



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

February 8, 2008

Room 137, Capitol Building
Helena, Montana

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

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.

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COMMITTEE MEMBERS PRESENT

SEN. JIM PETERSON, Chair
SEN. KIM GILLAN, Vice 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. PENNY MORGAN

COMMITTEE MEMBERS EXCUSED

REP. JON SONJU

STAFF PRESENT

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

Visitors

Visitors' list, Attachment #1.

COMMITTEE ACTION

- The minutes of the December 6 and 7, 2007 meetings were approved as amended.
- The Committee authorized the chair and the vice chair to put together a group of people to design a long term study called the 2030 Project and to approach the Legislative Council for financing.
- Requested two bill drafts: one bill to establish a fixed date adoption of the federal code; the other bill to establish a fixed date and the temporary adoption of changes to the federal code and the method of implementing that.
- Requested a bill draft to recodify both the corporate and individual income tax codes with common elements put into another chapter of the MCA.

CALL TO ORDER AND ROLL CALL

00:00:02 Sen. Peterson called the meeting to order at 8:33 a.m. The committee secretary took roll call visually. Sen. Peterson asked if there were any additions or corrections to the minutes of the December 6 and 7 meetings.

Sen. Story said that there is a name error for John Youngberg; and on page 7 of the December 7 meeting, it should say 40 mills and 55 mills, not million dollars.

Sen. Elliott said in the minutes for December 6, western Montana is referred to as a state and if "states" could be substituted with "area".

Sen. Elliott moved that the minutes of December 6 and 7, 2007 meetings be approved as corrected. The motion passed.

AGENDA

SUBCOMMITTEES REPORTS

00:04:05 **SJR 31 Subcommittee Report - Sen. Story, Chair**
Sen. Story summarized the SJR 31 Subcommittee meeting. He said that they reviewed how schools were funded, how the funding formula determines how much schools can spend, and the revenue sources. A report on the demographics of Montana showed that as the population ages how spending habits change, how the income stream changes, and the implications that that has for not only school funding but for general funding. There was a discussion on problems that states with a sale tax are experiencing as far as the change in economy from consumer-goods buying economy to a consumer-service economy, and the relation with the change in marketing from buying in a store to

buying via Internet and internationally.

Questions

00:08:21 Sen. Elliott asked if the difference in the income stream between senior citizens and people who are not senior citizens, was debt service brought up? Sen. Story said to some extent. He said that charts and graphs showed that as population ages, their income rises until they get in the 55-65 age group. After retirement, income drops in half.

00:14:31 **HB 488 Subcommittee - Sen. Gillan, Chair**
Sen. Gillan said that Jeff Martin, Research Analyst, presented a history of cyclical reappraisals in Montana and the challenges to those reappraisals. The Department of Revenue discussed the results of the 1997 and 2003 reappraisals and the mitigation responses of the 1997 and 2003 reappraisals. She said that the subcommittee will consider a variety of mitigation strategies. The subcommittee also plans on looking at changes to the reappraisal cycle which is now at six years.

Committee Comments

Sen. Story said that in 2003 his bill would have changed a statute so that the reappraisal would have taken place in 2007, and the numbers would have been available by now and you could have mitigated them. However, the Department converted to a new computer system, and in 2005, the reappraisal cycle was extended to 2009. That put residential and commercial property one more year behind all the annually assessed property. The valuation gap widens unless you shorten the reappraisal cycle. The subcommittee should discuss whether the Department would move reappraisal up a year so numbers would be available in advance of the session. The other thing is the initiative to base reappraisal on acquisition value. We would need to have a strategy to deal with that not only in reappraisal but in how it affects funding of schools and local governments.

00:23:50 Sen. Peterson said that one thing that the Legislature needs is a better way of looking into the future. He suggested a project that might be titled "The 2030 Project" that would model demographic information, revenues, and expenditures into the future. Rather than focusing on the political side, the project would focus on what future revenue and expense needs might be based on population changes. If done right, there could be a presentation to this committee by the summer. Sen. Peterson asked the committee whether it would be worthwhile to

pursue this project. He and the vice chair would detail a more formal proposal to the committee at the next meeting.

