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## Revenue and Transportation Interim Committee

### 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

May 2, 2006

Room 137, State Capitol  
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

An electronic copy of these minutes and the audio recording may be accessed from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side column of the home page, select *Committees*, then *Interim*, and then the appropriate committee.

To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

### **COMMITTEE MEMBERS PRESENT**

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

SEN. GREGORY BARKUS  
SEN. JERRY BLACK  
SEN. SAM KITZENBERG

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

### **MEMBERS EXCUSED**

SEN. KIM GILLAN  
SEN. KEN TOOLE

### **STAFF PRESENT**

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

## AGENDA & VISITORS' LIST

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

## COMMITTEE ACTION

The Revenue and Transportation Committee:

- approved the February 16, 17, 2006, meeting minutes, as written;
- requested a bill draft to allow the RTIC to estimate revenue during a special session; and
- requested a bill draft to address reimbursements for fee in lieu of tax on heavy vehicles.

## CALL TO ORDER AND ROLL CALL

### **PART ONE - TAPE 1 - SIDE A**

00:00:01 SEN. ELLIOTT called the meeting to order. The secretary took roll, Senators Gillan and Toole were excused, all other members were present. The Committee approved the Feb 16 & 17, 2006, meeting minutes as written on a unanimous voice vote.

## CREDIT FOR CONTRIBUTION TO A QUALIFIED ENDOWMENT FUND

00:02:11 **Larry Finch, Administrator, Tax Policy and Research, Department of Revenue (DOR)**, discussed the DOR report on the charitable endowment credit. The report provided the legislative history of the tax credit and included tables illustrating the charitable endowment credit usage through tax year 2004 ([EXHIBIT #1](#)).

00:11:03 SEN. BARKUS asked for a breakdown of the recipients of past donations. Mr. Finch said that the only time that had been done was in 2000 for the years 1997 and 1998.

00:13:55 SEN. BARKUS said that the information would be useful to have because the credit is due to sunset in 2007 and legislators will have to decide whether or not to retain it.

00:15:11 SEN. ELLIOTT asked if the tax credit has served as an incentive for charitable contributions made to endowment funds. Mr. Finch said that it would require a study to determine the impact of the credit on the total amount of contributions made in any given year.

00:16:33 REP. MCALPIN asked if the Governor's Task Force on Charitable Giving is still active. Mr. Finch said yes and asked Aidan Myhre to respond. **Aidan Myhre, representing the Governor's Task Force of Endowed Philanthropy**, said that the Task Force has been in place since 1997 and represents charities across the state. The Task Force monitors this tax credit and is also interested in finding out how much of an incentive it has been for charitable contributions to endowments. The Task Force considers this tax credit a tool for donors, charities, financial planners, and accountants. Ms. Myhre said that the Task Force would provide

whatever information it could to the Committee or would assist with research, should it be needed.

- 00:19:15 REP. LAKE agreed with SEN. BARKUS that the Committee needs to know the impact of this tax credit. He asked if the Task Force has a system for tracking donations. Ms. Myhre said that the Task Force worked with the DOR in the late 1990s to determine who was taking advantage of the tax credit and that there continues to be widespread use of the credit.
- 00:21:41 In response to a question from REP. LAKE, Ms. Myhre said that the purpose of the tax credit is to build long-term permanent wealth that would remain in endowments and that a donation must be a permanent cash gift to qualify as an endowment.
- 00:23:24 REP. WAITSCHIES asked about not allowing carryforward or carryback of the credit. Ms. Myhre said that one of the goals of the Task Force is to encourage taxpayers to make regular charitable contributions and to use the endowment credit as a tax planning tool, rather than making charitable contributions only when a tax break is needed.
- 00:24:48 SEN. ELLIOTT asked Ms. Myrhe to research what organizations are receiving the endowments. Ms. Myrhe agreed to do this.
- 00:26:39 Mr. Finch said that the names of people who make charitable endowment contributions is confidential information but that a list of endowment recipients could be compiled.
- 00:28:32 **Dan Bucks, Director, DOR**, discussed the December 2005 ruling by the DOR regarding the use of the charitable endowment credit for construction of buildings. Director Bucks said that the question of what qualifies for the credit is unclear and that he would like to have it addressed legislatively in the 2007 session. The issue arose when the university system asked if donations intended for buildings on campuses would qualify for the endowment credit. After extensive research, the DOR reluctantly ruled that gifts for buildings are eligible for the credit under certain conditions. Director Bucks said that the ruling placed the DOR in the position of having to determine what an "appropriate investment" was. Director Bucks predicted that because of the DOR ruling, the use of this credit would increase before sunset in 2007 because churches, hospitals, and other institutions may also qualify, which could significantly affect the general fund. He noted that the Governor's Task Force has concerns about the ruling also.
- 00:39:03 REP. WAITSCHIES asked if the ruling states that an endowment can be used directly for building or if a specific fund has to be set up and the income earned from the fund used for a building. Director Bucks explained that a permanent endowment fund has to be set up and that contributions to the fund have to be earmarked for a building.

