



Revenue and Transportation Interim Committee

PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

57th Montana Legislature

SENATE MEMBERS

WM. E "BILL" GLASER, VICE - CHAIRMAN
VICKI COCCHIARELLA
BOB DePRATU
JON ELLINGSON
GLENN A. ROUSH
MIKE TAYLOR

HOUSE MEMBERS

RON ERICKSON, CHAIRMAN
RONALD R. DEVLIN
CHRISTINE KAUFMANN
JESSE LASLOVICH
ROGER SOMERVILLE
ROBERT R. STORY JR.

COMMITTEE STAFF

LEANNE KURTZ
RESEARCH ANALYST
LEE HEIMAN
STAFF ATTORNEY
MIKO OWA
SECRETARY

MINUTES

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

Second Meeting of Interim Continued
Room 102, State Capitol
September 14, 2001

COMMITTEE MEMBERS PRESENT

Rep. Ron Erickson, Chair
Sen. Wm. E. "Bill" Glaser, Vice Chair
Sen. Jon Ellingson
Sen. Vicki Cocchiarella
Sen. Bob DePratu
Sen. Glenn Roush
Rep. Roger Somerville
Rep. Robert R. Story, Jr.
Rep. Christine Kaufmann
Rep. Ronald Devlin

COMMITTEE MEMBERS EXCUSED

Sen. Mike Taylor
Rep. Jesse Laslovich

STAFF PRESENT

Leanne Kurtz, Research Analyst
Lee Heiman, Attorney
Lois O'Connor, Secretary

VISITORS

Visitors' list (ATTACHMENT #1)
Agenda, (ATTACHMENT #2)

COMMITTEE ACTION

- Approved the guidance for the interpretation of SB 3 as amended (strike the last sentence in number 2-F) and recommended that it be referred to the MDOT and Transportation Commission
- Approved to amend the guidance for the interpretation of SB 3 by striking “should” and inserting “may” in the last sentence of number 2-E
- Approved the SJR 21 proposed study plan as amended

CALL TO ORDER AND ROLL CALL

The meeting reconvened at 8:35 a.m. Roll call was noted, Representative Laslovich and Senator Taylor were excused. (ATTACHMENT #3)

CONTINUED DISCUSSION OF MONTANA DEPARTMENT OF TRANSPORTATION (MDOT) ISSUES

Rep. Story and Sen. Roush were appointed to serve on the MDOT Trans Plan 21 Economic Development Committee.

RTIC Statement and guidance to MDOT (re., Highway 2)

Rep. Somerville provided an overview of the Revenue and Transportation Interim Committee’s Guidance for the Interpretation of Senate Bill No. 3. (EXHIBIT #1) He stated the following:

- Senators Roush, Glaser, and DePratu and he met with MDOT personnel to discuss the language in the guidance for the interpretation of SB 3.
- They did not want projects to be developed for Highway 2 and have the money come off the top of Montana’s allocated highway funds.
- They wanted to make sure that the money used was special highway fund money, and they want to make sure that the communities had a say in how the roads were being designed in and out of their communities.
- They also wanted to say that if Montana received small amounts of money above its allocated highway funds and if the MDOT could not construct a whole segment of 4-lane highway, the money could be used to enhance the bridges to support 4-lane traffic in the future.

David Galt, Director, Montana Department of Transportation, requested that the last line in number 2-F be struck.

Rep. Somerville **moved** the approval of the guidance for the interpretation of SB 3 as amended (strike the last sentence in number 2-F) and that it be referred to the MDOT and the Transportation Commission.

Rep. Story asked if there was a way that the Department could build a 2-lane highway so that when it received the money to build a 4-lane highway, it would only have to build the other two lanes. Mr. Galt said that if the highway was built that way, the problem would be utility location and relocation and the purchase of right of way. The Department cannot buy additional right of way and build a 2-lane highway on the Highway 2 project without conducting an EIS.

