

August 29, 2022

Travis Brown
Research Analyst
Montana Legislative Services Division

Subject: Department of Transportation Legislative Concepts 2023 Legislative Session

Dear Mr. Brown:

Attached please find a spreadsheet and detail sheets presenting the Montana Department of Transportation's (MDT's) proposed legislative concepts for the 2023 Legislative Session.

If you need further information, please do not hesitate to contact me.

Best regards,



Valerie Wilson
Chief Legal Counsel

MDT Legislative Concepts 2023 Session

	A	B	E	F	G	H
	MDT Proposed Legislation	Short Title	Attorney	Division / Bureau	Testimony	NOTES
1	5401-02-001	Progressive Design Build	Carol	ENGINEERING	DUSTIN ROUSE	Authorize MDT to use a progressive design build process; revise /amend 60-2-134, 60-2-145, 60-2-111, and 18-2-501, MCA.
2	5401-02-002	Making Permanent CM/GC Contracting Process	Carol	ENGINEERING	DUSTIN ROUSE	Amend 60-2-119 and 60-2-145 MCA to make permanent the Transportation Commission's authority to use CM/GC contracting process for highway projects.
3	5401-03-003	Include Maintenance Vehicles in Move Over Law	Charlena	MAINTENANCE	JON SWARTZ	Amend 61-8-346 MCA, to include highway maintenance vehicles in the move over law. Bill draft submitted to the 5401 folder.
4	5401-22-015	Authorize Temporary Permit for Mobile Equipment	Charlena	MCS	BRAD MARTEN	Amend 60-3-431, MCA to authorize a temporary permit for mobile equipment.
5	5401-22-010	MCS Red Tape Relief Bill	Charlena	MCS	BRAD MARTEN	<ul style="list-style-type: none"> • Amend 61-10-102(2)(c)(i), MCA to allow for additional hours of operation for oversized hay movements. • Amend 61-10-147, MCA to remove jail time as a potential penalty for violating load restrictions. • Repeal 61-10-209(3), MCA, which requires GVW violators to purchase annual permit and repeal 61-10-209(4), MCA, which allows impounding vehicles as penalty for non compliance. • Amend 61-10-213, MCA to delete references to non permitting agencies.
6	5401-01-005	Fuel Tax Streamlining	Eli	ADMIN	LARRY FLYNN	Amend 15-70-426, MCA to allow taxpayers to submit electronic transaction reports to verify amounts claimed for motor fuel tax refunds.
7	5401-01-006	The Local Tax Fuel Tax Account (BaRSAA Cleanup)	Carol	ADMIN	LARRY FLYNN	Repeal 15-70-127, 15-70-403, and section 5 HB 473 (2017) to simplify Bridge and Road Safety and Accountably Restricted Account and remove excessive regulations.
8	5401-01-007	Electric Vehicle Funding (registration / charging stations)	Eli	ADMIN	LARRY FLYNN	Establish a revenue source for electric vehicles, establishing fees for registration/road use/charging station.
9	5401-01-004	Point of Taxation First Receivership	Eli	ADMIN	LARRY FLYNN	Amend the definition of "Distributed" under 15-70-401 (7), MCA to establish when motor fuel tax is due.
10						

MDT Legislative Concepts 2023 Session

	A	B	E	F	G	H
1	MDT Proposed Legislation	Short Title	Attorney	Division / Bureau	Testimony	NOTES
11	5401-01-012	Revise RR Protective Devices Requirements	Eli / Carol	ADMIN	LARRY FLYNN	Revise 15-70-102 to allow all state fundng for RR Protective devices to be charged to HSSRA (02422) rather than the non-restricted fund (02349).
12	5401-03-011	Authorize and Enforce Emergency Road Closures	Carol	MCS & MAINTENANCE	BRAD MARTEN & JON SWARTZ	Amend 60-2-201 MCA, to authorize MDT to enact emergency road closures and draft enforcement and penalty statutes.
13	5401-22-018	Entry Level Driver Training/ Drug and Alcohol Clearing-house	Charlena	MCS & DOJ	BRAD MARTEN	Revise DOJ statutes to require entry level drivers training and drug and alcohol clearing-house checks to comply with federal mandates.

Complete Shaded Areas

Form last update 05/6/2022

Proposed 2023 Session Legislation

Agency Name & No: TRANSPORTATION

Priority Number: 1 **Filename:** 5401-02-001

Short Title: Progressive Design Build Contracting Process

Agency Contact Person/Phone: Dustin Rouse

1. Purpose:

Authorize MDT to use a progressive design build alternative (PDB) contracting process for highway projects; revise /amend 60-2-134, 60-2-145, 60-2-111, and 18-2-501, MCA. PDB is an emerging construction delivery method that utilizes the time-saving benefits of traditional Design-Build (D-B) delivery and benefits from early contractor involvement similar to the Construction Manager/General Contractor (CM/GC) project delivery method.

2. Background:

See attached.

3. Fiscal Impact by Fund Type:

This impact should be as specific as possible including dollar amounts, funding source, and FTE (if known).

Fiscal impact would be determined based on legislative result.

4. Summary Checklist [Check & complete all that apply]--

- Housekeeping Only
- Federal Requirement
- Audit Recommendation (Audit No.)
- Major Legislation
- Anticipated to be Controversial Legislation
- Bill Draft has been included in Legislation Submittal (if available)
- Supports Submitted EPP Item No:
- Local Government Fiscal Impact
- Implements Red Tape Relief Initiative
- Leg. has been Submitted in Previous Legislative Sessions (list priority no, LC no, or bill no):
- Legislation would affect other state agencies (list):
- Special Interest Groups Affected (list):
- Other:

MONTANA DEPARTMENT OF TRANSPORTATION
MDT 5401-02-001 - PROGRESSIVE DESIGN BUILD CONTRACTING PROCESS
2023 LEGISLATIVE SESSION

PURPOSE OF BILL

MDT 1, Progressive Design Build Contracting Process, proposes legislative statutory amendments to authorize a new alternative contracting construction delivery method known as Progressive Design-Build (PDB). PDB is an emerging construction delivery method that utilizes the time-saving benefits of traditional Design-Build (D-B) delivery. Additionally, PDB benefits from early contractor involvement similar to the Construction Manager/General Contractor (CM/GC) project delivery method.

BACKGROUND

MDT and the Transportation Commission are authorized under Mont. Code Ann. Title 18, Chapter 2, Part 4 and Title 60, Chapter 2 to let contracts for the construction or reconstruction of highways.

Design-Bid-Build is the most commonly used method for completing construction projects. MDT currently delivers approximately 96% of transportation projects with this method. As its name suggests, this delivery method consists of three distinct phases: the design phase, the bidding phase, and the build phase. Design-Bid-Build is a good option for simple projects (e.g., maintenance construction) or projects requiring challenging right-of-way and/or utility relocation negotiations. It is also a good choice for projects that do not require expedited delivery.

