



## Revenue and Transportation Interim Committee

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### 61st Montana Legislature

#### SENATE MEMBERS

KIM GILLAN--Chair  
RON ERICKSON  
JEFF ESSMANN  
CHRISTINE KAUFMANN  
JIM PETERSON  
BRUCE TUTVEDT

#### HOUSE MEMBERS

ROY HOLLANDSWORTH--Vice Chair  
DICK BARRETT  
CYDNIE (CARLIE) BOLAND  
BRIAN HOVEN  
MIKE JOPEK  
BILL NOONEY

#### COMMITTEE STAFF

JEFF MARTIN, Research Analyst  
LEE HEIMAN, Staff Attorney  
FONG HOM, Secretary

# MINUTES

September 15, 2010

Room 137, Capitol Building  
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. KIM GILLAN, Chair  
REP. ROY HOLLANDSWORTH, Vice Chair

SEN. RON ERICKSON  
SEN. JEFF ESSMANN  
SEN. CHRISTINE KAUFMANN  
SEN. JIM PETERSON  
SEN. BRUCE TUTVEDT

REP. DICK BARRETT  
REP. CARLIE BOLAND  
REP. MIKE JOPEK  
REP. BILL NOONEY

#### COMMITTEE MEMBERS EXCUSED

REP. BRIAN HOVEN

#### STAFF PRESENT

JEFF MARTIN, Research Analyst  
LEE HEIMAN, Staff Attorney  
FONG HOM, Secretary

## Visitors

Visitors' list, Attachment #1.

## **COMMITTEE ACTION**

- The minutes of the August 2-3, 2010, full committee meetings were unanimously approved.
- The minutes of the August 2, 2010, Agricultural and Forest Land and Residential and Commercial Subcommittees were approved.
- The committee approved LC 8001 and LC 8002 related to Realty Transfer Certificates as committee bills with revisions as discussed.

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

- 00:00:01 SEN. GILLAN called the meeting to order at 8:33 a.m. The committee secretary took roll. Rep. Hoven was excused.
- 00:02:36 **Jeff Martin, Research Analyst**, said there were two emails to the committee (**Exhibit 1**) from Debbie Biolo and Judy Pettinato regarding property taxes.

## **Approval of August 2-3, 2010 Minutes**

- 00:04:17 SEN. BARRETT moved to approve the August 2-3, 2010, minutes. The motion passed unanimously.
- 00:04:56 SEN. PETERSON moved to approve the minutes of the August 2, 2010, Agricultural and Forest Lands meeting. The motion passed unanimously.
- 00:05:29 REP. BARRETT moved to approve the Residential and Commercial August 2, 2010, minutes. The motion passed unanimously.

## **AGENDA**

- **REVIEW OF CURRENT BUDGET STATUS AND OUTLOOK FOR MAJOR REVENUE SOURCES - Terry Johnson, Principal Analyst, Legislative Fiscal Division**

- 00:07:47 Mr. Johnson gave a presentation on the General Fund Status (**Exhibit 2**).
- **PROPERTY TAX APPEAL SYSTEM - Karen Powell, Chair, State Tax Appeal Board**
- 01:28:27 Ms. Powell gave a presentation on the property tax appeal system (**Exhibit 3**).

## **Discussion**

- 01:43:59 The members of the committee discussed the county tax appeal boards and the documents that the people who are appealing their taxes have to read and fill out and the timeframe of the process.

- **DEPARTMENT OF REVENUE REPORTS (Exhibit 4)**
  - ▶ **Revising Cyclical Reappraisal - Alan Peura, Deputy Director, Department of Revenue**

01:59:47 Mr. Peura discussed the report "An Alternative Approach to Cyclical Reappraisal" (**Exhibit 5**).

**Discussion**

02:19:58 The committee asked if the Department takes into account the possibility of reducing the time that appeals are heard and what the costs of the last reappraisals were.

02:34:01 The committee discussed whether to request a bill draft to revise the reappraisal cycle.

**Motion by Rep. Barrett**

02:38:45 REP. BARRETT **moved** that staff draft a bill to establish a one-year reappraisal cycle as outlined in the memorandum from the Department of Revenue.

