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Revenue and Transportation Interim Committee

60th Montana Legislature

SENATE MEMBERS

JIM PETERSON--Chair
KIM GILLAN--Vice Chair
JIM ELLIOTT
JEFF ESSMANN
CHRISTINE KAUFMANN
ROBERT STORY JR

HOUSE MEMBERS

TIMOTHY FUREY
GALEN HOLLENBAUGH
MIKE JOPEK
BOB LAKE
PENNY MORGAN
JON SONJU

COMMITTEE STAFF

JEFF MARTIN, Lead Staff
LEE HEIMAN, Staff Attorney
FONG HOM, Secretary

MINUTES

July 10, 2008

Room 102, Capitol Station
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

An electronic copy of these minutes and the audio recording may be accessed from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side column of the home page, select *Committees*, then *Interim*, and then the appropriate committee.

To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

COMMITTEE MEMBERS PRESENT

SEN. JIM PETERSON, Chair
SEN. JIM ELLIOTT
SEN. JEFF ESSMANN
SEN. CHRISTINE KAUFMANN
SEN. ROBERT STORY JR

REP. TIMOTHY FUREY
REP. GALEN HOLLENBAUGH
REP. MIKE JOPEK
REP. BOB LAKE
REP. JON SONJU

COMMITTEE MEMBERS EXCUSED

SEN. KIM GILLAN, Vice Chair
REP. PENNY MORGAN

STAFF PRESENT

JEFF MARTIN, Lead Staff
LEE HEIMAN, Staff Attorney
FONG HOM, Secretary

Visitors

Visitors' list, Attachment #1.

COMMITTEE ACTION

- The committee approved the minutes from the April 17 and 18, 2008, meetings.
- The committee requested a bill draft to clarify the \$250,000 exemption on the metalliferous mines tax.
- The committee requested a bill draft to clarify the tax increment financing district laws.
- The committee requested submitting bill draft requests for the Montana Department of Transportation's legislative proposals.

CALL TO ORDER AND ROLL CALL

00:00:01 Sen. Peterson called the meeting to order at 3:04 p.m. The secretary noted the roll. Sen. Gillan and Rep. Morgan were excused. The minutes of the April 17 and 18, 2008, meetings were approved as submitted.

AGENDA

Committee consideration of requesting bill drafts - Jeff Martin, Research Analyst, LSD

00:02:21 Mr. Martin recommended that the committee request bill drafts clarifying the statutes on the mines tax and tax increment financing districts (**EXHIBIT 1**).

Questions

00:07:47 Rep. Lake asked if the changes in the tax increment financing districts would affect the definitions of what qualifies as a district area? Mr. Martin said that the intent is to have consistency in definitions and to get consistency within the tax increment financing districts laws.

00:10:34 Sen. Story asked whether the exemption would be \$250,000 for the year or \$125,000 per reporting period? Mr. Martin said that a producer might not get the full exemption if it is split per reporting period. He would work with the Department of Revenue to make sure that a taxpayer isn't inadvertently deprived of an exemption.

Sen. Story said that he would be interested in seeing proposed changes in the tax increment financing districts because any time you unify several sections of code, someone is going to end up with a better deal than they had and vice versa. He requested that the committee look at proposals on both these subjects for the next meeting.

00:12:44 Rep. Lake said that his interpretation is, if you operate a mine for 6 or 9 months,

the first \$250,000 is an exemption.

Mr. Martin said that it is unclear whether the \$250,000 applies annually or applies to the 6-month reporting period. It could be interpreted that it applies to the reporting period, in which case, it would be a \$500,000 exemption for the year. The idea is to clarify that it is \$250,000 for a year regardless of how long metal mine producer is in business.

Rep. Lake moved that the committee request staff to prepare a bill draft that would clarify that the \$250,000 exemption is a per year exemption regardless of the reporting period on metalliferous mines tax. The motion passed unanimously.