Sen. Roush asked what was being done to SB 3 if the Committee adopts the guidance. **Lee Heiman, Staff Attorney, Legislative Services Division**, said that the guidance states that if

the state builds the SB 3 road and it receives the money for 4 lanes, the road will be 4-lanes. If the state does not receive the money, the number of lanes will be determined by the Department based upon lane determination, engineering, and road structure. If the state receives a portion of the money, but not enough for an entire 4-lane project, it would be used to enhance bridges along Highway 2.

Sen. Cocchiarella was concerned that if the Committee adopted the guidance, it would be going outside of legislative intent. Mr. Heiman said that the lane determination factors in SB 3 is what the Legislature intended and is how he interpreted the Standing Committee minutes. The bridge work language is only a guidance to the Department if there is less than a total commitment of funds for SB 3.

Rep. Story felt that SB 3 would not stand a legal challenge based on the EIS problem. The state must review a range of alternatives in an EIS, one being no action; and SB 3 only allows one alternative that is permissible--a 4-lane highway. He also questioned whether the language that directs the Department to use additional funding to expand future bridge reconstruction to accommodate a 4-lane highway should be left in the guidance.

Sen. Roush was opposed to the guidance as amended in part because of political heat from constituents but mostly because he felt that the guidance would be contrary to the intent of SB 3.

Rep. Erickson suggested that striking "should" and inserting "may" in number 2-E could solve Rep. Story's concern regarding bridge reconstruction.

Rep. Story **moved** to amend Rep. Somerville's motion by striking "should" and inserting "may" in the last sentence of number 2-E of the guidance for the interpretation of SB 3. Motion passed unanimously.

Rep. Somerville's motion passed on a 9 to 1 roll call vote with Sen. Roush voting no. (EXHIBIT #2)

Future Agenda Items and Instructions to Staff

The Committee approved the following future agenda items:

- Background information and presentation from appropriate personnel on general safety measures related to the transportation of hazardous materials through Montana. (EXHIBIT #3) It will be a December meeting agenda item and the December meeting will be increased to two days if necessary.
- Possible public hearings in the future to address the issue of hazardous waste transport.
- Background information on whether Montana's legislators have oversight or responsibility regarding the transport of hazardous waste.
- A presentation from Jim Green from the State Disaster and Emergency Services Division regarding hazardous waste transport.
- Staff research on what the 4-R and Interstate Commerce Acts permit states to do regarding hazardous waste transportation.
- Staff research on Sen. Reed's federal legislation regarding available money for concerns about the transport of nuclear waste.
- Staff research on the citizens right to know about the transport of hazardous waste.

- A presentation on the nation's economy from the WEFA Group at its December meeting.

DEPARTMENT OF REVENUE REPORTS

Kurt Alme, Director, Department of Revenue, provided a notebook containing various presentations from Department of Revenue staff (EXHIBIT #4) and provided an overview of the Department's goals and objectives. (See Exhibit #4, Appendix #2)

Sen. Ellingson asked if the Department was making progress on the POINTS project. Mr. Alme said that the Department has not made progress on POINTS Phase 1 in the last three months. As a result, the Department has contracted with an outside maintenance expert to work with the POINTS Phase 1 contractor to give a prognosis of what can be done to induce stability. The Department continues to make progress in POINTS Phase 2, continues to work with the contractor, and holds the contractor accountable. Sen. Ellingson requested that the Committee receive a presentation from the outside maintenance expert about the POINTS project.

Sen. Roush asked about the implementation of the self-reporting of real property improvements statewide. **Delores Cooney, Department of Revenue**, said that the Department implemented a self-reporting pilot project in Carbon and Hill Counties. It ran approximately an 80% success rate.

Procedure for Legislative Information Requests

Mr. Alme provided an overview of how the Department is handling information requests from legislators and the Legislative Branch Divisions. (See Exhibit 4, Appendix #3)

Rep. Erickson asked if the Department was receiving complaints about the responses to requests being too slow. Mr. Alme said that the Department has not received many complaints, but it has received some, particularly from the Legislative Fiscal Division.

Rep. Story said that problems in communication between the Department and the Legislative Branch is an issue that could be worked out between the two. However, working with individual legislators who request complex information puts the Department in the difficult position of prioritizing its resources to deal with them. He felt that there may be a role for individual legislators to go through specific interim committees, for example, as different routes to receive information.

