

EXHIBIT 1
DATE 2-15-05
HB 479

HOUSE BILL 479

PRESERVING LOCAL INVESTMENT

PROTECTING PUBLIC HEALTH & SAFETY

PROTECTING NATURAL ENVIRONMENTS



2005 MONTANA STATE LEGISLATURE

FEBRUARY 2005

MONTANA STATE LEGISLATURE - HOUSE BILL 479

HEARING SCHEDULED FOR FEBRUARY 15, 2005 @ 3:00 P.M.

WHY IS THE LEGISLATION NECESSARY?

Section 17.8.308(2) of the Administrative Rules of Montana, states **“no person shall cause or authorize the use of any street, road or parking lot without taking reasonable precautions to control emissions of airborne particulate matter”**. The Montana Department of Environmental Quality has determined that **“DEQ has a long-term understanding with Montana counties that the responsibility for addressing dust complaints on county roads lies with the county.”** Ravalli County is attempting to address this mandate through the development of a County Road Dust Abatement Program for those residents electing to participate in this voluntary program. Not all residents or project owners elect to participate on a voluntary basis. For the county to fully realize the objectives of this mandate, the county will require legislative allowance for the implementation of management systems that would compel this participation.

Airborne particulate (fugitive dust) rising from un-paved roadways is a primary contributor to localized air quality hazards, and hazards to motorist safety, the health and safety of adjacent property owners and the health of adjacent agriculture crops and waters of the state. Un-paved roads are the largest source of particulate pollution in the United States, producing almost five times as much particulate matter as the next two largest sources combined. A single vehicle traveling on an un-paved road once per day for one year will produce one ton of dust per mile, which equates to losing one hundred tons of fine particles per year for each mile of roadway with an average of one hundred vehicles per day. (Source - Wisconsin Transportation Bulletin #13, U of W at Madison, 1997.)

In addition to a significant reduction in air quality and other natural resources attributable to fugitive dust, the loss of roadway surface materials through the creation of dust weakens the roadway structure and creates driving conditions that may become hazardous. When these fine particles are lost as fugitive dust, it damages the roadway (gravel) surface and exposes the larger aggregate. These large particles are then scattered by vehicles or washed away by rainfall. The unstable roadway surface then can become quite rough, developing potholes, ruts and corrugations that collect storm-water, saturating the roadway base and causing even further damage. Additionally, the eroded material can damage storm-water management facilities, often requiring frequent and expensive repairs.

Studies demonstrate that the proper application of dust abatement materials can reduce fugitive dust by 30% to 80% and cut aggregate loss by 25% to 75%.

RAVALLI COUNTY ROAD & BRIDGE DEPARTMENT

In addition to damages to county roadways arising from the creation of fugitive dust, the use of those roadways at levels beyond the capacity of the roadway to support excessive demand also results in extraordinary damage or accelerated deterioration, resulting in a reduction in the level of service of the roadway or an **increase in the capital resources** necessary to sustain that level of service.

While roadways will deteriorate even if left unused, most roadway deterioration is associated with use; and the damage caused by vehicles goes up much more than proportionately with size and weight. Consequently, costs associated with roadway management are greater for roadways used by heavy vehicles. **Damage to a roadway from a single fully-loaded Class 8 truck is equivalent to the damage from approximately 5,000 passenger automobiles (AASHTO, 1994).**

The intent of this proposal is to equitably allocate the cost of increased levels of service to those who generate the demand for that level of service.

WHAT WOULD BE THE BENEFIT OF THIS LEGISLATION?

This legislation would enable a Board of County Commissioners to implement a local permitting program to mitigate the accelerated deterioration of county roadways caused by the excessive use of the roadway. **Importantly, this legislation would not mandate the implementation of such a program, but would allow for it, at a board of county commissioners statutory discretion.**

Properly implemented, this legislation would allow the development of a program that would **1)** provide for a reduction in fugitive dust and the public safety and environmental health hazards associated with dust; **2)** maintain a reasonable level of service on more heavily-used county roadways; and **3)** provide for the equitable assessment of the costs associated with maintaining a reasonable level of service on the roadway. Through such an equitable assessment process, local **residents** not associated with the excessive use **would not bear the burden** of providing for the resources necessary to sustain an **increased level of service.**

RAVALLI COUNTY ROAD & BRIDGE DEPARTMENT

HOW WOULD THE PROGRAM BE IMPLEMENTED AT THE LOCAL LEVEL?

