



Revenue and Taxation Interim Committee

56th Montana Legislature

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SENATE MEMBERS

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MIGNON WATERMAN

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ROGER SOMERVILLE
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EMILY SWANSON

COMMITTEE STAFF

JEFF MARTIN
RESEARCH ANALYST
LEE HEIMAN
STAFF ATTORNEY
JOANN JONES
SECRETARY

MINUTES

September 23, 1999
Montana Department of Transportation
Helena, MT

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Exhibits and tapes are on file in the offices of the Legislative Services Division.

COMMITTEE MEMBERS PRESENT

Rep. Chase Hibbard, Chair
Sen. Jon Ellingson, Vice Chair

Sen. Vicki Cocchiarella
Sen. Wm. E. "Bill" Glaser
Sen. Fred Thomas
Sen. Mignon Waterman

Rep. Ron Erickson
Rep. Dan W. Harrington
Rep. Roger Somerville
Rep. Robert R. Story, Jr.
Rep. Emily Swanson

COMMITTEE MEMBERS EXCUSED

Sen. Bob DePratu

STAFF PRESENT

Jeff Martin, Research Analyst

Lee Heiman, Attorney
Jo Ann Jones, Secretary

VISITORS

Visitors' list, Attachment #1.

COMMITTEE ACTION

- c Approved the minutes of the June 14, 1999 meeting
- c Adopted a proposed work plan

CALL TO ORDER AND ROLL CALL

Rep. Hibbard called the meeting to order at 8:07 a.m. Roll call was noted, see Attachment #2. The minutes of the June 14, 1999, meeting were approved.

STATE HOUSING TRUST FUNDS

Mary Brooks, National Housing Trust Fund, Center for Community Change, Washington, D.C., said her organization is non-profit and tracks housing project trust funds around the country. She said that SB 349 created a housing trust fund but had no revenue source. The goal for supporters of SB 349 was a funding source of \$5 million per year.

Ms. Brooks said more than 100 cities and counties across the nation have created a housing trust fund that provides housing for low and moderate income people in response to the steady decrease of Section 8 funding from the federal government. The funds are almost entirely administered by state agencies and provide grants or loans to qualified applicants.

Ms. Brooks said that revenue sources for housing trust funds in 34 states include: a real estate transfer tax, which is highly controversial; a document recording fee, or the county clerk recording fee; an increase in the contractor's gross receipts fee, and an insurance premium tax. She said the ideal revenue source in Montana would be from the coal tax trust fund. Utilizing the Treasure State Endowment Fund would probably

require a redefinition of infrastructure so that it would include low income housing projects. She said using this trust fund would involve committing a certain percentage of its annual income to the housing trust fund, not a one-time funding commitment.

Ms. Brooks said that the \$5 million goal would not meet all the housing needs in Montana, but would be a good start for the 25,000 Montana households that have needs not being met. Other housing trust fund projects have been able to leverage \$9 or \$10 from other sources for every dollar that had been committed to the fund.

COMMITTEE DISCUSSION

Rep. Swanson asked Rep. Hibbard if the presentation was intended for the Committee to undertake a study of revenue sources for a housing trust fund project. Rep. Hibbard said only if the Committee should choose to take action. Rep. Swanson asked that Committee time be set aside to discuss the issue.

Sen. Waterman requested that available research be presented before any discussion takes place. Ms. Brooks said that she would provide information from other states' studies.

Rep. Hibbard asked if the money set as a goal is spent each year, requiring another \$5 million in funding for the next year. Ms. Brooks said the idea is to spend the \$5 million each year, so the project is not a true trust fund. She said four or five states are setting aside funds for an endowment fund so a dedicated revenue source will eventually not be needed.

Rep. Somerville asked what the benchmarks are for low and moderate income. Ms. Brooks said that low is below 80% of median income, and moderate is below 95% of median income; some states set a standard for very low income (below 50% of median income) and mark those applications as a priority.

