

LEGAL REVIEW NOTE

LC#: LC0726, To Legal Review Copy, as of
January 17, 2013

Short Title: Revise fuel tax revenue to fund local
public transportation

Attorney Reviewer: Todd Everts

Date: January 21, 2013

CONFORMITY WITH STATE AND FEDERAL CONSTITUTIONS

As required pursuant to section 5-11-112(1)(c), MCA, it is the Legislative Services Division's statutory responsibility to conduct "legal review of draft bills". The comments noted below regarding conformity with state and federal constitutions are provided to assist the Legislature in making its own determination as to the constitutionality of the bill. The comments are based on an analysis of relevant state and federal constitutional law as applied to the bill. The comments are not written for the purpose of influencing whether the bill should become law but are written to provide information relevant to the Legislature's consideration of this bill. The comments are not a formal legal opinion and are not a substitute for the judgment of the judiciary, which has the authority to determine the constitutionality of a law in the context of a specific case.

Legal Reviewer Comments:

LC0726, as drafted, may raise potential constitutional conformity issues associated with Article VIII, section 6, of the Montana Constitution that provides:

Section 6. Highway revenue non-diversion. (1) Revenue from gross vehicle weight fees and excise and license taxes (except general sales and use taxes) on gasoline, fuel, and other energy sources used to propel vehicles on public highways shall be used as authorized by the legislature, after deduction of statutory refunds and adjustments, *solely for:*

(a) Payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads, and bridges.

(b) Payment of county, city, and town obligations on streets, roads, and bridges.

(c) Enforcement of highway safety, driver education, tourist promotion, and administrative collection costs.

(2) *Such revenue may be appropriated for other purposes by a three-fifths vote of the members of each house of the legislature.* (emphasis added)

LC0726, as drafted, increases the gasoline license tax by 2 cents. Section 1. One cent from the increase in the gasoline license tax is allocated for repair and maintenance of the state highway

system. Section 2. One cent of the increase from the increase in the gasoline license tax is allocated for the purpose of public transportation.

Article VIII, section 6(1), of the Montana Constitution requires that revenue from license taxes on gasoline, fuel, and other energy sources used to propel vehicles on public highways shall be used as authorized by the Legislature solely for:

- "(a) Payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads, and bridges.
- (b) Payment of county, city, and town obligations on streets, roads, and bridges.
- (c) Enforcement of highway safety, driver education, tourist promotion, and administrative collection costs."

Use of the revenue from the gasoline license tax for public transportation as required in LC0726 may raise potential constitutional conformity issues as to whether public transportation is one of the allowable uses of revenue enumerated in Article VIII, section 6, of the Montana Constitution. The Constitution does, however, allow for revenue diversions that "may be appropriated for other purposes by a three-fifths vote of the members of each house of the legislature." Article VIII, section 6(2), of the Montana Constitution.

LC0726, as drafted, does not contain a three-fifths supermajority vote provision. Consequently, lack of such a provision or, in the alternative, the Legislature passing LC0726 in each house by a majority vote, as opposed to a three-fifths vote in each house, may raise constitutional conformity issues with Article VIII, section 6, of the Montana Constitution.

Requestor Comments: See attached.

Moore, Megan

From: Nancy Wilson <nwilsonhd97@gmail.com>
Sent: Monday, January 21, 2013 4:43 PM
To: Moore, Megan
Cc: Everts, Todd
Subject: Re: LC0726 Legal Review Comment

Comments:

Public Transportation does fit within Article VIII, section 6 of the Montana Constitution as Public Transportation helps with the (a)....operation and maintenance... of highways, streets, roads and bridges by removing single occupant vehicles from the road thereby reducing traffic.

Also Public Transportation fits under (c) Enforcement of highway safety,tourist promotion...

Public Transportation is much safer than driving alone. The Federal Transit Authority shows that bus travel from 2003-2008 resulted in .05 deaths per 100 million passenger miles, compared to 1.42 deaths for motor vehicles. In this bill public transportation would be used to assist those that drive only because they have no other option but do not feel comfortable driving; gives options to those that have had too many drinks and can't get home – thereby reducing drunk drivers from the roadways*; reduces people from driving to and from work after long hours and they may be too tired to drive; assists folks to medical services when they may choose to drive even though they are under medical care stating they shouldn't drive;

Tourist promotion: many people would love to take transit to other cities in Montana but find that the availability of service is extremely limited. This tax would help provide enough service to entice more tourists to Montana and allow them to explore the state without a car.

*please note that at The University of Montana Students that reported drinking and driving (in a survey done by Curry Health Center with 1347 participants) in 2002 (prior to bus service) was at 65% in 2012 it was at 40%. Those that drove after 5 drinks was at 25% in 2002 (national average was 14%) and in 2012 it was at 5%.

Late Night Bus case study: Fall 2012 the late night bus in Missoula gave 20,797 rides which was a 19% increase over fall 2011. Ridership has increased 67.5% every year since the service began in 2003.

Nancy Wilson
MT Representative, HD 97

From: "Moore, Megan" <memooore@mt.gov>
Date: Monday, January 21, 2013 12:15 PM
To: Alex Taft <nwilsonhd97@gmail.com>
Subject: FW: LC0726 Legal Review Comment

Hi Rep. Wilson,

Attached to this email are the Legal Review Comments for your LC726 draft. You have 2 days to respond and have comments included on the form. After two days, the bill will proceed through our process.

Please let me know if you have any questions.

Best,

Megan Moore
Research Analyst
Montana Legislative Services
Room 111F
(406) 444-4496
memoore@mt.gov

From: Everts, Todd
Sent: Monday, January 21, 2013 12:12 PM
To: Moore, Megan
Subject: LC0726 Legal Review Comment

Megan: Attached is an electronic copy of the LC0726 Legal Review Comment. Please forward to the requestor and note that the requestor has 2 days to respond to the legal review comment if the requestor so chooses before the bill proceeds through our process. Thanks. Todd

Todd M. Everts
Director of Legal Services/Code Commissioner
Montana Legislative Services Division
teverts@mt.gov
Office Phone: (406) 444-4023
FAX: (406) 444-3036
Cell Phone: (406) 439-5720