- 00:40:48 REP. COHENOUR asked if land given to an endowment can be used for future building. Director Bucks said that land can be given but how the land is used or disposed of is the issue. **TAPE 1 - SIDE B**
- 00:42:19 REP. COHENOUR asked Ms. Myrhe to comment. Ms. Myrhe said land can be gifted to an endowment fund. It is up to the recipient to choose how to use the gift. She said that the Task Force is very interested in working with the Committee and the DOR in crafting a solution to this issue and to extend the tax credit.
- 00:44:36 SEN. BARKUS said he thought that the DOR should have better information on what has been given and how it has been expended under this tax credit. Director Bucks explained how income tax forms are processed and said that capturing that data would be very time intensive and labor intensive to do.

#### **HJR 44 STUDY OF TAXATION OF OIL AND NATURAL GAS PROPERTY**

- 00:47:11 **Jeff Martin, Research Analyst, Legislative Services Division (LSD)**, discussed the revised summary of HJR 44 ([EXHIBIT #2](#)):
- introduction and history;
  - profiles of the affected companies;
  - central assessment of property under 15-23-101, MCA;
  - committee discussion points, including suggestions from the DOR regarding HB 569 ([EXHIBIT #3](#));
  - reimbursement of revenue to taxing jurisdictions; and
  - a conclusion.
- 01:12:28 **John Alke, Montana Dakota Utilities**, presented LC8000, a bill draft prepared by the oil and gas industry ([EXHIBIT #4](#)). He also distributed a list of 78 major gas producers in Montana ([EXHIBIT #5](#)). Mr. Alke said that Fidelity Exploration, Omimex, and EnCana are the only companies that are centrally assessed at the 12% tax rate and that all of the other companies on the list are locally assessed and taxed at a 3% tax rate. Mr. Alke said that this is the core issue of the litigation. He said that if the courts rule that the DOR cannot arbitrarily choose who must pay the 12% tax rate, the Department will have a choice of either taxing all companies at a 3% rate or the 12% rate. This possibility is of huge concern to companies operating in Montana. Mr. Alke said that the proposed industry bill is very narrowly focused so as to leave the status quo intact. Mr. Alke said that the bill focuses on production facilities only.

#### **TAPE 2 - SIDE A**

- 01:20:55 **Jerome Anderson, Encore Acquisitions**, spoke in support of LC8000. He said that the proposed legislation would solve many of the problems. Mr. Anderson also said that increased production and Canadian oil has placed a tremendous strain on pipelines in eastern Montana. Pipeline companies need assistance in constructing additional pipeline but if that results in more companies being centrally assessed, the purpose of the legislation would be lost.

01:26:10 **William Duffield, Executive Director, Montana Association of Oil, Gas, & Coal Producing Counties**, said that he has reserved judgment on LC8000 until he could determine its impact on the counties. He said that the Association believes that something must be done but that the proposed legislation contains several loopholes that the Association would make more black and white.

01:27:17 Director Bucks said DOR has not had time to fully evaluate the proposed bill. He listed several items that he thought the Committee should consider regarding LC8000:

- What is the total fiscal impact of LC8000?
- Does the tax policy of providing three years of property tax reimbursement for integrated oil and gas producer pipeline companies fit in legislative priority for use of the general fund?
- After three years, there would be tax increases for other property taxpayers in the affected counties.
- The proposal jeopardizes the use of unit valuation as the proper method of valuing integrated operations that cross county or state boundaries.

Director Bucks said that he took exception to Mr. Alke's remark that the DOR is motivated to find properties that can be taxed at 12% versus 3%. He said that the Department is simply following the law. Director Bucks said that the three companies that are being taxed as centrally assessed companies are different than the other companies on the list ([EXHIBIT #5](#)) and discussed several of the differences.

Director Bucks discussed the DOR's concerns regarding LC8000:

- The use of the term "legal entities" would allow companies to reassign assets among closely held business entities established along county boundaries to change their property tax classification and valuation method, which would result in a major shift in property taxes to other tax payers and in the market value standard not being upheld. Unit valuation is used to prevent taxpayers from manipulating business structure to influence the valuation process.
- Excluding oil and gas wells from unit valuation is arbitrary. Oil and gas wells that are part of an integrated system are properly valued through the unit method. Independent oil and gas wells are best valued locally.
- LC8000, if adopted, would create a precedent for legislation that would allow railroads, electrical generators, utilities, and telecommunication companies to establish closely held companies on county lines to change their property classification and valuation methods.