MONTANA DEPARTMENT OF TRANSPORTATION

EXHIBIT #1: REVENUE AND TAXATION INTERIM COMMITTEE, SEPTEMBER 23, 1999,

MONTANA DEPARTMENT OF TRANSPORTATION (MDT)

EXHIBIT #2: PROPOSED SECONDARY ROAD TAKE-OVER

EXHIBIT #3: MONTANA REST AREAS (map)

EXHIBIT #4: Copy of a letter dated June 15, 1999, from Janice Brown, U.S.

**Department of Transportation, Federal Highway Administration, to Marvin Dye,
MDT**

EXHIBIT #5: DEPARTMENT OF TRANSPORTATION -- SUMMARY

Marv Dye, Executive Director, Montana Department of Transportation (MDT), introduced MDT staff and stated their presentations would include overviews of the MDT organizational structure, mission and goals, programs, revenue and funding, legislative issues, and topics for future meetings.

Rep. Swanson said that Mr. Dye had described a partnership between the MDT and the Transportation Commission (Commission), and asked how the legislature fits into that relationship. Mr. Dye said the legislature is a partner, too, because authority and funding is granted to the MDT by the legislature, but there is room to forge a more positive relationship.

Rep. Hibbard said that MDT oversight is new for the Committee, so the point at which Committee responsibilities end has to be determined because the MDT is a very large agency.

Jim Currie, deputy director, MDT, discussed usage trends and transportation facilities. (see Exhibit #1)

Sen. Cocchiarella asked what constituted a local bridge system. Mr. Currie said that the local system is anything not located on the federal bridge system.

Sen. Glaser asked for a definition on structurally deficient. Mr. Currie said a structurally deficient bridge is one that may have weight restrictions on it due to age and use. He said he didn't believe that meant that any of them are capable of catastrophic failure. Gary Gilmore, chief engineer, said that structurally deficient bridges have lost the ability to carry original legal weight loads, and it may be due to potholes on the bridge surface or a change of river course. He said that nothing is wrong with the bridge as long as the weight restriction is observed. Rep. Story asked if very old bridges that can no longer carry the weight load are included. Mr. Gilmore said yes, and they may also be considered functionally obsolete. Mr. Currie added that functionally obsolete may include bridges that fail to meet national standards, too.

Sen. Waterman asked if the MDT home page provides road construction information. Mr. Currie said yes, and the report is updated every day.

Gary Gilmore, Chief Engineer, provided an overview of the Statewide Transportation Improvement Program (STIP) for FY 2000-2002 and displayed a chart indicating planned highway improvement projects (see exhibit #1).

Sen. Thomas asked why there is very little construction work planned for the Missoula district where there is significant population and travel. Mr. Gilmore said there is a lot of work being planned for US 93 and the chart did not reflect all those projects because of the uncertainty of federal funding. He said the chart portrays only those projects that have funding.

Rep. Swanson asked when federal funds are actually applied. Mr. Gilmore said federal funding can be used all the way through the project and, as soon as the Commission approves a project, federal funds are obligated.

Rep. Story asked if there is an option to move federal money to another project after it has been committed. Mr. Gilmore said, contrary to rumor, the MDT is able to spend every federal dollar and the money can be transferred to another project if the original project status changes.

Patricia Saindon, administrator, Rail, Transit and Planning Division, discussed non-highway program components: enhancements, rest areas, transit, rail activities, and the Lewis and Clark Bicentennial Activities. She said that enhancements must be at least a \$10,000 project that is nominated by a local government. The most popular projects are bicycle pathways, landscaping and scenic areas.

Ms. Saindon also discussed the secondary road program under SB 333.

Sen. Thomas asked how SB 333 helped counties other than helping them fund highway programs sooner. Ms. Saindon said the counties are also assisted with maintenance of existing highways. Sen. Thomas asked how funds for enhancements are divided among municipalities. Ms. Saindon said distribution was based on population and the municipalities have the option of borrowing ahead on their funds if their funding level is not adequate to meet the cost of a project.

