



MONTANA LEGISLATIVE BRANCH

Legislative Fiscal Division

Room 110 Capitol Building * P.O. Box 201711 * Helena, MT 59620-1711 * (406) 444-2986 * FAX (406) 444-3036

Legislative Fiscal Analyst
CLAYTON SCHENCK

DATE: October 4, 2006
TO: Legislative Finance Committee
FROM: Greg DeWitt
RE: Budget Amendment for SB 276 Tax Distributions

The Governor's Office of Budget and Program Planning has approved a budget amendment requested by the Department of Revenue to augment FY 2007 state special revenue funding. The budget amendment is for \$1.0 million state special revenue to meet the distribution requirements of SB 276. SB 276 calls for distributions of the bentonite taxes to Carbon and Carter Counties. SB 276, as passed and approved, did not include an appropriation or amend state law to add a corresponding statutory appropriation for the distribution of tax proceeds.

According to Greg Petesch, the legality of the budget amendment is at issue because of the following concerns regarding the statutory requirements for the approving authority to approve the request:

- 1) Under 17-7-402(1)(c)(i), MCA, for approval authority in response to an emergency¹
 - o No emergency exists to justify the expenditure since:
 - o No catastrophe, disaster, or calamity has occurred
 - o No serious unforeseen and unanticipated circumstance has occurred subsequent to the time that an agency's appropriation was made since SB 276 was passed and approved prior to passage and approval of HB 2. So, an appropriation could have been provided for the distribution and the need for a statutory appropriation was discussed during SB 276 deliberations but not included out of omission
- 2) Under 17-7-402(1)(e), MCA, for approval authority in response to an unanticipated event that has occurred since consideration by the legislature:
 - o No significant identifiable events, specific to Montana and pursuant to provisions or requirements of Montana state law have occurred since the matter was raised with or presented for consideration by the legislature, since SB 276 was passed and approved prior to passage and approval of HB 2. As such an appropriation could have been provided for the distribution and the need for a statutory appropriation was discussed during SB 276 deliberations but not included out of omission

This issue was raised to the committee at its October 2005 meeting when a budget amendment to distribute bentonite taxes was certified for FY 2006. At that time, the committee voted to "write

¹ An emergency is defined in 17-7-102(6), MCA.

a letter to the Governor informing him that the amendment did not meet the statutory criteria for a budget amendment, and to recommend that he include a statutory solution to the funding oversight as part of the next legislative session”². The Governor did not include a statutory solution to this issue as part of the call for the December 2005 Special Session. The Governor has requested legislation for the 2007 Legislature and the Legislative Council has requested drafting of legislation to establish a statutory appropriation for the bentonite tax distribution (LC 132).

Committee options for the FY 2007 budget amendment for SB 276 tax distributions include:

- 1) Take no action; or
- 2) Communicate to the executive that the committee has determined that the requirements for the approving authority to approve a budget amendment have not been satisfied.

² From the approved minutes for the Legislative Finance Committee meeting held October 2005