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MINUTES

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

Organizational Meeting
Room 137, State Capitol
June 18, 2001

COMMITTEE MEMBERS PRESENT

Rep. Ron Erickson, Chair
Sen. Wm. E. "Bill" Glaser, Vice Chair
Sen. Jon Ellingson
Sen. Vicki Cocchiarella
Sen. Bob DePratu
Sen. Glen Roush
Sen. Mike Taylor
Rep. Ronald Devlin
Rep. Jesse Laslovich
Rep. Robert R. Story, Jr.

COMMITTEE MEMBERS EXCUSED

Rep. Roger Sommerville
Rep. Christine Kaufmann

STAFF PRESENT

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

VISITORS AND AGENDA

Visitors' list (ATTACHMENT #1)

Agenda (ATTACHMENT #2)

COMMITTEE ACTION

- Elected Rep. Erickson Chairman
- Elected Sen. Glaser Vice Chairman

CALL TO ORDER AND ROLL CALL

The meeting was called to order by Senior Senator Glaser at 10:45 a.m. Roll call was taken; Representatives Somerville and Kaufmann were excused. (ATTACHMENT #3)

The morning portion of the meeting was held in conjunction with the Legislative Finance Committee. The Committees reviewed the fiscal report for the 2003 biennium.

ELECTION OF OFFICERS

Sen. Ellingson nominated Rep. Erickson as Chair by a unanimous ballot. Motion passed.
Sen. Taylor nominated Sen. Glaser as Vice Chair by a unanimous ballot. Motion passed.

COMMITTEE RESPONSIBILITIES/PROPOSED WORK PLAN

Leanne Kurtz, Research Analyst, Legislative Services Division presented a summary of the Committee's statutory duties and other functions and provided an overview of the proposed work plan and meeting dates. (EXHIBITS #1 and #2 respectively)

The Committee made the following additions to the proposed work plan:

- a report on House Bill No. 124 (local government oversight);
- a report from the Environmental Quality Council on fire suppression funding without it being a supplemental;
- monitor Strobe v. State (a school funding lawsuit on property tax revenue);
- have staff check with the Department of Revenue as to when it would have the information regarding the tax credit for planned gifts made to qualified charitable endowment funds (meetings to be held in April 2002 as well as the proposed February 2002 meeting) and intangible personal property exempt from property taxation;
- up to three reports by the Department of Revenue on the progress of developing the reappraisal cycle;
- an update on the telecommunication tax;
- an overview of the statutory apportionment of the highway funds;
- a report from the Department of Transportation regarding the relationship between the highway special revenue account, the letting of contracts, and expenditures;
- a report from WEFA (Whorton Econometrics) and Professor Paul Polzin regarding national economic trends;
- review the possibility of consolidating local government bonding limitation laws; and

- full Committee review of the constitutional issues related to the property taxation of agricultural versus nonagricultural land.

Lee Heiman, Staff Attorney, Legislative Services Division, outlined the Committee's powers related to administrative rules and provided two examples of administrative rules. (EXHIBITS #3 and #4 respectively)

Sen. Cocchiarella asked if the Committee had the legislative power to stop the implementation of an agency rule. Mr. Heiman said that the Committee has the ability to review the policies of the agencies. However, only the Legislature as a whole has the power to overturn an administrative rule. Sen. Cocchiarella expressed her concern about usurping legislative power to Executive Branch agencies through the rulemaking process. As a member of the Legislative Council, she will request that it review this issue.

Rep. Story requested that staff prepare a short synopsis explaining an agency rule if the rule is contentious and send it to the Committee.

DEPARTMENT OF TRANSPORTATION

Jim Currie, Deputy Director, Department of Transportation, postponed the introductions of the Department's leadership staff until Director Dave Galt could be present.

Mr. Currie clarified that the spending authority for debt service on bonds is statutory. However, authority to spend the proceeds needs legislative approval.

He provided a copy of a long-range planning document for the highway state special revenue fund. (EXHIBIT #5) He said that the Department has had some problems with the highway state special revenue fund and is responsible for managing it. The primary sources of revenue for the highway state special revenue fund are G.V.W. fees, gas and diesel taxes, the noxious weed trust, and a number of other revenues. Expenditures include expenses other than those of the Department, such as the statutory appropriation allocated to cities and counties, debt service on bonds, equipment contributed capital, the Highway Patrol base amount and pay plan, the Department of Fish, Wildlife, and Parks, and the Department's Architectural and Engineering Division.
Mr. Currie said that there are also statutory distributions allocated from gas tax revenue collected by the Department that are associated with off-road uses, such as motorboats and snowmobiles. This revenue is allocated to the Department of Fish, Wildlife, and Parks for administration purposes.