00:18:12 **Sen. Story moved for staff to prepare a bill draft on the tax increment financing districts laws to see if there are any tradeoffs. The motion passed.**

Montana Department of Transportation legislative proposals - Jim Lynch, Director

00:21:25 Mr. Lynch presented the Montana Department of Transportation's proposed legislation **(EXHIBIT 2)**.

Questions on Proposal 4: clarify state's obligation to pay costs in contract actions

00:25:52 Rep. Lake asked if this item includes right-of-way contracts? Mr. Lynch said that he believes it does but he doesn't want to say for sure.

00:27:18 Sen. Story said that his concern is that other entities have the power of eminent domain. He asked Mr. Lynch to find out that if the statute is put back in to protect the Department of Transportation, will it also apply to those other entities so that if the Department sues for eminent domain, are they then liable for court costs on those issues?

Questions on Proposal 5: establish post crash clearance standards

00:30:02 Sen. Elliott asked who would make the decision to remove the debris. Mr. Lynch said that right now the Montana Highway Patrol does. He said that this statute allows someone to, if they are in an accident and they know where the vehicles are, they can drive them to the shoulder of the road to wait until the Highway Patrol shows up. If there is an injury or serious accident, the Highway Patrol is the one who decides how long that roadway is going to be closed.

Questions on Proposal 1: allow use of electronic bid bonds

00:35:24 Sen. Story asked if other agencies in the state allow for electronic bid bonds or is this something that needs to be solved for MDT? Mr. Lynch said he only knows what it necessary for MDT.

00:38:44 **Rep. Hollenbaugh moved that committee submit bill draft requests for the Montana Department of Transportation's seven proposals.**

Sen. Story said that he still has concerns on #4 with the issue of attorney's fees. **Sen. Story offered a substitute motion to include all items except for Proposal 4: clarify state's obligation to pay costs in contract actions, and deal with that as a separate item.**

The motion to submit bill draft requests for the Montana Department of Transportation's Proposals 1, 2, 3, 5, 6, and 7 passed.

Discussion on Proposal 4

00:55:17 Sen. Elliott asked how many times the Department has to go through the condemnation process? Mr. Lynch said that he doesn't have that number but it depends on the project. In the last four years they have been able to make good offers on real estate and getting appropriate appraisals.

Roll call vote on Proposal 4 as bill draft

There was a voice vote on the motion to approve the bill draft request for Proposal 4. Sen. Elliott, Sen. Kaufmann, Rep. Furey, Rep. Hollenbaugh, Rep. Jopek, Rep. Lake voted aye; Sen. Essmann, Sen. Peterson, Sen. Story, and Rep. Sonju voted nay. The motion passed.

Montana Department of Transportation Reports

01:05:48 **Update on status of Highway 2 project.**

Mr. Lynch said that the Environmental Assessment (EA) on the Highway 2 project from Culbertson to North Dakota has been completed. The comment period is closed, MDT has responded to the comments, and the EA is now in the hands of the Federal Highway Administration for its review and action.

Questions

01:06:35 Sen. Peterson asked, when the Federal Highway Administration signs off on the EA, how does a project proceed and how does it enter into the queue as far as priority for funding? Mr. Lynch said that they would have an EA that supports the project, an estimate of the project determined, and then it would go back into the Red Book Process and adopted by the Transportation Commission. The Transportation Commission would establish the priority of the project.

01:08:41 **Priority of highway projects under scenario of rising costs and uncertain revenue**

Mr. Lynch discussed the MDT's project status summary (**EXHIBIT 3**).

Questions

01:15:49 Sen. Peterson asked how Mr. Lynch prioritizes each project given the escalating costs and fuel costs. Mr. Lynch said that one way to prioritize a project is through the Performance Programming Process (P3System) in which every mile of roadway in the state is analyzed every year. They look at safety, pavement condition, and congestion.

