



Revenue and Transportation Interim Committee

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59th Montana Legislature

SENATE MEMBERS

JIM ELLIOTT--Chair
GREGORY BARKUS
JERRY BLACK
KIM GILLAN
SAM KITZENBERG
KEN TOOLE

HOUSE MEMBERS

KARL WAITSCHIES--Vice Chair
JILL COHENOUR
CYNTHIA HINER
BOB LAKE
DAVE MCALPIN
PENNY MORGAN

COMMITTEE STAFF

JEFF MARTIN, Lead Staff
LEE HEIMAN, Staff Attorney
DAWN FIELD, Secretary

MINUTES

December 2, 2005

Room 137, State Capitol
Helena, Montana

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.**

COMMITTEE MEMBERS PRESENT

SEN. JIM ELLIOTT, Chair
REP. KARL WAITSCHIES, Vice Chair

SEN. GREGORY BARKUS
SEN. KIM GILLAN
SEN. SAM KITZENBERG
SEN. KEN TOOLE

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

COMMITTEE MEMBERS EXCUSED

SEN. JERRY BLACK
REP. CYNTHIA HINER

STAFF PRESENT

JEFF MARTIN, Lead Staff
LEE HEIMAN, Staff Attorney
DAWN FIELD, Secretary

AGENDA & VISITOR'S LIST

Agenda, [Attachment #1](#).
Visitors' list, [Attachment #2](#).

COMMITTEE ACTION

Approved the September 30, 2005, minutes as corrected.

PART ONE

CALL TO ORDER AND ROLL CALL

TAPE 1 - SIDE A

- 00:00:01 SEN. ELLIOTT called the Revenue and Transportation Interim Committee to order at 8:05 a.m. Roll call was taken, SEN. BLACK was excused, REP. HINER was absent ([Attachment #3](#)).
- REP. LAKE moved to approve the September 30, 2005 minutes. SEN. TOOLE asked to clarify several statements he made at the September meeting regarding the formation of a stakeholders group to work on tax policy with the Revenue and Transportation Committee (page 9). The corrections were noted and the minutes were approved as corrected.
- 00:01:03 **Jeff Martin, Research Analyst, Legislative Services Division (LSD)**, suggested that the RTIC meet a day or two in advance of the special session to prepare the revenue estimates, once a date has been set. He said that would be adequate time for the Committee to adopt the estimates and for staff to draft the resolution for introduction.
- 00:02:39 SEN. GILLAN asked if revenue estimates are statutorily required for a special session. Mr. Martin said that when the law was originally enacted, this committee had authority to prepare revenue estimates for a special session, as well as for regular sessions. Mr. Martin said he attempted to determine why the provision regarding special sessions was removed but could not find anything that clearly indicated why that happened. Mr. Martin said that the Revenue and Transportation Committee has prepared revenue estimates before a special session. SEN. GILLAN said, for clarification, that the original legislation that required revenue estimates for a special session has been modified and no longer requires them, but that the Committee has continued preparing them. Mr. Martin said this committee typically has done estimates for special sessions.

00:06:12 REP. LAKE said it will depend on what the call is for the special session. The Legislature may really need the information to know if it is dealing with one-time revenue or continuing revenue.

00:07:00 SEN. ELLIOTT agreed and has asked the Governor to include the revenue estimate within the call.

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

00:07:15 Mr. Martin presented a brief history of the regulation of the supply of natural gas, focusing primarily on federal regulatory policy ([EXHIBIT #1](#)).

00:27:46 **Gene Walborn, Department of Revenue (DOR)**, presented a power point presentation on the Valuation of Centrally Assessed Properties ([EXHIBIT #2](#)). Mr. Walborn's presentation included information regarding:

- unit valuation;
- central assessment and unit valuation;
- the case history of unit valuation;
- central assessment criteria;
- central assessed companies' facts;
- three approaches to determine system value; and
- definitions, examples, and other information relating to central assessment.

TAPE 1 - SIDE B - Mr. Walborn's presentation, continued - slide 8, EXHIBIT #2.

00:43:46 SEN. TOOLE asked if cable television and cellular telephone companies are centrally assessed. Mr. Walborn said cable television is centrally assessed up to the "head end", which is when the microwave hits a company's repeater for distribution. It is locally assessed from that point on. Currently cellular and wireless telephones are not centrally assessed, nor is direct television or satellite television.

00:45:05 REP. LAKE asked if assessment changes as the market value of a company changes and if it is possible for the Department to arbitrarily change the assessment of a property in order to increase revenue, even if there have been no physical changes or improvements in the property. Mr. Walborn said that the assessment of property may change depending on circumstances. He gave an example of a house sale. Even though there may be no physical changes made to the house, the Department may change the assessment of that house because of a change in market or of comparable sales. The Department does

not do this to enhance revenue, it does that because it is mandated to determine value of property. Mr. Walborn also provided an example of a centrally assessed telephone company, saying that even if the local exchange company makes no physical changes or improvements in the company's assets, if it changes the services provided and makes more money as a result of those changes, that could change the company's assessment value.

- 00:49:55 REP. LAKE said it would then be possible for someone to own identical properties in two locations in the state and have different assessments. Mr. Walborn said that is correct, not because of taxation, but because of the market value. He gave a comparison of identical houses located in Jordan, Montana, and on Flathead Lake.
- 00:51:00 REP. MORGAN asked how often these types of businesses are assessed. Mr. Walborn said they are reappraised annually.
- 00:51:42 Mr. Walborn returned to his presentation - slides 12-15, EXHIBIT #2.
- 01:03:06 REP. WAITSCHIES asked how close is Montana in valuation with the other states and if the Department consults with them. Mr. Walborn said Montana does consult with other states and is a member of the Western States Association of Tax Administrators, which consists of 14 western states. A subcommittee within that organization, the Committee on Centrally Assessed Property, (the revenue staff of the 14 states) meets annually to discuss common issues. Montana is also a member of the National Association of Unit Valuation States, an organization of approximately 35 states which meets annually to discuss common issues as they relate to centrally assessed property.
- 01:04:57 SEN. BARKUS asked if just the counties that have the pipeline running through them receive the tax revenues for pipeline or if the entire state receives the revenues. Mr. Walborn said the counties will receive most of the revenues from the pipeline, except for the statewide school mills.
- 01:05:55 SEN. BARKUS asked if there is a compressor station in one county, rendering the pipeline more valuable, does that county receive more revenue than the other counties and if each of the county's local mills are applied to the apportioned value. Mr. Walborn said that particular county will get more market value because the compressor is located there. The remaining pipeline is apportioned on a per mile basis. Each county would get the market value based on the miles of pipe located in the county.