The Design-Build (D-B) method was authorized by the 2003 Montana Legislature in Mont. Code Ann. §60-2-137 to reduce the lengthy timeline that often accompanies Design-Bid-Build. It does so by replacing the designer and the contractor with a single party who fills both of these roles, called a Design-Builder. The Design-Builder, who is usually the contractor and engineer, serves as MDT's single contact for the entirety of the project. This allows for efficient communication, and also means that the Design-Builder is singularly accountable for the outcome of the project.

After selection, the D-B Team can complete their design development, secure permits, and begin construction. D-B allows the construction to be completed in phases, wherein the first phase is designed, and construction begins while the second phase is still in design allowing for a faster start to construction. This makes D-B ideal for projects that require obligation of construction funding or projects with an accelerated timeline. In Montana, D-B has been used for projects qualifying under emergency contracting, e.g., Beartooth Highway Slide Repair and MT-81 Bridge Replacement.

Construction Manager/General Contractor (CM/GC) is a derivative of the D-B process. MDT hires the engineer to manage the design of the project. At the same time, MDT hires the contractor to serve as the Construction Manager (CM) to assist the engineer with constructability review and developing innovative solutions. The final member of the team is an Independent Cost Estimator (ICE) who ensures that pricing and schedules are commensurate with the work. The CM/GC process is ideal when MDT wants a contractor's perspective to design and construction solutions.

Similar to D-B, the CM/GC delivery method allows utilization of Early Work Packages to begin early construction on portions of the project while other portions of the project are still in the design phase. It

is important to note that CM/GC is currently in the pilot process. MDT has contracted out four projects using the CM/GC Alternative Contracting method. The Montana Legislature will assess the benefits of the process and determine if CM/GC should be allowed for future use by MDT.

PROGRESSIVE DESIGN BUILD

Progressive Design Build (PDB) is an emerging construction delivery method that utilizes the time-saving benefits of traditional Design-Build delivery and benefits from early contractor involvement similar to the Construction Manager/General Contractor project delivery method. Similar to CM/GC, the PDB Team is selected mainly on team qualifications. The biggest difference between CM/GC and PDB is CM/GC selects a contractor and engineer under two different contracts and PDB selects a cohesive contractor/engineer team under a single contract.

Most of the project delivery related research indicate that early contractor involvement of any type consistently reaps benefits for MDT by producing a more constructible project, which often translates into earlier cost and schedule certainty. A comparative analysis of PDB with CM/GC process concludes they are nearly identical with regard to format, differing only in whether MDT retains the design responsibility in CM/GC or assigns it to the Design-Builder in PDB.

PDB facilitates involvement of the Design-Build Team during the earliest stages of MDT's project development, ensuring they are part of the project team developing design solutions. This promotes the greatest amount of collaboration among the three key players in a construction contract – MDT, the designer, and the contractor. Construction projects benefit under PDB from faster decision making, both in design and construction.

While a project design is usually 30-percent complete (or more) by the time a Design-Builder is procured in the traditional two-step D-B process, PDB adds the Design-Builder to MDT's team at the very beginning of the design phase. Under PDB, when the design is somewhere between 75 and 100 percent complete, the Design-Builder provides a price proposal. MDT will incorporate an independent cost estimator (ICE) to review and validate the Design-Builder's pricing.

The other major feature of PDB is that the Design-Builder is selected mainly on the team's qualifications. By state statute, Montana is required to include a price element in the selection process. Since there is no early design to develop a bid price, MDT could base the pricing comparison on the PDB Team's overhead and/or profit rates, similar to the selection process currently utilized in CM/GC. In the PDB selection process, the owners would consider "the reasonableness of price elements" in order to satisfy the pricing selection criteria mandate.

The Federal Highway Administration (FHWA) recognizes and supports use of PDB in the federal aid highway program under 23 CFR 636.302 citing: streamlined procurement, single point of responsibility, MDT input, transparency, lesson design submittal review cycles, opportunity for early work packages, and off-ramp for MDT.

LEGISLATIVE CHANGES

MDT's Progressive Design Build Contracting Method Bill will provide a new section of Code to be codified as part of Title 60, Chapter 2, Part 1 including:

(1) After the commission, acting on the recommendation of the department, has identified a project for which the progressive design-build contracting process will be used and the commission has approved the selection criteria proposed by the department, the department shall prepare and advertise a request for qualifications.

(2) From the responders to the request for qualifications, the department shall prepare a short list of the responders that it believes are most qualified, not to exceed five responders on any single project.

(3) (a) The department shall announce the short list and issue a request for proposals to each of the prospective progressive design-build firms on the short list.

(b) A technical and price proposal submitted in response to a request for proposals must contain detailed descriptions of the prospective progressive design-build firm's approach to performing construction management and design services during the preconstruction phase and the construction phase in accordance with the project delivery criteria package.

(4) (a) The department shall evaluate the technical and price proposals and make a written recommendation to the commission regarding the department's selection of the progressive design-build firm to be awarded the preconstruction phase contract.

(b) After completion of the preconstruction services contract, the department shall make a written recommendation to the commission regarding award of the construction contract.

The bill will also amend Mont. Code Ann. §18-2-501 to clarify the Title 18 (Public Contracts) Chapter 2 (Construction Contracts) Part 5 (Alternative Project Delivery Contracts) definition of "alternative project delivery contract" does not include a design-build or progressive design-build contract awarded by the Transportation Commission under Mont. Code Ann. §60-2-111(3). The amendment will clarify the Legislature is granting authority for use of the PDB contracting method specifically to MDT for highway construction projects.

MDT'S DELIVERY METHOD CONSIDERATIONS

Each of the described contract delivery methods have their benefits and limitations. When considering which processes are best suited for a project, MDT gives careful consideration to several critical factors. When assessing whether to use existing alternative delivery methods of DB or CM/GC, MDT managers and key stakeholders perform a systematic Project Delivery Selection Process (PDSP) review. The six key factors considered when assessing the applicability of current alternative delivery methods are:

1. Cost Impacts
2. Schedule
3. Opportunity to Manage/Assign Risk
4. Complexity of Design and Construction
5. Opportunity for Innovation
6. Complexity of Coordination

SUMMARY

The PDB process benefits from early delivery, risk assignment to the contractor, streamlined project scope of work, and innovative solutions resulting from the contractor's involvement in design.

Legislative authority to use Progressive Design Build as an alternative contract delivery method for MDT highway construction or reconstruction projects is intended to result in the benefit of assigning and/or mitigating risk during the design stage. Reduced risks result in lower costs and potential for litigation.