Rep. Story asked which secondary roads are being taken over by the state for maintenance. Ms. Saindon said it was paved, not graveled, secondary roads.

Sen. Cocchiarella asked if truck and bus safety is part of the MDT purview. Ms. Saindon said that it was, some is in planning and some in engineering.

Rep. Somerville requested that Ms. Saindon provide the Committee at the next meeting with a copy of the plan for rest area construction.

John Blacker, Maintenance Supervisor, MDT, discussed the secondary road take-over. He said that engineered structurability is the determining factor of whether a road is a paved road.

Rep. Swanson asked if snow plowing is considered part of maintenance. Mr. Blacker said that it is. Rep. Swanson asked if the state plows will do the work, or will the state contract with counties. Mr. Blacker said that, in most cases, the state will be doing the work but there will be an agreed trade-off of work if it is more feasible for one entity rather than the other to do the actual plowing.

Rep. Swanson asked where the \$13.5 million comes from in regard to federal funding (see exhibit #1). Mr. Black said that it comes from a variety of sources, but none comes from enhancement program funds.

Rep. Story asked how much discretion the state has in taking over paved secondary roads in case counties may pave roads specifically for state take-over. Mr. Blacker said the language of SB 333 is broad and it is not MDT's intention to refuse to take over maintenance of paved secondary roads because it is in the state's best interests to do so.

Mr. Gilmore discussed contracting procedures. He said the project time line includes four weeks to the letting of bids, 45 days to the award of the contract, and 20 days to execute. He said there are approximately 11 lettings each year.

Sen. Waterman asked for the average length of time from project inception to beginning of work. Mr. Gilmore said that it has averaged four to six years and commented that most states would consider that time frame to be extremely quick and efficient.

Sen. Thomas asked if bid acceptance was on the low bid basis. Mr. Gilmore said that low, sealed, and competitive bid protocols are followed for bids that meet federal requirements. He said that one federal regulation states that no preferences shall be given to in-state or in-country bidders.

Sen. Glaser asked for MDT comment on the letter from Janice Brown to Marvin Dye (see exhibit #4). Mr. Gilmore said the MDT can respond with a written reply to the issues raised in the letter. Mr. Dye explained that the MDT had asked the Legislative Audit Division several years ago to conduct an audit of MDT contract management procedures. He said a team of people were put together to assess the problems identified by the audit. He said that communication is the essence of the problems that were described as is training, and he stated that the problems are being addressed.

Ms. Saindon discussed urban highway improvement proposals which include the Urban Highway Pilot Improvement Program, Urban Highway Pavement Preservation, and State Maintained Urban Highway Improvements.

Mr. Currie discussed revenue and funding, including federal funding, apportionment, obligation, expenditures, and funding plans. He also provided an overview of the Transportation Equity Act for the 21st Century (TEA-21), a continuation and expansion of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA).

Rep. Swanson asked that the issue of federal funding be flagged for consideration at future meetings. Rep. Story said he agreed with Rep. Swanson's request.

Sen. Ellingson asked if the construction industry would be able to keep pace with the expansion of highway projects resulting from TEA-21 programs. Mr. Currie said he believes that, as an industry, they are gearing up for it.

Bill Salisbury, administrator, Administration Division, MDT, discussed state funding. (See exhibit #5)

Mr. Dye discussed legislative issues and topics for future meetings as a wrap-up to the MDT presentation.

PUBLIC COMMENT

Rep. Dan Fuchs said that he wanted to draw the Committee's attention to a serious flaw in MDT administration in regard to enforcement. He said that a contractor was suspended prior to any hearing in regard to the deficiencies discovered on the Butte signing project. Rep. Fuchs said that due process must be observed in situations like these and said that the procedure should have been probation followed by investigation, a hearing, and then a suspension, if that is appropriate. He said the actions of the MDT in this case will cost the taxpayers money because a lawsuit has been filed.