- 01:07:27 SEN. ELLIOTT asked if the pipeline's value in each individual county is increased by the intangible value of putting all of the components together. Mr. Walborn said the market value of the unit is higher than the value of the individual pieces.
- 01:08:05 SEN. ELLIOTT asked for further explanation of taxation of intangibles and the exemption of intangibles from taxation. Mr. Walborn said in 1999, the Department received an audit exception because it wasn't taxing intangible personal property statewide. The Legislative Auditor stated that intangible personal property was not exempt from taxation. For example, the intangible value of a liquor license would not be taxed, only the liquor store. A bill was enacted that made intangible personal property exempt from taxation. This kept the status quo by taking out the intangible personal property from the centrally assessed side and allowed software, licenses, patents, trademarks, stocks and bonds, etc., to be exempt from taxation. Mr. Walborn said the Department went through each industry before the negotiated rulemaking process and looked at all necessary information for each industry. The Department established default percentages of intangible property. Mr. Walborn said the Department has had few challenges to this rule because it is a straight forward way of valuing intangible personal property. The highest default exemption is 15% for telecommunication companies.
- 01:12:28 SEN. ELLIOTT said that Montana does tax the intangible value of the aggregate of parts, without which the unit could not function. Mr. Walborn said yes. He said Montana allows a very limited list of intangible property and the rule stipulates that the item has to be specifically identified or it is not allowed as an exemption.
- 01:13:38 Mr. Walborn returned to his presentation - slide 16, Exhibit #2.
- 01:16:34 SEN. BARKUS asked if the nine percent cap rate is universally acceptable. Mr. Walborn said the cap rates are carefully determined by research and appraisers and that the cap rate models are built specifically to each industry. Additional income models have been added recently to help back up the traditional model.
- 01:18:16 SEN. BARKUS asked if the Department uses the same capitalization rate as the surrounding states. Mr. Walborn said not necessarily, but that the Department does communicate with the other states about the direct cap. Few states still use the direct cap but since Montana's cap has been upheld in the courts, the Department does use it and is trying to improve it.

- 01:19:08 REP. LAKE asked if the Department uses the same methodology for like properties across the state. Mr. Walborn said the appraisers will calculate all three valuation approaches (cost, income, and market) and weight them. **TAPE 2 - SIDE A** Mr. Walborn explained how DOR weights the different approaches for each company and determines the Montana market value. Each appraiser is allowed to use some judgment because it is not a cookie cutter formula.
- 01:22:33 REP. LAKE asked if that approach results in lawsuits because the difference between like properties could be viewed as arbitrary valuation. Mr. Walborn said that if it isn't done that way, market value could not be achieved. A great deal of time is put into appraising each company and the Department has determined a market value for each company. He said equalization is provided for and that it is not an arbitrary process.
- 01:26:59 REP. WAITSCHIES said assigning percentages to each approach seems arbitrary. He asked if there is criteria for determining valuations on a more uniform basis. Mr. Walborn said the Department will issue the initial value, then send that value to the company and the company will respond. The Department takes that response into consideration.
- 01:29:40 Mr. Walborn returned to his presentation - slide 18, EXHIBIT #2
- 01:36:54 **Lee Heiman, Staff Attorney, LSD**, discussed a memo regarding invalidation of the central assessment rule ([EXHIBIT #3](#)). Mr. Heiman explained that this issue evolved from an ongoing court case between Omimex and the Department of Revenue. Mr. Heiman reported that the case has been delayed until September of 2006 and that it is important for the Committee to be aware of the status of the case.
- 01:42:50 Mr. Heiman discussed a memo regarding central assessment and the classification of property ([EXHIBIT #4](#)). He said that the last study of the classification system was done in 1979 and that the system may be outdated. He suggested that the Committee consider updating the classification system.
- 01:47:43 **John Alke, MDU Resources, Inc.**, provided a natural gas pipeline industry time line and a company by company summary ([EXHIBIT #5](#)).
- 01:55:35 SEN. ELLIOTT asked Mr. Alke to clarify how the Williston Basin was established. Mr. Alke explained that in 1985 FERC authorized the establishment of the Williston Basin Interstate Pipeline Company, but in 1982, MDU had filed an application with FERC to do it. It took FERC three years to deliberate on the

application before deciding that the pipeline operations and the production functions should be segregated in a different company. SEN. ELLIOTT asked if the separation was initiated by MDU and not FERC. Mr. Alke said that is correct.

TAPE 2 - SIDE B

- 00:03:29 SEN. TOOLE asked for an explanation on the interplay of regulation. He said with MDU, essentially any tax levy is a pass through to customers in the regulatory process. SEN. TOOLE said that the Williston Basin is regulated by FERC and asked if FERC allows, in establishing price, the tax to pass through. Mr. Alke said that FERC no longer regulates gas production but if a pipeline company incurs or pays a tax as part of its cost of service the tax would be rolled into rates. SEN. TOOLE said neither Bitter Creek nor Fidelity are an automatic pass through, that it is moving out to the market. Mr. Alke said that Bitter Creek, as a gathering line company, is not rate regulated. SEN. TOOLE said that as far as Fidelity is concerned, that the tax is not automatically passed through. Mr. Alke said every producer has to bear, as an expense against its production, the taxes they pay and that is why this is such a serious discrimination issue. MDU is competing in the market with other producers and it has to pay property taxes at a 12% rate while the others are paying property taxes at a 3% rate. MDU thinks this is unlawful discrimination.
- 00:05:32 REP. WAITSCHIES referred to EXHIBIT #5 and asked if all of the wells are centrally assessed. Mr. Alke said yes. REP. WAITSCHIES asked if that would change under the DOR proposal. Mr. Alke said it is unclear to him whether or not it would change. He explained that the critical issue is how "owner" is defined and that the definition could have great implications for MDU.
- 00:07:52 **Dan Bermingham, Land Manager, Omimex Canada**, discussed the activities of Omimex in Montana as they relate to what the RTIC is studying. He stated that he has been cautioned by legal counsel not to discuss the ongoing litigation that Omimex is involved in with the Department of Revenue. Mr. Bermingham gave a brief corporate history and a description of how the Omimex business is operated. (Mr. Bermingham provided copies of his presentation at a later date: [EXHIBIT #13](#) - written testimony, [EXHIBIT #14](#) - map of Omimex Montana properties, and [EXHIBIT #15](#) - Battle Creek map.
- 00:31:00 REP. MORGAN said that neither Mr. Bermingham nor Mr. Alke discussed coal bed methane. She asked if that is taxed the same way as natural gas and oil. Mr. Bermingham said Omimex does not have coal bed methane properties.