It is not the intent of the Ravalli County Board of County Commissioners to impose restrictions upon the use of any public roadway, nor to in any way compromise the movement of materials or people, nor to restrict free commerce; rather, it is the intent of this proposal to preserve the integrity of and considerable investment in county roadways, to protect the health and safety of roadway users and adjacent residents, to ensure compliance with environmental regulation, and to maintain and improve a clean and healthful environment, pursuant to the Montana Constitution. Through this proposed legislation, the Board of County Commissioners would achieve the statutory authority to implement a regulated permitting procedure through which a commercial or construction interest operating upon county roadways, at levels that may cause the production of extraordinary levels of fugitive dust, or extraordinary damage or accelerated deterioration to county roadways, would be responsible to the county for effectively mitigating that dust, damage or deterioration. This permitting process would be implemented only after due consideration of interests, consultation with representatives of those interests and through appropriate resolution and the adoption of appropriate ordinance.

For Ravalli County, we anticipate developing the program through considerable consultation with representative interests, perhaps including, but not limited to, the Montana Contractor's Association (Highway & Heavy Construction), the Farm Bureau (Agriculture), the Bitterroot National Forest (Forest Management), the Montana Logging Association (Timber Harvesting), the Bitterroot Builders Association (Commercial & Residential Construction), the Bitterroot Valley Chamber of Commerce (General Business Interests) and the Montana Department of Transportation (State Highway Operations), as well as the residents of Ravalli County. The objective of these discussions would be to identify the most reasonable, equitable and effective manner through which to develop and administer the program and to establish objective and reasonable thresholds at which the provisions of the program would become effective. We would also expect to work closely with these interests in the management of the program.

~~One option we may suggest is that all public projects (examples being highway construction and timber harvests) using county roadways as "haul routes" would include a bid (line) item of "Haul Road Restoration", a concept that has been effectively implemented in other states. This would allow the contracting agency to prepare for the costs of restoration and would ensure that a private contractor would be compensated for the expenses incurred in the restoration.~~

For other private or commercial activity, the thresholds may be based upon a percentage increase in daily traffic volume or in the volume of truck traffic, or the size of a sub-division or other commercial development. The intent would be to identify the "typical" use of a subject roadway and to reasonably calculate the roadway operation or restoration impacts of an activity beyond those levels.

RAVALLI COUNTY ROAD & BRIDGE DEPARTMENT

When planning an activity or project that would utilize county roadways, a project owner would contact the Road & Bridge Department to identify if the proposed activity would require a permit. If a project exceeds the established threshold, the owner would complete a permit form and representatives of the Road & Bridge Department would work with the owner to identify the most appropriate mitigation strategy. Should an owner contest the department's determination, appeal could be made to the **Board of County Commissioners**.

WOULD ANYONE BE EXEMPT FROM THE PROGRAM?

The activity of "typical" users of county roadways would be exempt. Emergency Response (Local Fire Departments & Law Enforcement) would also be exempt.

WHAT WOULD THE IMPACTS TO BUSINESS BE?

Provided that the local program would be developed with **full consultation** with the representative interests, and that a project owner would be **fully advised** of the program **before implementation, the actual impacts would be nominal**.

WHAT WOULD THE IMPACTS TO RESIDENTS AND TAXPAYERS BE?

An effectively developed and administered program would result in an **increase in public safety**, enhancement of life-style functions, **preservation of natural resources** and **preservation of the structural integrity** of the roadway system.

Residents and typical rate-payers **would not be burdened** with the additional expense of an increased level of service, the demand for which was generated by factors beyond their control and which would result in nominal benefit to them.

THEREFORE

We find that the **control of fugitive dust** on county roadways and the **mitigation of extraordinary damage or accelerated deterioration** to county roadways is in the best interests of public safety and health, environmental protection and of the county roadway system. We find that this proposed legislation is appropriate with regard to the Board of County Commissioners responsibility to "**manage county roads and bridges**" within the county and to take those "reasonable precautions to **control emissions of airborne particulate**".

