;
- approved LC7000 to be drafted as a Committee bill to clarify the Revenue and Transportation Committee's authority to revise revenue estimates during a special session of the Legislature;
- approved LC7001 to be drafted as a Committee bill to eliminate reimbursements to local governments for the fee in lieu of tax on certain vehicles;
- approved LC8001 to be drafted as a Committee bill to provide a technical correction to clarify allocation of certain drivers license fees;
- approved sending a letter to the Education Local Government Committee stating that the Revenue and Transportation Committee wished to maintain the current interim committee structure; and
- approved not taking action on LC8000.

TAPE 1 - SIDE A

CALL TO ORDER AND ROLL CALL

SEN. ELLIOTT called the meeting to order at 1:00 p.m. The secretary noted the roll. REP. HINER and SEN. GILLAN were excused, all other members were present (Attachment #3).

DEPARTMENT OF REVENUE REPORTS

- 00:00:02 **Dan Bucks, Director, Department of Revenue (DOR)**, provided copies of an outline of his report (EXHIBIT #1) and discussed each item. Director Bucks reported on the implementation of the Integrated Revenue Information System (IRIS) and said that it is on time, on target, and on budget (EXHIBIT #2).
- 00:09:34 Director Bucks discussed federal legislation that would preempt state taxing authority:
- H.R. 5252, a telecommunications bill approved by the Senate Commerce Committee (EXHIBIT #3). The bill will preempt certain wireless services currently taxed under Montana law and will make the Internet tax moratorium permanent.
 - H.R. 1956 would substantially preempt state corporate business taxes and other general business taxes levied by states. After four to five years, corporate income taxes collected in Montana would shrink by

approximately 30%-40%, amounting to a revenue loss of approximately \$50-\$60 million. Corporate income taxes would become relatively useless as a revenue source.

- H.R. 1369 - would affect state taxation of interstate natural gas transmission lines. The impact to state and local governments would be approximately \$24.5 million.

Director Bucks distributed a November 4, 2005, memo from Larry Finch discussing the major features of the bill (EXHIBIT #4) and a table listing a county by county estimate of the fiscal impact (EXHIBIT #5).

Director Bucks said the States must act to retain their ability to set tax policy. Independent revenues are necessary to have independent policies from the federal government. Congress is increasingly infringing on this process and Director Bucks said that the DOR would urge the Committee's attention to these issues.

Director Bucks reported that PPL Montana has filed an appeal of the District Court decision with the Montana Supreme Court. Because of that action, DOR will also lodge with the Supreme Court issues that it thinks are necessary to protect the interests of state and local government in equitable taxation of the property in question.

Director Bucks discussed State Tax Audit Developments:

- DOR response to a legislative performance audit of state tax compliance activities, conducted by the Legislative Audit Division (EXHIBIT #6);
- compliance staff from 2005 Session exceeding revenue targets, including a graph depicting compliance collection by month for fiscal years 2006 and 2007 (EXHIBIT #7); and
- overall audit collections meeting or exceeding targets, including an audit collections summary spreadsheet (EXHIBIT #8) and a spreadsheet on revised audit collections balanced to SABHRS (EXHIBIT #9).

Director Bucks said that changes have been made in the realty transfer certificate, which is used for both property and income tax administration. He said that feedback from the Land Title Association was useful in making the improvements and that additional changes would be made, if necessary.

00:00:51 REP. WAITSCHIES said that he has received several complaints about having to furnish a social security number and asked if measures have been taken to make sure that such information is secure. Director Bucks said that security has been strengthened.

00:02:56 SEN. ELLIOTT asked how the audit targets are set. Director Bucks said that Gene Walborne, Administrator, Business Income Tax Division, sets the targets after consultation with staff. The target amounts are then reported to the Legislative Fiscal Division (LFD) and the Office of Budget and Program Planning (OPBB). LFD and OBPP may exercise discretion to change the targets but to date, have not done so.

TAPE 1 - SIDE B

PROPERTY REAPPRAISAL

- 00:14:33 **Randy Wilke, Administrator, Property Assessment Division, DOR**, discussed his report *REAPPRAISAL 2009* (EXHIBIT #10) in a three part presentation:
- the role of DOR in property tax and the reappraisal process;
 - property impacted by reappraisal; and
 - a hands-on computer opportunity for Committee members to assess their own personal or business property.
- 00:18:40 SEN. TOOLE said, regarding Property Taxes in Actual Dollars - slide 2 on page 2 of EXHIBIT #10, that it would be very helpful to have information on how much of the amount is due to inflation and how much is due to new property. Mr. Wilke said that he would look into providing that information. Mr. Wilke continued with the presentation.
- 00:22:41 In response to a question from REP. MORGAN, Mr. Wilke said that reappraisal is not designed to be a tax collection mechanism but is designed to equalize the values of property.
- 00:27:42 Mr. Wilke continued his presentation and discussed:
- various functions of property taxation - page 4, slide 2;
 - mass appraisal vs. single property appraisal - page 5, slide 1;
 - workload statistics - page 5, slide 2;
 - types of property that are valued - page 6, slide 1; and
 - mass appraisal process - page 6, slide 2.
- 00:37:45 REP. LAKE asked about the impact of zoning restrictions on property. Mr. Wilke said if after a reappraisal has been done, major restrictions came about that restricted the use of the property would be taken into account. The taxpayer may request a valuation review and that if the taxpayer is unsatisfied with that, they may appeal.
- 00:41:07 REP. LAKE said that if that if an entire county was zoned a particular way, there may be a large number of taxpayers who would deserve a review but who would not file. He said it is his concern that this type of situation would result in many taxpayers paying too much in property taxes.
- 00:41:54 **John Grimm, Property Assessment Division, DOR**, explained the remaining steps of the reappraisal process:
- 00:47:52 - tasks unique to each reappraisal - page 8, slide 2; **TAPE 2, SIDE A**
 - neighborhood\subneighborhood delineation;
 - land valuation and methods; and
 - sales comparison approach.
- 00:53:58 REP. MORGAN asked how agricultural land is valued when the property next to it is being subdivided. Mr. Grimm said that as long as the land is being used for agricultural purposes, it is valued as agricultural land. Detailed administrative rules are used to determine if the land qualifies as agricultural land.

- 00:57:19 Mr. Grimm continued with the presentation;
- abstraction method;
 - capitalization of ground rent;
 - cost table development;
 - depreciation analysis and table development;
 - benchmarking;
 - residential property valuation; and
 - market modeling.
- 01:08:49 REP. MORGAN asked how property that is not maintained is valued. Mr. Grimm said that maintenance is a factor in determining property value.
- 01:10:39 Mr. Grimm continued with the presentation:
- income approach; and
 - commercial property valuation.
- 01:26:56 REP. LAKE asked how DOR determines "typical" expenses and how it determines the cap rates in its model. Mr. Grimm said that DOR collects and analyzes the information to determine what is typical for a particular type of property and develops the model from that information, but that adjustments can be made for individual cases.
- 01:28:53 Mr. Grimm continued with the presentation;
- income approach slide;
 - income models;
 - steps in income modeling;
 - predominant structures values;
 - reconciliation of approaches to value;
 - assessment process; and
 - valuation review and appeal process.
- 01:33:30 Randy Wilke, DOR, explained certification of values (page 25, EXHIBIT #10):
- reappraisal status;
 - development and implementation of orion system; and
 - reappraisal areas of concern.
- 01:42:16 SEN. ELLIOTT said that some states are at 100% of market value and that the mills are applied directly to the market value. He asked if that was a viable way to do business. Mr. Wilke said that Montana has a complicated property tax system. If one were take the value and be able to immediately apply a mill levy to it, it would smooth things out.
- 01:43:29 SEN. ELLIOTT asked if that would be equitable across the different property classes. Mr. Wilke said that it is up to the Legislature to decide what is equitable.

