



# Revenue and Transportation Interim Committee

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## 58th Montana Legislature

### SENATE MEMBERS

GREGORY BARKUS  
JERRY BLACK  
VICKI COCCHIARELLA  
JON ELLINGSON  
ROBERT STORY  
KEN TOOLE

### HOUSE MEMBERS

JOE BALYEAT  
EILEEN CARNEY  
RONALD DEVLIN  
CHRISTINE KAUFMANN  
KARL WAITSCHIES  
BILL WILSON

### COMMITTEE STAFF

LEANNE KURTZ, Research Analyst  
JEFF MARTIN, Research Analyst  
LEE HEIMAN, Staff Attorney

## 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 the document.**

Room 137, State Capitol  
October 2, 2003

### COMMITTEE MEMBERS PRESENT

Sen. Robert Story, Chair  
Rep. Eileen Carney, Vice Chair  
Sen. Gregory Barkus  
Sen. Jerry Black  
Sen. Ken Toole  
Rep. Joe Balyeat  
Rep. Ronald R. Devlin  
Rep. Christine Kaufmann  
Rep. Karl Waitschies

### COMMITTEE MEMBERS EXCUSED

Sen. Vicki Cocchiarella  
Sen. Jon Ellingson  
Rep. Bill Wilson

### STAFF PRESENT

Jeff Martin, Research Analyst  
Leanne Kurtz, Research Analyst  
Lee Heiman, Staff Attorney  
Cindy Amundson, Secretary

### VISITORS

Visitors' list (Attachment #1)

### COMMITTEE ACTION

None

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

The meeting was called to order by Sen. Story at 9:05 a.m. on Thursday, October 2, 2003. Roll call was taken; Sens. Cocchiarella and Ellingson and Rep. Wilson were excused.

Sen. Black moved to approve the June 20, 2003, minutes as presented. The minutes were approved unanimously. Rep. Waitschies moved to approve the August 20, 2003, conference call minutes as presented. They were approved unanimously.

## **GENERAL FUND STATUS: Fiscal Year 2003 Actual/2005 Biennium Projected**

**Terry Johnson, Principal Fiscal Analyst, Legislative Fiscal Division**, presented a report on the status of the state's general fund. The report provides a comparison between budgeted data as developed by the 57th and 58th Legislatures and what actually occurred in fiscal year 2003. It also provides aggregate information on revenue estimates and collections, disbursements and reversions, and a revised ending general fund balance for the 2005 biennium. (Exhibit 1)

Mr. Johnson said that the general fund balance at the beginning of fiscal year 2003 was \$81.3 million. Based on HJR 2 revenue estimates and disbursement budgets adopted during the 57th and 58th legislative sessions, this balance was expected to drop to \$16.5 million by the end of fiscal year 2003. Total revenues were expected to be less than total disbursements by approximately \$64.8 million. However, the preliminary general fund balance for fiscal year end 2003 was \$46.4 million, or \$29.9 million above the level anticipated by the 58th Legislature. Mr. Johnson explained the reasons for the differences, which are detailed in Exhibit 1.

**Chuck Swysgood, Director, Office of Budget and Program Planning**, provided comments on behalf of the executive branch and generally agreed with Terry Johnson's report. However, he said they have concerns relating to several items in the report and offered their perspective on the following: 1) the stability of revenue going into the second half of the biennium; 2) the \$19 million in FMAP relief fund, which they feel should stay in the ending fund balance so it is available to backfill the \$23 million; 3) wildfire cost estimates, which they feel should be higher; and 4) variances in revenue, especially corporate taxes. Director Swysgood said he expects to have a more refined report on revenue projections by the end of the year, but remains cautious about the future revenue picture.

Sen. Toole asked about the concern regarding the sustainability of the FMAP funds and how this is balanced with the SB 407 tax cut. Director Swysgood responded that in the projected budget for 2005; the revenues equal the expenditures, which includes a modest growth in Medicaid funds and the tax cut.

## **Fire Suppression Costs**

Sen. Toole asked why fire costs were so high for Montana, **Gary Hamel, Senior Fiscal Analyst, LFD**, presented information on the fiscal year 2004 estimated fire costs. (Exhibit 2) The first page of Exhibit 2 contains the fiscal year 2004 estimated fire costs, which is in three parts: 1) fiscal year 2003 actual and estimated fire costs; 2) costs covered by other sources; and 3) remaining fire costs to Montana. The second page shows a table of net costs of fire suppression for fiscal years 1998 through 2004. The figure for 2004 is an estimate. The table lists the total cost, reimbursement, and net cost for each of those years. Mr. Hamel explained the costs and said that the new FEMA rules reduce federal reimbursements to the states for fire

costs this year.