Sen. Glaser felt that the Legislature had to ensure that individual citizens had the same access to information as legislative leadership in order for Montana's citizen legislature to work. He felt that the legislative leadership needed to critique how Department resources are utilized so that it can get the daily work of the Legislature completed.

Sen. Cocchiarella said that she would ask for discussion time at the Legislative Council meeting regarding the training of newer legislators related to the use of staff and what staff resources are available internally.

POINTS/SABHRS Integration Progress Report

Judy Paynter, Tax Policy and Research Team, Department of Revenue, provided a report on POINTS/SABHRS and an update on the progress of recording audit revenue in the SABHRS system. (See Exhibit #4, Appendix #4)

POINTS Status Report

Jeff Miller, Department of Revenue, provided a status report on the POINTS projects from June 18, 2001, to the present. (See Exhibit #4, Appendix #5)

Sen. Glaser asked what position the state would be in if the vendor ceased to exist. Mr. Miller said that if the Department reaches the acceptance testing stage, the vendor will have delivered the coding system. At that point in time, it would be less serious to the Department if the vendor ceased to exist than it would be today. If the vendor would cease to exist today, they would take their coding system with them and all of the Department's efforts to build and test the system to this point would be for naught. Sen. Glaser asked if the Department had access to the coding system and were there adequate backup provisions in place to protect the code off-sight. Mr. Miller said that the Department has the ability to test the coding system but it does not have the code in its possession nor is it authorized to make changes to the code. **Dan Ellison, IT Manager, Department of Revenue**, added that the Department is waiting for the system adjusting phase to end and the acceptance adjusting phase to begin at which time the Department will obtain a copy of the code. The Department will then run a number of test scripts to find any weaknesses or inefficiencies that need to be fixed before the Department goes further with the implementation of the code.

Rep. Kaufmann asked if there were any contract disputes related to POINTS Phase I. Mr. Miller said that POINTS Phase I is not as good a product as the Department had hoped. The Department continually tries to impress upon the vendor that it delivered a bad product in POINTS Phase I and that the Department would not accept anything similar in POINTS Phase II. Because of the experiences with Phase I, the Department is holding to higher standards in requiring additional steps to certify and confirm that it received a better product in Phase II. Rep. Kaufmann asked why the Department had no legal recourse against the vendor if it did not deliver the product it promised. Mr. Miller said that the Department reached acceptance and signed off on the Phase I contract. At the time it signed off, it did not expect to encounter the number of defects that it found.

Sen. Ellingson asked if the vendor had agreed to extend the warranty period on Phase I. Mr. Miller said that the vendor has not agreed to extend the warranty period on Phase I. However, it has tried to make available developer-type resources at the Department's cost that are familiar with the program. The vendor has worked with the Department to discount the Department's cost for these resources.

Sen. Ellingson asked at what point is the Department going to lose complete confidence in the vendor and look toward litigation against the vendor (Unisys). Mr. Alme said that the Department has not made any plans for legal action against the vendor but neither is the Department letting the vendor walk away from the contract. The vendor is asked to fix problems as they arise. Sen. Ellingson asked if the state had to pay for Phase II before it reached the acceptance point, and if so, how much is the cost of the project. Mr. Miller said that the pay schedule is a work in progress and Department pays at certain points of the contract. The

individual and corporation tax project was billed at \$4.7 million, the Department paid \$2.4 million, leaving a balance owed of \$2.2 million. The next deliverable amount of money is \$760,000 at the conclusion of systems testing. With each milestone payment made, there is a 10% hold-back amount until such time as the phase is satisfactorily completed. Sen. Ellingson urged the Department to be very reluctant to depart with any state funds to the vendor until the Department is absolutely certain that the vendor has met all requirements under the next phase under which it would be entitled to money.

Rep. Erickson asked if there had been any security breaches and would the Department be aware of them given the problems with the POINTS system as a whole. Mr. Miller said that the current security problem is that the POINTS system design allows certain people to have the ability to create, read, update, or delete data in the system. The Department groups its users based on what they need for the jobs. Other departments also have the ability to access the system as a “read only” participant. The Department is finding that the system is not working as intended and people with a “read only” access can make changes to the system.