TAPE 2 - SIDE B

- 01:44:21 **Dallas Reese, Property Assessment Division, DOR**, gave an overview of the Class 3 agricultural land reappraisal and Class 10 forest land reappraisal. He

discussed the activities of the Agricultural Land Valuation Advisory Committee which has been working on Class 3 property reappraisal (EXHIBIT #11). Mr. Reese covered the following topics:

- elements of agricultural land valuation and determine current ag land use;
- determining current productivity or yield;
- base crops;
- what is driving the need for a new approach; and
- elements of a long-term agricultural land productivity system;
- agricultural land valuation advisory committee;
- review of 2004 committee recommendations;
- 2005 legislative actions;
- 2006 ag committee recommendations;
- current status of the agricultural land reappraisal project;
- current ag land activities; and
- ag land reappraisal activities.

02:06:01 Mr. Martin asked if it is important to get information from the Farm Service Agency (FSA) and if that information would help in the reappraisal process. Mr. Reese said the information from FSA indicates whether the land is being used as farm land or as grazing land and is critical to the process.

02:07:20 Mr. Martin asked if it is likely the DOR will get the FSA information in this reappraisal cycle. Mr. Reese asked Director Bucks to respond.

02:07:54 Director Bucks said DOR has submitted an appeal for information to the national FSA office. While the request is still pending, DOR has received some positive feedback from FSA staff, so is cautiously optimistic that the information will be provided.

02:09:24 REP. MORGAN asked if the reappraisal will affect hobby farms being operated primarily for the tax advantage. Mr. Reese said that the new reappraisal process will have a more scientific basis which will help determine eligibility status.

02:10:49 Mr. Reese concluded the presentation on ag land reappraisal activities (page 14, slide 1, EXHIBIT #11).

02:12:33 Mr. Reese presented a report on Class10 reappraisal activities on commercial forest land (pages 14-17, EXHIBIT #11).

02:15:31 SEN. BLACK asked if there was much change in the 10 counties that have been reviewed in how they were classified before and how they should be classified now. Mr. Reese said that the review completed to date includes primarily southeastern and south central Montana. The results vary, depending on the county. It is hard to identify some field boundaries and certain delineations from the aerial photography, which has resulted in some misclassified acres.

02:16:49 REP. LAKE asked about the classification of forest land. Mr. Reese said that statutorily, DOR requires 15 contiguous acres of commercial forest land under the same ownership in order to be classified as forest land.

- 02:18:05 REP. LAKE asked if an individual owned 500 acres with a 30-acre grove of commercial forest land, if the entire 500 acres would be classified as forest land. Mr. Reese said that the land would be broken down into smaller parcels and each would be classified according to its use.
- 02:18:42 SEN. BLACK asked if CRP land is still classified as farm land. Mr. Reese said yes.
- 02:19:10 REP. COHENOUR asked what the Advisory Committee's strategy is for getting information from FSA. Mr. Reese said that the Advisory Committee made two recommendations: one was to recommend that DOR aggressively pursue obtaining the FSA information and the other was to request the different agricultural organizations to contact their congressional delegate to ask that they request information from FSA.
- 02:20:18 REP. WAITSCHIES asked if the 2006 Advisory Committee has discussed why the 2004 reappraisal recommendations died in the 2005 legislative session. Director Bucks said that it is the state's constitutional responsibility to equalize the values of property, and that fairness and justice must trump administrative ease. In the test cases conducted in four counties, the numbers indicated that there would be major shifts in property tax values and property tax bills for the sake of administrative ease. The question is: should an individual's property taxes go up just because it is easier for DOR to get the job done? He noted that the Advisory Committee has not completed its review of the recommendation but will do so at its next meeting. The bill in the last session, in Director Bucks' opinion, went too far in the least cost approach and did not give enough attention to achieving a fair and just result.

TAPE 3 - SIDE A

- 02:24:02 SEN. ELLIOTT said that as a member of the 2004 Advisory Committee, he would like to respond to Director Bucks' statement. The rationale for the Advisory Committee's decision was not so much for administrative ease as it was taking into account the productive capability of the land and not the personal choice of how to farm the land.
- 02:25:14 REP. WAITSCHIES said that rationale didn't make sense to him and that it would be like saying that all land is equal. "You have that lakefront house...land footage is the same, it is the water that makes the difference. I would feel that is the same with irrigated land. I know a lot of people felt that way when they came to testify and I think that is the big difference between going to a two class system and what we have now."

PUBLIC COMMENT

- 02:26:27 **Dr. Richard Sargent, Helena**, discussed "mini cigars". Mini cigars have been a problem since the passage of I-149, which increased the tobacco tax by \$1 per pack. Mini cigars are really cigarettes and should be sold and taxed as such. Mini cigars are the same size, the same shape, and are rolled and wrapped in

the same manner as cigarettes. Dr. Sargent distributed advertising materials from the manufacturers (EXHIBIT #12).

Dr. Sargent said that the mini cigars are not held under any of the cigarette laws simply because the manufacturer labels them as cigars. Additionally, they can be marketed as singles, are available in many different flavors and scents, and are clearly marketed to initiate smoking in teenagers. Dr. Sargent read several excerpts from a manufacturer's merchandising recommendations (EXHIBIT #13) and said that the mini cigar market is clearly aimed at cigarette smokers.

Dr. Sargent displayed a large chart which indicated Montana cigar sales prior to 1998 through 2004-05. He pointed out the large jump in cigar sales which occurred after the I-149 cigarette tax was increased. Dr. Sargent said that this is clearly a tax avoidance issue and a marketing issue.

02:33:21 **Dr. Robert Shepard, Helena**, said that one of the big falsehoods promoted by tobacco companies is that smoking is an adult choice. He provided smoking addiction statistics:

- 90% of smokers start smoking before the age of 18;
- 50% of people who smoke begin smoking at age 13 or under, so choosing to smoke is clearly not an adult choice;
- tobacco addiction is very difficult to break, in fact, more difficult to break than either alcohol or cocaine addictions;
- adolescents are much more susceptible to addiction than adults and the tobacco industry understands this very well.

Dr. Shepard made several additional points, saying that mini cigars constitute only 1% of national cigarette sales but that the sale of mini cigars has grown 70% in the last year because wholesalers can get around state taxes. Dr. Shepard said that he is asking for rulemaking to redefine mini cigars as cigarettes, which will subject them to the cigarette tax and require that they be sold in packs of 20 or more.