Brian Cavey, MT Motor Carriers Association, said that the MDT will need additional appropriated funds in the future to update highway scales so that motor carriers can move through more quickly and efficiently. He also said that additional parking spaces for big rigs at rest areas should be taken into consideration, especially since the state is planning to begin constructing one shared rest area for both lanes of interstate highway systems. He said that semi tractor/trailers are required to be off the highway for a certain number of hours per day and they cannot park safely at rest areas if there is inadequate parking spaces available. He also stated that the fuel tax policy should be made simpler because if compliance is simple, there would be less evasion.

Mike Foster, MT Contractors Association, said that the association has developed a very good working relationship with the MDT and the Transportation Commission. He

said that all three entities believe that quality of work is an important consideration. He stated that contractors are not only able to handle more work generated by provisions of TEA-21, they are very eager to get more work. Mr. Foster commented on the Butte signing situation, saying that any contractor deserves due process.

Phil Olson, Gallatin County Commissioner, discussed the enhancements program related to a bicycle and pedestrian pathway at Big Sky. He said a proposal was submitted but it was not accepted. After two years of trying to get the proposal approved, the county sought bids for the project but, because of the delay, the county was out of funds for the project. The end result is that the 2-mile trail cost the county \$274,000 and was finally finished this fall, after approximately four years of delay. He said that because the trail was required to be built to road standards, it's wide enough for vehicle traffic and there have been reports that semi trucks hauling gravel have been using it. He also said that the application process for enhancement funds is lengthy.

FEDERAL HIGHWAY ADMINISTRATION (FHWA)

Janice Brown, Division Administrator, Federal Highway Administration (FHWA), Helena office, said the federal highway program has the following characteristics: programs are federally assisted but state administered, funding ties are to specific systems, states are required to have a highway agency, the states pay for maintenance, there are matching requirements, it is a reimbursable program, and states hold the contracting authority. She said that federal responsibilities include the review and approval of state proposals, the development of regulations and guidance, promulgation of standards, providing of technical assistance, distribution of funding (line of credit), and the reimbursement to the states for their eligible expenses.

Ms. Brown said the FHWA's relationship to MDT is a partnership and that some authority is delegated to the MDT. The Partnership Agreement is currently being revised because it was developed prior to TEA-21.

Rep. Story asked if the requirement for a state highway agency is related to a certain level of funding. Ms. Brown said the language is very broad, but the FHWA works with departments if it is felt that the departments are lacking in certain areas.

Sen. Glaser asked for Ms. Brown's comment in regard to her letter to Mr. Dye, dated June 15, 1999. Ms. Brown said that she is comfortable with how that process is proceeding and that the letter was written while TEA-21 was being implemented. She said the letter was a reaffirmation of agreement between the FHWA and the MDT.

Rep. Story asks if the FHWA sends out personnel to perform spot checks. Ms. Brown said that if Rep. Story was speaking about the Butte situation specifically, it was reported to the FBI by an informant.

Rep. Somerville asked Ms. Brown to respond to Commissioner Olson's remarks. Ms. Brown said that there are federal standards that are adopted by the states. She said that she couldn't address that situation specifically because she had no information on it. She said they try to streamline procedures as much as possible, and offered to check into the facts of the situation. Rep. Hibbard asked her to report back to the Committee at a future meeting.

Sen. Waterman asked if Ms. Brown was assured that public safety issues are being addressed. Ms. Brown replied that she is quite comfortable with progress that has been made.

COMMITTEE DISCUSSION ON MDT ISSUES:

Rep. Hibbard said his interpretation of Committee responsibilities appear on page 3 of the proposed work plan (see exhibit #13) where it states, "opportunities to improve existing law." He said that the second full paragraph on page 4 of the work plan states that a link between the Committee and the MDT is established through taxes that fund a great deal of the MDT's work. Rep. Hibbard said that the Committee should focus on broad policy issues rather than micro-management of the MDT.

Rep. Story said another important Committee responsibility is examination of the Administrative Rules of Montana (ARM) for the MDT. He said Rep. Fuchs brought a potential rule problem to the Committee's attention, and that he would like to examine that rule, especially if there is a due process violation.