Tax Processing Update

Neil Peterson, Department of Revenue, provided an update of tax processing issues. (See Exhibit #4, Appendix 6)

Sen. Cocchiarella asked about the cost involved in updating the backlogs. Mr. Peterson said that the primary impact in the customer service center (CSC) is in accounts receivable collections and it is difficult to quantify the impact. There are also some increased costs associated with POINTS that the Department did not have in the old legacy system.

Sen. Ellingson asked how many individual taxpayers are still owed refunds and has the process been delayed because of the POINTS Phase I project. **Don Hoffman, Department of Revenue** said that the Department has processed almost all of the individual income tax refunds that it has received requests for. Any outstanding refunds would be those that have come in within the last two weeks.

Liquor Licensing Update

Mr. Peterson also provided an overview of how the Department is streamlining the liquor license process. (See Exhibit #4, Appendix #7)

Sen. DePratu asked if legislation was required to eliminate in-state residency requirements as a condition to obtain an on-premise liquor license. Mr. Peterson said that two federal District Court cases have thrown out residency requirements and stated that the Commerce Clause of the U.S. Constitution would take precedent over the 21st Amendment--the states' right to regulate the sale of alcohol. The Department's major concern is regulatory in nature and whether Montana's residency requirements pass the Commerce clause requirements.

Compliance, Valuation, and Resolution (CVR) and Customer Service Center (CSC) Structure Review

Don Hoffman, Department of Revenue provided an overview of the Compliance, Valuation, and Resolution (CVR) and Customer Service Center (CSC) structures. (See Exhibit #4, Appendix #8)

Progress on Reappraisal Plan

Dolores Cooney, Department of Revenue, provided an update on the current statewide reappraisal of all taxable real property. (See Exhibit #4, Appendix #10)

Rep. Erickson asked how an index worked when the value of the property itself is variable. Ms. Cooney said that it cost so much to replace or build a building. For example, if a 1,000 sq. ft. home was built in 1940, how much would it cost to replace that building with a like building today. The Department can get those costs from national manuals that show individual costs of each product, such as how much the foundation cement is worth, in order for the Department to build the cost into the structure. What it does not tell the Department to the detail that it needs is: Does a cubic yard of concrete in Missoula cost the same as a cubic yard of concrete in Glendive? At this point, local cost indexes are compared to the national manual. Property value is a combination of the land, the cost of building the structure, less any depreciation.

Sen. DePratu asked what ratio is used when the Department defines commercial property and how much income it generates and how does it work as opposed to the cost of the property. Ms. Cooney said that there are three approaches that can be used in the appraisal of property: (1) the cost approach; (2) the income approach; and (3) the sales comparison approach. If the right approach for a specific property is used, in this case, an income approach for commercial property, and if sufficient data is given, the value should be within an acceptable range among the three approaches.

Agricultural Land Advisory Committee

Ms. Cooney also provided an update on the Agricultural Land Valuation Advisory Committee. (See Exhibit #4, Appendix #11)

Sen. Glaser asked how the Department handled changes in the use of land. Ms. Cooney said that if there are changes in land use, for example a farm unit that is subdivided, they become two different classes of property. Land that is between 20 acres and 160 acres that does not qualify for true agricultural land is classified as nonqualified agricultural land.

Sen. Glaser asked about the conservation reserve program (CRP). **Les Saisbury, Department of Revenue** said that land under a CRP contract is not actively being used as agricultural land but there are payments from the federal government in terms of the amount of crop that could have been produced based upon typical yield. When land is put into a CRP, it does not change the class of the land. However, when the land comes out of CRP, the property owner may make a decision as to whether crops will continue to be produced on the land or whether the land reverts to some type of permanent vegetative cover. At that point, the Department makes a reclassification determination. Sen. Glaser asked what triggers reevaluation when it comes out of the CRP contract. Mr. Saisbury said that the actual use of the land as it comes out of the contract triggers the reevaluation process.