01:35:29 • The proposal provides neither clarity nor stability in the taxation of integrated oil and gas production and pipeline properties. The ability of companies to change their taxation by changing their business structure would create the potential for continuous disputes and litigation with the State.

- Since April of 2005, the DOR has offered a proposal which would clarify current law, preserve the concept of unit valuation, reduce the potential for litigation, and minimize any tax shifts and fiscal impacts. He distributed copies of the April 13, 2005, Department proposal ([EXHIBIT #6](#)) and a chart of how the definitions would be applied ([EXHIBIT #7](#)).

- 01:37:30 REP. LAKE said that he is concerned about the DOR's application of taxation methods and that his understanding of Montana's tax laws is "like taxation for similar use". He said that a gathering line, for example, should be taxed the same as other gathering lines if the lines are transporting the same product, regardless of who owns the pipeline.
- 01:39:37 Director Bucks said the key distinction is if the gathering line is a part of an integrated system or not. For example, the difference between an oil or gas well that is operated only to get the oil or gas product to a point where another entity takes it to market is valued differently than an oil or gas well that is part of an integrated production and marketing system.
- 01:49:06 SEN. ELLIOTT asked Mr. Alke if the law suit would have been filed if the centrally assessed property tax rate was 3%. Mr. Alke said that there are two separate problems with central assessment: the tax rate and what the Department looks at when establishing the value of the property. Unit valuation allows the state to look beyond its boundaries to determine how it will tax property within the state. Local assessment values and taxes only what is physically located within the state. A shift from local assessment to central assessment has two influences: the tax rate difference and the tax base. SEN. ELLIOTT asked if the valuation of centrally assessed property is too high. Mr. Alke said the dispute is having two different tax rates of 12% versus 3%. What is unique about this situation is that the determination of which method to use (local versus central assessment) determines the tax rate. This is the only Montana property tax law that allows the DOR to administratively determine the value of a property and assess a tax rate based on that assessment.
- 01:56:23 SEN. ELLIOTT asked if Mr. Alke was implying that the DOR is attempting to maximize the property tax returns collected by the state by deciding of which properties to centrally assess. Mr. Alke said the three companies involved in this dispute are the "legacy companies" of the former Montana Power Company. The DOR is trying to preserve the status quo from the past, when these companies were centrally assessed as a part of the MPC. Mr. Alke provided the example of a property that was locally assessed until it was purchased by Fidelity, at which point the DOR began taxing Fidelity's newly acquired property as a centrally assessed property. Mr. Alke asked how the ownership of a well can determine the rate at which it is taxed.
- 01:59:42 SEN. ELLIOTT discussed another scenario: a locally assessed hydroelectric facility is sold to a company that owns centrally assessed hydroelectric facilities. That facility should now be assessed the same as the other facilities because the value has changed as the result of the change in ownership. **TAPE 2 - SIDE B** Mr. Alke said he would agree with the outcome, but not for the reasons stated by

Senator Elliott. The reason the outcome is correct is that the buying entity is a public utility. Central assessment was invented for railroads and public utilities, so the acquiring company, from the beginning, was centrally assessed. Historically, oil and gas production companies have not been public utilities and have never been centrally assessed.

- 02:02:30 REP. MCALPIN asked to have a fiscal note prepared before a decision is made because of the potential fiscal impact on the general fund.
- 02:03:10 Mr. Alke said that LC8000 ([EXHIBIT #4](#)) would amount to about a \$1 million per year reduction in local property taxes. He noted that the fiscal impact for LC8000 was based on the fiscal notes prepared for HB 569 from the 2005 legislative session.
- 02:04:15 Mr. Martin said that his summary report ([EXHIBIT #2](#)) contains the fiscal note estimates (page 8).
- 02:07:34 REP. WAITSCHIES asked Mr. Martin to explain the rationale behind the difference between the two tax rates. Mr. Martin explained that the 1989 Special Session consolidated several different classes of personal property and lowered the tax rate. The rationale was to stimulate business investment within the state. The 12% rate on utilities has not changed and the rationale for that is (class nine property) that a utility's property tax is included in the rate base and passed on to consumers.
- 02:09:19 REP. LAKE said that it is the responsibility of the Legislature to ensure a fair and equitable taxing structure for all taxpayers. Since Montana tax policy seems to continually result in litigation, it should be changed. He suggested making changes to the current policy to be certain that like items, being used for like use, be taxed similarly.
- 02:13:36 SEN. ELLIOTT said that his primary concern is the potential impact on counties and asked if Montana counties were consulted about LC8000. Mr. Duffield said that his association sat in on the working group meetings. SEN. ELLIOTT said that the industry bill provides that reimbursements be phased out in three years and asked Mr. Duffield to comment on LC8000. Mr. Duffield said that he hopes, if there is a decrease in tax rates, that the counties will be reimbursed in some fashion. It is understood that the reimbursements won't last forever, that some counties will be harder hit than others, and that some the hardest hit counties may have to raise taxes. The Association has indicated that it will support LC8000, provided the tax rate change are phased in gradually.
- 02:18:08 Mr. Martin asked the Committee how it wished to proceed regarding HJR 44. He said that there are two distinct positions on how this issue ought to be dealt with and asked if it would be useful to get the stakeholders together to attempt to work out a compromise.

