



Revenue and Transportation Interim Committee

60th Montana Legislature

SENATE MEMBERS

JIM PETERSON--Chair
KIM GILLAN--Vice Chair
JIM ELLIOTT
JEFF ESSMANN
CHRISTINE KAUFMANN
ROBERT STORY JR

HOUSE MEMBERS

TIMOTHY FUREY
GALEN HOLLENBAUGH
MIKE JOPEK
BOB LAKE
PENNY MORGAN
JON SONJU

COMMITTEE STAFF

JEFF MARTIN, Lead Staff
LEE HEIMAN, Staff Attorney
FONG HOM, Secretary

MINUTES

April 17, 2008

Room 102, Capitol Building
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 PETERSON, Chair
SEN. KIM GILLAN, Vice Chair

SEN. JIM ELLIOTT
SEN. JEFF ESSMANN
SEN. CHRISTINE KAUFMANN
SEN. ROBERT STORY JR

REP. GALEN HOLLENBAUGH
REP. MIKE JOPEK
REP. BOB LAKE

COMMITTEE MEMBERS EXCUSED

REP. TIMOTHY FUREY
REP. JON SONJU
REP. PENNY MORGAN

STAFF PRESENT

JEFF MARTIN, Lead Staff
LEE HEIMAN, Staff Attorney
FONG HOM, Secretary

Visitors List and Agenda

Visitors' list, Attachment #1
Agenda, Attachment #2

COMMITTEE ACTION

CALL TO ORDER AND ROLL CALL

00:00:02 Sen. Peterson called the meeting to order at 3:22 p.m. The committee secretary took roll. Rep. Furey, Rep. Morgan, and Rep. Sonju were excused.

AGENDA

Montana Department of Transportation Reports - Jim Lynch, Director

00:01:30 Shauna Helfert, Administrator, Liquor Control Division, Department of Revenue, talked about underage use of alcohol including energy drinks with alcoholic content (**Exhibit 1**). She said that it is the policy of the state through the Department of Revenue to ensure the complete control of alcoholic beverages for the protection of the safety, health and welfare of Montana's citizens. They have been working with the Department of Transportation, other state agencies and other partners, including the Interagency Coordinating Council to reduce underage drinking and youth access to alcohol.

Questions

00:17:31 Sen. Gillan asked if there were any federal statutes on beer labeling and marketing. Ms. Helfert said that all labels on alcoholic drinks have to be approved by the Tax Trade and Alcohol Bureau (TTAB). They in turn inform the Department of Revenue which distribution channel to send it through.

00:18:56 Rep. Lake asked if Montana has a maximum alcohol percentage in beer. Ms. Helfert said that beer is at 7% or less in weight. She said that energy drinks are all by volume. Weight is 80% of volume.

Rep. Lake asked if the Department of Revenue will propose legislation for this problem. Ms. Helfert said that they are working with other agencies on the Interagency Coordinating Council and that the next Interagency Coordinating Council will be meeting in May.

00:21:49 Sen. Essmann asked if Ms. Helfert has contacted the distribution chain. Ms. Helfert said that she has met with the Montana Beer and Wine Wholesalers Association who distributes the product to the convenience stores and they are aware of the Department of Revenue's concerns. Ms. Helfert said that they have been developing brochures for distribution by the wholesalers to educate clerks and licensees.

00:23:44 Sen. Elliott said that a couple of years ago there was a question about flavored

cigars which were being sold in convenience stores and not taxed as cigarettes. He asked if there is similar resistance on energy drinks by convenience stores? Ms. Helfert said that they are just in the beginning stages and the Department of Revenue is trying to educate as many people as possible, the convenience stores, parents, adults, and law enforcement.

00:25:24 Jim Lynch, Director, Department of Transportation, said that, through a grant from Safe Kids Safe Communities, they provided alcohol sales and service training. The bar owners, convenience stores and other stores have been very cooperative. There has been some resistance from bigger grocery stores.

Mr. Lynch discussed the document "All Crashes" (**Exhibit 2**). He said that there is a problem with binge drinking and underage drinking in Montana.