MDT's goal is reduction in costs and efficiencies in delivery of highway projects through availability of the new PDB contracting method.

Proposed 2023 Session Legislation

Agency Name & No: TRANSPORTATION

Priority Number: 2 **Filename:** 5401-02-002

Short Title: Extend CMGC Pilot Program

Agency Contact Person/Phone: Dustin Rouse

1. Purpose:

An Act Making Permanent the Transportation Commission's authority to use the Construction Manager General Contractor (CM/GC) contracting process for highway projects.

2. Background:

See attached.

3. Fiscal Impact by Fund Type:

This impact should be as specific as possible including dollar amounts, funding source, and FTE (if known).

Fiscal impact would be determined based on legislative result.

4. Summary Checklist [Check & complete all that apply]--

- Housekeeping Only Federal Requirement Audit Recommendation (Audit No.) Major Legislation
- Anticipated to be Controversial Legislation Bill Draft has been included in Legislation Submittal (if available)
- Supports Submitted EPP Item No: Local Government Fiscal Impact
- Implements Red Tape Relief Initiative
- Leg. has been Submitted in Previous Legislative Sessions (list priority no, LC no, or bill no):
- Legislation would affect other state agencies (list):
- Special Interest Groups Affected (list):
- Other:

MONTANA DEPARTMENT OF TRANSPORTATION

MDT 5401-02-002 - MAKE PERMANENT THE TRANSPORTATION COMMISSIONS AUTHORITY TO USE CM/
GC CONTRACTING PROCESS

2023 LEGISLATIVE SESSION

BACKGROUND

MDT and the Transportation Commission are authorized under Mont. Code Ann. Title 18, Chapter 2, Part 4 and Title 60, Chapter 2 to let contracts for the construction or reconstruction of highways.

Design-Bid-Build is the most commonly used method for completing construction projects. MDT currently delivers approximately 96% of transportation projects with this method. As its name suggests, this delivery method consists of three distinct phases: the design phase, the bidding phase, and the build phase. Design-Bid-Build is a good option for simple projects (e.g., maintenance construction) or projects requiring challenging right-of-way and/or utility relocation negotiations. It is also a good choice for projects that do not require expedited delivery.

The Design-Build (D-B) method was authorized by the 2003 Montana Legislature in Mont. Code Ann. §60-2-137 to reduce the lengthy timeline that often accompanies Design-Bid-Build. It does so by replacing the designer and the contractor with a single party who fills both of these roles, called a Design-Builder. The Design-Builder, who is usually the contractor and engineer, serves as MDT's single contact for the entirety of the project. This allows for efficient communication, and also means that the Design-Builder is singularly accountable for the outcome of the project.

After selection, the D-B Team can complete their design development, secure permits, and begin construction. D-B allows the construction to be completed in phases, wherein the first phase is designed, and construction begins while the second phase is still in design allowing for a faster start to construction. This makes D-B ideal for projects that require obligation of construction funding or projects with an accelerated timeline. In Montana, D-B has been used for projects qualifying under emergency contracting, e.g., Beartooth Highway Slide Repair and MT-81 Bridge Replacement.

Construction Manager/General Contractor (CM/GC) is a derivative of the D-B-B process. Under the CM/GC alternative contracting process, MDT hires the engineer to manage the design of the project. At the same time, MDT hires the contractor to serve as the Construction Manager (CM) to assist the engineer with constructability review and developing innovative solutions. The final member of the team is an Independent Cost Estimator (ICE) who ensures that pricing and schedules are commensurate with the work. The CM/GC process is ideal when MDT wants a contractor's perspective to design and construction solutions.

Similar to D-B, the CM/GC delivery method allows utilization of Early Work Packages to begin early construction on portions of the project while other portions of the project are still in the design phase.

CM/GC PILOT PROGRAM

MDT received legislative approval during the 2017 session to use the CM/GC alternative project delivery method on a conditional basis, for four pilot projects. MDT has completed one of the CM/GC pilot projects with three currently in the design phase.

MDT sponsored CM/GC training workshops, and extensive debrief meetings to assist contractors with little or no CM/GC alternative delivery experience to improve submittals. As a result, the quality of contractors' technical proposals and interviews has steadily increased between the first and last pilot projects. As a direct result of debrief meetings with the contractors, several process modifications have been made as MDT becomes more experienced with the CM/GC project delivery process. MDT has striven to make the playing field as even as possible for all contractors without compromising project quality and price.

CM/GC SELECTION CRITERIA

In response to input from the Montana Contractors' Association, the pilot program does not limit the number of Contractors to be prequalified. All responsive teams are allowed to continue their pursuits and submit a proposal. In accordance with the MDT CM/GC Guidance document developed in 2018, the best-value selection process included three primary elements, and their weighting are listed as follows:

- Technical Proposal = 55%
- Interview = 25%
- Price Component = 20%

In response to input from Montana Contractors' Association representatives following the first pilot project (Trout Creek Bridge), the interview weighting was increased to 40% and the technical proposal weighting was lowered to 40%. This scoring criteria was implemented for the second, third and final CM/GC pilot project selection.

CM/GC RESULTS FOR FOUR PILOT PROJECTS

Trout Creek Bridge project -The first of the CM/GC pilot projects, the Trout Creek Bridge project was advertised for Statements of Qualifications (SOQ) in August 2018 with six firms responding to the solicitation. Kiewit Infrastructure Company was selected as the best-value firm. The project construction has been completed and the contract closed out.

Summary of benefits received:

- Agency/Public participation effort reduced bridge closure time (6-weeks) by at least 50% compared with conventional approach (12-16 weeks). Equates to approximately \$2.5 million savings.
- Construction means and method recommendations by the CM resulted in an additional \$850K savings.
- Final Guaranteed Maximum Price (GMP) – Contractor price \$10,504,000; Engineer's Estimate \$10,770,000; Independent Cost Estimator (ICE) estimate \$10,458,000.
- At project completion, Contractor's final construction cost \$200K under GMP.
- Project team collaboration resulted in the design being completed in 18-months, over a year ahead of traditional delivery schedule.

Salmon Lake – MT 89 Reconstruction - The second of the CM/GC pilot projects was advertised in February 2019 with five firms being shortlisted. Kiewit Infrastructure Company was selected as the best-value firm. MDT and the Consultant are currently negotiating ROW acquisition, which is expected to conclude shortly. The project is approaching 90% design; the GMP is anticipated in late fall 2022.

Summary of benefits received:

- Contractor constructability review design options to implement innovative rock catchment concepts will save \$180K.
- Additional geotechnical analysis based on input from the Contractor will save \$800K on slope attenuator design.