- 02:20:15 REP. COHENOUR agreed that the two proposals are very different. She said that she would like to know what effect that the DOR proposal would have on local governments.
- 02:21:29 SEN. ELLIOTT asked to include the effect on state government also and requested that the same information be prepared for the industry proposal as well.
- 02:21:43 Mr. Martin clarified that the DOR proposal contained three different tax scenarios. REP. COHENOUR said that two of the proposals offered by the DOR would not change the tax rate, that there is a rationale for keeping the tax rate at 12%, and that she is not in favor of changing it.
- 02:22:42 SEN. ELLIOTT asked if the Committee wished to continue discussion of the issue at the June meeting in order to allow members time to consider the all of the proposals. The Committee agreed that it would like to do that.
- REP. WAITSCHIES asked Mr Alke to comment on a proposal that would place pipelines in the same class as transmission lines and taxing both at 6%. Mr. Alke said that he would not support reclassifying property because of the potential for a huge fiscal impact. He said that there are at least 20 pipeline companies that are satisfied being centrally assessed and if the tax rate was lowered for those companies, the fiscal impact would be very significant.
- 02:24:44 REP WAITSCHIES said that taxes should be fair and that he gathered from Mr. Alke's statements that Mr. Alke thinks that the current rates of 3% and 12% are unfair. Mr. Alke said that applying different rates to gas producers is not only unfair but is illegal discrimination. Reclassifying and adjusting the tax rate for pipeline company property is a new matter, which has never been raised as an issue.
- 02:25:50 SEN. ELLIOTT said that the discussion will continue at the June meeting. He asked all involved parties submit information outlining their positions and that alternate suggestions were also welcome.
- 02:26:16 REP. MCALPIN asked that the DOR provide more information on whether the proposals threaten the unit valuation system.

**COMMITTEE CONSIDERATION OF POTENTIAL BILL DRAFTS FOR CONSIDERATION BY THE 2007 LEGISLATURE**

- 02:26:55 Mr. Martin discussed a memo on possible committee bill draft requests ([EXHIBIT #8](#)). He discussed a proposal to allow RTIC to estimate revenue during a special session (pages 1 & 2, [EXHIBIT #8](#)).
- 02:34:10 REP. MORGAN said that the question needs to be clarified in statute.
- 02:35:55 REP. LAKE **moved** to request a bill draft for consideration by the 2007 Legislature. The **motion passed** on a unanimous voice vote.



- 02:36:32 Mr. Martin discussed the reimbursement for fee in lieu of tax on heavy vehicles and explained the possible solutions (pages 2 & 3 of [EXHIBIT #8](#)).  
**TAPE 3 - SIDE A**
- 02:41:48 **Steve Austin, Administrator, Citizen Services and Resource Management, DOR**, said that the DOR planned to proceed with a bill draft request to resolve the problems but is interested in hearing input from the Committee.
- 02:42:46 **Barry "Spook" Stang, Executive Vice President, Montana Motor Carriers**, said that his association would support the proposed bill so long as the tax rate was not changed.
- 02:43:40 SEN. BARKUS asked if the fee applies to large motor coaches. Mr. Martin said that there is a separate fee for motor homes.
- 02:44:09 REP. WAITSCHIES **moved** to draft a committee bill to resolve the reimbursement for fee in lieu of taxes issue. The **motion passed** on a unanimous voice vote.
- 02:45:58 SEN. ELLIOTT said that the issue of motor home fees is causing problems in several counties and would be on the June meeting agenda.