Questions

00:33:56 Sen. Gillan asked if the graduated drivers licensing has had any impact. Mr. Lynch said that he doesn't have any details but the Office of Public Instruction and the people involved in the education process say that they are seeing a difference. It's too early to tell if there is a reduction in fatalities or accidents.

00:35:26 Sen. Elliott commended Ms. Helfert and her employees for their good job.

Highway 2 Project from Culbertson to North Dakota with Completion of Environmental Assessment - Jim Lynch, Director, Department of Transportation

Mr. Lynch summarized the Highway 2 Project (**Exhibit 3**).

Questions

00:49:22 Sen. Peterson asked Mr. Lynch to explain the Finding of No Significant Impact and what is the process beyond that point? Mr. Lynch said it would be to enter into final design of the project. That design would then drive the total costs of the project. The project could also be advanced into the state's tentative construction plan.

Sen. Peterson asked Mr. Lynch about the plans for going north into Port of Raymond. He asked if the current proposal was to design the highway to Culbertson and narrow that down so it could go through the town of Culbertson. Mr. Lynch said that was one of the discussion points in the public meetings, but the residents of Culbertson voted to approve a narrower form of the 4-lane highway through Culbertson that will go through the intersection of Highway 16.

Sen. Peterson asked what the plans were for the road north of the Port of Raymond that is not a part of that EA. Mr. Lynch said that since that particular road is not part of this EA, they would have to do another EA for that section.

Sen. Peterson asked if North Dakota has plans for the Theodore Roosevelt Expressway from the borders east and south? Mr. Lynch said that North Dakota is in favor of this project. Sen. Peterson asked how this project affects other federal projects and priorities of funding in other locations in Montana. Mr. Lynch

said that the Highway Commission has already approved that this project move into the environmental process and will be considered with the mix of other projects.

00:57:08 Sen. Story asked about the distribution of money to the five transportation regions and how the Highway 2 project affects that. Mr. Lynch said that there are certain categories of federal dollars or state statutes in how we have to spend money in different regions and not all of the federal dollar is obligated that way.

01:00:56 Sen. Essmann said that he talked with Bill Kennedy, Chairman of the Transportation Committee, who has been working on a bypass project and he had a concern about the process of economic feasibility before getting to the EA stage. He asked Mr. Lynch about the economic feasibility section. Mr. Lynch said that one aspect of the environmental document was addressed in the trend study. He said that highways are not built based on a cost benefit. That may have been an attitude of a few commissioners but that in itself isn't the driving factor of whether a roadway gets built.

Sen. Essmann asked if an economic analysis was performed in the study. Mr. Lynch said that he would have to review the study to give a definite answer, but he does know that they studied the economics of that particular roadway and how it benefitted the state and corridor.

01:03:30 Rep. Jopek discussed an EA conducted in 1994 for a project between Kalispell and Whitefish. He asked about the Finding of No Significant Impact and if that particular approach will lead to faster pavement of roadways. Mr. Lynch said that the Department of Transportation and the federal government sees it as the way to move projects forward for streamlining while still meeting the intent of MEPA. He said that the project that Rep. Jopek mentioned started as an EA, but because of issues within the local community, that moved to an EIS.

01:08:50 Sen. Peterson asked about the costs of the project and how that affects the state match. Mr. Lynch said that this project will be handled same way unless it receives 100% earmark, which is doesn't have, but if it received funding in the normal process, there would be a 13% match of state dollars on this project.

01:10:52 **Status of State Highway Fund and Revenue and Expenditures - Jim Lynch**
Mr. Lynch talked about the Highway State Special Revenue Account (**Exhibit 4**).

Questions

01:13:15 Sen. Story asked what happened to the expenditure that was under Indirect Costs in 2007. Mr. Lynch said the federal government stated that indirect costs must be charged to everyone, which places a burden on state, cities and counties that have already started their program. The Department of Transportation developed a hold harmless measure to allow time to plan for that indirect costs expenditure. All federal dollars that are spent locally, there is indirect costs applied to that which goes into the revenue side.