Sen. Toole asked if the majority of fire costs were attributed to personnel, and if so, do these costs affect income taxes. Terry Johnson confirmed that the majority of these costs were for personnel and said that if there is an effect on the income taxes, it will be a very small percent.

Rep. Balyeat asked if the average fire costs for the last five years were based on the revised FEMA reimbursement policy. Mr. Hamel said that the effect from changes in FEMA reimbursement is insignificant and does not affect the average. Clayton Schenck, Legislative Fiscal Analyst, reiterated what Mr. Hamel said and explained that LFD includes estimated fire costs because this is only the first year of the biennium and there is another fire season to address. He said that the estimated fire cost is at the very low end of the spectrum and the Committee might want to consider using a higher figure.

Rep. Balyeat commented on the figure used for the fire cost estimate and the fact that only one year of the biennium is included in the revenue estimate variances. Terry Johnson responded that during the last legislative session, LFD strongly recommended \$8 million for fire costs be included in the budget. This amount was included in the budget analysis and carried on the general fund status sheet throughout the session. However, the Legislature in the last few days of the session directed LFD to take this figure out of the budget. Mr. Johnson said LFD felt very strongly about the importance of including the \$7 million now, even if it is a conservative figure at this time. He said LFD has been put in a very precarious position because of that legislative directive.

Mr. Johnson also addressed Rep. Balyeat's concern regarding the fact that only one year of the biennium was included in the revenue estimate variances. He said that LFD did not include 2005 because they are trying to assure that nothing is overlooked in 2004 that may offset the \$17 million. Currently, LFD does not see anything that would impact that, but there is a potential that the excess would evaporate to the point that the Governor might have to recommend expenditure reductions.

Sen. Toole agreed with Rep. Balyeat and requested additional information to clarify the issue of why fire costs have increased so drastically over the last couple years.

Sen. Barkus asked for clarification on the footnote in Exhibit 2, which refers to the Legislative Auditor's issue about using Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA) money to pay the state's portion of FEMA eligible fire costs. Clayton Schenck explained the federal-state match process for all federal funds received by the state. He said that the state would like to use the funds from the JGTRRA to match the FEMA funds rather than using state funds. The federal government does not specify how the FEMA funds must be used, other than for ongoing costs. The Legislative Auditor's issue with this relates to the accounting regulation that generally states you must match federal funds with state funds, not money from another federal fund. The Department of Administration has requested an exemption from this regulation so they can use the JGTRRA funds to match FEMA funds.

**Chuck Swysgood, Director, Office of Budget and Program Planning**, provided comments regarding the funding for wildfire costs. The executive finds no issue with using federal money to pay the state's match for wildfire costs; although they did have a concern with using federal money in situations where FEMA is involved. However, they contacted the U.S. Treasury

Department regarding this issue and were told there is no problem using other federal funds when FEMA is involved. At the Governor's request, the federal government sent a written confirmation.

Clayton Schenck said that the state's policy for funding wildfire costs is unlike other state programs in that DNRC is not given a budget for these costs. There are many factors that can affect the costs that it is very difficult to come up with an estimate. In the past, the Legislature has chosen to rely on supplementals to fund the fire costs, but now with the state of the economy, budget deficits, etc, this is becoming a real issue. Mr. Schenck told the Committee that Sen. Cobb has submitted a request for an interim study on funding wildfire costs to the Legislative Finance Committee, which meets tomorrow.

Rep. Kaufmann said she had been invited to serve on a committee to look at fire costs and the first meeting will be held the second week of October. Gary Hamel said Rep. Pattison has also been asked to participate on this committee.

In response to a question by Sen. Toole on how other states are dealing with increasing costs and less FEMA reimbursement, Gary Hamel said, to his knowledge, they were following the FEMA rules.