Sen. Elliott said that information like that is a good idea. He asked Terry Johnson about the about the accuracy of such studies. **Terry Johnson, Fiscal Analyst, LFD**, said that there are unknowns in projections that far out into the future. He said that using these projections as a planning tool is the key. A lot of times projections can be wrong but they would give a good indication of where you are going.

Sen. Gillan said that when Sen. Peterson introduced this concept to her, she thought it is great as a planning tool.

Rep. Morgan said there may be a train wreck coming regarding health and human services in Montana. Those programs are subsidized by the federal government and the federal government has less and less money. With the demographic changes that are coming, the programs are only going to grow. If the Legislature doesn't look ahead, it won't be prepared for the changes. She would encourage that as we are doing these projections, to take that into consideration.

Rep. Jopek asked Mr. Bucks if he had any thoughts about this approach. Mr. Bucks said the Legislature should be applauded for gathering more information and looking ahead as far as possible. On the expenditure side, the study would have all of the costs. On the revenue side, the demographic information from Dr. Swanson and Dr. Watts is information that is relevant to projecting only a part of the tax base, which is the part that individuals pay.

Sen. Story **moved** that the Committee authorize the chair and the vice chair to proceed with a plan for a long-term project and in doing that, put together a group of people who can design the study, and bring that plan to the full committee and if it looks good, approach the Legislative Council for some financing. The motion **passed** unanimously.

Jeff Martin said as a follow up to what Sen. Story said, there are two issues: one is funding and the other is, in trying to get funding, the committee would need to go through an RFP process.

HJR 61 STUDY OF STATE INCOME TAX CONFORMITY WITH FEDERAL INCOME TAX

LAW - Jeff Martin, Research Analyst, LSD

00:44:16 Mr. Martin reviewed other states conformity with federal income tax law (**EXHIBIT 1**). He suggested that regardless of any recommendations that the committee makes, that it put into the work plan, updates on federal income tax law changes to have an awareness of what might be happening in the state.

Questions

00:59:36 Sen. Elliott said that he is very concerned about the constitutionality of the blanket acceptance of the federal income tax code, that it may be possible for someone to bring a suit against the state on a certain tax provision saying that it was unconstitutionally adopted. He asked Mr. Martin if that would be possible. Mr. Martin said that it is possible and Mr. Heiman will discuss that in his presentation.

01:01:45 Lee Heiman, Staff Attorney, LSD, gave a presentation on the state income tax conformity with federal income tax law (**EXHIBIT 2**).

Questions

01:07:26 Sen. Story asked Mr. Heiman to clarify what the court said in the Lee Case. Mr. Heiman said there was no delegating power in it, but they thought that if there had been some kind of delegating power, in an emergency, to give the Attorney General the power with some criteria involved to make a decision that the Legislature had enacted, that that would work during the two-year period.

Sen. Story asked Mr. Bucks if the Department would work with staff to put together a list of things, such as depreciation that creates problems for adopting on an interim basis. Mr. Bucks said that the Department is reviewing the provisions of the federal tax law and how it fits in Montana.

Rep. Lake asked Mr. Heiman if a two-year conformity is any different than what they are doing now as far as dealing with a constitutional issue. Mr. Heiman said that it is a shorter period of time and it would be dealt with in the next session.

Sen. Elliott said that if the issue is conforming with federal government and being constitutional, he can only see one way to do it and that is for each Legislature to adopt parts of the federal code of a date certain.

Rep. Furey asked about estate tax. The federal government is going to let it go back to the way that it was in prior years. If we follow the federal government, his concern is for families and businesses that set up a plan. He asked if this would affect the estate tax. Mr. Heiman said that he would do some research on that.

Sen. Story said that he agrees with Sen. Elliott about constitutionality. He said a two-year rolling conformity would make sense in the administration process and that we need to look into the timing issue. Usually when we deal with income tax in the Legislature, we implement our decisions the following January 1. He is concerned about retroactive provisions which might create legal problems.