- 00:31:49 REP. MORGAN asked Mr. Alke to respond. Mr. Alke said he discussed coal bed methane on the last page of his handout (EXHIBIT #5). The example used indicated how gas is produced, gathered, and transported to a coal bed methane pipeline.
- 00:32:28 SEN. ELLIOTT asked if those lines are centrally assessed in coal bed methane production. Mr. Alke said the DOR centrally assesses everything from the wellhead to the sale. MDU is challenging that and it's position is that nothing should be centrally assessed past the compressors.
- 00:33:35 REP. COHENOUR recalled that Mr. Bermingham had said there must be continuous control over the gas, regardless of the form. She said that she thinks that involves two different structural models - one is transactions at each stage and the other is one transaction that goes to the end and then is allocated backwards. She said she would assume that with either model, both market or income value could still be determined. She asked Mr. Bermingham to respond. He said that the nature of natural gas production involves changes in title or transfer of ownership because the gas stays in a line that is continuously flowing. The ownership starts at the base level by who owns leases and minerals. The gas may be commingled, depending on who is allowed to share in the production. It is a very complex accounting exercise to track how it is being transferred from one party to the next. The ownership of the gas changes from well to well and almost all are unique. Omimex has, within Montana, 130 separate entities that it distributes revenues to as part of our accounting process. The configuration of how each participates is varied and that number does not include all of the royalty owners.

TAPE 3 - SIDE A

- 00:37:59 SEN. ELLIOTT asked if gas is centrally assessed. Mr. Walborn said no. SEN. ELLIOTT said it shouldn't matter who owns the gas. Mr. Walborn said it is important to know who owns the gas because it gives the DOR an idea of who is managing the physical property.
- 00:38:51 REP. MCALPIN asked if gas is usable at the well head or if it has to be sweetened or processed. Mr. Bermingham said it varies from well to well, but that gas is usually consumable at the well head; but is odorless at that point, so Omimex prefers to treat the gas to make it have an odor for safety and detection purposes. He said it is also typical for suspended water or other liquids to be removed, depending on the nature of the reservoir.

- 00:40:42 REP. MCALPIN asked how much of Omimex taxable property are facilities that treat the product. Mr. Bermingham said it would depend on the definition of treatment and that he didn't have an exact percentage of property. REP. MCALPIN said there are sour gas plants in Wyoming and asked if Montana natural gas is similar. Mr. Bermingham said there is some sour gas in Montana and explained how sour gas must be "sweetened" before being used.
- 00:42:23 REP. LAKE asked how pipelines and distribution lines are taxed. Mr. Alke said the property tax rate for distribution and pipeline transmission is 12% and that MDU has not contested the application of central assessment for the gathering lines. Mr. Alke said the only issue MDU is concerned about is exploration and production and is fully prepared to pay central assessment taxes on the gathering lines. Mr. Alke said that is not a fair situation for Omimex but that in MDU's case, exploration and production is the only thing that is 3%. We are okay with 12% on the gathering lines, 12% on the transmission lines, and 12% on the distribution lines.
- 00:44:44 **Richard Dunbar, Phillips County Commissioner, President of Oil, Gas, and Coal Counties**, gave his perspective on and a brief history of how oil and gas production has evolved over the years in his county and surrounding area. He noted that the taxes collected on individual wells vary from \$5 to \$70 per well and that the total revenue collected by the counties is not a significant amount. He questioned the disparity in market value, saying that is an issue the Committee needs to examine.

Committee Discussion on HJR 44

- 01:09:15 Mr. Martin asked the Committee members for their input on whether he is getting them the information they need to proceed with the study. He also thought it would work best to get all of the parties involved meet for a discussion in one setting, rather than doing it separately.
- 01:13:14 REP. MORGAN said, in order to do an "apples to apples" comparison, she would like to have not only information on Wyoming's tax structure for natural gas pipelines, but how other businesses are taxed in Wyoming as well; as well as Wyoming's corporate tax revenues.
- 01:14:12 SEN. BARKUS said the rationale of ownership criteria in the centrally assessed property category would be of interest to him. He said if Montana is going to centrally assess a pipeline, it shouldn't matter who owns it.

- 01:15:03 REP. COHENOUR referred to her motion made at a previous meeting to include the counties in the fiscal impact information of the study plan and asked when that would be addressed. Mr. Martin said he has that scheduled for the next meeting.
- 01:16:10 SEN. ELLIOTT suggested asking small producers and county commissioners for their input in the study and how a change in classification might impact them. He said it would be beneficial to examine the similarities and differences of the various portions of the pipelines. He agreed that ownership shouldn't not matter so much as the type of lines they are. He said he is interested in examining the physical and financial characteristics of the gas pipelines.
- 01:17:59 REP. LAKE commented on Montana's tax system and said the Committee's job is to oversee the system and to make sure the system is fair and equitable. He said like activity and like product should be taxed on like levels. He said all but three companies are taxed at 3% and that he would like to know the financial impact to Montana if all wells were taxed at the same rate. He said he didn't think Montana could continue allowing the type of favoritism that is occurring now because it is not logical, fair, or equitable. He suggested a compromise tax rate of somewhere between the 3% and 12%.

CORPORATION INCOME TAXES

- 01:21:13 Mr. Martin presented a report on corporation income taxes ([EXHIBIT #6](#)). The report contained a brief overview of imposition of corporation taxes, the rationale for taxing corporations, the history of the corporate income tax in Montana, and interstate tax comparisons. He noted two errors in the report: on page 3, under "The Taxation of Corporations in Montana", line 3 should read "42nd Legislature" instead of "1942 Legislature"; and on page 5, line 2 - (interest received on federal debt obligations) - does not apply to Montana, as stated in the report.

TAPE 3 - SIDE B

- 01:42:43 Mr. Martin said that the previous Revenue and Transportation Committee had asked Mr. Johnson do an analysis of the corporate tax structure in Montana. He said the analysis indicated that, with a few exceptions, the corporate tax base in Montana has not eroded. He said it may be of interest to the Committee to look at other states that use combined reporting.