02:37:47 REP. MCALPIN asked if tobacco companies have put marketing dollars behind the promotion of mini cigars. Dr. Shepard said that he could not say with certainty that this is occurring but that it is very clear from the tobacco companies' inside memos that this is an evolving strategy, that they know it is a tax avoidance measure, and that they are intentionally marketing to kids.

02:39:01 SEN. BLACK asked if the major tobacco companies are manufacturing mini cigars. Dr. Shepard said that most of the mini cigars are manufactured by smaller independent companies but that larger companies are looking at this.

02:39:58 REP. COHENOUR asked if this issue can be taken care of in rulemaking. Dr. Shepard said both the Department of Justice and the Department of Revenue think that DOR has rulemaking authority. The only question may be whether the manufacturers can be forced to package them in packages of 20 or more.

02:40:45 Director Bucks said DOR has the authority to redefine these products and is doing further legal research on the issue of packaging requirements.

02:43:39 REP. MORGAN asked about the difference in tax treatment. Director Bucks said that state statute makes a distinction between cigars and cigarettes and that the tobacco tax also makes a distinction between the various tobacco products, which determines how each product is taxed.

02:47:02 REP. LAKE asked what the tax would be on a package of 20 mini cigars. Director Bucks said that manufacturers are putting a very low wholesale price on mini cigars. He distributed a table illustrating the increase in sales of mini cigars from 1995-2005 (EXHIBIT #14).

02:48:02 SEN. BARKUS asked why there should be a difference between the two. Dr. Sargent said that the biggest difference is that cigarettes are designed to be inhaled. Other states have tried to define the difference between a cigar and a cigarette. Seven states are using a definition of "less than three pounds for 1,000 sticks", which includes the filter.

02:49:58 SEN. BARKUS said that the price for a carton of 10 packages of mini cigars is about \$15, including a \$5 tax and that the proposed rule change would increase the tax from \$5 to \$17 on the carton. Dr. Shepard said that was correct.

02:51:09 SEN. ELLIOTT said that he is in favor of changing the rules to include mini cigars but thought that it will be a very difficult process to define the product as either a cigar or a cigarette. Dr. Sargent said that a federal agency is also considering action, as are other states. He said that the purpose of the tobacco tax was not to raise revenue for the state, but to make it more difficult to market to children.

02:54:32 REP. MCALPIN **moved** to encourage DOR to promulgate rules regarding mini cigars. SEN. BARKUS spoke against the motion, saying that rulemaking authority is being stretched to the limit and that the Legislature should handle this matter.

02:55:24 SEN. TOOLE spoke in support of the motion and said that this is an appropriate administrative function.

02:56:16 REP. LAKE asked to defer a decision until the next Committee meeting in order to allow more information to be gathered.

02:57:50 REP. MORGAN agreed with REP. LAKE's suggestion.

02:58:20 REP. COHENOUR asked REP. MCALPIN to consider changing his motion to say that if the Director of DOR believes it is legally defensible under current law, then the Committee would support rulemaking by DOR.

02:59:42 SEN. ELLIOTT asked Director Bucks how long it would take to promulgate a rule and enforce it. Director Bucks said the entire process would take about six

months. He said that there is no doubt about DOR statutory authority to define what constitutes cigarettes.

03:01:46 SEN. TOOLE said that it is clear to him that DOR can proceed with rulemaking whether the Committee approves or not. He said that the tobacco companies have obviously targeted a young audience for an addictive product and has come up with at way to evade state tax.

TAPE 3 - SIDE B

03:06:20 REP. WAITSCHIES asked about the sale of singles, saying that if the tax requirement is to tax by the pack, then he didn't see how this would work. Mr. Bierlocker explained that under the proposed rules, weight and filter criteria would be established as determining factors.

03:07:37 REP. WAITSCHIES asked how the issue of a tax stamp will be handled on single sales. **Mr. Lee Bierlocker, DOR**, said that the proposed rules would make singles sales illegal.

03:12:54 SEN. TOOLE said that the motion is to urge DOR to move forward with a rulemaking process and said, in his opinion, DOR has the authority to do so with or without RTIC support. The Committee's approval of the motion would signify that it agrees that this is a serious issue and that the Committee wants DOR to proceed with the rulemaking process. SEN. TOOLE said that he would like the Committee to be on record as supporting DOR's actions.

03:14:09 Mr. Martin said that while the motion would be to encourage DOR to do something it has the authority to anyway, the issue of the Committee taking action without an official agenda item should be discussed.

03:14:41 SEN. ELLIOTT asked Director Bucks if DOR is considering promulgating a rule to address the mini cigar issue. Director Bucks said yes. SEN. TOOLE called the question. The **motion failed 5-5** on a roll call vote, with SEN. BARKUS, SEN. BLACK, REP. LAKE, REP. MORGAN, and REP. WAITSCHIES voting no. (ATTACHMENT #4).

03:16:06 The Revenue and Transportation Committee recessed until 8:00 a.m., June 30, 2006.

DAY TWO - PART ONE

TAPE 4 - SIDE A

SEN. ELLIOTT called the Committee back to order at 8:01 a.m.

00:00:48 Mr. Martin said that the discussion on access to tax information has been postponed. DOR sent the committee a bill draft with several changes and that there has not been sufficient time to evaluate the changes. The item will be on the September agenda. He said that the Economic Affairs Committee is

considering legislation regarding access to social security numbers and that EAIC staff, Pat Murdo, would be available for questions.

UPDATE ON THE OIL PRICE DIFFERENTIAL TASK FORCE

- 00:06:43 **Greg Jergeson, Commissioner, Public Service Commission (PSC)**, provided an update on the Oil Price Differential Task Force. Commissioner Jergeson discussed a preliminary report, *CRUDE OIL PRICE DIFFERENTIALS* (EXHIBIT #15). Commissioner Jergeson noted that the Task Force has no authority to compel companies to respond so it has had to rely on public information. Commissioner Jergeson reported that he was appointed to a subcommittee to research the impact of government regulations. Market imperfections are the biggest issue, such as the lack of available pipeline. He is concerned that those who have been harmed by the market imperfections will be the ones asked to fix the imperfections, and not those who have been profiting from the market imperfection. Commissioner Jergeson said that this is a capacity issue, that there are no clear solutions at this point, and that he hopes to have a report available in September.
- 00:16:28 REP. COHENOUR asked if the Task Force has discussed the possibility of a publically-owned pipeline. Commissioner Jergeson said that there is an interest on the part of almost all of the parties in developing additional pipeline capacity but that a publically-owned pipeline it has not been discussed to date.
- 00:18:18 SEN. BARKUS asked if Commissioner Jergeson is aware of any private interest in resurrecting the Yellowstone pipeline. Commissioner Jergeson said that he did not know but would find out.
- 00:19:00 SEN. TOOLE asked if there is the potential to expand existing pipeline. Commissioner Jergeson said that existing right-of-ways could probably be used to construct a larger pipeline, but larger pipeline would still entail a significant capital investment. Guaranteeing a return for the investor would be the biggest hurdle and would require a long period of time to recover the costs.
- 00:21:22 SEN. TOOLE asked if there is an industry standard for recovery of costs. Commissioner Jergeson said that the standard recovery period would likely be 20-30 years. The investor would want to know the sustainability of reserves before investing in a pipeline.
- 00:22:34 SEN. TOOLE asked if the technology exists to convert pipeline from one use to another, or if pipeline must be limited to one commodity. Commissioner Jergeson said that in certain and limited circumstances, switches can be made. Pipeline pressure and contamination would be a consideration.
- 00:24:37 SEN. BLACK said that part of the problem is pipeline owned by Suncor and that it has a priority right on its use. He said that a Canadian company has proposed building a pipeline to serve eastern Montana and the Williston Basin and that producers in those areas have been invited to join in as a participant in the cost of the pipeline. Commissioner Jergeson said that he did not have the details of the proposal and could not comment. Regarding existing pipelines,

Commissioner Jergeson said that those who have used the pipeline and paid for the pipeline may have a reservation for capacity, which leaves little room for new production and is an issue that the Task Force is struggling with.