02:39:34 SEN. GILLAN said that the committee could revisit this issue at tomorrow's meeting.

**No public comment given on revising cyclical reappraisal.**

- **PRESENTATION FROM RON CLARK, LAKESIDE, MONTANA**

02:45:26 Mr. Clark discussed his experience he had with an employee of the Department of Revenue when he tried to appeal his property reappraisal.

**Questions**

02:55:36 SEN. GILLAN asked when an individual appraiser makes an adjustment, is that adjustment subject to any type of oversight. **Cynthia Montea Moore, Administrator, Property Assessment Division, Department of Revenue**, discussed the process that takes place when someone appeals a property tax assessment.

**Public Comment**

02:57:55 **Ed Bartlett, Lobbyist for the City of Billings**, encouraged the committee to move toward a shorter cycle than the 6-year cycle.

- **Refining Income Approach for Valuing Commercial Property - Ross Halvorson, Management Analyst, Property Assessment Division, Department of Revenue**

02:59:31 Mr. Halvorson gave a presentation on capitalization rates for valuing commercial property (**Exhibit 6**).

03:02:20 Mr. Halvorson discussed the Income Valuation Appraisal System (**Exhibit 7**).

- **Proposed Rule 42-20-107 - Cynthia Monteau Moore, Administrator, Property Assessment, Department of Revenue**

03:17:05 Ms. Moore discussed 42-20-107, Valuation Methods for Commercial Properties (**Exhibit 8**) that the generally preferred method is the income method to valuation.

**No public comment given**

## LUNCH

04:42:24 The meeting reconvened at 1:16 p.m.

- **AGRICULTURAL LAND REAPPRAISAL ISSUES**

- **Summary of value before reappraisal issues - Jaret Coles, Staff Attorney, LSD**

04:43:26 Mr. Coles discussed the memorandum on "Agricultural Land: Summary of Value Before Reappraisal (VBR) Issues" (**Exhibit 9**).

### Questions

04:57:28 SEN. PETERSON asked for clarification of the change in acreage that resulted in the reclassification and the recalculation of a new VBR. **Mr. Coles** said that the example that he used was the Department's position that there was change on the land in some point in time.

04:58:34 SEN. PETERSON asked if that was based on the most current set of maps that were published. **Mr. Coles** said that the Department did a comprehensive re-mapping of that particular parcel and it was based on the Department's comprehensive 2008 digital mapping.

04:59:12 REP. JOPEK said that the Legislature made some changes to the way agricultural land and timber land was valued and asked in what year that

happened. **Mr. Heiman** said that was in the early 1980s and the economic conditions were that urban land was encroaching upon agricultural land so that land was being valued as residential property. There was an interim study to look at other ways to value agricultural land and the interim committee came up with productivity value.

► **Discussion of committee information requests from August meeting - Alan Peura, Deputy Director, Department of Revenue**

05:01:56 Mr. Peura discussed the Department of Revenue's response to the Revenue and Transportation Interim Committee's questions on the 2009 agricultural reappraisal (**Exhibit 10**).

► **Update on phase-in of agricultural land - Mike Green, Crowley & Fleck**

05:56:25 Mr. Green gave a presentation on *Lucas v. Montana Department of Revenue* (**Exhibit 11**), the lawsuit that challenged the Department of Revenue's phase-in. He also discussed the 2009 Legislative Considerations, Fiscal Note to HB 658 (**Exhibit 12**).

**Questions**

06:15:26 SEN. ESSMANN asked Mr. Green how long will it take to resolve the litigation in terms of whether the Legislature should be acting in the next session to try to resolve some of these issues. **Mr. Green** said that the Legislature can act independently of the judiciary. He can't say when this issue will be resolved.

06:20:49 REP. JOPEK asked Mr. Peura about the Fiscal Note 2011 Biennium (HB 658) document (**Exhibit 13**). He asked if the Department did an analysis on the fiscal note. **Mr. Peura** said that the Department did a detailed analysis of the changes in HB 658, as amended, with HJR 2.