- 01:44:05 SEN. ELLIOTT said information on the genesis of the corporate structure and the reasons for which that structure was created, whether for liability or for differential tax treatment, would be helpful to the Committee.
- 01:47:19 REP. LAKE asked SEN. ELLIOTT, as Committee Chair, what his end goal is regarding this information and if he envisioned a change in the tax code. SEN. ELLIOTT said his goal is a discussion of corporate income tax for Montana so that legislators may make informed decisions when dealing with the corporation income tax.
- 01:48:41 REP. COHENOUR said she would like to see how Montana corporate taxation structure compares with other states. She said there needs to be a comparison to see how Montana's ebb and flow matches up with other states and the federal taxing system.
- 01:51:38 SEN. TOOLE said he is interested in looking at what kind of behavior the Montana tax system encourages within corporations, such as the issue of CEO pay. He said some corporations have a very complex structure and that he would like to investigate how or if Montana's tax code affects corporate behavior.
- 01:53:06 SEN. GILLAN supported SEN. TOOLE's request and asked Mr. Johnson to update of the corporate tax structure analysis. Mr. Martin said the update would be done.
- 01:53:48 REP. WAITSCHIES cautioned that an investigation to determine the cause of corporate behavior, based on the tax codes, could be only an interpretation and not be based on fact. He said the only reason Montana has a corporation income tax is to raise revenue and if Montana makes it too high, corporations will leave.
- 01:54:54 SEN. GILLAN said she would like to hear corporations' opinions of the corporation tax structure in Montana, particularly corporations which also operate in states surrounding Montana.
- 01:55:39 SEN. TOOLE said incenting behavior in tax policy is a core issue of all tax policy discussions and that the double weighting of sales, as discussed by Mr. Martin in his presentation, is an example of incenting a certain type of corporate behavior. He said that while he appreciated the principal of what REP. WAITSCHIES said, he didn't think the Committee could separate tax policy from how it affects the behavior of individuals or corporations.

- 01:57:24 SEN. ELLIOTT said he is not interested in the internal workings of corporations or of executive reward, but rather what is in the tax code that causes C corporations for instance, to become partnerships or LLCs. He said he would like to know if the motivation is the tax code or because of the liability protection. He said in addition to that, there are many family corporations in Montana which are incorporated to hold property in common and pass along to succeeding generations and that he would like to know more about those types of corporations.
- 01:59:24 REP. COHENOUR said the previous Revenue and Transportation Committee studied this and said the reason corporations are taxed is not just to gain revenue. All must participate in paying for societal benefits and corporations must also be a part of paying into the system they benefit from.
- 02:00:41 SEN. TOOLE asked to review the study done by the last interim committee. Mr. Martin said the tax reform committee report is still on the internet, as is Mr. Johnson's report. SEN. ELLIOTT said he supports SEN. GILLAN's suggestion to have corporations discuss how the corporate tax structure affects their business in Montana and that this information should provide balance to the Committee's work.
- 02:02:14 SEN. BARKUS asked to invite a corporation that has moved out of Montana for tax reasons and gave the example of the Washington Corporation, which is now headquartered in Boise, Idaho. SEN. ELLIOTT agreed and asked to also invite a corporation that came to Montana for tax purposes. SEN. ELLIOTT noted that the next RTIC meeting will be a two day meeting and that a full day would be devoted to HJR 44.

The Committee recessed from 12:15 until 12:55 p.m.

PART TWO

DEPARTMENT OF REVENUE REPORTS

- 00:00:22 **Dan Bucks, Director, Department of Revenue (DOR)**, said if the Committee has a request for information that he does not routinely include in his report, to please let him know and that he would accommodate the Committee's request as best he could. Director Bucks provided an update on DOR issues:
- The DOR recently received a Best of the Web Government Achievement Award from the Center for Digital Government. Gene Walborn, Van Charleton, Dave Hansen, and Becky Winger received the 2005 James B.

Griffith Award from Department of the Interior for outstanding audit efforts on federal lands. SEN. ELLIOTT offered congratulations to the Department on behalf of the Committee.

- The conversion to the IRIS software has gone smoothly and only a few glitches have been encountered.

Department Reorganization

Director Bucks reported on the Department of Revenue's reorganization plan ([EXHIBIT #7](#)). Director Bucks explained the purposes, goals, the anticipated results of the reorganization, **TAPE 4 - SIDE A** a summary of position changes, and also provided a flow chart of the new structure of the Department.

List of Taxpayers with Substantial Tax Delinquencies

Director Bucks distributed the Large Case Delinquent Taxpayer List ([EXHIBIT #8](#)), published by the Department, and which contains information on delinquent taxpayers owing from \$20,000 to \$500,000 to the state. Director Bucks said the list is posted on the Department's web page and is updated regularly. He said the list excludes those who are working with the Department to resolve their bill and that the list is public information. He said the Associated Press has a standing request to the Department to receive the list of all of warrants for distraint (judgment liens), that all of the delinquent taxpayers were notified that their name would be published, and all were given the opportunity to resolve their bill before the list was published by the Associated Press.

00:21:08 SEN. ELLIOTT asked why this list is public information, when other information on the individual income tax is not. Director Bucks said it becomes public information when the Department issues a *warrant for distraint*. The information is filed in the county court houses and is open to the public for review.

Pending Federal Legislation That Would Affect Montana

00:22:32 Director Bucks reported that there are two pieces of federal legislation affecting Montana:

- H. R. 1956 - This legislation will directly preempt the nexus standards for corporation income taxes in Montana. Nexus standards are used to determine when a company must file and pay a tax and is a jurisdictional concept. He said Montana's nexus standard has been very clear for decades. The standard is that when a corporation actively engages in any transaction for gain or profit, it is required to file and pay taxes in

Montana. Director Bucks said the new federal law will preempt Montana's nexus standard because it allows several exceptions to physical presence. He said that the bill lacks clarity and the impact would be difficult to predict, but in the long term, the estimated fiscal impact will be about \$24 - \$35 million.

- H. R. 1369 - This legislation will extend the tax provisions to the natural gas pipeline industry that the federal government adopted in the 1970s that restrict the way a state is allowed to tax railroads for property tax purposes. The HJR 44 study may become irrelevant if this bill is passed. Director Bucks discussed the bill ([EXHIBIT #9](#)) and the fiscal impact if passed.

00:36:30 Director Bucks reported that seven centrally assessed companies have appealed their property taxes: Omimex, Qwest, Centennial Energy, NorthWestern Energy, PacifiCorp, Puget Sound, and PPL Montana. He briefly described the basis for and status of each appeal.