- 00:27:13 REP. LAKE asked what is current pipeline capacity is in relation to current production and what portion of the capacity is used by Canadian oil. Commissioner Jergeson said that is one of the issues the Task Force is investigating.
- 00:28:48 REP. LAKE asked, considering the increase of production in the Canadian sands, if there is a possibility that Canada will build a refinery and begin shipping a finished product, rather than the crude product. Commissioner Jergeson said that is a possibility. REP. LAKE asked if Montana oil could be shipped north to Canada for processing and then come back as a finished product. Commissioner Jergeson said that if a refinery was constructed in Canada, there would be great interest in doing that.
- 00:31:55 SEN. BLACK asked if there is a pipeline is being built from Alberta to Vancouver, for export to the Pacific Rim. Commissioner Jergeson said that is a possibility and that such a pipeline would take the pressure off existing pipelines going from Alberta to the mid-west hubs. SEN. ELLIOTT said that there are two proposals for new pipeline but that neither have started construction.
- 00:34:02 **Gary Forrester, MDU Resources**, said that the three refineries in Billings are not part of the supply problem because they run mostly Canadian crude from a different pipeline. Mr. Forrester also said that:
- The three refineries each process approximately 60,000 barrels of heavy sour crude a day.
 - The Cenex refinery in Laurel is building a coker to take care of the asphalt problem, as the other two refineries are already doing.
 - The Enbridge Pipeline is running at capacity with 12 shippers. Eight of the 12 have agreed to upgrade the pipeline. The remaining four shippers did not support the upgrade because they felt they were profitable enough as is.
 - The Guernsey Pipeline seems to have the biggest price differential and could slightly increase capacity by adding an agent to increase the ease of flow.
 - No one seems to know where the price differential is and everyone is interested to find out who is getting the money.
- 00:37:54 SEN. ELLIOTT asked where is the point of sale of the oil, where is the point of delivery, and what is the price there. Mr. Forrester said that the producers sell to a petroleum marketer. The petroleum marketer pays the pipeline a set amount of money to transport the oil. Once the oil reaches the tank farm, the refinery is the ultimate buyer of the oil. SEN. ELLIOTT said that the marketer could purchase the oil at a discount price, ship it to the purchaser and the marketer could realize the spread. Mr. Forrester said that is what the Interstate Oil and Gas Compact Commission is looking at. Commissioner Jergeson said that is the kind of information the Task Force is trying to obtain.

- 00:40:13 SEN. ELLIOTT said that it would be important to know if transactions are conducted as "arms length transactions" and discussed a court case won by the State of Alabama that involved Shell Oil. Shell was selling gas to a wholly-owned subsidiary at a discount price, paying the tax on that price, and then the subsidiary was putting it into the pipeline at a higher price.
- 00:40:47 **Gail Abercrombie, Montana Petroleum Association**, said that Tom Richmond, Board of Oil and Gas, gave a report recently to the Montana Association of Oil, Gas, and Coal Counties and that much of her testimony would be based on that report. Ms. Abercrombie said that:
- she agreed with Mr. Forrester's assessment that is the north-south pipelines that are the problem;
 - that the Enbridge Pipeline capacity is going to be increased by increasing pipeline pressure;
 - ▶ FERC conducted a test and found several weak points which will have to be repaired before the pressure increase can occur.
 - ▶ There will be a 5,000 barrels-per-day increase when the pressure is increased.
 - more oil is flowing now because of the warmer temperatures;
 - one of the problems has been the off-take due to the fires at the Suncor refinery in Denver but the refinery has been repaired so more product will be taken off there;
 - capacity is a problem at Guernsey **TAPE 4 - SIDE B** because 70,000 barrels per day are being produced but only 50,000 barrels per day are shipped out; and
 - there is interest in building a refinery in eastern Montana, including interest from the Fort Peck Tribe.
- 00:44:45 SEN. TOOLE asked Mr. Forrester about the cost of trucking oil,. Mr. Forrester said that there is limited trucking, but that refineries consider it to be very risky, due to the cost of cleaning up spills and other environmental issues.
- 00:48:44 SEN. ELLIOTT asked Ms. Abercrombie how it was possible that the Guernsey Pipeline has a capacity of 50,000 barrels per day but a supply of 70,000 barrels per day. He said that it doesn't matter what price the oil is sold for, it still can't get on the pipeline and that selling the oil at a discount doesn't change the constriction on the pipeline. Ms. Abercrombie agreed, and provided production statistics from the Elm Coulee Field to illustrate the capacity problem.
- 00:52:12 SEN. ELLIOTT asked at what point it became more economical to shut in wells than to sell at a cost differential. Ms. Abercrombie said that it is expensive to shut in a well and that it would be a significant decision for a company. But, if the company is losing money by selling at the discount, the company will have to make that decision. Ms. Abercrombie noted that Mr. Richmond had reported that the cost differential fell from \$30 to \$8-\$12. SEN. ELLIOTT said that the potential for the market to fall is a good motivation to move the oil and not shut in the well. Ms. Abercrombie agreed that that is an issue, particularly for royalty owners in the well who want to get paid.