## **PART TWO**

### **MONTANA DEPARTMENT OF TRANSPORTATION REPORT**

#### **"4 for 2" Highway 2 Association**

- 00:00:01 SEN. KITZENBERG reviewed the longstanding problems that led him to introduce legislation to deal with Highway 2. He said the lack of infrastructure in northeastern Montana has critically hurt the economic well being of many communities and that converting Highway 2 to a four lane highway would positively impact approximately 25% of Montana citizens. He said that North Dakota is dealing with a similar situation and that Montana must act quickly in order to connect with the North Dakota project. He said that he hoped that the first section of the four lane highway would extend from the Montana - North Dakota border to Culbertson, Montana.
- SEN. KITZENBERG invited the Committee to join a trip along Highway 2. He said that Governor Schweitzer, the governor from North Dakota, and the premiere from Saskatchewan planned to speak to participants at the end of the trip. SEN. KITZENBERG distributed a list of points in support of creating a four lane highway on Highway 2 ([EXHIBIT #9](#)).
- 00:23:25 **Bob Sivertsen, President, "4 for 2" Highway 2 Association**, discussed several points for committee consideration:
- The main goal of the "4 for2" Highway 2 Association is to enhance economic development with an adequate transportation system.
  - An "adequate transportation system" is necessary because research indicates that 80% of businesses locate in or near communities that have at least a four lane highway.

- Interstate 94 diverted a great deal of traffic from northern Montana and was the initial step of the economic demise of the area.
- The amendment to SB 3 that restricted construction funding for the expansion of Highway 2 to federal funds only created a double standard for funding because other regions of Montana do not have funding restrictions.
- The EIS from Havre to Fort Belknap turned out to be flawed and incomplete, which further complicated the issue.
- The Association plans to work with Governor Schweitzer to advance economic development in northern Montana. The Governor's support has given this area a renewed hope.
- Alberta, Canada, is experiencing a very strong economy and exported \$97.5 billion, \$20 billion of which was manufactured goods. Economic activity in Montana directly south of the border is vastly different, despite similar climate conditions and similar businesses. **TAPE 3 - SIDE B**
- The Highway 2 Association is working to pressure Congress to modify the passport law before the January 1, 2008, effective date. All of the border provinces in Canada, as well as the Canadian Prime Minister, Steven Harper, also support this effort.
- The Governor has reinstated a committee devoted to improving relations with the Canadian provinces that border Montana.

00:37:52 SEN. BARKUS asked why the Highway 2 road trip starts in East Glacier and not in Libby. SEN. KITZENBERG said because it is not possible to build a four lane highway through Glacier Park. He said that the Association supports building a four lane highway from Kalispell to Libby and that there is much support in that area for "4 for 2".

00:39:30 REP. WAITSCHIES asked how many miles of Highway 2 is on Indian Reservations and under the responsibility of the federal government. SEN. KITZENBERG said that Highway 2 goes through three Indian Reservations and that he did not have an exact number of miles but would research it.

00:40:13 REP. MORGAN said that eastern Montana prospered during the oil boom of the 1970s and that the decline in eastern Montana began when the oil boom was over. Another oil boom is occurring so that excuse can't be used anymore. She disagreed with SEN. KITZENBERG that the only way any economic development could occur in eastern Montana is if the four lane highway is built. Her opinion is that economic growth is more dependent on what is going on in the economy. SEN. KITZENBERG agreed that there has been limited growth, as is occurring in Richland County. He said that there are many other factors at play, such as decreased railroad activity, the detrimental effects of CRP, and drought.

00:44:56 REP. MORGAN said that the road between Billings and Great Falls has much more traffic and could easily be a four lane road as well. SEN. KITZENBERG said that there are many needs in the state and pointed out that much of the money that has been used for road projects in the state are funds from delayed Highway 2 projects.

## Highway Traffic Safety Report

- 00:49:25 **Jim Lynch, Director, Montana Department of Transportation, (MDT),** presented Montana Highway Safety data ([EXHIBIT #10](#)). He discussed statistics for the years 2001-2005 relating to:
- number of vehicles per crash and number of fatalities;
  - fatalities by roadway classification;
  - fatalities per 10 miles;
  - nonscientific speed limits on Montana Highway 200;
  - nonscientific speed limits on US Highway 93;
  - nonscientific speed limits on S-503 Foy's Lake;
  - scientific speed limits on S 201 - Fairview West;
  - scientific speed limits on Montana Highway 39;
  - scientific speed limits on US Highway 191;
  - speed limit changes on US Highway 191; **TAPE 4 - SIDE A**
  - Montana Highway Patrol enforcement activity on US Highway 191;
  - open container citations filed from October 1, 2005, through May 1, 2006, in Justice Courts;
  - open container citations filed based upon local ordinances for 2005 and 2006;
  - 2000 - 2004 crash statistics on the Rockvale to Laurel highway segment ([EXHIBIT #11](#)); and
  - 2000 - 2004 crash statistics on the Red Lodge to Rockvale highway segment.
- 00:51:52 SEN. ELLIOTT asked if Director Lynch could give the Committee an idea of the number of the one, two, and three vehicles crashes in addition to the total number of fatalities. Director Lynch said that he would provide that information.
- 00:52:24 REP. WAITSCHIES asked about the alcohol-related accident rate. Director Lynch said that alcohol related fatalities for the last three years numbered between 48% and 50% of all fatalities.
- 01:00:29 REP MORGAN asked, regarding US 93 - Elmo (Page 5 [EXHIBIT #10](#)), how changes in the speed limit were determined. Director Lynch said that speed studies were done and that the county commissioners and tribal leaders also requested that changes be made in the speed limit. The MDT took both factors into consideration when establishing the speed limits.
- 01:03:11 SEN. BARKUS asked, regarding S-503 Foy's Lake (Page 6, [EXHIBIT #10](#)), what prompted the move to make all of Highway 93 have a 65 mph speed limit. SEN. ELLIOTT said that the 1999 Legislature mandated that change.
- 01:04:25 SEN. BARKUS asked who has the authority to make changes in the Highway 93 speed limit now - the Legislature or the Transportation Commission. Director Lynch said if the Flathead County and Lake County Commissioners request a change to increase the speed limit, a speed study would be done. The results and the request of the County Commissioners would be presented to the Transportation Commission, who would be responsible for making the decision.