Sen. Waterman said she would like to receive periodic reports on whether there is adequate staffing and oversight, and to discuss the best way to fund the MDT with an eye to the next legislative session.

Sen. Thomas said that since oversight of the Department of Revenue (DOR) is also within Committee purview, he would like to emphasize staff attention to ARM considerations within the liquor division.

Rep. Swanson said that she favored a broad perspective because the duties of interim committees include determining whether departmental policies are for the good of the people.

Sen. Thomas said he would like to follow the issuance of the TEA-21 projects and the issue outlined by Commissioner Olson in regard to the Community Transportation Enhancement Program (CTEP).

Sen. Glaser said SB 184 and SB 333 gave certain people tax relief and he would like to track the effect on the citizens of Montana.

Rep. Swanson said she would like to examine the authority and accountability involved in the transfer of funds from one program to another, the enhancement funds, motor fuel taxes and their uses, and the special revenue account.

Rep. Erickson said he is interested in the CTEP, and would like to get information on how the TEA-21 recreational trails program is working.

Rep. Somerville said he would like to investigate right-of-way acquisitions. Mr. Martin said the Environmental Quality Council is conducting a study of eminent domain (HJR 34). He said he will request that they address the Committee on study progress. He said that the Business, Labor, and Agriculture Interim Committee (BLAC) is studying privatization issues, and the State Administration, Public Retirement, and Veterans Issues Interim Committee (SAIC) is studying state contract procedures. Sen. Glaser said an examination of right-of-way acquisition would require an enormous expenditure of time and the Committee should receive reports on what other committees are doing.

Rep. Somerville said the second half of the question is whether the MDT actually owns the right-of-way on existing highways, and said he would like a report on that issue from the MDT. Rep. Story said that question may raise more problems than it solves because many state highways were once county roads, and the counties may not have owned the right-of-way.

Rep. Story said that he would like federal and state funding to be examined. He said the Committee should work closely with the Transportation Commission to avoid

friction and suggested that the Commission be formally invited to address the Committee. Rep. Hibbard said that he would like to see that as well.

Sen. Cocchiarella said she would like to find out how projects are begun at the local level, and would like further information on how to resolve her constituents' concerns and problems.

FISCAL REPORT FOR FY 1999:

EXHIBIT #6: General Fund Status: Fiscal Year End 1999

Terry Johnson, principal fiscal analyst, Legislative Fiscal Division (LFD), presented an overview of Exhibit #6. Mr. Johnson said that actual revenue collections for FY 99 exceeded expectations by \$38.5 million, resulting in a 2001 biennium ending fund balance of \$90 million.

SB 184 REPORT:

EXHIBIT #7: Senate Bill 184 Implementation

**EXHIBIT #8: BEFORE THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,
NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION, AMENDMENT
AND REPEAL [ARM hearing notification]**

Mary Bryson, executive director, Department of Revenue, discussed the information contained within Exhibits 7 and 8.

LEGAL CHALLENGE TO HB 260:

Dave Woodgerd, chief counsel, DOR, discussed a legal challenge to the constitutionality of HB 260. He said the issues include whether the bill diverts revenue from the coal tax trust fund, whether the original purpose of the bill was changed, whether the bill contains only one subject or two, and if it contains an unconstitutional delegation of power through the creation of a board and no definite guidelines on how to disburse the funds.

Sen. Waterman asked if anyone has filed an amicus brief. Mr. Woodgerd said the Department of Agriculture, one other agricultural organization, and Butte-Silver Bow have filed briefs.

Rep. Story asked if HB 260 had a severability clause. Mr. Woodgerd said that it did not. Sen. Glaser asked if a severability clause was necessary to separate the board's creation from the rest of the act. Mr. Woodgerd said that it is not necessary because the Supreme Court can determine whether a section, if another section is severed from it, leaves a complete act that can stand on its own.

FORT PECK TOBACCO REVENUE SHARING AGREEMENT:

EXHIBIT #9: Fort Peck Tobacco Revenue Sharing Agreement

Rep. Hibbard distributed copies of Exhibit #9 as that item on the agenda was being omitted.