- 00:54:05 **Jerome Anderson, Encore Acquisitions**, said that there is more production than there is capacity to move it and that this is not unique to Montana. Mr. Anderson said that it is significantly cheaper to ship crude or any other product by pipeline, rather than by truck or rail. Mr. Anderson responded to issues discussed earlier in the meeting:
- Regarding the mixing of materials in pipeline, Mr. Anderson said that this was not feasible.
 - Regarding Canadian ownership of pipeline, Mr. Anderson said that pipeline is regulated by FERC and that space is purchased by shippers. Once capacity is reached, a new user must either wait to get on or purchase capacity from an existing user according to FERC regulations.
 - He agreed that payout for construction of new pipeline is usually 20-30 years and that there must be sustainable volume. He said that many factors contribute to who develops and finances pipeline.
 - He said the price differential has decreased because Suncor is back on line and that several refineries in New Orleans are also back on line.
 - He agreed that the warmer temperatures aid in the flow of oil but that the same issues will resurface in the winter.
 - He said that the main issue that led to the development of the Task Force was that the price differential was so broad and affected entire states. Wyoming recognized this as a problem several years ago and established a pipeline transmission authority. Mr. Anderson supports the idea of establishing a similar authority in Montana.
 - Regarding public ownership of pipeline, Mr. Anderson said that he didn't know of any publically owned pipeline but thought that it could be done. It is a risky investment and Mr. Anderson said that he didn't know if the public would be willing to take the risk.
- 01:05:41 REP. MORGAN asked Commissioner Jergeson if the Task Force has considered the tax implications of centralized versus local taxation on a new pipeline and asked at what rate a new pipeline would be taxed. Commissioner Jergeson said that the Task Force has not discussed this issue but that he could bring it up.
- 01:06:41 REP. MORGAN asked Commissioner Jergeson if he thought investors would be interested to know what the taxation rate would be for the pipeline. Commissioner Jergeson said that investors would be interested in every cost associated with building a new pipeline, including the tax rate.
- 01:08:32 SEN. TOOLE asked Mr. Anderson, in regard to the Wyoming Transmission Authority's bonding authority, if the bonds are publically guaranteed bonds. Mr. Anderson said they were not and that he would not suggest that a Montana authority publically guarantee bonds.
- SEN. TOOLE asked Mr. Anderson to comment on his remarks made at the last Revenue and Transportation meeting regarding Encore and the oil gathering issue. He said that he reviewed the minutes and asked, if when Mr. Anderson was discussing support for the bill draft, if that was on behalf of Encore and how this issue relates to Encore on pipeline capacity. Mr. Anderson said that this issue doesn't relate to the central assessment issue. It is clear by statute that

transmission pipelines are taxed at the rate of 12%. The difference in the issue between transmission and central assessment is difference in the use of the two systems and how they are set up. The industry does not consider flow lines and gathering systems within the fields as being transmission lines and historically they have never been taxed as a transmission line. With respect to the central assessment issue, there have been many developments since the last meeting, including federal legislation. He recommended no action on the bill until more is known. Mr. Anderson said that is the position of Encore and of the Montana Petroleum Association as of this date.

01:10:55 SEN. TOOLE asked Mr. Anderson if it is Encore's position that the issues of central assessment apply the same to oil and gas pipelines. Mr. Anderson said yes.

01:11:25 SEN. ELLIOTT asked if the oil from one producer is mixed with that of different producers in the pipeline or if there is a mechanism for keeping the oil separated. Mr. Anderson said that the oil is kept separated.

GENERAL FUND REVENUE REPORT

Terry Johnson, Principal Fiscal Analyst, Legislative Fiscal Division (LFD), presented a Power Point update of the general fund outlook (EXHIBIT #16). He noted that the data presented was current through June 28, 2006. Information discussed by Mr. Johnson included:

- a comparison of HJ1 [special session] to now;
- selected revenue source data; and
- a 2007 biennium outlook.

TAPE 5 - SIDE A

01:25:55 REP. LAKE asked if the difference in the audit collections is due to the accounting changes being made at DOR. Mr. Johnson said yes.

01:35:34 Mr. Johnson continued his presentation (corporation income tax comparison - page 6, EXHIBIT #15). Mr. Johnson noted that DOR has recently provided a detailed listing of corporation tax payments. The data will allow LFD to identify where the additional corporation tax revenues are coming from.

01:38:39 Mr. Johnson said that additional supplementals may be an issue, particularly with the Department of Public Health and Human Services (DPHHS), because there is a possibility that DPHHS may request an even larger than anticipated supplemental.

01:44:46 REP. MCALPIN asked when solid revenue projections would be available. Mr. Johnson said that individual income tax return data would not be available until the first of November but that corporate tax data would be available earlier.

01:47:23 SEN. BARKUS asked why there was such a significant drop in coal trust interest earnings. Mr. Johnson said that the coal tax trust account is primarily invested in long-term investments, so is slower to respond to changes in interest rates.

01:48:55 REP. COHENOUR asked if the coal trust earnings will respond in time. Mr. Johnson said it is complicated because the Board of Investments (BOI) make the investment decisions. Due to current short term rates, there is a tendency to invest long-term securities that have come due in a shorter term security in order to take advantage of those short term rates. He said that while long-term rates are anticipated to eventually rise, the effect is two-fold: the lag effect of long-term investments and investment decisions of BOI to take advantage of short-term interest rates.

01:50:44 REP. LAKE asked if the Committee would get updated information before meeting to set revenue estimates. Mr. Johnson said he will provide a summary by revenue source to the Committee at its September meeting.

01:51:42 SEN. ELLIOTT asked Director Bucks to comment. Director Bucks said the corporate income tax is subject to the greatest volatility. He said that there are approximately 16,000 corporations doing business in Montana but that only a small number of them significantly affect revenues. He said listed five factors that may explain why Montana is experiencing such high collections and why this could change:

- Corporate earnings tend to be cyclical and currently, they are in an upswing cycle. Eventually the cycle will change and corporate earnings will decrease.
- Depreciation deductions are also cyclical. Investments from several years ago that benefitted from accelerated depreciation have been exhausted. This factor, coupled with the effect of the upswing of corporate earnings, may cause companies to invest in new plants and equipment which will in turn, cause depreciation deductions to increase in a few years, resulting in lower corporate net income.
- The federal government has just given a one-year tax break to companies who bring back income from overseas. This will inflate corporate tax reports for one year.
- As part of a response to the World Trade Organization (WTO) decision against the United States on export subsidies, Congress adopted a new deduction (production activities deduction). It is a straight percentage taken off taxable income will affect state corporate tax collections.
- Active efforts in the regulatory and legislative arenas have undermined some of the accounting reforms that have been enacted.

Director Bucks said that volatility of capital gains is a critical factor and said that the current revenue streams are probably not sustainable.

01:59:57 REP. COHENOUR referred to the differences between 2003 session and the 2005 session ending fund balances. She said that she is concerned that the current growth may end very quickly. Mr. Johnson said that the sources of income that caused the problem in 2003 are the same sources for the incredible outlook in 2007. He said that it is important to examine the current situation from a historical perspective because it is similar to the one that caused the problems several years ago. The late 1990s saw revenue increases similar to those of today. At that time, it was assumed that the growth would continue and budgets

were based on that assumption. A recession and the events of 9/11 changed that assumption dramatically, particularly capital gains. Mr. Johnson said that he would recommend that the Legislature not build its budget on the assumption that the current revenue levels will continue and also recommended creating a "rainy day" fund.