00:43:45 Director Bucks discussed HJR 44. He said that the Department considers central assessment to mean the "unit valuation methodology" - the methodology of valuing an entire system to arrive at its market value because the system is worth more than the sum of its parts. Director Bucks also said that unit valuation has nothing to do with the tax rate and that Montana law treats centrally assessed property differently from other property, in terms of tax rates. When the Committee heard the presentations made by MDU and Omimex, it was stated that their gas wells are subject to a higher rate than other gas wells. That is a classification issue and not a unit valuation issue. Director Bucks, as an example, compared a railroad company office, full of equipment, and a local taxi company. He said Montana locally assesses the taxi company. The railroad is not assessed locally because it is part of a larger system and the system is taxed based on the value of the entire system. Unit valuation is different than classifying centrally assessed property at a particular tax rate. Director Bucks said he hoped the Committee would not dilute unit valuation to arrive at market value when deciding what the appropriate tax rates are. He said there would be broad ramifications if the concept of unit valuation is diluted.

00:48:58 Director Bucks discussed corporate taxation and said it is important to look at corporate taxation in the context of business income taxation. He said much has changed in the last 10 years: pass through entities have been authorized; S corporation rules have been liberalized; and limited liability partnerships, limited liability corporations, grantor trusts, and real estate investment trusts and all

different types of business structures have been created. He said the Committee should look at how all business income is taxed, not just corporate income. He said there is a need to examine the differences and inequities, based upon the different types of business forms, that lead to tax motivated behavior instead of good business motivated behavior. Director Bucks said abusive tax shelters are the number one income tax problem in America and recommended that the Committee give careful attention to this issue. He said he would like the Committee to look at real estate investment trusts because they do not conform to source income rule of taxation like other business income structures do. Their income is not taxed where it is earned, yet that principle applies to all other business income. The Committee also needs to look at variations in effective rates of different industries and different enterprises. When there are marked differences in effective rates, the state basically has policy inequalities that are unfair and have perverse consequences.

TAPE 4 SIDE B

00:53:03 REP. LAKE expressed concern regarding the Department's proposed source income rule change on 1031 property exchanges. He said there is no way to track the identity when it goes out of state. He asked Director Bucks to explain the rationale for the rule and if he thought this issue might be better handled legislatively. Director Bucks said the rule is being proposed to clarify the existing statute because it has been widely misunderstood by the Legislature, the public, and practitioners.

00:56:13 REP. LAKE said the proposed rule may be contrary to federal laws. Director Bucks didn't agree and read the statute regarding Montana source income. He said the law clearly provides that if property in Montana is exchanged for property outside of the state, the gain in Montana is taxable in Montana but that taxation is deferred until it is recognized for tax purposes by the federal government. The Department is adopting the rule because this provision of the law has been ignored and taxpayers don't understand it. REP. LAKE asked if any other states are doing the same thing. Director Bucks said he did not have information on other states and that the Department is responsible for administering Montana law. The problem lies with collection. Legislation proposed in the last session included a collection mechanism but it was not approved as a part of the bill. An appropriate reporting mechanism will be put into place. The Department is simply trying to administer a law that already exists and this rule is intended to clarify that law.

REAPPRAISAL OF AGRICULTURAL LAND UPDATE

01:03:36 Director Bucks reviewed the makeup of the Agricultural Land Advisory Committee. He said the committee will be appointed by the Governor and that appointments would be made through December. He encouraged anyone interested in serving to contact the Governor's Office. He said a work plan would be discussed to explain the status of the project and data from the test results of four counties would also be presented.

01:05:04 **Randy Wilke, Property Assessment Division, DOR,** gave a status report on the agricultural and forest land reclassification project ([EXHIBIT #10](#)). Mr. Wilke reviewed why there is a need to reclassify agricultural land, the approach that is being taken and why, and an overview of the current work plan.

DEPARTMENT OF TRANSPORTATION

01:14:25 **Jim Lynch, Director, Montana Department of Transportation (MDT)** discussed alternative road design and the "context sensitivity design" method of highway construction. Director Lynch said there have been considerable changes in highway construction design due to environmental concerns and that the changes are primarily due to the resistance of communities and environmental concerns and considerations that weren't met. He said the construction industry, in the past, didn't acknowledge the environmental impacts of construction and that the public didn't realize that it could have input in the process. As those two functions started to develop, highway design had to change to accommodate the requests of the citizens it was serving. Montana has made drastic changes since 1989 in three main areas: the planning office, the chief engineer, and the director's office. Director Lynch provided examples of ongoing context sensitive designs, outlined the process of implementing a context-sensitive design solution into a highway design project, and reviewed several completed projects ([EXHIBIT #11](#)). He explained the difference between a "preferred alternative plan" and a "context sensitive design" and said it is very important for the public to have input on highway projects and that the highway department must understand that it is not just building a highway, but is providing a solution to a community. He said it is important to involve a community early in the process and to encourage participation all through the process. He said the MDT is still working on finding more and better ways of communicating with the public.

TAPE 5 - SIDE A

01:32:14 SEN. BARKUS asked how these types of aesthetic projects are funded. Director Lynch said the projects are funded by either the city involved or the

MDT. If funded through the MDT, federal CTEP (Community Transportation Enhancement Program) funds are often used because these funds are required to be used for these types of projects. In some cases the city will provide the match to the federal funds, as in the Kalispell project.

01:34:52 REP. MCALPIN asked if an environmental impact study is required as part of a new highway construction project. Director Lynch said yes. REP. MCALPIN asked if the community decides it wants to try another plan, does another environmental impact study have to be done. Director Lynch said prescoping is done first to determine what the highway needs will be and then a preferred alternative is drafted, which involves some of the environmental issues. There are certain factors that must be in place to determine what type of environmental document is needed. A category exclusion, environmental assessment, or environmental impact study will be done, depending on the magnitude of the project. The Department realizes the importance of choosing the correct level of study because it does not want to spend a great deal of money defending a study that has been challenged in court. After the appropriate level of study is completed, a preferred alternative is submitted for review. From that point on, the public is very involved.

01:36:54 **Loren Fraser, MDT**, said that "preferred alternative" is a term that is used in NEPA and in an environmental assessment or in the EIS stage. In developing a preferred alternative, information gathering is the first step. The preferred alternative is developed from a range of public input and as the process matures, the final plans are developed. Director Lynch said it is important to understand that the "preferred alternative" is not the final highway design and that this is where a lot of the confusion has occurred in the past between the MDT and the community.