Sen. Ellingson asked if the Department has seen the situation whereby a person puts land in a CRP, and as a result, if they capitalize the income that they are getting from the CRP payments that they have a higher valuation than they would if they were actually farming the land. Mr. Saisbury said that the Department does not look at the individual income received from a CRP. It looks at what the land was capable of producing as nonirrigated agricultural land based on the

soil's capability and values the property as though it were capable of continuing to produce crop on that particular type of soil.

SJR 21--STUDY OF AGRICULTURAL LAND TAXATION

Committee members received a copy of SJR 21--the study of property taxation of agricultural land and nonagricultural land in Montana. (EXHIBIT #5)

Sen. Emily Stonington, Senate District 15, Bozeman, stated the following:

- The Legislature has never been able to establish a way to describe the difference between nonagricultural and agricultural land that is in small acres or whether smaller acres are bonafide agricultural pieces of land based on whether they are producing income.
- The dividing line is 20 acres resulting in a huge tax discrepancy between those who own 19 acres and are using them for a hobby farm and those who own 20 acres and are using them for a hobby farm.
- The Legislature created an incentive for dividing land between 19 and 20 acres and subdividing it into 20-acre tracts because taxes go from being a residential-taxation base to being an agricultural-taxation base.
- In 1993, the Legislature tried to address the problem in a variety of ways resulting in the current property tax laws.
- The Legislature designated between 20 and 160 acres as nonqualified agricultural land unless it could show income production.
- Between 20- and 160-acre tracts are taxed at the lowest grazing rate times 7 unless they can show \$1,500 worth of income on the property.
- When the transition occurred, people with irrigated land paid less taxes on those tracts of land if they were nonqualified agricultural land than they did if it was irrigated land, creating another discrepancy.
- This is a very political issue because no matter what change is made, someone's taxes are going to increase.
- She urged the Committee to review acquisition value, the issue of residency versus nonresident ownership, and whether there was any validity in trying to address it.

Rep. Story stated the following:

- Historically, agricultural land has been valued on productive capacity not market value because there are certain places in the state where there is a huge difference between the two.
- Anywhere there is development around major cities, places that attract tourists, or places where people are looking for second homes, the disparity in market value to productive value is 10 times greater.
- The whole point of the productive value system is to not tax people out of the historic use of their land and force them into development because they cannot afford to pay their taxes.
- If a person owns an acre of land west of Billings close to the Interstate and raises corn or sugar beets on the land, the person could gross \$400 an acre and pay all expenses from that amount. However, some of that land is worth \$1 a sq. ft. or \$40,000 an acre. If that land was in the market-value system of taxation, the taxes on the land would be far greater than the land's gross income.

- The productive value system of taxation worked fine until development began and the subdivision laws came into effect.
- There will be unintended consequences in trying to fix the problem because there are already unintended consequences in the present law. For example, there are 160-acre tracts in Montana that are old homestead quarter sections sitting in the middle of someone's ranch and they are still owned by a descendent of the original owner. All the owners are doing is leasing the acreage out to the surrounding landowner because the tracts have no value other than grazing and they do not generate \$1,500 worth of income.
- Sen. Grosfield's SB 516 was introduced during the 2001 Session to address agricultural tracts over 160 acres, those used as recreational ranches, for example, where someone buys a 10,000-acre cattle ranch and decides to use it for a retreat or a place to bring their friends. They are still taxed at the original ranch rate but they do not have the business equipment. Are they true agricultural operations or should they be looked at in some other way. Every time the Legislature tries to "tweak" the system, it results in unintended consequences that create the political problems.
- California also taxes acreage on the productive value system but it must be applied for every 10 years. If the land is subdivided and taken out of production, back taxes are owed. However, this option does not address the issue of the 7 times the lowest grazing rate.
- Although it is a difficult issue, it should still be reviewed to see if anything could be done to make the taxation system more fair but also to bring the taxes paid more in line with the services provided. Is the property paying enough taxes to cover its services and use?

Rep. Erickson was concerned that if the Legislature changed the tax system that it not hurt communities that are trying to save agricultural land on the immediate outskirts of the city through open space bonds. Sen. Stonington said that one key feature of Gallatin County's open space bond was that the ranchers were resistant to having another bond placed on their property tax burden and they were given an exemption from having to pay on the bond. She speculated that Bozeman would end up doing what Missoula has done by buying trail systems along water ways, for example.