- 02:05:13 REP. WAITSCHIES asked if there is information on the make-up of capital gains. Mr. Johnson said that the last time this information was gathered was in 1998. He said that he would try to compile at least some of this information.
- 02:07:58 REP. WAITSCHIES asked if an agreement with DOR would make that information available. **TAPE 5 - SIDE B** Director Bucks said that this information is not captured from tax returns. He said he knows that this is an area of great interest to the Committee and that he would try to determine if this information could be retrieved.
- 02:27:05 REP. MORGAN asked to comment regarding the Committee position on mini cigars. She said that she would like to be on record that she is not opposed to taxing them as cigarettes but thinks that it is a matter for the Legislature to decide.
- 02:27:49 **Vickie Zeier, Missoula County Treasurer**, discussed the registration of LLC motor homes. Four companies located in Missoula are advertising out of state for LLC registration in Montana. These types of registrations are steadily and dramatically increasing, which is causing significant problems for Missoula County and for other counties as well. Staff works overtime but there is still difficulty in keeping up with the demand. Taxpayers who reside in the county are getting frustrated. Two of the firms soliciting the LLC registrations have agreed to reimburse the County for overtime expenses but additional staff is still needed. Ms. Zeier said that she would like a fee to be created that would pay for the hiring of additional staff. Missoula County Commissioners have discussed with the Montana Association of Counties (MACo) and supported HB 475 in the 2005 legislative session. HB 475 did not pass but would have created a 10% surcharge on motor homes. Ms. Zeier said that LLC transactions do help the general fund at the state level but that assistance needs to be provided to counties to handle the work load. She predicted that the number of LLC transactions will continue to increase and will eventually affect every county.
- 02:36:00 REP. MORGAN asked why a fee should be charged if the companies are willing to pay the overtime for county employees. Ms. Zeier said that the clerks are growing weary of overtime after two years and that the workload keeps increasing.
- 02:37:35 SEN. BARKUS asked how much of the \$250 fee goes to the county. Ms. Zeier said that the counties receive nothing. SEN. BARKUS asked what kind of research has to be done in order to issue an LLC title. Ms. Zeier said that the clerk must research the title manual to find the title transfer requirements for whatever state the owner of the vehicle resides in. Ms. Zeier said that some states require that a title transfer must be notarized, while other states do not.

Registrations have come in from all 50 states and each state has different requirements. Additionally, the Title and Registration Bureau data can be affected if a vehicle is not registered properly.

02:40:02 In response to a question from REP. MORGAN, Ms. Zeier said that all motor vehicle fees go to the state, with the exception of a local junk vehicle fee or a local option tax. SEN. ELLIOTT said that the counties get a HB 124 reimbursement. Ms. Zeier said that was correct and that it goes into the county general fund.

02:41:29 SEN. ELLIOTT reviewed the history of HB 475 and why it died in committee. There was discussion of whether HB 124 fees should be changed to address this issue and there was disagreement on whether a 10% surcharge should go to the county.

PUBLIC COMMENT

02:43:50 **Linda Stahl, Missoula County**, said regarding HB 475, that Sen. Bob Story believed that because of the higher registration of LLC motor homes in Missoula County, registration of LLC motor vehicles would be reflected on its growth portion of the HB 124 entitlement share. It is Missoula County's position that these vehicles are not counted towards that growth. Ms. Stahl said that if counties had realized at the time that the counties all supported HB 124, that as counties, they would be never able to approach this body again to deal with emerging issues, it would have changed the very nature of the debate of HB 124. At the HB 124 hearing, the Senate Tax Committee told the counties that it had a method by which it would get money back to the counties. Ms. Stahl noted that none of the \$250 LLC registration fee is retained by the county and that the counties weren't able to anticipate this issue at the time HB 124 was being debated. Montana has no sales tax and has a very low registration fee, so literally thousands and thousands of recreational vehicle (RV) owners across the country come to Montana to register their RVs, which creates additional work loads for certain county treasurers offices. That was what the counties were trying to address but what came out of Committee was that counties could not approach the Legislature for new sources of county specific revenue. Ms. Stahl said that the whole point of HB 124 was to simplify the revenue stream process, which it did, but that issues like this complicate it.

02:48:21 REP. WAITSCHIES agreed that the purpose of HB 124 was to simplify the process and confirmed that all of the money is submitted to the state and then distributed back to the counties. The amount that each county gets is set by a formula. The problem is how the growth factor is designed.

02:49:12 REP. LAKE asked how much of the \$250 fee is returned to the county. SEN. ELLIOTT said that he didn't know a percentage amount but that the amount is determined by an allocation formula. The county commissioners then decide how to distribute the money once it comes back to the county.

02:50:31 Ms. Stahl asked to clarify that none of the \$250 registration fee for these motor homes is returned to the counties. SEN. ELLIOTT asked how Ms. Stahl knew

that. Ms. Stahl said that the information came from Missoula County Chief Operating Officer, Dale Bickle. She said at the time that HB 124 was passed, this was not an issue and that the formula in the bill does not address this issue.

02:53:09

Pat Murdo, Economic Affairs Committee Staff, Research Analyst, LSD, provided an update of the Economic Affairs Committee study of SJR 35 - Identity Theft Study. She distributed a bill draft (EXHIBIT #17) and reviewed the background of the issue:

- A work group has made several recommendations on identity theft prevention, protection, and victim assistance.
- Prevention issues cover security breaches and HB 732 would be extended to include state and local government to notify citizens if a computer breach has occurred.
- The bill draft follows exactly what was adopted for business.
- A survey sent to all state agencies, elected officials, the Commissioner of Higher Education, and to MACo and to the MONTANA League of Cities and Towns requesting information on how social security numbers are collected and used, and whether the agencies are in compliance with the federal privacy act.

Ms. Murdo explained the provisions and requirements of the bill draft (EXHIBIT #18). She said that the EAIC has not made a final decision on this issue and have debated different requirements, such as redaction or truncation of social security numbers, or if they should be collected at all for any use. Collection of social security numbers is done frequently in state government and if a bill is passed, there would be many requests for authority to collect social security numbers.

Another protection that the committee is considering is the security freeze bill. Ms. Murdo explained how a security freeze works and the benefits of placing a freeze on one's credit files. The Attorney General will introduce a bill if the EAIC does not sponsor a security freeze bill.

Another issue is that there are identity theft victims in Montana that need help and a victim assistance bill is being drafted. The bill would expand the identity theft passport, passed in 2005.

03:02:02

REP. MORGAN asked why the Judicial Branch was excluded in this bill draft (EXHIBIT #17). Ms. Murdo said that it is a question of whether the Legislative Branch can adopt policy for the Judicial Branch. The Judicial Branch is included in another bill draft regarding the portability of computer software and hardware.

TAPE 6 - SIDE A

03:03:17

REP. COHENOUR said the reason why she asked Ms. Murdo to address the Committee is because she is concerned that work done by RTIC to facilitate the flow of sensitive tax information between LFD and DOR could be compromised by the legislation being proposed by the Economic Affairs Committee. She **moved** that the Revenue and Transportation Committee send a letter to the

Economic Affairs Committee asking it not to take action on the proposed legislation until the Revenue and Transportation Committee has had the opportunity to have input on the draft legislation.

- 03:07:41 Mr. Martin asked when the Economic Affairs Committee would be meeting next. Ms. Murdo said that the Committee will be meeting on July 14 and that the final meeting dates are September 11 and 12.
- 03:09:25 Mr. Martin said that the LFD and DOR are still discussing this issue and that is why the agenda item was postponed until the September meeting.
- 03:10:36 After a brief discussion, REP. COHENOUR's **motion passed** on a unanimous voice vote.