Referring to Exhibit #5, Mr. Currie said that all funds through fiscal year 2000 are actual figures; FY 2001figures are based on the Department's current revenue and third quarter expenditure projections; FY 2002 and 2003 figures are based on the legislative budget; and FY 2004, 2005, and 2006 figures are Department forecasts with a small inflation factor added. He added that the state will spend more funds from the highway special revenue fund than it is bringing in through FY 2003. At the end of FY 2003, there will be a negative working capital balance of approximately $4 million. Steps are being taken on a program-to-program basis to mitigate the shortfall, such as an indirect-cost plan that allows the Department to charge a portion of its overhead to federal aid.

Sen. DePratu asked if the higher cost of fuel could lend itself to cheating--the use of off-road fuel in vehicles which contributes to the drop in the diesel tax. Mr. Currie said that the Department conducted a survey on the level of cheating at dyed-diesel pumps. It was found to be 6% to 8%. Legislation passed requires a more stringent requirement for retailers to mark the dyed-diesel pumps. However, the Department is concerned about the marquees along the highway that are advertising dyed diesel and who the retailers are targeting.

Rep. Devlin asked if the $1.6 million loss in the motor carrier services was due to trucks not being registered within the state. Mr. Currie said that because of the current economic conditions, there is less truck traffic in Montana. There have also been problems at the Haugen scale that are forcing the Department to catch both lanes of traffic on one scale.

Sen. Cocchiarella asked if the Department was able to review the Legislative Fiscal Division's projections for the Department's shortfall. Mr. Currie said no, adding that it is not unusual to have significant differences in the LFD's and Department's figures. Typically, the LFD takes the position that every dollar appropriated is available and is going to be spent while the Department does not.

Greg DeWitt, Legislative Fiscal Division, said that the LFD is typically more pessimistic and goes with full appropriation versus estimation of expenditures. The LFD and the Department are meeting to adopt a methodology that provides the Legislature with its needs and that does not show a huge difference between the figures.

Rep. Story requested information on the percentage of revenue that the Department is collecting on fines at the scales and whether the collections are due to overweight or safety violations. Mr. Currie said that the Department instituted the STARS program that allows it to weigh trucks in locations where weight scales are unavailable to get a feel for how the trucks are running when there is an enforcement present versus when there in no enforcement present.

Mr. Currie provided a copy of the obligation picture as of November 2000. (EXHIBIT #6) He said that toward the end of the 1999 Session, there was concern by different groups as to whether the Department was able to use the additional federal obligation authority it received under TEA-21. TEA-21 resulted in a 60% increase in federal funding to the state. Under the former ISTEA plan, Montana received approximately $150 million. When TEA-21 was enacted, the Department received approximately $260 million a year in federal obligation authority that included flexibility with respect to the fact that states were going to have some difficulty getting projects “out the door”. The Department undertook a concerted effort to obligate all available federal funding in the years that it was available. In FY 2001, the Department will have all federal authority obligated by the end of August. He added that the Department is working under the assumption that TEA-21 will be reauthorized and that Montana will retain its current share of the federal trust fund which is 1% or $300 million.

Rep. Story asked where the Department stands on the spending side. Mr. Currie said that when TEA-21 was enacted, the Department was concerned about the ability of its contracting community to keep up with the workload. Currently, the Department has $140 million in contracts outstanding where the work has yet to be completed.

DEPARTMENT OF REVENUE

Kurt Alme, Director, Department of Revenue, introduced his leadership team and provided an overview of the Department, the CVR structure, legislative implementation, HB 124 implementation, federal tax changes, a SOA status report, and a POINTS status report as well as a report regarding the HB 124, SB 339, SB 176, and SB 144 informational meetings. (EXHIBITS #7 and #8 respectively)

Referring to the Department’s implementation of HB 124, Sen. Ellingson asked what it was that would lead the Department to conclude that the 3% growth rate in entitlement shares was a drafting error. Mr. Alme said that the evidence points to the parties involved in the discussions and the testimony from the Free Conference Committee where the amendment from 3% to 2.3% was made for counties and 2.65% from 3% for consolidated governments. The percentage changes were never made when HB 124 was voted on in the Legislature resulting in the 3% growth rate being left in the bill. The Department will pay counties and local governments at the 3% rate until the rates are modified by the Legislature.