**Public Comment**

06:24:42 **Harold Blattie** distributed a copy of 15-7-210, MCA, tax on change of use of part of tract (**Exhibit 14**), and asked that the committee review the statute.

**BREAK**

06:41:33 The meeting reconvened at 3:15 p.m.

► **Revisit the 2009 Legislative Considerations (Exhibit 12)**

06:41:44 SEN. PETERSON said that based on the intent of the Legislature and as evidenced by the fiscal note of HB 658, it is clear that the total phased in value of agriculture lands projected for 2013 is \$5.23 million. By the effective use of the rule, parcels within legal descriptions triggering a VBR within the total legal description could effectively negate the phase in for agriculture.

**Motion by Sen. Peterson**

06:41:50 SEN. PETERSON **moved** that the committee reaffirm the legislative intent, as evidenced by the fiscal note, that agriculture was to be phased in over 6 years.

**Discussion**

06:43:26 REP. JOPEK said that the legislative intent was that no homeowner in Montana was going to see a tax increase. That was a policy statement that the Legislature made and yet based on testimony that the committee has heard, many homeowners saw their property taxes increase. He said that no good would come out of it if the committee gets into a debate on what it now thinks what the legislative intent of the bill was.

06:46:22 SEN. ERICKSON said that he can't support Sen. Peterson's motion. There is a lawsuit and it seems that Sen. Peterson's motion will interfere with that lawsuit.

06:47:28 SEN. PETERSON said that the intent of his motion was that during the legislative session, many of the legislators were quoted that they were going to mitigate each class so that there would be no initial tax increase. If there was anything, it would be phased in. It has become very clear that that did not happen for agriculture land and the whole reason for his motion is to clarify what the legislative intent was at the time that we were in session.

**Roll Call Vote**

06:52:02 A roll call vote was taken and the motion **failed** on a tie vote (**Attachment 2**).

• **ADMINISTRATIVE RULE REVIEW - Jaret Coles, Staff Attorney**

06:52:42 Mr. Coles gave a presentation on rule review activity (**Exhibit 15**).

07:01:04 Director Bucks commented on the Department preparing Economic Impact Statements for MAR Notices 42-2-845 and 42-2-846. The Department of

Revenue will prepare the EISs in time for the committee's review at its next meeting and will reschedule public hearings on the rules.

### **Questions**

- 07:05:55 SEN. ESSMANN is concerned about MAR 42-2-840, remittance of withholding tax by employers. It appears that the Department is trying to amend a statute, which says that the Department shall notify the employer each year by adoption of a rule. The rule conflicts with the statute and if the Department wishes to change a statute, they need to change the statute through legislation. SEN. ESSMANN would like a motion to have the Department rescind MAR 42-2-840 because statutory amendment is necessary.
- 07:06:54 Director Bucks said that all proposed rules are reviewed by attorneys and he does not sign rules unless he has been advised that they are appropriate under the statutes. He does not have a written legal opinion but will provide more legal clarification at tomorrow's meeting.
- 07:08:52 The members of the committee decided to wait until the director receives a legal opinion regarding MAR 42-2-840 before voting on Sen. Essmann's motion.

### **No public comment given**

- **COMMITTEE REQUESTED BILL DRAFTS**
  - ▶ **LC 0147, reducing tax rate on class four property that suffered a loss of market value due to market forces since reappraisal base values were established**

- 07:12:46 Mr. Heiman discussed LC 0147 (**Exhibit 16**).
  - ▶ **Fiscal implications of LC 0147 - Larson Silbaugh, Department of Revenue**
- 07:17:33 Larson Silbaugh, Department of Revenue, discussed the fiscal impacts of LC 0147 (**Exhibit 17**).

### **Motion by Sen. Tutvedt**

- 07:30:29 SEN. TUTVEDT **moved** to recommend LC 0147 as a committee bill.

### **Public Comment**

- 07:33:37 **Joe Roberts, Montana Association of Realtors**, supported LC 0147 as a committee bill.