### **SJR 29 STUDY PLAN**

**Jeff Martin, Research Analyst, Legislative Services Division**, presented the proposed study plan for an interim study to analyze the property tax valuation methods of electrical generation property. (Exhibit 3) Mr. Martin provided an overview of SJR 29, sponsored by Sen. Toole. He said that he organized a meeting in August with Sens. Story and Toole and interested parties to determine the scope of the study. At the meeting, some expressed interest in including all centrally assessed property in the study, but because of current state budget constraints, the consensus was to narrow the focus to the valuation of electrical generation property. Mr. Martin considered recommendations from this meeting in drafting the proposed study plan.

Sen. Toole explained the background of this resolution. He said that this resolution was specifically introduced because of the political controversy over the initiative to buy the dams. At that time, the valuation was very high when the utilities were talking about the cost to pay back the dams, which was much higher than the state market appraisals. During session, a question was raised regarding the difference between the appraisals of PPL's dams and Avista's dams; the answer was that one sells into a regulated market and the other sells into an unregulated market. He stated that at the August meeting mentioned above, there was interest in looking at all centrally assessed property. Sen. Toole told the committee that he strongly resists opening it up and feels it is the purpose of the resolution to focus on generation, because the deregulated market affects virtually all the generation in Montana. He said that he prefers narrowing the focus to just hydroelectric facilities because this is where the most stark contrast lies.

Sen. Story reminded the Committee that the resolution requests the study but does not define the scope, and that it is the Committee's prerogative to decide how narrow or broad the scope should be.

Sen. Barkus asked about the number of dams involved, and Sen. Toole responded that there are a total of 12 dams, 11 owned by PPL Montana and one by Avista. Sen. Toole added his

perspective that this study define the differences, the rationale for these differences, risk of return, etc.

Sen. Story asked for public comments. Ken Morrison, representing PPL Montana commented that at the August meeting, he suggested that issues involving other centrally assessed property be included in this study, but others at the meeting did not share his view that the study be that broad.

Tom Ebzery, representing Puget Sound Energy, Portland General Electric, PacifiCorp, and Avista, supported the proposed plan as submitted. He commented that Mr. Martin's proposed plan would invite discussion on the issue of valuation and whether that valuation is proper in the current atmosphere. Mr. Martin recommended the study include a review of the valuation of all generation property, not just focus on the dams. He commented on the value of a study which looks at the whole picture, rather than just one aspect of it.

Mr. Martin provided additional details on the proposed plan, explaining the background, the main elements of the plan, the list of major study areas, and a proposed schedule. The proposed plan also included a white paper option as an alternative to significant Committee involvement. (See Exhibit 3)

Committee members discussed the scope of the study. Sen. Story recommended the Committee adopt a study plan similar to the interim studies done in the past with committee involvement and presentations from various entities relative to the issues, rather than adopting the white paper option. The Committee agreed with Sen. Story's recommendation of not doing a white paper.

Sen. Toole said that number 5 listed under the Major Study Areas (related to energy issues) and perhaps the Committee shouldn't include this in the study. Mr. Martin said he didn't consider this area as a policy consideration of the Committee, but it was included because he believed it was relevant to look at how the development of electrical generation fits with other things that the Federal Energy Regulatory Commission is doing.

#### Valuation Methods for Centrally Assessed Property

**Gene Walborn, Bureau Chief of Business Tax and Valuation Bureau, Department of Revenue (DOR)**, presented information on the valuation methods for centrally assessed property in the state. Mr. Walborn expanded on the information presented in the proposed study plan and explained the property classes and the basics of assessment methodology. He used Qwest as an example to explain how DOR appraises companies which do business in more than one state and how the property tax is then split among all the states.

Mr. Walborn also explained the three indicators used in the valuation of property: 1) direct capitalization approach; 2) yield capitalization approach; and 3) market or stock and debt approach. He distributed copies of the 2003 Centrally Assessed Property Values and explained the data. (Exhibit 4) In 1999 intangible personal property was exempted from property taxation in Montana. DOR is required to track this separately and Mr. Walborn said he would provide a report on what the exempt value represents at the meeting in December.

Rep. Kaufmann, using the Qwest example, asked if there was concern as to whether the percentages to all the states added up to 100 percent, and whether representatives from all the

states negotiate the percentage allocation. Mr. Walborn responded that 100 percent would be the ideal, but it does not always add up that way because in some states there are property tax exemptions and other issues that may have bearing on the amount. He said that representatives from all the states involved do meet and discuss values and issues.