Sen. Glaser said that because the issue was so political and controversial, a subcommittee should be formed to address it.

Sen. Cocchiarella said that the Environmental Quality Council (EQC) held a brainstorming session several interims ago to address this issue. The discussion topic was that land was divided up so poorly that there was no consistent use of the land in the area (i.e. a subdivision between two huge agriculture producing properties). When the EQC developed the legislation that was passed in the 1999 Session, part of the plan was to preserve, protect, and provide the opportunity for Montana to have continuous kinds of use of land and not have all river bottoms subdivided where there was agricultural land. She suggested revisiting the legislation to see how EQC addressed the issue.

Sen. DePratu said that his concern was for those citizens who want to keep the traditional ways of life but are put in the situation of not passing on ranch holdings to the next generation because they cannot generate the income to stay there or to hire people to run the ranch for them, especially on the smaller holdings. The result of this is someone from the outside coming in who wants to buy the property and turn it into a hobby or vacation ranch.

Sen. Stonington said that another complication is the interface between the Subdivision and Platting Act and taxation. In 1973 when the Platting Act was enacted, much of Gallatin Valley was subdivided or at least surveyed. A certificate of survey was sent to the courthouse so that it could be subdivided without having to go through any subdivision review. There are many 20-acre tracts all over the Valley, and when a taxation system based on 20 to 160 acres is placed on top of that, it creates a 20-acre mindset because there are so many people who have put so much at stake on where that line is in terms of saving money and the ability to subdivide.

Sen. Roush said that there are 56 counties in Montana with 56 different planning boards and even though there are state laws that are applied across the counties, some are completely different from other counties. He suggested that staff research what other states are doing in this area.

Rep. Story asked that the Committee not get bogged down on the subdivision issue but to concentrate its efforts on how to value agricultural and nonagricultural land for taxation purposes. Economics will drive the issue of subdivisions regardless of tax policy. Currently, if a house is built on a piece of land and if it is surveyed, it is valued at market value. The question is whether the Legislature wants to continue the practice of saying that if a parcel of land between 20 and 160 acres at 7 times grazing is an adequate value or should there be some other factor for valuation. Criteria needs to be developed because equity in taxation is a guarantee, but could a methodology be developed that addresses whether a ranch or farm is still productive or whether it has become something else, and if so, should there be another property class developed that would apply.

Rep. Devlin said that the present policy works fairly well in eastern Montana. However, with the loss of population, it is starting to see people purchasing ranches currently considered agricultural property but the new owners have no intention of operating a working ranch themselves. He said that when discussions surround the establishment of another class of property that is not traditional agricultural property, he found it very hard to draw a distinction between who is an actual farmer/rancher and who is a hobby farmer/rancher. He asked that the Committee keep in mind the smaller and rural areas of Montana in its deliberations as well as the bigger cities.

Rep. Erickson asked if forest land would be included in the discussion of agricultural taxation. Rep. Story said that forest land is a different class of land and it has a productive-based valuation system. It is a related issue but he was unsure about how it worked. Rep. Erickson was concerned that if the Legislature establishes a new classification of land that it be concerned about where timberland would come into play.

Jerry Driscoll, Citizen and Former Legislator, stated the following:

- He became involved in the issue in 1984 during a reappraisal cycle.
- Before the reappraisal cycle, there was no problem with the tracts.
- Following the reappraisal cycle, the Department of Revenue decided that the small tracts (10 to 12 acres) should be taxed at \$1.50 a sq. ft. or \$65,340 an acre.
- The market value of the property of an elderly constituent of his was \$784,000 on 12 acres, her house was valued at \$17,000, her tax bill was over \$10,000, and Social Security was her only income.

- In the 1985 Session, former Representative Bernie Swift introduced legislation that included language stating that if a person owned 20 acres and could show \$1,500 worth of income, the person would be considered a farmer and would receive productive value of the land.
- In the 1993 Session, the Legislature enacted the 7 times the lowest grazing rate and tracts with that rate became known as suburban tracts. He was unsure how the Department came up with the value system.
- He added that the agricultural land values went crazy with the introduction of the 1-acre farmsteads.
- The 1-acre farmstead surrounding the house was valued separately and not by productive value.
- He urged the Committee to be very careful and if a person was a farmer once upon a time, the person should receive farmer tax rates. They should not be taxed off their land when all they want to do is live out the rest of their lives on their land.