- 07:36:35      **Jerome Patten, Bozeman**, did not support the bill.
- 07:37:46      **Mary Whittinghill, Montana Taxpayers' Association**, supported the bill and supported looking at shortening the time period for reappraisal.
- Roll Call Vote**
- 07:40:13      Upon a roll call vote (**Attachment 3**), the motion **failed** on a tie vote.
- ▶ **LC 8001, allow public disclosure of realty transfer certificates for class four residential property**
- 07:42:58      Megan Moore, Research Analyst, LSD, discussed LC 8001 (**Exhibit 18**).
- ▶ **LC 8002, allow public disclosure of realty transfer certitudes for class four commercial property**
- 07:43:33      Ms. Moore discussed LC 8002 (**Exhibit 19**).
- Motion by Sen. Barrett**
- 07:44:08      REP. BARRETT **moved** that LC 8001 go forward as a committee bill.
- 07:44:21      The committee discussed the right to privacy, and the need for the public to understand sale price information. SEN. ESSMANN said that he would support a bill draft that is more narrow in terms of the release of information.
- Substitute motion by Sen. Essmann**
- 07:46:37      SEN. ESSMANN **moved** that LC 8001 be revised so that there is a narrower disclosure only of a street address, legal description, and sales price, and not the entire disclosure contained in a Realty Transfer Certificate.
- Public Comment**
- 07:47:39      **Joe Roberts** said that he is opposed to LC 8001 and LC 8002. He addressed the concern of the privacy issue.
- 07:56:12      The motion **passed** on a voice vote with Sen. Tutvedt voting no.
- Motion by Sen. Essmann**
- 07:58:07      SEN. ESSMANN **moved** that LC 8002 go forward as a committee bill with the same modifications for disclosure that were made to LC 8001. The motion **passed** on a voice vote with Sen. Tutvedt voting no.

► **LC 4007, create a commercial property reappraisal advisory committee**

- 08:01:11 SEN. ESSMANN said that LC 4007 (**Exhibit 20**) is an attempt for input into the Department with respect to a number of factors involving class four commercial property. He said that he would be happy to work with the Director of the Department of Revenue if the committee decides to move the bill forward.
- 08:01:50 REP. JOPEK hoped that Sen. Essmann would amend the bill to add a residential sector. SEN. ESSMANN said the two types of property have distinct natures and would require a different committee.

**Substitute motion by Rep. Jopek**

- 08:06:19 REP. JOPEK **moved** to add language to LC 4007 to include a separate homeowner property tax reappraisal advisory committee with an appropriate membership. The motion **failed** on a tie vote.

**Public Comment**

- 08:15:30 **Madalyn Quinlan, Chief of Staff, Office of Public Instruction**, urged the committee to request and consider a set of revenue options as the state looks at balancing the state budget next biennium. There have been 18 budget options presented that involve reducing revenues and shifts the burden of support for schools from the state level to the local property taxpayer.

**Withdrawal of Sen. Essmann's motion**

- 08:17:49 SEN. ESSMANN **withdrew** his motion to request LC 4007 as a committee bill.

► **Issue of annual cyclical reappraisal**

- 08:18:26 SEN. GILLAN discussed taking up annual cyclical reappraisal at tomorrow's meeting but Rep. Barrett said he was prepared to make a motion regarding annual cyclical reappraisals.

**Motion by Rep. Barrett**

- 08:19:26 REP. BARRETT **moved** that the committee request staff to draft a bill to amend section 15-7-111, MCA, to require the Department of Revenue to annually appraise all taxable property within the state, seek to amend any and all statutes that currently relate to cyclical valuation under 15-7-111, MCA, including statutes that do not relate to phase in, notice of classification and assessment to taxpayers, taxpayer appeal rights, the operations of county and state tax appeal boards, and the general appraisal and assessment methods utilized by the Department of Revenue.

08:20:32 The committee had a discussion on whether or not the bill would contain flyovers, what the reappraisal date would be, what would the advantages of an annual reappraisal versus reappraisal being done every two years, and what the costs would be.

It was the consensus of the committee to continue discussing the motion the next day.

- **RECESS**

08:46:14 Sen. Gillan recessed the meeting at 5:20 p.m. to reconvene at 8:00 a.m. on September 16, 2010.

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