REQUEST TO REVISE LAWS RELATED TO LENGTH OF TRIPLE TRAILER TRUCKS

- 03:11:02 **Barry "Spook" Stang, Executive Vice President, Motor Motor Carriers Association**, spoke on behalf of William Duffield, He said that Mr. Duffield would like Committee support for requesting an exemption to the federal freeze placed on the length of triple trailers. Mr. Stang said that in 2001, Montana passed a law allowing the length of triple trailers to be extended. The federal government found the law to be in violation of the federal freeze. Millions of dollars for Montana highway projects were at risk, so the 2005 Legislature amended the law to be compliance with the federal law. Mr. Stang said that it is his opinion that there is little that can be done by the State regarding this issue. He said that the industry wants the longer length trailers so it is the industry that must work with the federal government to make the changes.
- 03:16:13 SEN. ELLIOTT asked **Jim Lynch, Director, Montana Department of Highways (MDT)**, to explain the de-icing substance used by MDT on Montana's highways. Director Lynch said that the magnesium chloride is a very effective de-icer but that it damages vehicles. MDT is testing different types of de-icing substances and is testing a salt brine with an added rust inhibitor in two districts. He predicted that MDT would eventually go back to using the salt brine and would also increase application rates.
- 03:22:02 Mr. Stang said that the members of his association have mixed feelings about the magnesium chloride. He discussed a 2005 session bill that proposed guidelines for a uniform de-icer for statewide use and said that he still favors having uniform guidelines for the State.

COMMITTEE CONSIDERATION OF BILL DRAFTS REQUESTED AT MAY MEETING.

- 03:23:49 Mr. Martin discussed LC7000 (EXHIBIT #18), a bill to clarify the Revenue and Transportation Committee's authority to revise revenue estimates during a special session of the Legislature.
- 03:25:31 REP. LAKE **moved** that LC7000 be drafted as a Committee bill. The **motion passed** on a unanimous voice vote.

03:26:23 Mr. Martin discussed LC7001 (EXHIBIT #19), a bill to eliminate reimbursements to local governments for the fee in lieu of tax on certain vehicles. Mr. Martin said that LC7001 is in response to recommendations made by the Legislative Audit Division financial compliance audit of the Department of Revenue. REP. WAITSCHIES **moved** to draft LC7001 as a Committee bill. The **motion passed** on a unanimous voice vote.

03:29:00 **Lee Heiman, Staff Attorney, LSD**, discussed LC8001 (EXHIBIT #20), a bill to provide a technical correction to clarify allocation of certain drivers license fees. REP. LAKE **moved** to draft LC8001 as a Committee bill. The **motion passed** on a unanimous voice vote.

DISCUSSION OF INTERIM COMMITTEE STRUCTURE

03:31:01 Mr. Martin discussed the current interim committee structure and the background leading up to the reorganization of interim committees in 1999. He said that staff has discussed the current committee structure. One suggestion is that Local Government be separated from Education and that a Local Government with Transportation committee be created, leaving Revenue and Education as stand alone committees. Mr. Martin explained the rationale for the staff suggestions and said that LSD staff is interested in the Committee's opinion.

03:42:33 After a brief discussion, the Committee concluded that the current structure is the best. REP. COHENOUR **moved** to send a letter to the Education Local Government Committee stating that the Revenue and Transportation Committee wished to maintain the current structure. The **motion passed** on a unanimous voice vote.

TAPE 6 - SIDE B

HJR 44 STUDY OF THE TAXATION OF OIL AND NATURAL GAS PROPERTY

05:11:26 Mr. Martin said that LC8000 (EXHIBIT #21) would require the local assessment of certain oil and gas properties. Mr. Martin said that the purpose of the memo he would be discussing tries to quantify by taxing jurisdiction, the effect of the proposal (EXHIBIT #22). He said that he calculated the effect of the proposal on county governments, school equalization levies, county wide transportation and retirement levies, and school district levies.

05:35:50 REP. COHENOUR asked Mr. Martin to clarify that what he calculated was the effect on the local taxing jurisdictions, which would be the shifting the property taxes from these large corporations to the rest of the taxpayers in the taxing jurisdiction. Mr. Martin said that the different mill levies would be applied to all types of property, so there would be some shift in the property tax burden, if mill levies were increased.

05:37:02 SEN. BLACK commented that half of the \$353,867 loss in county taxes would come from just Liberty and Glacier Counties (page 4, EXHIBIT #22) and would be a significant blow.

- 05:37:55 SEN. BARKUS asked if the Committee could get information on what other kinds of taxes the affected companies pay. Mr. Martin said that it would depend on how the Committee wanted to use the information. He said that the oil and gas production taxes may provide valuable information. SEN. ELLIOTT said that he would like to look at their income tax returns. SEN. BARKUS said there is an allocation back to counties, based on production. Mr. Martin said yes and that he tried to point out the companies' relative significance to the property tax base and not to the total financial resources of a particular district.
- 05:40:26 REP. LAKE asked if the percentage listed in the right column of the tables indicate the amount that taxes would increase for the other taxpayers in that particular district in order to offset the decrease in taxes the affected companies would be paying. Mr. Martin said that the number represents the percentage of increase in the mill levies and that each jurisdiction would be impacted differently.
- 05:44:12 REP. COHENOUR said that LC8000 is an industry proposal. If the Committee is going to look at specific proposals to address this issue, then it must have input from counties also. If taxpayers will be picking up the slack, the Committee needs to know the impact this legislation will have on the counties and individual taxpayers, as well as the industry.
- 05:45:23 SEN. BLACK agreed that taxation has to be fair and equitable for all but that the impact on the counties must be considered also. This issue has the potential to negatively affect counties and that must be considered in the discussion of what is fair.
- 05:46:26 SEN. ELLIOTT said that since 1989, there has been a tremendous shift of property taxes from industry to small businesses and home owners. This is not a new trend. This is a difference of opinion on how these properties should be taxed. Whatever decision is made will affect the citizens. SEN. ELLIOTT said that he believes the three companies have always been aware of the difference in the assessment values but have just now gone to court to protest them. It was always an accepted cost of doing business until recently. Central assessment and local assessment does have some inconsistencies but the greatest concern must be to decide if it is conscionable to reduce taxes on industry and increase taxes on homeowners. SEN. ELLIOTT said that is a very serious matter and must be carefully decided. **TAPE 7 - SIDE A** He recommended taking no action on this issue and letting the court settle it.
- 05:50:25 REP. WAITSCHIES agreed with SEN. ELLIOTT. Mr. Martin said that the presentation of the memo to the Committee completed the requirements of the SJR 44 study.
- 05:51:18 REP. LAKE agreed that no action is the correct course of action. REP. LAKE **moved** to take no action on LC8000 and to include Mr. Martin's report as an official part of the Committee's records.

05:51:58 REP. COHENOUR asked that the Committee's concerns regarding the tax shifts that have occurred and that it was of concern to Committee members be noted in the HJR 44 Final Report.

05:52:33 REP. LAKE's **motion passed** on a unanimous voice vote.

COMMITTEE CONSIDERATION OF REQUESTING RESOLUTION TO CONDUCT AN INTERIM STUDY OF TITLE 16, MCA, RELATED TO ALCOHOLIC BEVERAGE AND TOBACCO LAWS

05:56:02 **Lee Heiman, Staff Attorney, LSD**, recommended three areas of Title 16 that could be reworked:

- licensing - there are many licensing requirements that are in need of cleaning up;
- liquor agency stores - the system is cumbersome and could use an update; and
- taxation system used by the State.