Implications for Highway Funding if Gas Tax is Suspended

01:39:44 Director Lynch discussed the fiscal impact of eliminating the 27-cent gas tax. He said that if Montana wished to maintain its current level of construction, the State would be \$53 million in debt by the end of fiscal year 2006 and \$257 million in debt by the end of the 2007 legislative session without the gas tax revenue. Director Lynch said that Title 33 of the United States Code requires states to maintain highways to federal standards and that if Montana fails to do so, the federal government can suspend all federal funding and can also force Montana to pay back federal funds. Director Lynch explained how the federal funds are allocated to different programs and that the federal funds are used for much more than construction projects. He said the elimination of the gas tax would

have a drastic effect on the MDT's ability to maintain and develop roadways in Montana.

01:44:42 REP. LAKE asked Rep. Roy Brown to discuss his proposal for the suspension of the gas tax.

01:45:11 **Rep. Roy Brown, HD 49, Billings**, said there is a misunderstanding about the proposed suspension of the gas tax and provided copies of a letter he sent to Governor Schweitzer regarding the proposal ([EXHIBIT #12](#)). Rep. Brown's opinion is that the gas tax could be suspended and that Montana could still maintain its planned highway projects by using the gains in oil and gas production taxes as a replacement revenue source.

01:48:59 SEN. ELLIOTT asked Director Lynch if supplementation is acceptable under the federal agreement for matching funds. Director Lynch said that supplementation would work.

01:49:24 REP. WAITSCHIES asked for an update on safety and accident statistics at future meetings. Director Lynch said he would do that and gave an update on the topic:

- Montana's open container law has been implemented and he is confident that statistics will bear out the benefit of the legislation.
- Highway fatalities are higher this year and efforts are underway to decrease fatalities by encouraging the use of designated drivers.
- Seatbelt use has increased, with 80% of Montanans buckling up. In spite of this there is still an alarming number of fatalities, with only 18% of the fatalities wearing seatbelts. Director Lynch said this is a slow cultural change and that he anticipates these statistics to change over time.

Director Lynch said highway fatalities are a problem and that the MDT will continue to work to decrease the numbers. He said he will provide updated statistics at each meeting.

01:57:15 REP. WAITSCHIES asked if the open container law has resulted in a reduction in fatalities. Director Lynch said that since the law has only been in effect a short time, reliable statistics are not yet available.

01:58:20 SEN. ELLIOTT asked if the statistical difference in fatalities could be related to the change in the speed limit. Director Lynch said that he would guess that speed is a factor in many fatalities in Montana and that he would compile statistical information on that topic for the next meeting.

QUALITY SCHOOLS INTERIM COMMITTEE UPDATE

- 01:59:59 REP. LAKE reported that the Quality Schools Interim Committee (QSIC) has compiled a great deal of information and drafted a bill but that it is uncertain if the bill will be approved by the QSIC for consideration by the Legislature. He said the QSIC appears to be willing to consider other options and that the QSIC believes that "bridge" funding is the short term solution until a long term funding proposal can be determined. He asked the RTIC if it would like for him to continue attending the QSIC meetings.
- 02:05:53 SEN. ELLIOTT thanked REP. LAKE for his efforts and said that REP. LAKE had been of good service to the Committee.
- 02:06:16 REP. COHENOUR asked, regarding H.R. 1956, if the Interstate Commerce Clause would prevent the federal government from taking this authority from the states. She said the Interstate Commerce Clause protects the state from treating outside entities differently and this bill would force states to treat outside entities differently. Director Bucks said REP. COHENOUR's analysis is on target. The purpose of the Interstate Commerce Clause is to ensure that there isn't discrimination against interstate businesses. Congress has the power to regulate interstate commerce and under this bill, would favor interstate businesses over intrastate businesses. REP. COHENOUR asked if the Director plans to work with the Montana congressional delegation on this issue. Director Bucks said he visited with staff members of the delegation last spring and again with Sen. Baucus' office last fall because he is in the best position to impact the outcome of this legislation. He said has also worked with National Governors Association and said that state governments are opposing the bill.
- 02:09:36 REP. MORGAN said that the Legislature relies on Legislative Fiscal Division for tax information and is not getting this in a timely fashion. I have heard DOR is reluctant to link LFD to the IRIS system and there is a conflict in interpretation of the law. Director Bucks said these issues are important matters. The DOR is supplying the LFD with the information that the law allows. He said federal law is also involved. There are several statutes that deal with confidentiality. The law is mostly clear, but not always. We are supplying the LFD with the information that they are to receive under the law. We are continuing to provide information where there is a major ambiguity as to whether or not that information can be provided to the LFD. We are providing corporate identifier information and will continue to provide it for the 2007 session. But we will seek legislation in 2007 to clearly authorize that information. In the past, the Department has not

managed the transfer of information in the manner that conforms to the best practices, and in some instances, there may have been violations of the law.

Director Bucks said the Legislature sends mixed messages about the provision of information. We have received requests from LFD over the past six months that were illegal and we had to say no to requests that are clearly illegal. And, when we say no, that is not what the law allows, we hear complaints. The other side is the Legislature has specifically said that if anyone in the Department provides information that the Legislature has declared to be confidential, that a person in the Department is subject to penalties. There are not many other statutes that subject a departmental employee to a jail sentence. That sends a message to the Department that you want us to be careful about not disclosing information to anybody outside the Department. Federal law places additional restrictions, which the Legislature cannot change, and we have to comply with that in order to maintain our relationship for exchange of information with the IRS. If we violate those standards, we could lose our right to receive federal income tax information. We couldn't administer the income taxes without the cooperation of the IRS. Director Bucks described best practices with regard to disclosure. There needs to be an audit trail. That audit trail needs to be kept for the federal government and it needs to be kept for the Legislative Auditor. Legislative staff and staff from other agencies would go to anyone in the Department whom they thought had the information they wanted. Often, it would be provided. It would sometimes be provided by people who were not acquainted with the applicable laws. The best practice for disclosure is to have a disclosure officer, advised by counsel, who receives the request, sends it to the party who is requesting it, and makes a record of all of the transfers of the confidential information. The Department will be able to track the requests from the LFD. I think we have resolved virtually all the issues that I am aware of with the LFD.

Director Bucks discussed IRIS software. The statute doesn't require us to provide the software, but we want to provide it but it has to meet the same standards of being able to track the transfer of information to the LFD. We are concerned about disclosure of that information once it goes to the LFD. Unfortunately, the communications about providing software were made by people who had no decision making authority. I have found out from the people who designed the software that it was never intended for exchange of information. It was only intended to operate within a department. A proper audit trail can't be established for the transfer of information. I have to work with the vendor and find out what it will cost us to modify the off-the-shelf information so the LFD can have access to this improved tool. The software tool, as designed, will not meet the standards of the disclosure laws and the confidentiality laws. I

don't know what the cost will be. If the cost is reasonable and we can afford it, we will try to get it reprogrammed so that we can use that as a basis for the exchange of information with the LFD. We don't have a policy difference with the need of the Legislature to have information to do its job, we have a concern that we follow the law.