- 01:05:48 REP. LAKE said he believes the 65 mph speed limit is in statute because in the 2003 Legislative Session, legislators changed a statute to increase the speed limit north of Whitefish portion to 70 mph. It was a statutory change and not a Transportation Commission decision, and legislation would be required to change it. Director Lynch said Rep. Lake was correct because the Legislature singled out Highway 93.
- 01:20:53 REP. LAKE asked if there is a possibility that the schedule for improvements to Highway 93 be moved up. Director Lynch explained that the MDT has to look at the entire state when designing roadways and deciding where the resources can be best utilized. Every community has an important project and it is very difficult for the MDT to balance them out. The statutory requirement regarding equal spending in financial districts also affects planning.
- 01:25:28 REP. MORGAN asked if safety is the first and foremost factor in determining how highway projects are prioritized. Director Lynch said that safety is a factor but not the most important one.

#### **CITIZEN PROPOSAL TO CONSIDER CHANGES TO STATE BEVERAGE LAW**

- 01:29:47 **Jim Glantz, Kalispell**, asked the Committee to consider requesting a resolution for an interim study of the alcoholic beverages code under Title 16, MCA, and submitted a letter listing his reasons why he and others feel this is necessary ([EXHIBIT #12](#)).
- 01:36:17 SEN. BARKUS said he recently returned from California and observed that there is a tremendous difference between the prices that Californians and Montanans pay for alcohol products.
- 01:45:54 SEN. BARKUS asked what the cost of operating the state liquor warehouse and if net figures were available. **Shauna Helfert, Administrator of the Liquor Division, DOR**, said that the Liquor Division:
- took in \$75 million in gross sales;
  - had \$66 million after commissions;
  - that the cost to run the warehouse was about \$2 million; and
  - after taxes and cost of goods were taken out, approximately \$6 million was deposited in the general fund.
- 01:48:10 REP. LAKE asked that copies of the DOR Liquor Division Annual Report be provided to Committee members.
- 01:48:53 SEN. ELLIOTT said that he thought that an interim study of Montana's liquor system was a worthwhile study and would recommend that a Committee bill be drafted to that effect. [Discussion postponed. See 03:18:50] **TAPE 4 - SIDE B**

#### **ACCESS TO TAX AND REVENUE INFORMATION**

##### **Update on Memorandum of Understanding Between Legislative Fiscal Division and the Department of Revenue**

- 02:04:41 **Terry Johnson, Principal Fiscal Analyst, Legislative Fiscal Division (LFD), Terry Johnson, Principal Fiscal Analyst, LFD**, said that a Memorandum of Understanding (MOU) has been signed by DOR Director Dan Bucks, Clayton Schenck, Fiscal Analyst, LFD, and their legal counsel, and that the MOU is being implemented immediately. A real advantage of the MOU is the mechanism to officially request specific taxpayer information. The MOU also addresses specific issues with nonspecific taxpayer information and also gives the LFD the latitude to contact various people in the DOR for that information. The MOU also provides access to information on the DOR computer system, which will be extremely valuable to the LFD staff for research purposes and for preparing revenue estimates. The DOR has committed to provide access to "data cube" information for particular tax types.
- 02:08:53 **Director Dan Bucks, Department of Revenue**, said MOUs should have been created within state government decades ago. It is the standard of practice around the nation for tax agencies. DOR plans to sign MOUs with every department it exchanges information with.
- 02:11:35 REP. LAKE asked why the Office of Budget and Program Planning (OBPP) was not included in the MOU between the DOR and the LFD. Director Bucks said that an MOU will be signed with the OBPP.