Mr. Heiman said that the issues of tobacco and gambling are intertwined with licensing and may also have a place in an interim study.

05:59:47 SEN. ELLIOTT asked Mr. Heiman for his personal opinion on how convoluted the current laws are. Mr. Heiman said that the problem is that Title 16 is never considered in its entirety when changes are being made. He said the quota system for licensing is a very complicated, expensive, and sometimes subjective process. Mr. Heiman said that he thought it would be a very difficult job to revamp the entire title

SEN. ELLIOTT asked why the State stayed in wholesale liquor business. Mr. Heiman said that revenue and control were the reasons. SEN. ELLIOTT said that in his opinion, it does not make sense for the State to remain in the wholesale liquor business.

06:02:40 SEN. BARKUS said that Mr. Johnson's revenue report showed liquor profits at zero. Director Bucks said that this is an accrual issue. The liquor sales numbers will be loaded into the state system on June 30 and will appear as adjustments to the books.

06:04:26 **Shauna Helfert, Liquor Control Administrator, DOR**, said that the accruals will be set up in June. She estimated liquor revenues to amount to approximately \$7 million.

06:04:58 SEN. BARKUS asked why liquor revenue numbers are not available now. Director Bucks said that information comes directly off from SABHRES, which has its own accounting rules through the Department of Administration. SEN. BARKUS said that there is a significant amount of interest in addressing this issue during the 2007 session. He recommended taking no action at this time.

06:06:41 REP. COHENOUR said that even if this issue is taken up in the 2007 session, she still supports conducting an interim study. SEN. ELLIOTT said an interim

study would not take place until after the 2007 legislative session and any bills resulting from the study would be introduced in the 2009 legislature. He agreed that it is reasonable to request an interim study.

- 06:08:40 SEN. BLACK asked what the scope of the study would encompass. SEN. ELLIOTT said that it would be up to the Committee to define the scope of the study. If the Legislature approves the study, it would be ranked by the members of the Legislature. If it ranks high, the study is assigned to an interim committee.
- 06:10:25 REP. COHENOUR **moved** to request a study resolution to be based on Mr. Heiman's recommendations. REP. COHENOUR withdrew her motion in order to allow public comment from Mark Staples.

PUBLIC COMMENT

- 06:11:43 **Mark Staples, Montana Tavern Association**, discussed the history of the Montana liquor licensing system. He cautioned against making major changes to the current system. He said all of the individual issues within Title 16 have already been studied. The retail licensing system, which was Mr. Glantz's main concern, has been heavily invested in and any study must be sensitive to that. He said that the industry is already dealing with other issues, such as the smoking ban, the out-of-state ownership of liquor licenses issue, and the recent U.S. Supreme Court decision regarding wine sales across state lines. This is not a good time to have a major revamping of licensing requirements.
- 06:18:18 REP. LAKE agreed that there may be portions of the law that are in need of study but thought that it would be wise to wait until after the 2007 legislative session before acting on this.
- 06:19:41 SEN. BARKUS asked to correct Mr. Staples, saying that Mr. Glantz did not request a licensing study, but rather a study of the taxation of liquor.
- 06:20:13 SEN. ELLIOTT said that Mr. Staples made a good point about the investment in liquor licenses and agreed that the investment should be protected. He asked for a show of hands from everyone present at the meeting who felt they were knowledgeable about Montana's liquor laws. He said his point was that very few are familiar with these laws. That factor, along with the impacts of term limits, make a strong argument for requesting an interim study of Title 16. SEN. ELLIOTT said for the sake of knowledge and the common good, he supports an interim study.
- 06:22:08 REP. WAITSCHIES said that he did not approve of an interim study at this time. He suggested conducting a public hearing instead, to allow the public to comment on what the scope of the study should be.
- 06:22:55 SEN. BLACK agreed with REP. WAITSCHIES and said that he would not support a motion for an interim study at this time.

06:23:41 SEN. ELLIOTT asked if the Committee would like to have a public hearing at the next meeting. The Committee indicated that it would. SEN. ELLIOTT said that a public hearing would be held.

ADMINISTRATIVE RULE REVIEW

06:24:59 Mr. Heiman briefly discussed three rule reviews (EXHIBIT #23).

06:27:45 SEN. ELLIOTT asked if the proposed rule change for manufactured and mobile homes deals with the confusion resulting from the manufactured homes legislation passed in 2005. Director Bucks said that the proposed rules are related to the 2005 legislation and that the amended language should clear up the confusion and that all concerned parties are satisfied with the proposed rule change.

TAPE 7 - SIDE B

06:30:59 REP. COHENOUR referred to proposals to return the surplus general fund ending fund balance to taxpayers. REP. COHENOUR said that she is very concerned about CI-97 (a constitutional initiative to cap the spending authority of the Legislature). She asked Director Bucks to explain how surplus money could be returned to taxpayers if CI-97 is approved. Director Bucks said DOR has begun to examine CI-97 and that that one feature would prevent the Legislature from returning surplus money to ordinary taxpayers/homeowners but would allow tax rebates for wealthier individuals and corporations. CI-97 would rule out Governor Schweitzer's proposal and would have prevented past rebates, such as the one issued in the mid-1990s under Governor Racicot. The Legislature has never made a policy choice to return property taxes to home owners on the pro rata amount. CI-97 would prevent the Legislature from distributing tax rebates in the manner that it has done so in the past. CI-97 would require rebates to be given to all property taxpayers and not allow, for example, the Legislature to focus relief on homeowners. Director Bucks said that the initiative language would create disparity and would very likely end up in the Supreme Court.

Director Bucks distributed a table indicating how surplus revenue would be distributed under the Governor's proposal and how it would be distributed under CI-97 (EXHIBIT #24). He discussed the comparisons and said that regardless of one's position on CI-97, the important point to remember is the significant impact it would have on the Legislature's ability to refund surplus revenue.

OTHER BUSINESS, MEMBER ISSUES, INSTRUCTIONS TO STAFF

06:39:58 Mr. Martin said that the next meeting is scheduled for Friday, September 8. Major agenda items include:

- legislative proposals presented by DOR and MDT;
- a revenue update from LFD;
- a draft of the Revenue and Transportation Committee Final Report; and
- a public hearing on Title 16 - liquor licensing and taxation.

06:42:33 SEN. KITZENBERG asked if the mini cigar issue will be on the agenda. SEN. ELLIOTT said that it would be on the agenda.

06:43:31 Mr. Martin said that he would contact OBPP for its agency legislative proposals. He said that both the bill draft and a summary sheet for each would be provided to the Committee members.

06:45:07 REP. COHENOUR said that another agenda item will be proposed legislation by the EAIC regarding social security numbers. Mr. Martin said that would be included in the access to tax information report, also an agenda item for September.

ADJOURNMENT

06:46:23 With no further business before the Committee, SEN. ELLIOTT adjourned the meeting at 2:50 p.m. The next meeting of the Revenue and Transportation Committee is scheduled for Friday, September 8, 2006, in Helena.

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