Pat McNulty, Chairman, MT Farm Bureau Taxation Committee, stated the following:

- Two problems surrounding this issue are: (1) the pressure from local governments to generate revenue to pay for the services demanded and (2) people who are bonafide farmers owning a small tract of land are getting taxed at a very high rate.
- The reason that the state came up with an acreage quantification on the tracts of land is that the Department of Revenue did not have an unlimited amount of resources to find out who qualified and who did not.
- The Committee must also review the open space value of some of the smaller tracts.
- Other avenues that could be reviewed are that landowners, even if their land is smaller than 20 acres, can apply for a means test to prove that their income is \$1,500 or their local farm service agencies can testify that a person has a bonafide agricultural operation.
- Current tax law specifies a minimum acreage in one ownership that has the income to meet the means test. What about the situation where parents divide their 60 acres among their children. The ownership may go into many small parcels and yet the whole entity is leased by a person that is farming them. The aspect of how a tract of land is used regardless of ownership should be something to look at as a qualification along with a means test for income.
- However, the real pressure is to generate the revenue to pay for the services that local governments are being asked to provide.
- One of the pressures that occur in communities that are close to populated areas is that the mill levies tend to increase in higher populated areas.
- He suggested reviewing the idea of putting one-half of the mill levies on income tax rather than solely on property tax.
- Regarding recreational type properties, the state cannot come up with a tax that will be high enough to stop the “Ted Turners” from buying great amounts of land. The amount of tax that most Montanans think is high is not even a punitive amount to people who have more money than they know what to do with. He advised the Committee to stay away from that ground.

Leanne Kurtz, Research Analyst, Legislative Services Division, provided an overview of the SJR 21 study plan. (EXHIBIT #6)

Following a thorough discussion, the Committee adopted the SJR 21 proposed study plan including the following points:

- There should be an understanding of what values the Committee is trying to enhance and protect through the study, such as the constitutional mandate to protect agricultural land;
- There should be an improved awareness of who is making the legislative decisions regarding agricultural land as more legislators are coming from urban areas and becoming more detached from agricultural production and how do Montana citizens want to structure their tax system to promote the agricultural lifestyle;
- There should be a better understanding of the land that is being taxed as agriculture but is not being used agriculturally, and because of it, there may be more than one value to the land--hold the value of agriculture constant while trying to respond to the needs of the cities and counties and the general concept of tax fairness;
- How to determine the classification for land that is it used for some other purpose other than agriculture, such as recreational ranching;
- The Committee should consider the geography of the state in its deliberations;
- Staff should research the way agricultural and nonagricultural land was taxed before 1985; and
- The Committee should start with the definition of "agricultural land" and consider options for other classifications of land or definitions.

The Committee also decided that the proposed Subcommittee need not hold meetings. They could meet via telephone conference calls and e-mail. It could be the full Committee's micro-managers of the staff and Department's efforts. Staff could then bring options forward to the full Committee for its involvement. Rep. Erickson appointed Representatives Story, Kaufmann, and Devlin and Senator Glaser to the Subcommittee. Sen. Glaser was appointed Chairman. Stakeholder involvement will include the MT Stockgrowers Association, MACo, the Farm Bureau, the Farmers Union, the MT Taxpayers Association, a representative from the agricultural community, a representative from the Land Trust, a realtor, a representative from those who own a 20-acre hobby farm, if possible, a representative from those who are buying large amounts of land and are not using them for agricultural purposes, if possible, and a representative from the environmental community (Smart Growth, for example). Testimony at the December meeting will be limited. A packet of information on how agricultural tax and property tax fits into the picture will be sent to Subcommittee members prior to December.

DEPARTMENT OF REVENUE REPORTS CONTINUED

Update on the Implementation of HB 124

Ms. Paynter stated that the first entitlement share payment related to House Bill No. 124 will be sent September 15. The Department also sent 55 checks electronically.