Johnson Lane - The third of the CM/GC pilot projects was advertised in April 2019 with five firms submitting SOQs. The joint Venture team comprised of LHC and Granite Construction Co. were selected as the best-value contractor. MDT and the Consultant are currently negotiating ROW acquisition. The project is at 60% design; the GMP is anticipated in Winter 2023.

Summary of benefits received:

- Contractor constructability review input will save \$540K on reduction of the interchange footprint and reduction in bridge spans and length.
- Contractor constructability review will save \$2.1M on maintaining Interstate profile and lowering Johnson Lane profile as opposed to maintaining Johnson Lane profile and raising Interstate profile.

MT 200 Bridges - The fourth and final CM/GC pilot project was advertised in February 2021 with six firms submitting SOQs. Kiewit Infrastructure Company was selected as the best-value firm. The project is currently in the preliminary design stage with the GMP expected to be completed by February 2024.

Summary of benefits received:

- The project is in the early stages of design. Specific cost benefits are unknown at this time.
- The contractor constructability review has already resulted in reimagining the traditional design approach to implement cost effective hydraulic structure solutions while meeting wildlife connectivity needs, e.g., use of culverts in lieu of bridges.

LEGISLATIVE CHANGES

The Bill will amend §§18-2-501, 60-2-111, 60-2-134, and 60-2-145, and repeal § 60-2-119, MCA; § 6, Chapter 54, Laws of 2017, and § 9, Chapter 111, Laws of 2021.

SUMMARY

The CM/GC process allows utilization of Early Work Packages to begin early construction on portions of the project while other portions of the project are still in the design phase. MDT benefits from early delivery, risk assignment to the contractor, streamlined project scope of work, and innovative solutions resulting from the contractor's involvement in design. MDT's goal is reduction in costs and efficiencies in delivery of highway projects through use of the CM/GC alternative contracting process. The CM/GC pilot projects have shown benefits of reduced road closure times, cost savings, and length of project time reductions.

Complete Shaded Areas

Form last update 3/24/2022

Proposed 2023 Session Legislation

Agency Name & No: TRANSPORTATION

Priority Number: 3 **Filename:** 5401-03-003

Short Title: MOVE OVER LAW

Agency Contact Person/Phone: Jon Swartz

1. Purpose:

The purpose of this proposal is to amend Section 61-8-346, MCA, to include "highway maintenance vehicles" in the Move Over law. This will provide a higher level of safety for MDT's employees and the traveling public.

2. Background:

Section 61-8-346, MCA, was amended during the 2021 Legislative Session to include "tow truck", in direct response to a winter 2020 crash that claimed the lives of two tow truck operators. Often MDT employees are first on the scene of a vehicle crash or other emergency or are called upon to assist with traffic control and incident management. Additionally, MDT staff make brief roadside stops to address highway safety issues. The dangers encountered by MDT staff and the traveling public, increase substantially when traffic does not slow down and move over for highway maintenance vehicles. MDT highway maintenance vehicles are the only group routinely working roadside incidents, without the important safety protection of the Move Over law. A number of other states have already recognized the importance of including highway maintenance vehicles in their move over laws.

3. Fiscal Impact by Fund Type:

This impact should be as specific as possible including dollar amounts, funding source, and FTE (if known).

No Fiscal Impact to the department or state.

4. Summary Checklist [Check & complete all that apply]--

- Housekeeping Only
- Federal Requirement
- Audit Recommendation (Audit No.)
- Major Legislation
- Anticipated to be Controversial Legislation
- Bill Draft has been included in Legislation Submittal (if available)
- Supports Submitted EPP Item No:
- Local Government Fiscal Impact
- Implements Red Tape Relief Initiative
- Leg. has been Submitted in Previous Legislative Sessions (list priority no, LC no, or bill no):
- Legislation would affect other state agencies (list):
- Special Interest Groups Affected (list):
- Other:

Proposed 2023 Session Legislation

Agency Name & No: TRANSPORTATION

Priority Number: 15 Filename: 5401-22-015

Short Title: Authorize Temporary Permit for Special Mobile Equipment

Agency Contact Person/Phone: Brad Marten 406-439-0700

1. Purpose:

This proposal authorizes MDT to issue a new temporary permit for special mobile equipment as defined in § 61-1-101, MCA, and addressed in § 61-3-431, MCA. This permit would benefit the trucking and construction industry by enabling purchasers of new special mobile equipment to operate on Montana highways after a sale similar to when a person purchases a new car and receives a temporary registration.

2. Background:

See attached.

3. Fiscal Impact by Fund Type:

This impact should be as specific as possible including dollar amounts, funding source, and FTE (if known).

The fiscal impact with be determined based upon consultation with DOR and DOJ and legislative result.

4. Summary Checklist [Check & complete all that apply]--

- Housekeeping Only Federal Requirement Audit Recommendation (Audit No.) Major Legislation
- Anticipated to be Controversial Legislation Bill Draft has been included in Legislation Submittal (if available)
- Supports Submitted EPP Item No: Local Government Fiscal Impact
- Implements Red Tape Relief Initiative
- Leg. has been Submitted in Previous Legislative Sessions (list priority no, LC no, or bill no):
- Legislation would affect other state agencies (list):
- Special Interest Groups Affected (list):
- Other:

MONTANA DEPARTMENT OF TRANSPORTATION
MDT 5401-22-015 - AUTHORIZE TEMPORARY PERMIT FOR SPECIAL MOBILE EQUIPMENT
2023 LEGISLATIVE SESSION

PURPOSE OF BILL

This proposal authorizes MDT to issue a new temporary permit for special mobile equipment as defined in § 61-1-101, MCA, and addressed in § 61-3-431, MCA. This permit would benefit the trucking and construction industry by enabling purchasers of new special mobile equipment to operate on Montana highways after a sale similar to when a person purchases a new car and receives a temporary registration.

BACKGROUND

This proposal identifies a viable solution to survey feedback MDT received during Governor Gianforte's Red Tape Relief Project. The survey respondent identified a gap in permit services for new special mobile equipment such as backhoes and cranes.

Currently, a purchaser of special mobile equipment is not authorized to operate on Montana highways until after the Department of Revenue (DOR) has processed private property taxes for the equipment and until after the Department of Justice, Motor Vehicle Division (DOJ) has issued a special mobile identification decal. During a follow-up phone interview, the survey respondent indicated to MDT that the existing process has taken up to six months to navigate.

MDT acknowledges that Montana companies need full use of new equipment in order to operate optimally. Governmental processing delays should not impede such business operations. MDT Motor Carrier Services (MCS) believes it is the best government resource for equipment purchasers to contact regarding temporary permits for new special mobile equipment. The new equipment purchasers would also have the ability to secure a permit through MCS online 24 hours a day.

LEGISLATIVE CHANGES

MDT plans to collaborate with DOR and DOJ to determine what legislative changes are necessary to implement this bill.