Sen. Barkus asked if they will revise the appraisal process to reflect NorthWestern Energy's bankruptcy filing. Mr. Walborn confirmed that they will adjust the process. Sen. Barkus also asked if the appraisal process was changed when the MPC stock was \$60 a share several years ago. Mr. Walborn said that the process was not changed.

Sen. Toole asked if they factor in sales of the asset that is being valued when looking at comparables, i.e., first year after the sale of MPC to NorthWestern Energy. Mr. Walborn explained that they used the PPL purchase price because the first year the company is required to do a sales price allocation and they allocate that to the property they purchased, which should equal the sale price. As a result, it is essentially the sale price, although they put most of the weight on the cost approach. Sen. Toole also asked about the timeframe in which that income is averaged. Mr. Walborn responded that they use an average of the last two years to attempt to normalize the income; they have used shorter and longer periods, but they usually use the two years.

Sen. Story provided an example of a stand-alone new construction and asked how they would be appraised, as class 13 or 8. Mr. Walborn responded that the appraisal would depend on the type of unit. If it is a stand-alone unit in Montana it would probably be locally assessed and trended and appreciated, but would still be class 13 property.

Rep. Waitschies asked if there is a financial rationale to explain why there is such a wide variance in tax rates for different classes. Sen. Story cited the example of the rural cooperatives taxed at 3 percent versus certain investor owned utilities at 12 percent, but said that the tax is paid by the consumers. He also mentioned the situation with the telecommunications industry where the tax rates dropped from 12 to 6 percent. Mr. Walborn stated that part of that difference was then made up from some other type of tax, i.e., retail telecommunications excise tax, and on the electrical side, the wholesale energy transaction tax.

Sen. Toole suggested the study include looking at which consumers are paying the tax.

Sen. Story asked for public comment and there was none.

#### **UPDATE ON SB 461 PROPERTY TAX MITIGATION**

**Dolores Cooney, Property Assessment Division, DOR**, presented an update on SB 461, property tax mitigation. She provided a summary and outlined the effects of this legislation. (Exhibit 5) The second page of Exhibit 5 shows the extended property tax statistics for tax year 2003. The letters of denial or approval for these applicants were sent out September 29, 2003. The Extended Property Tax Assistance Program (EPTAP) shows for each county, the total number of applications sent, the total number returned and processed, the percent of total mailed, the total number denied, the total number granted, and percent of total granted the EPTAP benefit. The third page reflects the totals for all counties. Ms. Cooney stated that the deadline for filing was extended from July 30 to well into August to assure that under no circumstances would any taxpayer be prevented from participating.

She presented a large map of portions of Flathead County, which had large numbers of applications sent out. The map illustrates in different colors the applications that were sent out and those that were granted. She said that the department expected to see much more activity on the lake, but the results showed that it was sparse, spotty, and particular to groupings of property. This indicates it is particular types of housing to particular types of land that were affected by the reappraisal. She presented similar maps for Missoula and Lake counties.

Sen. Story asked if applications were denied because of income restrictions. Ms. Cooney responded that they either didn't meet the income restrictions or they did not return the application. She said that an application is only good for this year, and because EPTAP is tied to income levels, property owners must apply every year.

The next three pages of the handout contained frequently asked questions and answers pertaining to EPTAP and this information is or will be available on DOR's website. The final page of the handout outlined information about the two study committees created by SB 461, which are the Interim Property Tax Reappraisal Study Committee and the Interim Tax Reform Study Committee. Each committee held its first meeting and the minutes will be available on the DOR website.

Rep. Carney asked how the initial applicants were determined. Ms. Cooney responded that DOR's data base showed how much property increased, but more important, whether the increase was due to reappraisal or new construction. The second criteria was the determination of whether the property would experience a \$250 tax liability increase if last year's mill levy was used and if the answer for both criteria was yes, then an application was sent.

Rep. Kaufmann asked if there is an appeal process for those applications that were denied, and if so, have there been any appeals. Ms. Cooney confirmed that there is an appeal process, but at this point, which has only been one week, there have been no protests filed.

Sen. Barkus asked if there was a "canned" answer to the question regarding the constitutionality of tying property taxes to income. Ms. Cooney responded that there was discussion about this issue during the legislative process, but she said there is no "canned" answer.