Brad Simshaw, Department of Revenue, said that all of the information in the revenue matrices will be provided by counties, cities, and towns. Local governments will no longer see revenues that they used to. Part of the mailing with the checks will be the revenue matrix with any changes made by the Department. Local governments will be paid quarterly.

Larry Finch, Department of Revenue, said that the most difficult component in the implementation of HB 124 is receiving information on District Courts costs. The state has not

assumed District Court costs this fiscal year but will in 2003. HB 124 requires that the Department receive District Court information in the first year in order to calculate base entitlement shares for making county reimbursements. Any glitch in the process to date is because the Department has not received any District Court information from six counties. The Department has been working with MACo. Once all of the information is received, the Department will calculate the 3% growth component and include the first two quarters of the growth amount for each county in the December payment.

Rep. Story asked if an error in HB 124 allows District Courts to run on their own for another year, possibly increasing costs that the state will have to assume. Ms. Paynter said that according to rumors, this might be happening. Director Alme has asked that she contact the local government people to get evidence rather than relying on rumor. If it is true and if it presents the problem of increased costs over and above what would be paid in 2001 plus the 3% inflation, discussions will be held on what, at that point, the state can do to solve the problem.

Rep. Erickson said that it was known that some employees working for the District Courts statewide were being underpaid. He asked if the state was going to add extra funding to the overall pay plan for them and is the amount above and beyond the amount that those employees were in fact due. Ms. Paynter said that District Court Funding and Structure Committee recommended a pool of money to be used for District Court employees when they went to a uniform pay plan. Nobody's salary could be reduced but those that were being paid less than what was appropriate on the pay plan could be brought up to the level that they should be. The Legislature did not fund the extra pool of money to do that. Rep. Story's question is over and above that idea in that a court could give extraordinary raises that the state would be responsible for.

Mr. Finch said that SB 176, the bill that provided for the state assumption of District Courts, also provided for the creation of the District Court Council. The Council is taking Rep. Story's concern very seriously.

Status of the Small Brewer Rules

Director Alme provided an update on the status of the small brewer rule review. (See Exhibit #4, Appendix #15)

Brian Smith, Montana State Brewers Association, provided written comments. (EXHIBIT #7)

Tax Policy Development

Mr. Alme stated the following:

- The goal of the Governor's economic development plan is to create and maintain good paying jobs in Montana.
- In order for Montana to have a business climate that creates and maintains good paying jobs, it must ensure that the business climate is competitive and stable. In order to be competitive, the state must have a good rate of return.
- The Department is reviewing the tax burden of businesses and evaluating Montana's tax system.
- It is also tapping into the experience of other resources, the Legislature, and all stakeholders in order to create a tax structure that will allow for good paying jobs.

- Two problems with Montana's tax structure is that income tax is not a competitive tax and the hidden 2% capital gains surtax.
- The Department will be focusing on how these taxes connect with economic development and the creation of good paying jobs.

Sen. Cocchiarella asked if the Governor's tax policy has been shared with the MT Taxpayers Association and is the Department reviewing individual citizens' tax burdens as well as the tax burdens of corporations and businesses in Montana. Mr. Alme said yes, but the Department is primarily focusing on the job creation and retention side. Sen. Cocchiarella was concerned about the continuation of tax cuts to businesses without real evidence of the creation of jobs and proof that it is working. Mr. Alme said that the burden of proving that there is job retention is on the Department.

Rep. Erickson requested that the Department keep the Committee updated as to any tax analysis conducted as it moves forward with the process.

Sen. Glaser asked that the Committee be able to piggyback its efforts with the Department as it moves forward, particularly if the Department feels that the process is going somewhere.

FUTURE AGENDA ITEMS CONTINUED

Future agenda items are as follows:

- hazardous waste updates;
- tax policy development updates;
- an update on the relationship between economic development and the changes in the tax structure of 1999; and
- future updates on the Committee's budget.

Ms. Kurtz will work with Rep. Kaufmann on an explanation of the revenue estimating process.

There being no further business, the meeting adjourned at 4:20 p.m.

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