FISCAL IMPACT BY FUND TYPE

The fiscal impact will be determined in consultation with DOR and DOJ.

Proposed 2023 Session Legislation

Agency Name & No: TRANSPORTATION

Priority Number: 10 Filename: 5401-22-010

Short Title: MCS Red Tape Relief- General Clean Up Bill

Agency Contact Person/Phone: Brad Marten

1. Purpose:

This proposal will expand operating hours for oversized commercial hay load operators. Additionally, this proposal will remove the current red flag language in § 61-10-102(2)(c), MCA. 49 CFR 393.87(a) addresses when red flags are applicable for all oversized loads.

2. Background:

See attached.

3. Fiscal Impact by Fund Type: This impact should be as specific as possible including dollar amounts, funding source, and FTE (if known).

None.

4. Summary Checklist [Check & complete all that apply]--

- Housekeeping Only, Federal Requirement, Audit Recommendation (Audit No.), Major Legislation, Anticipated to be Controversial Legislation, Bill Draft has been included in Legislation Submittal (if available), Supports Submitted EPP Item No., Local Government Fiscal Impact, Implements Red Tape Relief Initiative, Leg. has been Submitted in Previous Legislative Sessions (list priority no, LC no, or bill no):, Legislation would affect other state agencies (list):, Special Interest Groups Affected (list): MT Trucking Association & Trucking Industry in General, Other:

MDT identified four statutes that have legislative restrictions which create unnecessary burdens on the trucking industry and require amendments to implement changes under Governor Gianforte’s Red Tape Relief Project. The Red Tape Relief would include allowing additional hours of operation for oversized commercial hay loads, removing the imprisonment penalty for violations of load restrictions, streamlining duplicative penalties for Gross Vehicle Weight (GVW) fee violations that include vehicle impoundment, and modernizing non-resident permit requirements.

1. PURPOSE – Allow Oversized Commercial Hay Loads

This proposal will expand operating hours for oversized commercial hay load operators. Additionally, this proposal will remove the current red flag language in § 61-10-102(2)(c), MCA. 49 CFR 393.87(a) addresses when red flags are applicable for all oversized loads.

BACKGROUND

Current state law restricts commercial hay loads to movements during daylight hours. This statutory restriction on commercial hay loads is more restrictive than other oversized loads that are allowed to operate at night. For example, ARM 18.8.509 allows interstate oversized loads up to 18’ wide to operate 24 hours a day.

Comparison of Existing Oversized Load Limits



12’6” wide currently no night travel



16’ wide may travel at night

LEGISLATIVE CHANGES

Excerpt from § 61-10-102. Width — definitions.

(2)(c) A commercial vehicle that is hauling hay but does not qualify under subsection (2)(a) may be granted a permit subject to the provisions of 61-10-121 through 61-10-127 and the following requirements:

(i) travel during daylight hours only for an oversize shipment of large round bales of hay, whether the vehicle is loaded or with an empty hay rack, up to 144 inches; when empty, a square red or orange flag measuring 12 inches on each side must be attached to each corner of the hay rack; and

(ii) travel day or night for any other shipment of baled hay, whether the vehicle is loaded or with an empty hay rack, up to 114 inches.

This proposed statutory change removes the extra restrictions imposed on commercial hay loads in existing law.

2. PURPOSE – Remove Imprisonment Penalty for Load Restriction Violations

This proposal amends § 61-10-147, MCA, by removing imprisonment from the penalty for load restriction violations.

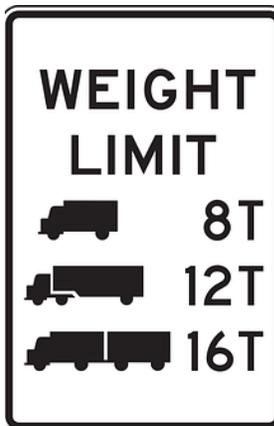
BACKGROUND

Temporary, seasonal, and certain permanent load limit restrictions change the statutory load limits for CMVs and heavy trucks operating on Montana’s roadways and bridges. These load limits on specified roadways and bridges are put into place to protect the traveling public and preserve the infrastructure from damage and failure. Typically, an MDT District Maintenance Chief, County Highway Department Official, County Commissioner(s) or bridge owner initiates the process of establishing temporary, seasonal, or permanent load limits. The MCS Division then enforces the established load limit restrictions.

MDT maintains that the existing statutory penalty section for load limit violations is excessive. For example, if a CMV driver has a third violation of the load limits in any given year, the driver may be subject to both a fine as well as up to six months imprisonment. This law has not been changed for several decades and MDT believes it needs to be modernized by removing the imprisonment provision.

Montana has approximately 535 posted bridges statewide. While it is difficult to estimate the number of roadways posted statewide, last year Lewis and Clark County had 43 posted roadways during spring break-up. On average, MCS issues 36 citations per year for load limit violations on posted roadways and bridges.

Examples of FHWA Approved Posted Load Limit Signs



LEGISLATIVE CHANGES

Excerpt from § 61-10-147. Penalties for using highway when use is restricted.

(1) It is a misdemeanor for a person, firm, or corporation to violate any of the provisions of 61-10-128(2).

(2) A person, firm, or corporation first convicted of a misdemeanor for a violation of any of the provisions of 61-10-128(2) shall be punished by a fine of not less than \$10 or more than \$50 or by imprisonment in the county or municipal jail for not less than 5 days or more than 25 days. For a second conviction within 1 year the person, firm, or corporation shall be punished by a fine of not less than \$50 or more than \$200 or by imprisonment in the county or municipal jail for not less than 25 days or more than 100 days or by both this fine and imprisonment. Upon a third or subsequent conviction within 1 year after the first conviction the person, firm, or corporation shall be punished by a fine of not less than \$200 or more than \$500 or by imprisonment in the county or municipal jail for not less than 100 days or more than 6 months or by both this fine and imprisonment.

This proposal would keep the existing tiered fine amounts for load restriction violations and would remove the possibility of imprisonment.

PURPOSE – Streamline duplicative penalties for GVW fee violations

This proposal removes the § 61-10-209(3), MCA, requirement that gross vehicle weight (GVW) fee violators of monthly or quarterly fees pay the fees for an entire year. The proposal will also remove § 61-10-209(4), MCA, which currently allows the impounding of vehicles as an additional penalty for a violator’s failure to pay the GVW fees for an entire year.

BACKGROUND

GVW fees are fees paid for the amount of total configuration weight hauled on Montana highways. Agricultural operations are allowed to pay reduced fees at a rate of 65% lower than other operations such as commercial trucking. Annually, Montana collects approximately \$36 million in GVW fees deposited into the Highway State Special Revenue Account (HSSRA).