Rep. Story said that HB 124 contained two growth rates. One was a flat figure 2.3%, 2.65%, and 3.0/5 to get through the first biennium and the second was a calculation of the formula that determines the growth factor. When the Legislature determined the growth rate percentages correct, it failed to include them in the bill.

Mr. Heiman added that the correct percentages came in after the first biennium. It was the first biennium that stated the 3%. It was a misunderstanding of when the 2.3% and the 2.65% were intended to kick in--at the time HB 124 passed or two years down the road.

Sen. Taylor asked how much more revenue does the error mean to counties and local governments. Mr. Alme said approximately $534,000 over the biennium.

Sen. Ellingson asked if the Department could find out what the legislative intent was to try and resolve the sufficient ambiguities contained in HB 124. Mr. Alme said that the law is the law, and if it is clear on its face, that is the way it needs to be determined. For example, the Department feels that the 3% growth rate in entitlement shares is very clear. However, the Department can rely on legislative history to resolve some of the ambiguities.

Referring to the federal tax changes, Sen. Taylor asked what the net result would be of the $600 rate reduction credit for tax year 2001 for married couples. Mr. Alme said if a couple is in the 11% tax bracket, it would be $66 (11% of $600). The maximum for a household is $66 and could go as low as $6 (2% of $300) for single people who are usually in the lowest tax bracket and only if they itemize. If people do not itemize on their state tax returns, there would be no impact.

Sen. Ellingson said that even though it will take until 2010 to eliminate the estate tax, the federal government has gone ahead and eliminated the state credit immediately. He asked if the state's share is reinstated in the year 2011. Mr. Alme was unsure.

Rep. Erickson requested a preliminary analysis of the estate tax for the biennium at the Committee's September meeting. Mr. Alme said that the Department has not adopted a timeframe for completing the analysis. One concern is the model that was used and the impact that it will have.

Referring to the report on the wage-based statements of account (SOA) and the POINTS status report , Sen. Taylor asked (1) if the state's procurement system was used to hire the company used in Phase I of the POINTS system; (2) what was the cost incurred by the Department to salvage the POINTS system; (3) would there come a point when the program would be scrapped; and (4) at what cost was the system purchased. Mr. Alme said that the Department went through the standard RFP process and it was awarded to Unisys (a global information technology consulting company). **Jeff Miller, Department of Revenue**, said that the procurement system allows agency flexibility in what weight they will assign to price. The weight assigned to the POINTS system was 40%. In answer to question number (2), Mr. Alme said that the Department has not broken out the costs, such as routine maintenance versus extraordinary work, associated with the POINTS system and it has crossed his mind to scrap the system and start over. He said that since he became the Director of the Department, the POINTS system has dominated what the Department employees have been doing. However, after an exhaustive internal review, it concluded that going back was not an option because it would be more costly and more disruptive to employees. Sen. Taylor asked if an audit had been conducted on the POINTS system. Mr. Alme said no, but that one has been requested.

Sen. Ellingson asked if the Department was depending upon its own software people or were Unisys employees being used to fix the POINTS system defects and can the Department receive any reimbursement from Unisys. Mr. Alme said that the Department is not using any Unisys personnel to fix the defects in Phase I of the POINTS system. It is being handled internally with local contractors. After POINTS was brought online in December of 2000, there was a warranty period where Unisys was to provide a certain number of programmers to help. Because of the problems with the system, the warranty was extended. During the Department "blitz" effort at the end of last year, Unisys employees were hired to help with the "blitz" (throwing a lot of people where the problem is). He added that the Department's preliminary review of the contract suggests that it cannot get any reimbursement from Unisys for Phase I of the POINTS system. As for Phase II, Unisys is doing the work and the Department can order them off the project at any time with the understanding that it will be paid through that date and the Department would have no insurance that the work that they had done was any good.