Sen. Story said that because revenue has been relatively flat over the last seven

or eight years with highway patrol salaries going up, construction projects may be affected. Sen. Story asked Mr. Lynch about the long-term future of construction and maintenance given the revenue side. Mr. Lynch said there is a concern about funding highways. There has been a trend nationally to hold the line, but lately people are looking at a much larger highway bill than this country has ever seen. The last number that he has heard was \$500 billion. We have a very aggressive pavement management system to maintain, and if we don't change by 2012 and look at different way of funding highways, we will need to look at other funding sources for the Department of Transportation.

Sen. Story asked how Montana would come up with the match if the federal program is expanded to \$500 billion. Mr. Lynch said that they can take federal dollars and change it into state dollars that can be used for the match. That helps in the short term, but it doesn't solve the problem because it also lowers the buying power as you move forward on projects. But looking into the future, we need to also look at how highways are being built within communities.

01:26:20 Sen. Essmann asked about the Shiloh Road expansion and if the Department of Transportation has the ability to do a quick take in case they are unable to work out a mutually acceptable agreement on right of way. Mr. Lynch said that the Department of Transportation does have that ability once a certain percentage of the right of way is acquired under state statute. The Department then has the option to advance into condemnation but that process takes a considerable amount of time to do. Mr. Lynch talked about another approach where the property owner could say that they are not going to argue necessity and give a grant of possession to property which they would argue about value later. Mr. Lynch said that if they have to go through condemnation for property on Shiloh Road, they will do that, but the Department will not enter into grants of possession because it is dangerous not knowing what the total costs of that project would be.

Sen. Essmann said that the Department of Transportation follows a legal appraisal process that can be defended in court. He asked why Mr. Lynch felt so much risk in this case. Mr. Lynch said that state law provides that if the Department of Transportation takes a landowner to court and he or she gets one dollar more than what was appraised, the state will have to pay the entire court costs. Mr. Lynch said that the Department of Transportation will use condemnation, grants of possession when it is in the best interests of the state taxpayers to do so.

01:34:09 Sen. Gillan asked Mr. Lynch if the Shiloh Road issue is going to affect the Airport Road? Mr. Lynch said that Airport Road has seven parcels that are scheduled to bid in July. He said that they can design around that project unless someone challenges the necessity to do that.

01:37:33 **Update on the Use of Escrow Account for Local Payments - Jim Lynch**
Mr. Lynch said that this is a followup from the last meeting when representatives from Billings and Missoula described how they were required by the state to pay in advance. He said that at that particular meeting he wanted to bring an actual

escrow agreement that the state entered into with the City of Great Falls on that same issue (**Exhibit 5**). He said that the Department will work with the cities that have projects, and come up with a mechanism in which they can put their money in escrow or pay for it in phases.

Questions

01:40:07 Sen. Essmann asked if there is any penalty for failure to pay on a timely fashion and could there be a discussion about a possible bill that would permit some advance on a payment schedule and a penalty to the local government if they fail to meet their obligations? Mr. Lynch said that is a good idea because currently there is no mechanism to charge interest.

01:41:11 **Overheight and Overweight Permits - Jim Lynch**
Mr. Lynch provided information on the process of obtaining oversize permits (**Exhibit 6**).

Conference Call Regarding Fort Belknap Agreement

01:41:59 Mr. Lynch gave update on the status of the Fort Belknap Agreement. He thanked the committee for taking the time to do a conference call. He said that unfortunately Fort Belknap decided not to sign the agreement and is still operating under the old agreement.

Questions

Sen. Story asked that if there were any changes in the agreement will the committee have to review it, or has the committee's obligation been met? Mr. Lynch said that the changes are in the wording of the contract in a few places, but the essence of the document will remain the same.

Public comment

01:44:00 **Christina Volek, Administrator of City of Billings**, commented on the update on the use of escrow accounts for local payment of transportation projects and the City being asked to escrow 25% of project costs in advance when that was not budgeted. She said that the City of Billings lobbies heavily at the federal level. They have been a good partner in attempting to help fund these projects but they are very concerned about having to escrow huge amounts of money up front.

Adjournment

01:47:56 There being no further business before the committee, Sen. Peterson adjourned the meeting at 5:30 p.m. to reconvene on Friday at 8:00 a.m.

CI0425 8161fhxa.