Sen. Story asked how DOR arrived at the lowest rate of 0.01 percent, referring to question 14 on page 3 of the question and answer section of Exhibit 5. Ms. Cooney said there are potentially 339 possible rates that are applicable to this particular group of properties. DOR did not calculate all the rates because they were clustered and just slightly below the tax rate for a class 4 which is at 3.4 percent. She explained the various circumstances in which an applicant could qualify and added that they wanted to be prepared for any instance. Sen. Story then asked about the percent for the average relief tax rate. Ms. Cooney responded that it was 3 to 3.02 percent. Sen. Story asked for a dollar amount and she said she did not have that figure at this point, but could provide it at a later time, based on estimated mills per county.

Jeff Martin noted that there is a link to DOR's web page on the Committee's web page under Legislative Services to view this information.

## **DEMONSTRATION OF APPLICATION OF INTEGRATED REVENUE INFORMATION SYSTEM (IRIS) FOR THE RENTAL VEHICLE TAX**

**Linda Francis, Director, DOR**, provided an update on the computer software replacement for the POINTS system. The new system is the Integrated Revenue Information System (IRIS). Ms. Francis introduced representatives of Fast Enterprises who were at the meeting to provide a computer demonstration of the new system. The rental vehicle tax is the first module to be implemented, which went live on September 26. Ms. Francis told the Committee that the department was ahead of schedule and would be able to implement five modules instead of three within a year.

Jami Sternhagen, Manager, Combined Oil and Gas Tax, DOR, and employees from Fast Enterprises presented the computer demonstration of the application for the rental vehicle tax module.

Linda Francis responded to numerous questions from Committee members regarding the capabilities of the system, access to information, and differences between IRIS and POINTS.

## **DEPARTMENT OF TRANSPORTATION**

### **Report on Reconstruction Alternatives for Highway 2**

**Dave Galt, Director, Department of Transportation (MDT)**, presented an update on highway projects on US Highway 2. He reviewed the provisions of SB 3, enacted in 2001. The legislation provided that only federal funding can be used to construct a four-lane highway along US Highway 2 and there may not be any impact to other Montana highway projects. Mr. Galt distributed copies of a map which details projects along US Highway 2, including the Havre to Fort Belknap environmental impact statement, all other projects under construction, and tentative construction projects from 2003 through 2007. (Exhibit 6) The EIS will list the options, review the impacts of each option, and suggest a preferred alternative that solves the problem with the least social and environmental impacts. The five options are: 1) do not build; 2) regular two lane; 3) a super two lane, which would include passing lanes; 4) four lane divided; 5) four lane. These alternatives will be studied in the EIS and a Record of Decision will be issued, which will dictate what will be built. Mr. Galt explained that if the final decision is a four lane highway, this will complicate the process further because of the SB 3 restriction. Federal funds are not available for the project so it will have to be put on hold until funds are available.

Mr. Galt also noted that there is a problem with affordability. This issue is significant because MDT is having a difficult time identifying capacity needs and allocating resources across the state. MDT will be issuing instructions to the consultant next week to move forward with the EIS.

Rep. Devlin asked about the projected timeframe before the Record of Decision is issued. Mr. Galt said he hopes that the EIS will be completed in less than 36 months. He anticipates a Record of Decision will be issued in 12 to 18 months and then the department will start programming. Currently, there are no funds programmed between Havre and Harlem. MDT is in the process of programming 2008 and by the time the Record of Decision is issued they will be programming 2009 or 2010. Mr. Galt said that a project cannot be programmed unless it is completely funded. Rep. Devlin commented that this project should not be delayed due to funding language in the law from last session. He suggested that perhaps the statute should be revised when the 2005 Legislature meets to prevent a delay.



Sen. Black questioned the validity of a full EIS on this project. Mr. Galt stated that an environmental document is required on all state highway projects and because this highway will pass through the city of Chinook, there could be a significant social impact; therefore, a full EIS is indicated for this project.

#### Report on Reauthorization of Federal Highway Funds

**Jim Currie, Deputy Director, MDT**, presented an update on reauthorization of federal highway funds. Mr. Currie reported that the six-year authorization bill, The Transportation Equity Act for the 21st Century (TEA-21), expired on September 30. As the deadline approached, there was significant concern because there seemed to be no action from Congress for reauthorization. The language in TEA-21 indicates that if there is no action by Congress for reauthorization then the funding stops. There is an attempt to increase the TEA-21 funding to a sufficient level so states will get an increase in terms of the federal highway funding available, but the revenue isn't available. However, Congress passed a 5-month extension of the expired legislation.