02:22:23 SEN. ELLIOTT asked Director Bucks about the ambiguity in Montana law and illegal requests made by the LFD. Director Bucks said it was an erroneous request for estimated tax information for individuals. The statutes are very clear that the LFD cannot have access to individual income tax information that identifies individuals in any manner. LFD requested estimated tax payments for specific individuals. It was not intentional, and I probably overstated that and I apologize for that. Our determinations apply equally to the Budget Office and the LFD. The request was not a valid request under the law .

With respect to ambiguity the Department researched, communicated with the Code Commissioner, our staff, and other attorneys in state government. The corporate income tax statute, enacted in 1993, makes a distinction for the Legislative Auditor to access returns. It is the only entity outside the Department that can actually handle returns and return information in full. Federal law gives legislative auditors access over others. The corporate statute allows the LFD to access corporate tax data. The question is, what is data and does it include the corporate identifier information. It interacts with another statute on the LFD's powers that identifies individual income tax data in such a manner as to imply that it is data without the identifiers on it. It is complicated by the legislative history. A prior director of the Department said in the legislative hearings that if the bill was passed, the LFD would receive information on corporate taxes in the same way they receive it for individual income taxes. If that is the case, it means no names of corporations, no identifiers. But, immediately after the (1993) session, the Department continued providing information that included corporate identifiers and that has been happening for the last 12 years. So, you've got language that is not exactly clear, but tilts one way. You have legislative testimony that is not clear but tilts that same way and then you have a practice that tilted the other way. The Department has decided to continue the practice of providing the same information through the next session, but get this cleared up in the next session.

02:27:38 SEN. ELLIOTT asked Director Bucks how he would recommend clearing up the ambiguity. Director Bucks said that the LFD ought to have the corporate identifier information for publically traded C corporations. I am not so certain that privately held C corporations and S corporations aren't pretty close to individuals.

A privately held C corporation, is often intertwined with the owners' personal finances as are S corporations. The Legislature has made it pretty clear that only the Department can look at it for tax purposes and doesn't want it to go to the LFD. The Department hasn't decided on this and is willing to talk about it. I think that the identifier information should clearly go for publically traded C corporations. Director Bucks said the legislature needs to think about what it wants to have happen with the privately held C corporations and the S corporation information.

02:29:44 SEN. ELLIOTT said the Department counsel has argued that the United States code was the reasoning behind the refusal of the Department to provide the LFD with the information. Director Bucks said in the instance about the transfer of information to the LFD, we are talking about a more limited kind of disclosure from one state agency to another public agency and the requirement to keep the information confidential is maintained. SEN. ELLIOTT said it was his understanding from the LFD, that the information was not going to be provided because of that section of the federal code. Director Bucks asked Dave Ohler to respond.

02:32:00 **Dave Ohler, Chief Counsel, DOR**, said there are two provisions in 26 U.S.C. 6103 related to disclosure. Subsection a prohibits the disclosure of federal tax return information and subsection b allows disclosure to other state agencies if the State has a statute that provides that information provided to other state agencies is subject to confidentiality, as if the Department of Revenue had that information. SEN. ELLIOTT said as he recalled, that was not in his draft opinion. Mr. Ohler said that was true. That is why he gave the draft opinion to the LFD for review. Greg Petesch pointed out subsection b and we consequently changed our interpretation.

Director Bucks said that the Department would provide, precisely to deal with these kinds of issues, a draft to the LFD for comment. Based on that comment, we would revise it and finalize it, so what counts is the final, not the first draft. There was a clerical error in retrieving the statute and Mr. Petesch called it to the Department's attention. Director Bucks said the Department would resolve that ambiguity in the favor of having the information continue to flow to the LFD as we are today. With respect to corporate identifiers, individual corporations names and identifiers, I think that it is clear that that should continue with regard to publically traded companies. I think the Legislature may want to think through because those S corporations and privately held C corporations get pretty close to individuals' finances. You have treated that differently. I think that is an issue for the Legislature to think about.

- 02:35:51 SEN. ELLIOTT asked to be a part of the discussion in resolving the ambiguity and asked that any draft legislation or other ideas sent to LFD also be provided to the RTIC. Director Bucks agreed. He said this is not only an important policy issue, but involves fundamentally, the interaction between the Department and an important legislative agency.
- 02:36:26 REP. MORGAN said this affects legislators' ability to do their job. There is no way we can do our job without the information that we are not getting. My second point - confidentiality issue and the request for certain corporations - why can't you give that information without names...just give dollar amount and that is all the LFD needs, not who it is. Director Bucks said all that information is being provided and no information is being withheld that he is aware of. The only requests that have not been satisfied are requests that are clearly not allowed under the law. The LFD wants corporate identifier information and they are receiving it today. The request for individual estimated tax payments was that the LFD wanted to identify particular taxpayers to track their payments over more than one period of time. It really gets down to this information that is covered by some very specific statutes. The Legislature on the one hand has said, if we (department) make a mistake, we go to jail and lose our jobs. On the other hand, (the Legislature) says we need this information to do this work. This has to be resolved in some manner.
- 02:39:54 SEN. ELLIOTT said the law the Director is referring to says "as otherwise provided in law" and it is clearly provided for in law. Director Bucks said that is true but said the problem is that the law is specific in some instances and we have provided the information as the law otherwise provides. I don't know of any case of where we have failed to provide the information that has been requested that is lawful to provide under the applicable state and federal statutes.
- 02:41:08 SEN. ELLIOTT said the federal code allows disclosure of returns and return information seems to be broad language and that names of individuals could be included. Director Bucks said that is correct but in the case of individual income taxes, the Legislature clearly said the LFD shall not get the names of individuals. The statute says the Department can provide federal return information, provided the State has covered that information by a confidentiality statute. The Legislature hasn't covered the transfer of information to the LFD with a confidentiality statutes for some taxes. For those taxes, the Department can provide all of the information, including the name of the taxpayer, but the federal law will not allow us to provide the social security number and FEIN number because the Legislature hasn't covered it by a confidentiality statute. That is a

second defect in the law that needs to be corrected to maximize the flow of information to the LFD.