Sen. Elliott said that problem can be obviated by adopting the federal code of a date certain effective on January 1 the following year. Sen. Story said that that is one way to address it but he didn't know if we could address it saying that it was adopted April 1, 2009, and effective as of January 1, 2009. Sen. Elliott asked if Sen. Story meant January 1, 2010? Sen. Peterson said that Sen. Story agreed with Sen. Elliott but questioning whether or not you can make it retroactive. Sen. Elliott said that it shouldn't be made retroactive.

In response to a discussion on when the law should be effective, Lee Heiman said that changes in income tax laws are frequently retroactive to January 1 or for tax years beginning after December 31 of the year that the Legislature starts. With income taxes, there is a 12-month period in which tax events take place and the fact that some of that tax year happens prior to the time the bill is passed, you still have most of it going forward. As a general rule, those types of applicability dates have been found okay.

Sen. Peterson said that if the Legislature doesn't make its decision until April and someone makes a business decision between January and April based on the current tax code, there is a concern with making it retroactive. Mr. Heiman said that that is a fairness issue more than it is a constitutional issue.

Public Comment

None at this time.

Recommendations on HJR 61

01:33:25 Sen. Story **moved** that staff draft two bills for review at the next meeting. One bill to encompass the concept of a fixed date two-year adoption of the federal

code. The other bill to encompass the concept of an adoption of the federal code on a fixed date and the temporary adoption of changes to the code and the method of implementing that. The motion **passed**.

Part 2 of HJR 61 - Lee Heiman, Legal Staff, LSD

01:58:50 Mr. Heiman recommended that the committee request a bill draft that would recodify Title 15, chapters 30 (individual income tax) and 31 (corporate income tax). He said that a lot of tax provisions apply both the corporate and individual income tax. They can put them in both chapters. The bill draft would put the common elements in a separate chapter. There would be no change in the law, just move it into new portions of the code and a new set of parts in Title 15, chapters 30 and 31.

Questions

02:00:33 Sen. Essmann asked if Mr. Heiman would be working with a work group. Mr. Heiman said that he would be working with the Montana Taxpayers Association, tax practitioners, and the Department of Revenue.

Public Comment

None at this time.

02:01:25 Sen. Essmann **moved** that the Committee request a bill draft that would recodify both the corporate and individual income tax codes into another section with elements common to both. The motion **passed**.

HB 9, Income Tax Credit for Property Tax Payments - Lee Heiman, Legal Staff, LSD

02:02:40 Mr. Heiman discussed the status of the lawsuit challenging the determination of the relief multiple under 15-30-140, MCA (**EXHIBIT 3**).

Determination of Refundable Income Tax Credit Relief Multiple - Terry Johnson, Fiscal Analyst, LFD

02:09:04 Mr. Johnson discussed the determination of refundable income tax credit relief multiple (**EXHIBIT 4**).

Questions

02:16:36 Sen. Gillan asked Amy Carlson how the credits fit in the Governor's Budget

Office with decisions about spending. **Amy Carlson, Office of Budget and Program Planning**, said that the committee will have its budget by the November 17 meeting, so that they committee will know whether or not they agree with what they are doing. The committee will have some sense of the level of new proposals that are available at that point in time. She said that she is presuming that the multiple would be treated as a new proposal.

Sen. Story asked Ms. Carlson about making the budget workable on November 15. Ms. Carlson said that it is impossible to get the budget done by the November 15 because the individual income tax estimate will not be ready. October 15 is the filing date for extensions and between October 15 and November 15, the Department of Revenue processes all returns and gets the data to Legislative Fiscal Division and the Governor's Budget Office to develop income tax revenue estimates and to make last minute decisions of what they can fund at that point.

Sen. Story said that they know present law adjustments for the base budget. The Executive Branch is going through the process of new proposals. By October, the Executive Branch will know most of the new proposals with just a few unknowns, and until then, we know what the revenue stream looks like. Ms. Carlson said that they have another deadline on November 1 which is not as precise as the November 15 deadline. The November 15 deadline is where everything is locked down. November 1 is when present law is done.

Rep. Lake asked Mr. Johnson about the timeline for analyzing the budget. Mr. Johnson said that it takes time to go through the budget and decipher all the new proposals, including spending proposals and tax proposals. He did not think that it would be available on November 17. Staff might be able to give some idea, but not a very good idea of all of the new proposals.