Mr. Currie said MDT had a letting scheduled for the first week of November and the second week of December. MDT must advertise four weeks prior to the letting, which would have been today, October 2. There was concern that there would be no authorization in place by this time so the department asked the Transportation Commission to reschedule the November and December lettings for two weeks later. The 5-month extension gives MDT \$135 million in apportionment through February 2004. Mr. Currie stated that they were unsure how this will affect the department's contract authority, because there has yet to be an appropriation bill signed. He clarified there are two parts to highway federal funding, apportionment and obligation authority. Mr. Currie said there is probably no issue with the lettings scheduled from December through March, but MDT will have to monitor the situation to ensure that they do not obligate more federal authority than what they were given under the temporary bill. He told the Committee that MDT has significantly more funds in the upcoming lettings than they have obligation authority.

Depending on whether Congress passes a 6-year reauthorization bill within the next five months, Mr. Currie said the letting process will go ahead as planned. Mr. Currie noted that they think Congress will issue another extension, and if they do, that would solve the problem also, because MDT will receive additional apportionment and obligation authority. However, if Congress takes no action, MDT must decide, relative to lettings from March forward, whether to risk proceeding with the lettings without the confirmation that the federal authority will be available. If MDT proceeds with the lettings without obligation authority, they must use a tool known as "advanced construction". This means that the contract and any payouts from letting that contract must be paid with 100 percent state funds until the federal funds become available, at which time they will be converted to the federal funds. Because of the risk, MDT did not want to exercise the authority with the TEA-21 deadline approaching and no significant action by Congress. However, Mr. Currie said that now they have the extension, they probably would exercise the authority up to the limit of the \$135 million.

In summary, Mr. Currie said that the November, December, and January lettings will proceed as planned. As far as the February and March lettings, MDT will await action from Congress and if reauthorization is not passed, they may have to scale them back in size. This means that some of the projects that would have been let will be put on hold until the funding is available.

Sen. Story asked if MDT has used the entire obligation under TEA-21 to this point. Mr. Currie

said they used 100 percent of their obligation authority available under TEA-21 and this year have applied for and received almost \$4 million of redistribution, which is federal obligation authority that isn't used in other areas.

#### Motor Fuel Tax Collections

**Jim Currie** also provided a status report on the revenue collections for gas, diesel and other miscellaneous categories. (Exhibit 7) He said that these revenue numbers are very close to the revenue estimates from the beginning of the year. MDT had some concerns regarding the numbers for August because of the forest fires and depressed tourist activity. However, the numbers were actually higher than expected. Mr. Currie clarified that the numbers (taxable gallons) reflected on the first page of Exhibit 7, are actually figures for July and August, which are not reported until the first of September. The revenue figures on the second page of the exhibit are for July only, even though the report says July through September. There is a two-month delay on the revenue figures.

Sen. Story commented that the increase in the aviation fuel tax revenue may be attributed to the slurry bomber activity during the fire season and Mr. Currie agreed.

#### Highway Safety

**Dave Galt** thanked the Legislature for passing the .08 alcohol legislation and the tougher repeat offenders standard. Montana qualified for an additional \$600,000 of grant money from the National Highway Traffic Safety Administration as a result of the .08 alcohol legislation. This money will be deposited into Montana's highway safety program.

Mr. Galt asked the Committee members to consider revisiting two bills that did not pass the last session. Those two bills are the open container and the graduated driver's license legislation. He also requested that the primary seatbelt law be reconsidered. Mr. Galt talked about reauthorization and the policies involved. There is a bill in Congress to create a \$1 billion safety program each year to be used for a variety of projects. To receive money from this program under the current guideline, states must have either a primary seatbelt law or 90 percent compliance on a secondary seatbelt law. Mr. Galt told the Committee that Montana is the highest or second highest state in the country for compliance on a secondary seatbelt law at 80 percent. Therefore, because Montana is not in compliance, the state would lose approximately \$10 million for the highway program. Revisions will have to be made in Montana's seatbelt law before that money would be available.

Mr. Galt complimented Leanne Kurtz for her article on safety in the current issue of The Interim [October 2003] and encouraged members to read it. He discussed the status of the Highway Traffic Safety program, reporting that MDT has hired a chief highway safety officer who now reports directly to the director instead of being in a separate highway safety bureau. They are in the process of developing a comprehensive highway safety program.