- 02:43:25 REP. LAKE said he assumed under the confidentiality statement that everyone within the government, regardless of the agency, is bound by that same confidentiality statement. Does it take a special statute that allows information between every agency within government? Director Bucks said the problem is that there are certain taxes where the information is not confidential and yet, some of the information received is declared confidential by the federal government - social security numbers and FEIN numbers - so it is covered by a federal law. Because there isn't a confidentiality provision, the Department can't provide to anybody else in state government, the federally protected information.
- 02:45:22 REP. LAKE asked wouldn't meeting federal confidentiality statement cover all of state government. Director Bucks asked Mr. Ohler to answer.
- 02:46:14 Mr. Ohler said that federal law (section 6103) that deals with confidentiality of federal information is very specific about what state agencies and employees of the state can have access to the federal information. It is not a blanket release to every agency in state government, it is specific to the administration of the tax laws. The agency that administers the tax law is authorized to receive it but nobody else is. There are some exceptions, as indicated by Director Bucks, such as the Legislative Audit Division and some others.
- 02:47:17 REP. LAKE asked how can the Legislature put a statute in Montana law that allows for the transfer of that type of information. Mr. Ohler said there is an exception, later on in the federal statute, that says if a state has a confidentiality law, it can provide information to other state agencies. It suddenly loses its character as federal return information. Director Bucks said it has to be specific to the taxes that you have to add that confidentiality provision to the taxes that are currently public. For the taxes that are public information that receive some federal information, you have to protect that federal information with a specific state law to enable that transfer to occur. That is what is missing.
- 02:48:38 SEN. ELLIOTT asked if it would help the Committee to have the Department write a paper on this issue. Director Bucks said it would (write the paper). I think it is a very important set of issues. We have been working hard with the LFD, I understand that there are concerns. I think we have provided everything that we can provide under current law and that the Department has been stretching it in one area where the law is ambiguous and I want to clear that up in 2007 and some other areas as well. SEN. ELLIOTT said the Committee would expect the paper at its February meeting.

- 02:49:24 REP. WAITSCHIES asked Terry Johnson to comment. REP. WAITSCHIES said the big concern is revenue estimates and trying to figure out what is one time and on going revenue. I know you have talked with many committee members. Is the information you need - is that a privacy concern or a software problem. **Terry Johnson, Principal Fiscal Analyst, Legislative Fiscal Division**, said it revolves around the tax type. In the case of individual income tax, the Department provides detailed data by tax return with the names and identifying information removed. The LFD sees what was reported by taxpayer for capital gains, interest income, wage income, etc. What we cannot get is how much of that capital gains was generated from real estate, stock sales, or other sources. Mr. Johnson said that is important information for the Legislature to have, but the statute is clear that we cannot see those returns. That is one example where we are hampered by lack of information. Another example on software is for oil and gas. The LFD has requested access to the new computer system. We want to be able to look at the amount of production by oil type and actual price by producer. As the Director has indicated, we have not been given access to the new computer system. The information that we get, and the Director is correct, we have gotten the information, but for oil and gas it is aggregate information. All we can tell you is the statewide aggregate reported for the various components of oil and natural gas. The LFD is dealing with both of these issues simultaneously.
- 02:52:44 REP. WAITSCHIES said you don't know what is happening exactly. Mr. Johnson said it is extremely difficult for the LFD to look at individual income tax, for example. I cannot tell you about royalty payments. They are combined with rent royalties and partnerships on the tax return. The LFD cannot identify what is a one time event.
- 02:53:50 REP. WAITSCHIES asked if that information could be looked at by area, in order to guess at the source of the income. Mr. Johnson said the county identifying information has been removed from the individual tax returns. That is a legal question and we don't know if that is covered under the statute or not. REP. WAITSCHIES asked Director Bucks if the removal of data is due to privacy issues or a software problem. Director Bucks said he was not aware of this situation and was not aware that Mr. Johnson had a concern in this area. I am not aware that the Department has received a request for that identifier information.
- 02:56:03 Mr. Johnson asked to address the Committee. He said he is perplexed by some of the comments made by Director Bucks. He said he wanted to make the point that he is a policy analyst and staff to the Revenue and Transportation Interim

Committee. He said he is trying to do his job and that his requests for information are made so he can do his job. It is not an erroneous request when he asks for information to do his job. He said he wanted to make it clear that he is trying to do the job that is specified in statute and not trying to cause problems for the Department of Revenue.

02:57:07 **Clayton Schenck, Fiscal Analyst, LFD**, said the LFD is committed to work with the Department to resolve the issues. He said the frustration is over the differing legal opinions. LFD's legal counsel differs from the Department's counsel. He believes that the Department is working hard to provide data and has a commitment to work with the LFD. The legal reviews have hindered the LFD's ability to prepare for special session. He said he understands that a new administration has to do its own legal reviews and assessments, but that issues and interpretation of the statute being dealt with now have never come up before. The LFD is very concerned that these issues get resolved. The LFD will work with the Department, for changing the statute to eliminate any ambiguity. If the LFD cannot get that information, it cannot provide the Legislature the information it needs to do its job. When discussing the software if the LFD can get more data and better data without having to go through the Department and without having to go through the huge requests, the LFD can provide even better data in the future. The LFD thinks that is a possibility that the software brings and that is very important to the LFD that it has that access. He said he appreciated the Director's comments that he is committed to, even at a cost to the Department, to work to get the LFD that information.

02:59:54 SEN. ELLIOTT said this has been a problem for years. He said he would like the Department and LFD to work together to develop a policy for the exchange of information and to bring that policy to the Committee. If the policy requires legislation, this Committee will entertain writing the legislation. This is an issue of crucial importance to this committee and to the state. The Committee agreed. SEN. ELLIOTT asked Director Bucks and Mr. Schenck if they would work on a policy. Director Bucks said as a part of the extensive discussion with the LFD is to write a memorandum of understanding to implement standard best practices. The MOU will minimize the disagreement over the issues. There are some issues to be resolved, but Director Bucks said he is resolved to put in writing the terms that govern the exchange of information. The Department intends to write an MOU with every state agency because that is a part of the best practices. It not only ensures that the law is followed, it helps to minimize the disputes. It is a public document and what is required to become law will be discussed with this Committee. Mr. Schenck concurred that the LFD will work with the Department

to resolve this matter. SEN. ELLIOTT said this issue will be on the agenda for the next Committee meeting.

OTHER BUSINESS

03:03:14 Mr. Martin said the next meeting is tentatively scheduled for February 16 and 17, 2006. The Committee agreed to schedule the next meeting for February 16 and 17, 2006.

ADJOURNMENT

03:06:36 With no further business before the Committee, SEN. ELLIOTT adjourned the meeting at 4:03 p.m. The next meeting is scheduled for February 16 and 17, 2006 in Helena.

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