Sen. Elliott asked how long before the bids are let does the engineer make an estimate? Mr. Lynch said that they make their estimate at the red book which could be a year or two. Prior to it being bid, they will finalize their estimate.

Sen. Story asked about the long-term outlook regarding highway maintenance. Mr. Lynch said that they look at that on a long term basis. As we move forward in the department with the current funding mechanism for both federal and state highways, the majority of projects are going to be pavement preservation and those projects that are new may not be on the front burner because the first priority is to maintain the asset that we have already put billions of dollars into.

Report required under 61-10-154, MCA, on inspection of diesel-powered vehicles (dyed fuel)

01:31:24 Mr. Lynch presented a report on dyed fuel (**EXHIBIT 4**). He said that the chart shows the number of inspections that MDT made and the number of vehicles that were found in violation.

Questions

01:34:13 Rep. Jopek asked what the exceptions for using dyed fuel are. Mr. Lynch said

the exceptions are primarily agricultural exceptions. They have to be used in farm activities. Another area is drill rigs that run on diesel fuel. If they move from one field to another field, they are allowed to operate.

Sen. Elliott said it used to be that there was no dyed fuel and users put in for a rebate. How was that handled with road trucks? Mr. Lynch said before the use of dyed fuel, everybody put in a refund for their off-road fuel. On a monthly basis they submitted a report on mileage, they showed receipts and how many gallons of off-road fuel used and applied for a refund. The Department of Transportation would then refund the money.

Sen. Elliott said if someone uses a tractor for a daily ride and a goes somewhere using dyed fuel, is that a violation? Mr. Lynch said technically it is not because the vehicle cannot carry a passenger.

Update on escrow account for local payment of transportation projects

01:42:55 Mr. Lynch gave an update on the city agreements where cities participate in construction costs. At the last meeting, Mr. Lynch gave the committee a copy of an escrow agreement with the City of Great Falls. He said that currently they have not had any city request to enter into an agreement on how they could pay or assure the MDT that the obligations that they are required to pay on these projects would be worked out. He said that the position of MDT as reported last time is that every community is unique and they are willing to sit down with those communities to work out ways in which they can satisfy the statutes, and also work up agreements in which the cities are responsible to pay their portion of construction costs.

Room to Live video

01:48:05 The committee watched the video "Room to Live" sponsored by the Department of Transportation on the tragedy of not wearing seatbelts in a moving vehicle.

Status of allowing white markers on public roads to commemorate traffic fatalities

02:10:15 Mr. Lynch said that since 1953, the Montana Post of the American Legion has installed the white markers. The American Legion pays for the material, they contact the families, and they determine where the accidents happened. He also said that there has never been a reportable injury due to a white marker.

Questions

02:12:26 Sen. Story asked if the Department has a policy regarding what happens to the markers after they are put up. Mr. Lynch said that the American Legion maintains the markers and would prefer that they weren't decorated. The Department has a policy that if a family wants to build a monument, there is a process to do that.

Highway 35 Fuel Spill Discussion

Rep. Lake asked if there were any limitations on restricting traffic because of the situation on Highway 35 where a huge amount of fuel was spilled. Mr. Lynch said that the Department has the statutory authority to restrict truck movement on roads anywhere in Montana but they have to follow a certain procedure and it has to be justifiable. As to the Highway 35 situation, public hearings were held and people were allowed to submit comments until July 7. It was decided that they need to solve the problem within the communities of Polson and Somers.

Questions

Sen. Kaufmann asked if Mr. Lynch has seen any impacts on the high costs of fuel on driving habits and accident rates? Mr. Lynch distributed and discussed the information on Average Percent Change (**EXHIBIT 5**) and a map of MDT's Automatic Traffic Recording & Weigh in Motion Sites (**EXHIBIT 6**).

Public Comment

None.

Adjournment

02:30:20 Sen. Peterson recessed the meeting at 5:34 p.m., to reconvene at 8:00 a.m. on July 11, 2008.

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