Mr. Galt distributed a report on statistics of traffic fatalities on Montana highways in each month from July through September of 2003. (Exhibit 8) These statistics include the names of the fatalities, total number of fatalities, the number of motorcycle and pedestrian fatalities, the number of fatalities in which a seatbelt was used and not used, and the number of alcohol-related fatalities.

Rep. Balyeat asked if the ages of the drivers in the report were available and Mr. Galt said he

could get this information and will include this as part of the report in the future. Sen. Barkus asked if MDT was monitoring the location of the fatalities to ascertain if there were certain highways or stretches of highways where fatalities occurred. Mr. Galt said they pinpoint the fatality accidents on a state-wide map and if there is a cluster in a particular area, they investigate to see if there is an engineering problem that can be corrected to prevent future accidents.

Sen. Story asked about percentages of seatbelt compliance in states with a primary seatbelt law. Mr. Galt responded that there are a few states that have higher percentages than Montana. California is the state with the highest compliance of seatbelt usage. Montana is among the states with a high percentage of compliance, even among states with a primary seatbelt law. Sen. Story asked what advantage Montana would have with a primary seatbelt law. Mr. Galt said he had done some research on this and found that in states that passed a primary seatbelt law, there was an increase in compliance of about five percent. He added that seniors and kids make up the highest percentage of those in noncompliance. In response to Rep. Balyeat's question regarding the secondary seatbelt law percentages, Mr. Galt said he did not have the statistics for the states with a secondary seatbelt law, but would research it during the interim and provide a follow-up report.

Sen. Story commented about the law passed last session, that changed the child-restraint law from a primary to secondary offense. He said that most people are unaware that the law changed the offense from primary to secondary. He said this law has several parts, but this particular segment of the bill was not well publicized.

#### Enforcement of Diesel Fuel Laws

**Jim Currie** provided a summary of the legislation that authorized MDT to enforce dyed diesel fuel laws. This authority was enacted in 2001 (HB 131) and made permanent in 2003. He reported that MDT issued 103 civil penalties after the bill became law in 2001, but only 19 penalties since March 2003. Mr. Currie said the language of the law makes it difficult to enforce. Motor Carrier Services (MCS) officers cannot pull a vehicle over and check for dyed diesel unless they have probable cause. Probable cause means that someone has to see a person dispensing dyed fuel into their supply tank. This could be an employee of the filling station or a member of the public. This person would then have to report their observation to the MDT. This information could also come in the form of a tip, which would need a signature. MCS officers cannot act on an anonymous tip. Another component, which impacts the MCS officers' ability to enforce the law, are the additional duties placed on them by the homeland security program regarding hazardous material loads. Mr. Currie said that although enforcing the law is difficult, it is still a good deterrent. He also noted that MDT has good commercials which inform the public about the illegality of using dyed diesel on highways.

**Will Hammerquest, Director of Member Services, Montana Contractors' Association (MCA)** read a statement on behalf of Jan Livesay, President, and Cary Hegreberg, Executive Director, and the Members of the Board of Directors of MCA, regarding the enforcement of diesel fuel laws and Constitutional Initiative 92, which would reduce the state fuel tax to 18 cents a gallon and would institute a flat vehicle license fee of \$30. (Exhibit 9)

#### PROPERTY TAX EXEMPTION STUDY COMMITTEE

**Lee Heiman, Staff Attorney, Legislative Services**, presented a status report on the Property

Tax Exemption Study Committee. This committee met a couple weeks ago and elected Sen. Walter McNutt, chair. The membership of the committee includes four legislators and six nonlegislators. The committee is reviewing the current tax exemption statutes, including 15-6-201, MCA. The committee intends to look at legislation to amend this statute.

**AGENDA ITEMS FOR DECEMBER MEETING**

The Committee discussed several items to be placed on the agenda for the December meeting, which included the following:

- Presentation by Global Insights on Economic Forecasting
- SJR 29 Study
- Update on IRIS
- Discussion on SB155 (trigger mechanism for reducing tax rate on class 8 business equipment)
- Legal opinion on class eight property tax reduction/elimination trigger as specified in 15-6-138(5), MCA
- Review necessity of required reports
- Department of Transportation
  - Long-term planning process
  - Highway safety
  - Update on federal reauthorization
- Updates from other committees
  - Tax Reform Study Committee
  - Property Tax Exemption Study Committee

There being no further business, the meeting adjourned at 3:50 p.m.

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