02:24:12 Rep. Jopek said that it seems that total revenues are on the increase. He asked Mr. Johnson if it is a reasonable expectation that by November, revenues continue to increase. Mr. Johnson said that you have to match the revenue stream with the costs of providing that present law service over that same period. Even with an increase in revenues, you may not have adequate revenue to fund present law. Their analysis will show whether there is a gap or not.

02:26:57 Sen. Peterson said that the other issue is reappraisal. He asked how that was

going to factor into his report. Mr. Johnson said that under current statute, the tax credit is based on \$20,000 of market value. To see how much is taxed, apply a tax rate and the 95 mills, that gives you a number. Based on current law, the tax rate is a known number, but that rate may be affected by mitigation. What you do with your mitigation could affect the amount of tax credits.

Sen. Peterson asked Mr. Johnson how much time would it take his office to analyze the governor's budget that will be released in November. Mr. Johnson said that the Legislative Fiscal Division would need at least a week of analysis to bring all the information together.

02:30:08 Sen. Story said that the question is whether this committee wants to draft a committee bill to do it or leave it alone.

02:32:05 Mr. Martin said that the committee could make a change in the relief multiple for tax year 2008 because the property tax rate is known for tax year 2008. The new reappraisal wouldn't go into effect until 2009. At least for this tax year, the committee doesn't need to worry about reappraisal.

02:33:19 Sen. Story said if you made it for tax year 2008 and it wasn't decided until April, people who had filed before April 15 are going to have to file an extension to get their tax credit or you are going to push it into the 2009, which means you are competing with the next biennium's money. He said that it was contemplated to be a method to take the excess ending fund balance and redistribute it back to the taxpayers.

Sen. Elliott said that he doesn't know if it belongs in the law but he didn't know how to distribute the money otherwise. He asked Sen. Story about taking this out of the law, and Sen. Story said that would be difficult to administer because of the timing. Sen. Story said that he didn't know how to comply with the law in a reasonable basis and in the timeframe that this committee has. A bill could be introduced in the session that is basically a placeholder and then let the legislative process work on it. The timeframe and the structure doesn't allow this committee to have the information that it needs to comply with the law. Sen. Elliott said that he doesn't have any problem with removing it.

02:36:33 Rep. Lake said that the relief multiple will be zero, so if there is an unexpected surge of revenue, it could be dealt with during the session.

Public Comment

None at this time.

02:38:17 Sen. Peterson asked for committee discussion. Rep. Morgan said that she would like to table it up at the next meeting. Rep. Jopek said that he concurs with that. While people might not like how it works, this is a mitigation tool that deals with property taxes one way or another and we should keep it in the mix.

Sen. Peterson said that it was the census of the committee to think about this issue and put a placeholder on the next agenda.

ADMINISTRATIVE RULE REVIEW - Lee Heiman

02:40:20 Mr. Heiman talked about rulemaking (**EXHIBIT 5**). He said that neither the Department of Transportation nor the Department of Revenue have proposed new rules.

Committee Discussion

02:41:52 Sen. Story talked about the chart that was handed out. Rep. Lake said that he asked Jim Standaert about the revenue flow over the last ten years as it relates to school funding (**EXHIBIT 6**). **Jim Standaert, Fiscal Analyst, LFD**, said that the interest and income from state lands is in all three charts. In 1997 and 2002, it flowed directly into the general fund. In 2003, it was put into the guarantee account for base aid to schools since 2003 on.

02:46:02 Sen. Elliott asked Mr. Standaert to explain vehicle taxes and fees. Mr. Standaert said that back in 1997, the vast majority of the vehicle fee money went to local governments and to schools. In HB 124, that brought that money into the state. In the meantime, the rates were lowered on cars and pickups. That is why there is an increase in the state general fund's receipts of motor vehicle fees.

02:48:12 Rep. Jopek said that particularly in the property tax sections, it would be interesting to see how the different classes are performing over time to see if there are changes. Mr. Standaert said that the property tax slice is an interesting one because in 1997 they were still at the high rates for electrical generation and telecom and business equipment. They were reduced in 1999. Because of HB 124, motor vehicle money was not distributed to the property taxes but followed the mills.