State law allows for monthly or quarterly payment of GVW fees which enables operators engaging in seasonal activities such as agriculture and construction to save money and avoid paying these fees during off-season when the trucks are not operating on Montana highways. In addition to the violator potentially receiving a citation and the corresponding fine set forth in § 61-10-232, MCA § 61-10-209(3), MCA, sets forth an additional penalty by requiring the violator to also pay the GVW for an entire year.

For example, a farmer may pay the GVW fees during harvest for June, July, and August and then if found operating in September on expired fees be subject to a citation and corresponding fine. In addition to the referenced citation/fine, current law requires the farmer to also pay an entire year of GVW despite not operating on highways for the remaining eight months. More specifically, the farmer in this example would be required to pay an additional GVW fee of \$175.04 for eight months when they are not likely to be operating on Montana highways during that time.

Similarly, a commercial hauler operating under the same circumstances (June, July, August with a violation in September) would be required to pay an additional GVW of \$500.00 (this amount is higher because commercial haulers have a higher fee class) for eight months when the hauler is not likely to be operating on Montana highways during that time.

Further, state law allows for impounding of the vehicle for failure to purchase the additional GVW fees within 5 days.

LEGISLATIVE CHANGES

Excerpt from § 61-10-209. Monthly payment — quarterly payment — penalty for failure to pay fee.

(3) A person who operates a vehicle upon the public highways in violation of subsection (2) is guilty of a misdemeanor. ~~In addition the person is required to purchase a gross weight license for the vehicle involved at the fee covering an entire year's license for operation of the vehicle less the fees for the period of the year already paid.~~

(4) ~~If, within 5 days after a requirement under subsection (3) is applicable, a license for a full year has not been purchased as required, the Montana highway patrol, county sheriff, or city police may impound the vehicle in the manner that is directed for these cases by the department until the requirement is met.~~

For operators who have operated on expired GVW fees, MDT believes the issuance of a citation and corresponding fine allowed for in existing law are sufficient to deter operators from continuing to operate in this manner. Thus, this proposal would remove the additional penalties of requiring seasonal operators who have expired GVW fees to pay GVW fees for an entire year and potential impoundment of their vehicles.

4. PURPOSE – Non-Resident Permit Requirements

A proposal to amend § 61-10-213, MCA, removing references to Montana highway patrol, county sheriff, any MDT office or county treasurer as the location to purchase permits.

BACKGROUND

Most of the listed governmental entities have not issued non-resident permits in decades. The non-resident permit issuance is primarily the responsibility of the MCS Division and a few MDT District Offices, however, motor carriers can also secure non-resident permits electronically without interacting with any governmental entity. Technology advancements and the widespread allowance of electronic documentation removes the need for drivers to stop and physically secure permits.

In 2021, MCS issued 17,421 non-resident permits and 44% were secured electronically for a total revenue of \$541,040.

LEGISLATIVE CHANGES

§ 61-10-213. Time for payment of fees by nonresidents -- disposition.

A nonresident owner or operator of a motortruck, truck tractor, trailer, or semitrailer shall, either electronically prior to entering the state, or immediately upon arrival in the state, contact the nearest highway patrol office, any department office, the county sheriff, or the county treasurer's office to pay the fee and secure the permit prescribed department's Helena office or the nearest open, permanent or temporary weigh-station location to pay the fee and secure the permit prescribed. All fees collected shall immediately be remitted to the county treasurer in accordance with § 61-10-226.

Complete Shaded Areas

Form last update 2/17/2022

Proposed 2023 Session Legislation

Agency Name & No: Transportation-5401

Priority Number: 5 **Filename:** 5401-01-005

Short Title: Fuel Tax Streamlining

Agency Contact Person/Phone: Larry Flynn 406-444-9418

1. Purpose:

The purpose is to reduce the amount of red tape Montana citizens navigate to receive their motor fuel tax refunds.

2. Background:

Presently, statutory language requires taxpayers to send in their original receipts for each individual purchase if they are applying for a motor fuel tax refund. The taxpayer must itemize and submit the invoices for all eligible fuel purchases including retail, bulk and Cardtrol. MDT staff is tasked with looking through every document provided to verify the refund amount. With changes to technology, all the information needed can be provided electronically on a transaction report that is provided by fuel card processors such as WEX. The language in MCA 15-70-432 requires "the form must be accompanied by the original bulk delivery invoice or invoices issued to the claimant at the time of purchase and delivery.

3. Fiscal Impact by Fund Type:

This impact should be as specific as possible including dollar amounts, funding source, and FTE (if known).

Fiscal Impact if any would be determined based on legislative result.

4. Summary Checklist [Check & complete all that apply]--

- Housekeeping Only
- Federal Requirement
- Audit Recommendation (Audit No.)
- Major Legislation
- Anticipated to be Controversial Legislation
- Bill Draft has been included in Legislation Submittal (if available)
- Supports Submitted EPP Item No:
- Local Government Fiscal Impact
- Implements Red Tape Relief Initiative
- Leg. has been Submitted in Previous Legislative Sessions (list priority no, LC no, or bill no):
- Legislation would affect other state agencies (list):
- Special Interest Groups Affected (list):
- Other:

Proposed 2023 Session Legislation

Agency Name & No: Transportation - 5401

Priority Number: 6 **Filename:** 5401-01-006

Short Title: Local Government Fuel Tax Account

Agency Contact Person/Phone: Larry Flynn 444-9418

1. Purpose:

The intent is to simplify the BaRSAA, Bridge and Road Safety and Accountability Restricted Account, statutes to remove excessive regulations. Repeal MCA 15-70-127; 15-70-403; and section 5 of HB 473 (2017 Legislative session).

2. Background:

BaRSAA was created as a result of the passage of HB 473 during the 2017 Legislative session. The fuel tax was increased and this fund established to direct a portion of the increase in fuel tax revenue to local government agencies. The bill will not impact the allocation of funds to local government agencies but will reduce red tape.

3. Fiscal Impact by Fund Type:

This impact should be as specific as possible including dollar amounts, funding source, and FTE (if known).

Highway State Special Revenue Account and Bridge and Road Safety and Accountability Account. The net impact will be zero.

4. Summary Checklist [Check & complete all that apply]--

- Housekeeping Only Federal Requirement Audit Recommendation (Audit No.) Major Legislation
- Anticipated to be Controversial Legislation Bill Draft has been included in Legislation Submittal (if available)
- Supports Submitted EPP Item No: Local Government Fiscal Impact
- Implements Red Tape Relief Initiative
- Leg. has been Submitted in Previous Legislative Sessions (list priority no, LC no, or bill no):
- Legislation would affect other state agencies (list):
- Special Interest Groups Affected (list):
- Other:

Proposed 2023 Session Legislation

Agency Name & No: Transportation - 5401

Priority Number: 7 **Filename:** 5401-01-007

Short Title: Electric Vehicle Funding (registration/charging stations)

Agency Contact Person/Phone: Larry Flynn 444-9418

1. Purpose:

Establish a revenue source for electric vehicles that travel on Montana's public roads and highways. Possible methods may be registration fees or road use charge for residents and charging station fees for non-residents.

