

Jergeson Testimony
RTIC December 5, 2017

Mr. Chairman and members of the Committee:

I appear today as a member of the Montana Transportation Commission, an executive branch entity. I am speaking for myself today since the Commission has not had a chance, in a regularly scheduled meeting, to discuss and determine whether there is consensus on the Commission about the points I wish to make today. However, my written remarks have been shared with the other members of the Commission, and we will surely be discussing them at our next meeting on December 14.

My primary qualification for making these remarks is my 24 years of service in the Montana Senate, where I clearly developed enormous reverence for the institution of the Legislature, and profound respect for most of those who serve there. During my service, I always remained vigilant to protect the proper authority of the Montana legislature in our constitutional system of “checks and balances.” But while the power of the legislature is large, it is not unlimited. There are authorities vested in our executive and judicial branches that provide a check on the unbridled exercise of legislative power, just as the legislative branch operates as a check on the other branches.

Boards and Commissions throughout State Government are frequently referred to as “independent” and have real authority to make binding decisions in accordance with the law, unlike advisory committees that have only the authority to advise. This “independent” status is conferred on such a board or commission to provide a layer of insulation against the inappropriate or untoward application of political pressure on the decisions rendered by that body. Once a commission member has been appointed, the Governor may only remove that person from the position “for cause” during the term that member is appointed to serve. Usually, these boards or commissions may have no more than a narrow majority from the same political party. Board members frequently serve terms that overlap that of the governor. These boards shoulder solemn fiduciary responsibility to properly manage and care for the resources entrusted to them.

I am in possession of a communication from a former member of the Legislature to three current legislators in which he describes the current members of the Transportation Commission as being “subservient to Governor Bullock.” I reject the efficacy of that statement, not only

because it does not comport with the “independent” nature of the Commission I have just described, but because there is absolutely no basis in fact that such a relationship exists between this Commission and the Governor. Neither the Governor, nor any member of the Governor’s staff, has told me which projects to approve, deny, or cancel. Not once. Period. Full stop.

Except in certain emergency situations, no highway construction, rehabilitation, or safety project may commence without the express approval of a majority of the Commission in open and noticed public meetings. Typically, the Department staff will bring proposals for preliminary engineering for specific projects based on their ongoing analysis of road and facility condition, safety factors, traffic density, and other quantifiable standards. In addition, they maintain frequent communication with local government officials to gauge public input about local and regional needs. Since my appointment, I have joined District staff at meetings with local government officials in Great Falls, Havre, Chinook, and Shelby. I will continue to do so throughout my service on the Commission. Once a project has been approved for preliminary engineering by the Commission, that project is submitted to the Federal Highway Administration for their approval if it is a project that qualifies for federal matching funds. With their approval, a contractual relationship is established that secures the federal match provided that the project is built according to the standards and specifications for which it was proposed. Frequently, these preliminary approvals occur 7 or more years ahead of actual construction. Though the membership of the Commission may change, that contractual relationship with the Federal Government continues to exist until a project is completed. If a project is cancelled once a material amount of Federal dollars have been expended on a project, the Commission is compelled to repay the Federal Government for the Federal dollars expended so far on that project. That repayment must be made with State dollars. The fiduciary responsibility of the Commission is to honor that contractual relationship, and if repayment is made, to manage the loss of those state dollars as a match for up to nine times as many federal dollars for other projects.

I’ll admit that I was taken by surprise when I heard that a highway project first approved by the Commission in 2012 at the intersection of US 200 and US 191 had been cancelled due to decisions made during the recent special legislative session. There was nothing in the Transportation budget that was included in the Special Session Call issued by the Governor. There was no petition circulated and agreed to by a majority of legislators to expand the call of the session to include highway construction projects. I suspect there were no amendments forcing the project cancellation included in any of the bills that passed during the session because such would have been outside the call.

What I do understand happened is that a small, willful group of legislators threatened to withhold their votes during this extremely tense session from any final agreements to successfully end the special session unless the Chairman of the Senate Finance Committee secured from the Governor

the cancellation of that particular highway construction project. I know that the Commission was not consulted, nor did the Commission agree to cancel the project. I doubt that most legislators ever even knew this was one of the issues being determined during the session. This fine bit of micro-management by a small group of legislators is just the kind of untoward and inappropriate political pressure that must not be allowed to prevail in the Transportation Department Construction program.

I do believe that, just as the Commission must approve a project before it commences, only the Commission can cancel a project, especially after a contractual obligation has been entered into with the Federal Highway Administration. A Commission can only fulfill its fiduciary responsibility if it has been included in, and has approved the cancellation, cognizant of, and armed with a plan to manage the financial implications of such a decision.

Finally, and as a practical matter, the proper implementation of SB 182 standards is best accomplished in the early life of a project, before material amounts are spent on a project, certainly before money is expended on right-of-way acquisition. I stand ready to facilitate that and am ready to answer any questions from members of this committee.

Greg Jergeson, Commissioner
Transportation District #3