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With anticipated amendment(s) to this proposed legislation that may provide for an **exemption for the Montana Department of Transportation**, and given the provisions of Section 107.10 of the MDOT Standard Specifications for Road and Bridge Construction (attached), we would propose the initiation of a discussion with the Department of Transportation, interested county governments, highway and heavy construction representatives and other interests to develop a greater and more specific understanding of the implementation of these provisions and of the impacts to local roadway systems from state highway construction activity, and to ensure the consistent application of these provisions. It may be that such amendment(s) may be in the best interests of the State of Montana, provided that the interests of Montana's local governments would be considered in the development of state highway construction projects and that the mitigation of impacts to local transportation systems are provided for in a consistent manner.

Ravalli County would offer to assist in the facilitation of such a discussion.

requirements of Title 29, Title 30, and Title 49 of the Code of Federal Regulations when using, handling, loading, transportation, and storing explosives and blasting agents.

Use explosives without endangering life or property and be responsible for all resulting property damages, injury, or death.

Only use persons experienced in the handling of explosives and do not fire explosives until sounding a warning and removing all persons from the radius of danger.

Notify each property owner, railway company, and public utility company having facilities near the blasting area of the intent to use explosives to enable them to take precautions to protect their property from injury. Be responsible for damages to property or injury to persons attributable to the use of explosives.

107.10 PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPE.

Preserve all public and private property when performing work. Do not disturb or damage land monuments and property markers until witnessed or referenced by the Project Manager.

Be responsible for all damage to public and private property resulting from any act, omission, neglect, or misconduct in the manner or method of executing work until the project is accepted.

Replace or restore damaged property to its original condition at Contractor expense.

107.11 ENVIRONMENTAL PROTECTION.

107.11.1 General. Follow all State, local, and Federal laws and regulations controlling pollution of the environment. Take precautions to prevent pollution of streams, lakes, ponds, reservoirs, and wetlands with silt, fuels, oils, bitumens, chemicals, or other harmful materials. Prevent pollution of the atmosphere from particulate and gaseous matter.

Obtain all required permits and furnish copies of all permits or authorizations to the Project Manager before starting activities requiring permits.

107.11.2 Water Pollution and Siltation Regulations. Attention is directed to Title 75, Chapter 5, MCA, (Water Quality) and the administrative rules of the Water Quality Bureau, Department of Health and Environmental Sciences.

Under the Water Pollution Control Act, Construction De-watering - General Discharge Permits and Short-Term Construction Authorizations are required for construction activities that may result in a violation of water quality standards of streams, lakes, or other bodies of water located on or adjacent to the project.

Under the Federal Water Pollution Control Act, as administered by the U.S. Army Corps of Engineers, Permits Branch, P.O. Box 5, Omaha NE 68101, Section 404 Permits are required for discharging dredged or fill material into wetlands or waters under the jurisdiction of the Corps. Information on Section 404 Permits may be obtained from the Corps offices in Helena (406-444-6670) and Billings (406-657-6891).

Other requirements relating to water pollution control are covered in Section 208.

Amendments to House Bill No. 479
1st Reading Copy

Requested by Representative Ray Hawk

For the House Local Government Committee

Prepared by Susan Byorth Fox
February 12, 2005 (1:50pm)

1. Title, line 10.

Following: "ROADS;"

Insert: "PROVIDING THAT DEPARTMENT OF TRANSPORTATION CONSTRUCTION
AND MAINTENANCE CONTRACTS AND MAINTENANCE ACTIVITIES ARE NOT
SUBJECT TO THE LOCAL PERMITTING PROCESSES;"

2. Page 2, line 24.

Following: line 23

Insert: "(4) Construction and maintenance contracts and
maintenance activities conducted by the department of
transportation are not subject to the local permitting
processes provided for in subsection (1)(a)(ii)."

3. Page 3, line 6.

Following: line 5

Insert: "(5) Construction and maintenance contracts and
maintenance activities conducted by the department of
transportation are not subject to the local permitting
processes provided for in subsection (4)."

- END -