Rep. Swanson said she wished to commend the DOR on their work in implementing the provisions of SB 184. Rep. Hibbard ordered formal recognition of the DOR to be recorded in Committee minutes.

DEBT LIMITATIONS OF LOCAL GOVERNMENT UNITS:

EXHIBIT #10: PROPOSAL TO EVALUATE ALTERNATIVES TO DEBT LIMITS FOR LOCAL GOVERNMENT UNITS

EXHIBIT #11: Title 7, Ch. 7, Part 22 of Montana Code Annotated (MCA), County General Obligation Bonds

EXHIBIT #12: Letter from Mae Nan Ellingson, Dorsey & Whitney, LLP, dated September 22, 1999, to members of the Committee

Mr. Martin outlined the proposal in Exhibit #10 and recommended that an advisory committee be created to conduct roundtable discussions on alternatives to debt limits. He said the advisory committee would be comprised of a D.A. Davidson

representative, Dorsey & Whitney law firm, Gene Huntington, an Office of Public Instruction representative, Gordon Morris of the Montana Association of Counties (MACo), and Alec Hansen, MT League of Cities & Towns, and he recommended that some legislators be appointed, too.

Rep. Story said that the Local Government Funding Committee had met the prior day and had discussed the bonding study. He moved that the Committee undertake the study. Rep. Hibbard said a motion was not necessary and seeing no disagreement, said the Committee would take on this study. He appointed Reps. Story and Erickson to the advisory committee.

PROPOSED WORK PLAN:

EXHIBIT #13: PROPOSED WORK PLAN OF THE REVENUE AND TAXATION INTERIM COMMITTEE, Prepared by Jeff Martin, Legislative Research Analyst

Mr. Martin discussed the effects on the interim committee structure by the approval of SB 11 passed during the 1999 session. He said the Committee's duties include, revenue estimating functions, study activities, and tracking the restructuring process of the utilities.

Rep. Story said that at the last meeting, Sen. DePratu had expressed a wish to track the positive effects on the economy from tax legislation passed in 1999. Ms. Bryson said the DOR was prepared to monitor that and to report back to the Committee. Rep. Story said the Committee should specify some of the criteria by which any positive effects could be tracked.

Mr. Martin said that other areas for review, analysis and study include the DOR report on SB 184, the reappraisal plan under 15-7-111, MCA, and review of the implementation of SB 200. He said that there are also agency reports that are required by statute.

Sen. Waterman moved to adopt the proposed work plan; the motion was passed via unanimous voice vote.

COMMITTEE BUDGET:

EXHIBIT #14: COMMITTEE TOTAL: Revenue and Taxation Committee

Mr. Martin explained the budget for the Committee as outlined in Exhibit #14.

TAX POLICY SUMMARY:

**EXHIBIT #15: 4 reports from the DOR analyzing tax legislation passed by the 56th
Legislature**

Ms. Bryson recommended that the Committee have an opportunity to read the reports before discussing them. Rep. Hibbard said that there will be an agenda item for December to discuss them.

Sen. Glaser asked how SB 100 affected tax revenues. Ms. Bryson said a report will be issued by the DOR in December after the counties have determined the amount of their mill levies.

OTHER COMMITTEE BUSINESS

Sen. Cocchiarella asked if the Committee had an interest in pursuing the housing trust fund issue. Sen. Glaser said he wouldn't want to preclude the option of appropriating an income stream instead of creating a trust fund. Sen. Cocchiarella asked if staff could provide more information on the issue at the next meeting.

Sen. Thomas stated that he didn't believe this issue was under the Committee's purview because it could create a precedent of supporters of unfunded legislation approaching the Committee to find a revenue source for their project. Rep. Story said he agreed.

Rep. Hibbard said the matter will be discussed at the next meeting.

ADJOURNMENT

The meeting was adjourned at 5:30 p.m. The next meeting will be December 10, 1999.

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