2. Background:

Gasoline and diesel fuel taxes are the largest source of revenue for road and bridge funding in Montana. Average fuel efficiency increases and electric vehicles entering the market are resulting in a loss of fuel tax revenue. Montana currently has 2,895 total registered electric vehicles, a 56% increase over 2021. Legislation is required to maintain revenue necessary for construction and maintenance of Montana's highway system.

3. Fiscal Impact by Fund Type:

This impact should be as specific as possible including dollar amounts, funding source, and FTE (if known).

Fiscal impact would be determined based on legislative result.

4. Summary Checklist [Check & complete all that apply]--

- Housekeeping Only Federal Requirement Audit Recommendation (Audit No.) Major Legislation
- Anticipated to be Controversial Legislation Bill Draft has been included in Legislation Submittal (if available)
- Supports Submitted EPP Item No: Local Government Fiscal Impact
- Implements Red Tape Relief Initiative
- Leg. has been Submitted in Previous Legislative Sessions (list priority no, LC no, or bill no):
- Legislation would affect other state agencies (list):
- Special Interest Groups Affected (list):
- Other:

Proposed 2023 Session Legislation

Agency Name & No:

Priority Number:

4

Filename:

5401-01-004

Short Title:

POINT OF TAXATION FIRST RECEIVERSHIP

Agency Contact Person/Phone:

LARRY FLYNN

1. Purpose:

The purpose is to clarify the definition of "Distributed" in MCA 15-70-401 (7) to establish when the motor fuel tax is due.

2. Background:

The department performs a "cross-matching" process in which licensed distributor's tax returns are compared against each other's to determine that the correct tax was remitted. Cross-matching is a time consuming and largely manual process. MDT collects an average of \$310,000 each fiscal year from those licensed distributors who have underreported tax liabilities. This liability could be reduced by clarifying the point of taxation and minimizing the number of companies who can purchase motor fuel in Montana without the tax. Of concern is a growing trend to move motor fuel via rail rather than by pipeline to increase supply demands. Fuel is being imported into Montana in railcars and sometimes not ever being delivered to a terminal or refinery. The terminology in MCA 15-70-401 (7) (b) referring to when fuel has arrived and "is brought to rest in this state" is unclear. Fuel imported into this state by rail and then transloaded into a tanker truck or vice versa has technically not "come to rest" but now becomes untracelable.

3. Fiscal Impact by Fund Type:

This impact should be as specific as possible including dollar amounts, funding source, and FTE (if known).

None.

4. Summary Checklist [Check & complete all that apply]--

- Housekeeping Only Federal Requirement Audit Recommendation (Audit No.) Major Legislation
- Anticipated to be Controversial Legislation Bill Draft has been included in Legislation Submittal (if available)
- Supports Submitted EPP Item No: Local Government Fiscal Impact
- Implements Red Tape Relief Initiative
- Leg. has been Submitted in Previous Legislative Sessions (list priority no, LC no, or bill no):
- Legislation would affect other state agencies (list):
- Special Interest Groups Affected (list):
- Other: Montana Petroleum Marketers & Convenience Store Association and The Montana Petroleum A

Complete Shaded Areas

Form last update 05/06/2022

Proposed 2023 Session Legislation

Agency Name & No: Transportation - 5401

Priority Number: 12 **Filename:** 5401-01-012

Short Title: Revise Railroad Protective Devices Requirements

Agency Contact Person/Phone: Larry Flynn 444-9418

1. Purpose:

Rescind MCA 15-70-102 so the match for RR Protective devices on all highway systems will be charged to the Highway State Special Revenue Account (fund 02422) rather than the non-restricted Highway State Special Revenue Account (fund 02349).

2. Background:

There have been several rewrites of this section of MCA; leaving parts of previous law and changing the intent of the original legislation. The section requires excessive monitoring and tracking of RR devices by public highway system type which results in moving match costs for certain routes to ensure compliance with the law.

3. Fiscal Impact by Fund Type:

This impact should be as specific as possible including dollar amounts, funding source, and FTE (if known).

The impact to fund 02422 is minimal (less than \$100,000). The actual impact would be net zero due to the 02349 fund currently paying for the match. This change will alleviate the process of tracking and journaling costs by route.

4. Summary Checklist [Check & complete all that apply]--

- Housekeeping Only Federal Requirement Audit Recommendation (Audit No.) Major Legislation
- Anticipated to be Controversial Legislation Bill Draft has been included in Legislation Submittal (if available)
- Supports Submitted EPP Item No: Local Government Fiscal Impact
- Implements Red Tape Relief Initiative
- Leg. has been Submitted in Previous Legislative Sessions (list priority no, LC no, or bill no):
- Legislation would affect other state agencies (list):
- Special Interest Groups Affected (list):
- Other:

Complete Shaded Areas

Form last update 05/06/2022

Proposed 2023 Session Legislation

Agency Name & No: TRANSPORTATION

Priority Number: 11 **Filename:** 5401-03-011

Short Title: EMERGENCY ROAD CLOSURES

Agency Contact Person/Phone: Jon Swartz

1. Purpose:

Amend Mont. Code Ann. §60-2-201 to authorize MDT to close any commission-designated highway system or state highway when necessary for protection of the public; protection of the highway from damage during storms, construction or maintenance operations; or protection of participants and the public during a special event or athletic event. Amend Mont. Code Ann. Sec. 61-8 Parts 3 and 8 to authorize Motor Carrier Services officers to enforce penalties.

2. Background:

MDT's authority to temporarily close a commission-designated highway system or state highway due to hazardous conditions or for public events (e.g. parades) is not currently contained in MCA, but is found in a 1978 AG Opinion 37 Op. Atty Gen. 496. Enforcement has been difficult, as there is no statute for law enforcement to enforce, nor do MDT's MCS Officers currently have the ability to ticket motor carriers for violation of an MDT road closure. Amendment of the statutes will 1) establish the authority of MDT to close commission designated highway systems including the interstate, and state highways maintained by MDT, including penalties for statutory violations; 2) establish criteria for road closures such as storms, highway construction or special events such as parades; 3) authorize law enforcement and MCS Officers to enforce penalties for violation of the road closure statute.

3. Fiscal Impact by Fund Type:

This impact should be as specific as possible including dollar amounts, funding source, and FTE (if known).

Fiscal impact, if any, would be determined based on legislative result.