#### **Bill Draft to Revise and Clarify Laws on Access to Tax Information**

- Lee Heiman, Staff Attorney, LSD**, reviewed LC0043, a bill draft to revise and clarify laws on access to tax information ([EXHIBIT #13](#)). He said that the MOU has a six-year life. The parties will meet after every session to discuss if any amendments are needed for the MOU, based upon changes made in the legislative session.
- SEN. ELLIOTT asked if the bill draft mirrors the MOU. Mr. Heiman said that it does not. LC0043 addresses some areas in need of clean up and clarification, particularly where federal law is concerned.
- 02:18:56 REP. WAITSCHIES asked if information disclosed through gross negligence is covered. Mr. Heiman said that gross negligence is not covered and that the practices and protocols contained in the MOU should prevent gross negligence from occurring. Mr. Heiman said that negligence is not a crime but that an employee committing negligence is subject to discipline.
- 02:20:20 SEN. BARKUS asked about changes in Section 4(4)(b). Mr. Heiman explained that the change was made because the fiscal analyst will no longer have to go to the DOR to view information. SEN. BARKUS said that there is ambiguity in the language and suggested that it be clarified by using "obtained by" in place of "furnished to".
- 02:22:09 Director Bucks provided two technical comments on LC0043 and discussed a policy issue:
- Section 1(1) regarding federal confidentiality standards: Director Bucks said that LC0043 does address barriers that have prevented information

- from being provided to the LFD in the past but said additional clarification is needed. He suggested adding "including but not limited to federal return information reflected on a state return" at the end of Section 1(1) (Page 1, [EXHIBIT #13](#)).
- 02:24:21 • Section 2(1) (Page 2, [EXHIBIT #13](#)): Director Bucks objected to language allowing legislative fiscal analysts to obtain copies of tax records that could be taken out of the department. He asked that the language be changed to reflect that fiscal analysts may only investigate and examine these records on DOR premises. He said that the Capitol is a public building and is not a secure area. He said that it was his understanding that there was consensus to make the changes. Director Bucks said that an inspection room would be maintained in DOR where the LFD would be able to examine any document it is authorized to see.
- 02:26:55 • Section 2(3) (Page 2, [EXHIBIT #13](#)): Director Bucks expressed great concern about access to individual income tax information in subsection (3). He said that the Economic Affairs Interim Committee has asked for a comprehensive inventory of how state agencies uses social security numbers as a part of its identity theft study. That committee's concern, combined with the strong individual right of privacy provision in the Montana Constitution, is why the DOR would like to have more time to discuss striking this language. Director Bucks said that he has strong concerns that the more information is allowed to be circulated, the greater chance there is for error or accidental disclosure.
- 02:31:51 REP. MCALPIN said, in reference to Section 1(3), that the language regarding punishment for violations of LC0043 seemed like overkill and that any employee of any state agency who violated state law or policy would likely have cause for termination anyway.
- 02:33:17 SEN. BARKUS asked for clarification of Section 5(6) about the Budget Director obtaining copies of individual tax returns. Director Bucks said that under current law, neither the Budget Director nor the LFD has access to individual income tax records and that the language added in Section 5(6) was added at the request of the LFD. He said that the DOR is concerned about the appropriateness of this access and would like more time to consider this issue.
- 02:35:32 SEN. ELLIOTT asked if the LFD and the Budget Office have access to corporate income tax returns. Director Bucks said that both have access to corporate returns. He said that the DOR's position is that current law is unclear on access to corporate tax information. However, DOR will continue current practice of providing corporation tax information until the end of the 2007 Legislative Session. SEN. ELLIOTT asked if LC0043 clarifies the language to the satisfaction of the DOR. Director Bucks said yes, except for providing access to and examination of confidential information within a secure area of the DOR.
- 02:38:57 SEN. ELLIOTT asked, if it is appropriate for the LFD to have access to corporate tax return information, is it appropriate that the LFD should have access to individual tax return information also. Director Bucks said access to individual income tax return information should be given great consideration, because in

the past, the Legislature has clearly stated that names, addresses, social security numbers were not to be provided to either the Budget Office or to the LFD. However, LC0043 will clear up the corporate ambiguity but the individual income tax information is something the Legislature has said would not be provided. The Montana Supreme Court has also made a distinction between the right of privacy of individuals and corporations. **TAPE 5 - SIDE A**

