MD

Senator Hamlett

EXHIBIT 8
DATE 4-7-09
SB 465

SB 465 Fiscal Note Analysis and Comparison

Fiscal Note dated – 2/23/09

It is assumed that the estimated revenue generated as the result of the riverbeds being returned to the tax rolls is accurate.

Technical Notes

1. The Department of Revenue did not adopt rules to remove the property from taxation so it is not clear why that would be necessary in order to return the property to tax status.

2. The Department of Revenue was able to remove property from taxation without any guidance from the legislature. Therefore, the DOR should be able to return the property to its former tax status based on the guidance provided in SB 465.

3.

4. Section 2 of the bill should apply to all disputes regarding ownership of the riverbeds – not only those between the state and a private entity. The challenges may involve to private landowners. This section simply states that there is no presumption. This section should apply no matter who the disagreement is between.

5. This is not about whether or not the structure is taxable – it is about who owns the structure if it is determined that the bed of the river is navigable. The entity who owned the structure when the decision was made still owns the structure. It is critical that structure owners retain the ability to maintain, repair, and operate, etc, their structures.

6. The intent is not to address ownership for property tax purposes.

7. It is not clear why this could not be applied retroactively. DOR took an action without clear authority to do so.

8. This is simply a restatement of the existing Court Case. The Department of Natural Resources and Conservation claims that they are applying this process now.

9. Title 70 is about property and the location of a structure on property that is owned by another entity. The more appropriate statute to reference is 77-1-125, MCA. This section addresses the unauthorized installation or construction of a structure on state land.

10. Section 61-8-371, MCA, does not prohibit the use of motorized vehicles. It limits the use of motorized vehicles. When a river is flowing through private land the limitation only applies to Class 1 waters.

11. This section does not affect the ability of an oil and gas lessee to remove structures within navigable waters.

Fiscal Note dated – 3/31/09

It is assumed that the estimated revenue generated as the result of the riverbeds being returned to the tax rolls is accurate.

The increased expense of an additional FTE has no basis and is not required.

Assumptions:

1. The bill does not make the acreage determinations for property assessment purposes title determinative. Section2(2) makes it very clear that only those rivers adjudicated in a court can be considered state owned – if they aren't the DOR must assess the property to the owner of record of the property. Without an adjudication the title would not be amended to reflect the state as the owner.

12. In the initial fiscal note the DOR estimated that the cost of issuing revised assessments was $6,984 for printing and mailing. In the revised fiscal note DOR estimated the cost of issuing revised assessments is $13,970 for printing and mailing. Why the change from one fiscal year to two fiscal years other than to increase the cost?

13. <u>There is absolutely no basis for hiring additional staff.</u> No additional staff were required to remove the property from the tax rolls – why would additional staff be needed to add it back on? Additionally, there is no need for an attorney to assist with adjudication. Section 2(2) provides very clear direction to DOR on how to address the different types – the rivers are either adjudicated or they aren't.

14. This bill does not address the tax status of the structures. The bill only makes it clear that the existing owners still own the structures.

16-20. Because the DOR can only remove property from the tax rolls that has been adjudicated and a court has determined belongs to the state any appeals to the Tax Appeal Boards would be based on value assessments. These are the exact same issues that the STAB deals with now so there is no reason for additional training, printing, etc. This is an additional cost that is not necessary.

Technical Notes:

1. The Department of Revenue did not adopt rules to remove the property from taxation so it is not clear why that would be necessary in order to return the property to tax status.

2. Section 1, (4)-(8) DO NOT require the DOR to determine title. Section 2(2) makes it very clear that they only act based on the direction of a court of competent jurisdiction. The law has always required due process and it must be provided in this instance.

3. This is absolutely false. The DNRC DOES NOT determine whether a river is navigable for title purposes. This is a determination that can only be made by a court of competent jurisdiction.

4. This section states that "the department reduced taxable acreage due to the navigable stream or river issue described in Section 1 of the bill". This "issue" was created when the DOR implement a

change while a District Court case was being appealed to the Montana Supreme Court and without direction and authority provided by the legislature.

5. The list that DNRC is using as their navigable rivers list was never formally adopted by any entity. While it may have been commissioned by the State Land Board it was never adopted and river bed users were never afforded due process. At a minimum the user of a bed of a navigable stream or river should be provided notice as a basic element of their Constitutional due process right.

2. (should be 6) This again is a restatement of the current situation.

3. The DNRC added in section 77-1-125, MCA to this technical note. The rest is the same as the initial fiscal note.

4. Section 9 of the amended bill has absolutely nothing to do with structures. Again, this section does not affect the ability of an oil and gas lessee to remove structures within navigable waters.