



Revenue and Transportation Interim Committee

63rd Montana Legislature

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TO: Revenue and Transportation Interim Committee

FROM: Megan Moore, Research Analyst

RE: Options for Bill to Add Legislators to Agricultural Land Valuation Advisory Committee

DATE: June 30, 2014

At the May meeting, the committee requested a bill draft to require the appointment of legislators to the Agricultural Land Valuation Advisory Committee. This memorandum gives the committee options related to compensation and travel reimbursements and addressing a possible concern about legislators exercising executive power for the requested bill draft. The draft is attached to this memorandum.

Compensation and Travel Reimbursement

Sections [2-18-501](#) through [2-18-503](#) provide for reimbursement for travel, meals, and lodging for advisory committee members while engaged in committee business. For clarity, suggested changes to section [15-7-201](#) should specify whether legislative members are entitled to compensation while serving on the Agricultural Land Valuation Advisory Committee. Each option below includes sample language that could be included in subsection (7)(a)(ii).

1. Receive compensation and reimbursement for travel expenses paid by a state agency.
 - a. Examples
 - i. Economic Development Advisory Council provided for in section [2-15-1820](#). Legislative members receive compensation paid by the Department of Commerce pursuant to section [5-2-302](#), which provides for compensation when the Legislature is not in session.
 - ii. Electronic Government Advisory Council provided for in section [2-17-1105](#). Legislative members are reimbursed and compensated as provided in section [5-2-302](#). The Department of Administration pays the expenses of the advisory council.
 - b. Sample language: Legislative members are entitled to compensation and reimbursement pursuant to 5-2-302, which must be paid by the department of revenue.

2. Receive no compensation, only reimbursement for travel expenses paid by a state agency.
 - a. Example: Many advisory committees on which legislators serve have authorizing statutes that do not specify whether legislative members receive compensation so the legislators do not receive compensation. For clarity, this should be specified in the advisory committee authorizing statute.
 - b. Sample language: Legislative members shall serve without compensation but are entitled to reimbursement for travel, meals, and lodging while engaged in committee business as provided in 2-18-501 through 2-18-503.
3. Receive compensation and reimbursement for travel expenses paid by the Legislature. This model is currently used for legislative liaisons.
 - a. Examples
 - i. State Fund liaison provided for in section [2-15-1019](#). The Economic Affairs Interim Committee's presiding officer appoints two members of the committee as legislative liaisons, one from each party. The legislative liaisons receive compensation and expenses from the Economic Affairs Interim Committee budget.
 - ii. Board of Investments liaison provided for in section [2-15-1808](#). The President of the Senate and Speaker of the House each appoint one member to serve as a nonvoting legislative liaison. The Legislative Council budget covers compensation and expenses.
 - b. Sample language: Legislative members are entitled to compensation and expenses pursuant to 5-2-302 to be paid by [Legislative Council or committee].
 - i. If the committee wishes for the Revenue and Transportation Interim Committee (RTIC) budget to cover compensation and travel costs for attending the meetings, it may make sense for the appointed members to be members of RTIC.

Exercise of Executive Power

When including legislators on executive branch advisory committees, a potential concern is whether the advisory committee exercises power that is granted to the executive. This is a concern because of separation of powers provisions: legislators may not exercise power reserved for the executive. If section [15-7-201](#) is amended to require the appointment of legislators to the Agricultural Land Valuation Advisory Committee, there may be a separation of powers concern.

The concern stems from language in section [15-7-201\(5\)\(d\)](#). That section provides that the base period used to determine net income is the most recent 7 years for which data is available *unless the advisory committee recommends a different base period and the department adopts the recommended base period by rule*. Similar language is also included in the section for the averaging method used for net income. This language prevents the Department from changing the base period without a recommendation from the advisory committee to do so.

One of the following changes to the section could alleviate the separation of powers concern.

1. Subsection (5)(d) could be amended in one of two ways.
 - a. Take away the ability of the advisory committee to recommend a different base period and averaging method than the ones in statute.
 - b. Set a base period and averaging method in statute but allow the Department to determine a different base period and averaging method upon consultation with the advisory committee.
 - i. Strike subsection (5)(d) and insert the following: "The base period used to determine net income must be the most recent 7 years for which data is available prior to the date the revaluation cycle ends unless the department determines a different base period. Data referred to in subsection (5)(b) must be averaged, but the average must exclude the lowest and highest yearly data in the period unless the department determines a different averaging method. The department must consult with the advisory committee regarding the base period and averaging method. If a different base period and averaging method are used, the department must adopt the changes by rule."
2. Designate the legislative members as nonvoting members. This could be achieved by adding the following language to the end of the proposed subsection (7)(a)(ii): "The legislative members are nonvoting members."