- 02:41:43 SEN. ELLIOTT said that social security numbers were never meant to be used for identification purposes but are widely used. Because of that, the argument regarding the use social security numbers may not be valid because that information already exists in so many places. He asked Terry Johnson to comment on the necessity of being able to examine individual income tax information.
- 02:42:35 Mr. Johnson said that the LFD needs access to individual income tax information in order to provide accurate revenue estimates to the Legislature. He related an example from several years ago when a situation involving a large individual taxpayer caused revenue estimates to be incorrect. If the LFD had had access to the additional information, the situation could have been prevented. He said that having information on individual and corporate tax returns would make revenue estimates much more accurate.
- 02:46:22 SEN. ELLIOTT asked if having identifier information on tax returns would be beneficial. Mr. Johnson said that having that information would be of great benefit to the LFD.
- 02:46:56 SEN. ELLIOTT asked for comment on that from the DOR. Director Bucks said that LC0043 as drafted, will provide information on all taxpayers in Montana. He said that adding a state identifier to returns will add a cost and that there may be another method for getting this information. He said that DOR is committed to finding a way to balance the constitutional right to privacy with the needs of the LFD. He noted that before the 2005 Special Session, an anomaly analysis was conducted to see if there were returns with unusual income figures that would skew a revenue estimate. Even though no anomalies were found, Director Bucks said they would have been examined if they had occurred.
- 02:51:09 SEN. BARKUS said revenue estimating is important, but individual income tax return information is not essential to the revenue estimating process.
- 2:52:47 REP. MORGAN asked why a name and social security number of a taxpayer is needed. Mr. Johnson said that identifier information is needed to track a taxpayer's return from year to year to determine whether a tax payment was an anomaly. Mr. Johnson agreed with Director Bucks that taxpayer information is not necessary on all Montana taxpayers, only for the large taxpayers because it is the large taxpayers who most heavily influence the revenue estimates.
- 02:55:22 REP. MORGAN suggested that a tax return be given a code number at the point it is entered into the system and be segregated from year to year. She said that would give the LFD the information if needs without using names and social

security numbers. Director Bucks said that he would evaluate that option as a solution. He agreed that there are certain circumstances in which it is important to know specific information, but that it usually is not needed.

02:59:15 REP. COHENOUR said that during both the 2003 and the 2005 Legislative Sessions, it was very difficult for the LFD to obtain necessary information requested by legislative committees from the DOR. The Revenue and Transportation Committee and the Legislative Finance Committee have also experienced problems in obtaining information from the DOR. The LFD requested assistance to rectify this situation. Mr. Johnson said that the purpose of LC 0043 is to allow the LFD to meet the demands of the legislative requests for information and to have the ability to make accurate revenue estimates.

03:07:21 REP. COHENOUR asked if the MOU and LC0043, if implemented, would help the legislative fiscal analysts do their jobs. Mr. Johnson said both would help. He said that since there are concerns from the administration regarding corporate tax and individual tax return information, he is willing to work to find a compromise that will satisfy all concerned.

03:08:33 REP. LAKE recommended giving more time to work on the proposed bill draft. He asked that copies of the finished bill draft be provided to Committee members at least one week prior to the June meeting so that all members would have an opportunity to review it.

03:09:59 REP. COHENOUR requested that the Economic Affairs Committee provide information to the RTIC on what the goals and objectives of its identity theft study and an analysis of how the study could affect LC0043 and the needs of the LFD and Budget Office.

#### **OTHER BUSINESS**

03:12:10 Mr. Martin said that the next meeting is tentatively scheduled for June 29 and 30. He discussed the agenda items for the June meeting:

- review proposed legislation by the DOR and MDT;
- reappraisal report on agricultural lands, residential and commercial property, and forest lands;
- revenue update from the LFD;
- HJR 44 study discussion;
- review bill drafts requested by the Committee;
- a discussion of triple trailer length;
- continued discussion of the access to tax information and LC0043;
- MDT and DOR reports;
- the registration of motor homes; and
- an update from the Economic Affairs Committee regarding its identity theft study.

Mr. Martin recommended a two-day meeting because of the many agenda items that will have to be dealt with by the committee members.

03:18:50 SEN. BARKUS asked to act on Mr. Glantz's request to conduct an interim study of alcoholic beverage laws. Mr. Martin said that copies of the executive summary



of *Montana's Liquor License Quota System, a report to the 47th Legislature*, were in the meeting folders and that 1979 was the last time this issue had been studied by the Legislature ([EXHIBIT #14](#)).

03:20:29 REP. WAITSCHIES asked that any proposed study be limited to the issues of concern discussed by Mr. Glantz and did not support the idea of a full-blown study resolution.

03:20:57 REP. LAKE asked to defer a decision on a study resolution to the June meeting so that the current statute could be reviewed by Committee members.

### **ADJOURNMENT**

03:22:19 With no further business before the Committee, SEN. ELLIOTT adjourned the meeting at 4:33 p.m. The next meeting of the Revenue and Transportation Committee is scheduled for June 29 & 30, 2006.

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