Rep. Erickson said that during the Session, the House Taxation Committee heard testimony regarding the use of dynamic modeling instead of static modeling for revenue estimating. He ask if the Department were going forward with dynamic modeling. Mr. Alme said he was interested in moving forward with dynamic modeling, taking into account the change in the law upon people's behavior instead of assuming the same behavior will occur no matter what the tax rate is. However, the Department has not pursued the issue to date. Rep. Erickson requested that the Committee receive a further analysis from Larry Finch, Department of Revenue at its next meeting regarding quarterly income tax payments over a series of years to help the Committee in its revenue estimating model. Rep. Erickson said that several legislative members expressed their concern with "triggers". The House Taxation Committee was shown data showing how much possible revenue loss there may be when the “trigger” was hit for Senate Bill No. 200, for example. He requested that the analyses received during the Session would be continued and he also requested information on how the other states handle “triggers”.

Rep. Devlin asked if the Department has implemented the legislation that allows people to pay their taxes with credit cards. **Neil Peterson, Department of Revenue**, said that the Department is currently in the process of composing its work plan to implement the legislation and it must work closely with the Department of Administration to get access to the state’s portal for the use of credit cards. Rep. Devlin asked if a bid was going to be let to handle the state’s account or credit card system. Mr. Peterson was unsure, but the Department currently has a contract for 1-stop licensing for processing credit card transaction. Rather than get a separate contract, it would like to build on what it has with the Department of Administration.

PUBLIC COMMENT

Brian Smith, President, Montana State Brewer’s Association, provided written comments about the rulemaking process by the Department of Revenue regarding MAR Notices 42-2-662 and 42-2-672--suitability of on-premise retailer licenses. (EXHIBIT #9)

Sen. Taylor asked what Mr. Smith wanted the Committee to do regarding the rules. Mr. Smith requested that the Committee review the rules, and if it were found that the Department went beyond its scope in implementing the rules, he asked that the Committee request the Department to reconsider the rules and start over. Sen. Taylor asked for a response from the Department regarding the rules. Mr. Alme said that MAPA does not require an agency to send a copy of the rules to the impacted parties ahead of time and there is no formal process for, in essence, for a pre-notice notice, although the Department does try. Internally, it did not get a copy of the rules to the right people.

Sen. Ellingson suggested that the rules be referred to Mr. Heiman to provide the Committee with an opinion as to whether the rules exceed the scope of the statute or are procedurally defective. Mr. Heiman will conduct an analysis of the rules, give both parties a copy of his opinion, and report back to the Committee at the next meeting.

Sen. Cocchiarella asked at what stage in the rulemaking process are the rules that Mr. Smith is concerned about. Mr. Smith said that although the Association has given its input on the rules, there is no discussion with the Department. The Department then has the choice of amending the rules or publishing them for adoption as originally proposed. Ten days after they are filed with the Secretary of State's Office, the rules become law unless the Association seeks an injunction from the District Court. If the Department does not implement or adopt the rules, 6 months from the proposal date, the rules go away.

Sen. DePratu asked if there was method by which the implementation of the rules could be suspended until the September meeting. Rep. Erickson said that if the Department would choose not to act in the next 10 days, the Committee would have a chance to hear Mr. Heiman's opinion of the rules.

Rep. Story said that there is a regular rulemaking process and a negotiated rulemaking process. He asked what determines whether a contested rule goes into one process or the other. Mr. Heiman said that the negotiated rulemaking process is sometimes written into a law, therefore requiring it; but in other times, it would be at the discretion of the agency. He was unsure whether, at this time, the rules in question could go into the negotiated rulemaking process.

Because she felt that the Committee needed to defend the public process, Sen. Cocchiarella **moved** that the Committee recommend that the Department of Revenue take steps to engage in negotiated rulemaking for the purposes of addressing the issues of the small brewers.

Sen. DePratu asked if the Department would be willing to agree to engage in negotiated rulemaking instead of having a motion. Mr. Alme said that the Department would be willing to abide by the recommendation of the Committee. This issue will be an agenda item for the September meeting.

Sen. Cocchiarella withdrew her motion.

INSTRUCTIONS TO STAFF

Following a short discussion, the Committee agreed to the following:

- that the meetings be 11/2 day meetings;
- moved the revenue estimating meeting (November 2, 2002) to November 7 and 8, 2002;
- move the December 7, 2001, meeting to either November 26 and 27 or December 3 and 4, 2001 ; and
- move the September 13, 2002, meeting to September 17 and 18, 2002.

There being no further business, the meeting adjourned at 3:45 p.m.

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