4. Summary Checklist [Check & complete all that apply]--

- Housekeeping Only
- Federal Requirement
- Audit Recommendation (Audit No.)
- Major Legislation
- Anticipated to be Controversial Legislation
- Bill Draft has been included in Legislation Submittal (if available)
- Supports Submitted EPP Item No:
- Local Government Fiscal Impact
- Implements Red Tape Relief Initiative
- Leg. has been Submitted in Previous Legislative Sessions (list priority no, LC no, or bill no):
- Legislation would affect other state agencies (list):
- Special Interest Groups Affected (list): Montana Trucking Association
- Other:

Proposed 2023 Session Legislation

Agency Name & No: TRANSPORTATION

Priority Number: 18 Filename: 5401-22-018

Short Title: Entry Level Driver Training/ Drug and Alcohol Clearing-house

Agency Contact Person/Phone: Brad Marten

1. Purpose:

Please see attached

2. Background:

Please see attached

3. Fiscal Impact by Fund Type:

This impact should be as specific as possible including dollar amounts, funding source, and FTE (if known).

The fiscal note from previous 2021 legislation will be updated.

4. Summary Checklist [Check & complete all that apply]--

- Housekeeping Only
- Federal Requirement
- Audit Recommendation (Audit No.)
- Major Legislation
- Anticipated to be Controversial Legislation
- Bill Draft has been included in Legislation Submittal (if available)
- Supports Submitted EPP Item No:
- Local Government Fiscal Impact
- Implements Red Tape Relief Initiative
- Leg. has been Submitted in Previous Legislative Sessions (list priority no, LC no, or bill no): HB84/HB608
- Legislation would affect other state agencies (list): Dept of Justice Motor Vehicle Division
- Special Interest Groups Affected (list): Montana Trucking Associations
- Other:

MONTANA DEPARTMENT OF TRANSPORTATION

MDT 18 – Federal Requirements for Commercial Driver Licenses (Entry Level Driver Training & Drug and Alcohol Clearinghouse)

2023 Legislative Session

PURPOSE 1 – Require the Montana Department of Justice (DOJ), Motor Vehicle Division (MVD), staff to check for Entry Level Driver Training (ELDT) prior to Commercial Driver License (CDL) skills testing or CDL upgrades.

This proposal will bring Montana into compliance with 49 CFR § 384.230 requiring each State to comply with § 383.73(b)(11) and (e)(9) to verify a CDL applicant has completed ELDT prescribed in subpart F of part 380 of the subchapter prior to CDL skills testing or license upgrade. The compliance effective date was February 7, 2022.

BACKGROUND

The Moving Ahead for Progress in the 21st Century Act (MAP-21) was signed into law by President Obama on July 6, 2012. Included in MAP-21 were sections 32304 and 31305 directing the United States Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) to establish minimum ELDT requirements for Commercial Motor Vehicle (CMV) drivers. FMCSA published a final rule on December 08, 2016, with an initial compliance date of February 07, 2020. The compliance date was extended until February 07, 2022.

FMCSA sent Governor Steve Bullock a December 16, 2020, letter, providing ELDT implementation details in advance of the February 7, 2022, compliance date.

During the 2021 Legislative Session, legislative efforts were made to address ELDT and Drug and Alcohol Clearinghouse compliance.

- **HB 84**. Representative Julie Dooling carried HB 84, at the request of DOJ, with the Transportation Interim Committee listed as the requester. House Bill 84 specifically included ELDT language that, *“An applicant for a commercial driver's license must comply with commercial entry-level driver training as established under 49 CFR 380.600-609.”* During the Judicial House Committee Hearing on January 22, 2021, Representative Dooling asked for the bill to be tabled due to changes in administration at MVD.
- **HB 460**. After the tabling of HB84, MDT understood that federal ELDT requirements would be addressed in other more concise bills. In a later email exchange regarding HB 460 (with Representative Dooling as the sponsor), it was determined HB 460 would be the most appropriate bill to address ELDT and Drug and Alcohol Clearinghouse. HB 460 was ultimately withdrawn per House Rule H30-50(3)(b).
- **HB 608**. Due to potential sanctions outlined in the attached FMCSA letter to Governor Bullock, MDT then secured a sponsor, Representative Galloway, and HB 608 was drafted. This bill passed the House but failed to pass in the Senate Transportation Committee.

On April 22, 2021, FMCSA sent the attached letter to Governor Gianforte strongly encouraging the State Driver License Agency (SDLA), which is MVD in Montana, to comply with ELDT requirements and summarizing the consequences of Montana's failure to comply, including decertification of CDL Programs and/or withholding of up to four percent of the National Highway Performance Program and

the Surface Transportation Block Grant Program funds that would otherwise be apportioned under 23 U.S.C. § 104(b)(1) and (2).

On January 24, 2022, Governor Gianforte submitted the attached letter to United States Department of Transportation Secretary, Peter Buttigieg requesting an extension or waiver for ELDT until the end of the upcoming legislative session.

LEGISLATIVE CHANGES

Revise MCA § 61-5-110 to require compliance with ELDT federal requirements.

PURPOSE 2 – Require MVD staff to comply with federal Drug and Alcohol Clearinghouse requirements.

Additionally, the proposal will include compliance with FMCSA Drug and Alcohol Clearinghouse requirements for Commercial Learner’s Permits (CLP) and CDLs by November 18, 2024. Specifically, 49 CFR § 384.235 requires SDLAs or MVD staff to query the FMCSA database prior to issuing, renewing, upgrading, or transferring a CLP or CDL.

MVD staff must also comply with 49 CFR § 383.73(q) upon receipt of notification that a driver is prohibited from operating a CMV due to a drug and alcohol program violation, initiate the downgrade process to remove the CLP or CDL privilege from the driver’s license within 60 days.

BACKGROUND

In addition to the ELDT requirements, MAP-21 mandated FMCSA to establish requirements for the development of a Commercial Driver License Drug and Alcohol Clearinghouse. The database contains information about violations of FMCSA’s drug and alcohol testing program for holders of CDLs and is designed to improve roadway safety by identifying CMV drivers who have committed drug and alcohol violations that render them ineligible to operate a CMV.

On October 7, 2021, the FMCSA published a final rule establishing requirements for all SDLAs to access and use driver-specific drug and alcohol program violation information contained in the Drug and Alcohol Clearinghouse.

The proposed changes to Montana law for Drug and Alcohol Clearinghouse requirements were introduced in the same bills as ELDT, however, because of the extension dates revised for States to comply by November 18, 2024, risk of sanctions to the CDL Program or highway funding have not matured.

LEGISLATIVE CHANGES

Revise MCA § 61-5-110 to require compliance with Drug and Alcohol Clearinghouse federal requirements.