Request bill draft to clarify distribution of certain motor vehicle revenue - Lee Heiman

02:51:52 Mr. Heiman said that this is a request for a committee bill to correct a mistake that happened in the drafting of a revenue distribution bill last session. House Bill 737 changed motor vehicle laws, including the distribution of motor vehicle money, and shorted money to the adoption services account in the Department of Public Health and Human Services, and to the Department of Revenue by lowering their base amount and then incrementing up again. The money is already collected and is ready to be distributed but cannot be fully allocated. Mr. Heiman said that the bill draft would fix the bill so that the correct number would be \$59,208, if it goes into effect for fiscal year 2009. The base amount of \$3,050,205 would be \$3,142,997 in the year 2009. The bill would be effective upon passage and a supplemental appropriation would give the difference in the amount that is transmitted to those agencies (**EXHIBIT 7**).

Discussion

02:55:34 Rep. Morgan said that she does not have a problem with the bill draft request because many of these departments have money, but without seeing the dollar amounts, she is opposed to a supplemental appropriation as a part of it. Mr. Heiman said that before he got the bill draft to the committee, he would have the dollar amounts in there.

Rep. Lake **moved** to authorize Mr. Heiman to draft a bill for the committee to review at the next meeting. The motion **passed**.

Public Comment

None at this time.

Discussion of agenda items for the next meeting

03:00:52 Sen. Essmann discussed some of the topics for the next RTIC meeting: further examination of a sales tax design to include goods and services, have a Wyoming style exemption for business to business transactions, discussion of some of the reports from the Quality Schools Interim Committee's work, looking at the equalization issue in terms of the wealthier districts by doing an inverse relationship by denying them access to nonlevy revenues or closing industrial classes of property. Sen. Gillan would like an update on the Montana Quality Education Coalition lawsuit. Sen. Story said that we need to be kept up to date on what is happening to the short term investment pool with the subprime crisis. Sen. Kaufmann would like a report on gross receipt taxes.

LUNCH

MONTANA DEPARTMENT OF TRANSPORTATION RELATIONS WITH LOCAL GOVERNMENT

04:33:07 **Ed Ulledalen, City Council and Deputy Mayor, Billings**, read his testimony to the Committee (**EXHIBIT 8**).

Questions

04:41:32 Sen. Elliott asked for clarification from Mr. Ulledalen's statement that he might refuse federal funds for road projects in Billings. Mr. Ulledalen said that he didn't say that the city of Billings would refuse federal funds. He said that their issue is that in the future they would reach a point where it isn't cost effective for them to ask for federal funds. He talked about the issues that the Zimmerman Trail Project is experiencing with the Montana Department of Transportation.

Sen. Elliott asked Mr. Ulledalen if the Department of Transportation is requiring him to put \$5 million to hold the earmark? Mr. Ulledalen said that was correct.

04:44:43 **Bruce Bender, Chief Administrative Officer, City of Missoula**, discussed the transportation issues that are pertinent to growing areas of Montana, including the growing needs, the inadequate funding formula that distributes the money, the City of Missoula's problems with delayed projects, and alternatives to be considered.

Questions

04:54:34 Rep. Morgan said that one of Mr. Bender's alternatives was local certification. She asked him how that would work. Mr. Bender said that cities do not get involved in construction. Local certification means cities have the same role as the Department of Transportation. The Department of Transportation manages and contracts with the engineer and manages the project locally. The locals hire an engineer to design it. The locals also will be part of the public process. The net result is that they will still meet all the bidding requirements.

04:57:25 Sen. Elliott asked if the city of Missoula has ever been delinquent in its payments to the Department of Transportation. Mr. Bender said that he doesn't know for sure, but he does know that the state owes Missoula \$100,000 that they billed in 2006, and they haven't received payment because of a project they took on. He said that paying up front in the beginning of the project is a problem for them.

DEPARTMENT OF TRANSPORTATION - Jim Lynch, Director

04:59:48 Mr. Lynch said he is familiar with the issues brought forth and he will be available for questions afterward. He responded to the issue of paying up front and talked about the audit report (**Exhibit 9**) that addresses all cities who were delinquent in their payments and what the audit recommended.

Questions

05:04:40 Sen. Essmann asked Mr. Lynch why Mr. Barrett asked the city of Billings for \$5 million for the Zimmerman Trail project? Mr. Lynch said that the Zimmerman Trail project is different. That was a project that the city of Billings went out for an earmark. It was not in their Planned Project.

Sen. Essmann said that the issue is cash flow and that is what the discussion needs to be about. He said that he wants to know whether Mr. Barrett met with the city and tried to work that out. Mr. Lynch said that he doesn't know how the Department can do that unless there was some sort of guarantee based on the audit recommendation.

Sen. Story asked Mr. Lynch if the Legislature directs the Department of Transportation to comply with the audit, are there any statutes that have been put in place that require the Department to change policies that were in place that the audit pointed out were not the best policy? Mr. Lynch said that departments have audits and they have audit recommendations which they have to respond to in front of the Legislative Audit Committee. Mr. Lynch said that the Department looks at the auditor's recommendations and they can either concur or disagree or modify based on what they feel the appropriate state statute is.

Sen. Story said that apparently the policy of the Department of Transportation is to be the banker for construction projects in the state. He asked whether the Department of Transportation was doing this with both federal and local projects. Did the auditors say if there was any violation of the law? Mr. Lynch said that the auditors did say that the Department of Transportation cannot have receivables that do not earn interest and that payments have to be prompt.

05:19:42 Sen. Gillan said that the Legislative Audit's recommendation was that local governments prefund a portion of the costs. Mr. Lynch said that it was made very clear to them by the Legislative Audit Division's recommendations that not just local governments but every entity that shares in the costs of the project pay

up front. The Montana Department of Transportation and the Legislative Audit Division would cut an agreement that they can pay in phases and pay their portion as it is due. For a 12-month project with monthly pay estimates, the city could pay its estimated costs of that next pay estimate rather than paying the 12 months.

05:26:54 Sen. Essmann said that there is an inherent conflict between Mr. Lynch's response of Recommendation #2, which requires prefunding of all anticipated local construction costs, and Recommendation #3, that would set up monthly billing. Mr. Lynch said that he will make a copy of the full audit report so the Committee will know what the recommendations are.

05:28:25 Sen. Elliott asked Mr. Lynch if the Department of Transportation has a fiduciary responsibility to match funds notwithstanding that the Department does not have a statutory obligation. Mr. Lynch said that he does not know what all of the Department of Transportation's statutory obligations are to that particular item. He said that he has a statutory fiduciary obligation as the Director of the Department of Transportation to run it properly.

Sen. Elliott said that for the record, the Legislative Audit Report does reference the methods that 13 other states use.

05:30:12 Rep. Lake asked if the Montana Department of Transportation treats federal earmarked funds differently than a MDT program for construction? Mr. Lynch said that this is a city requested earmark and the city is responsible for the match in any additional funding. The funds that the MDT puts into this program are federal funds.

Rep. Lake asked Mr. Lynch about federal and city funds and the prepayment program. Mr. Lynch said that it is a confusing process. First of all, MDT doesn't have any money in the bank. It is a reimbursement program. Federal law has requirements for spending federal dollars. He discussed how the Zimmerman Trail project spending federal dollars means that the city of Billings has demonstrated that it has the money to build the project. The Montana Department of Transportation does not ask the city to give the money to the Department.

05:32:46 Rep. Morgan said that the Montana Department of Transportation never gives

the contractor 100% funds up front. Mr. Lynch said that the contractor bills MDT for its work and the contractor is paid on a paid estimate.

Rep. Morgan asked if that wasn't what the audit report was saying, that the cities rather than paying money up front, can break the payments into portions. She asked if the Department would be willing to work with the cities so that they didn't have to pay the entire amount up front providing that the city demonstrates that they have the ability to pay. Mr. Lynch said that that is what the Montana Department of Transportation does.

05:35:43 Mr. Ulledalen said the Billings' public works department was not presented a choice but was told that in order to keep the earmark, the city would have to pay in advance.

Rep. Morgan asked Mr. Ulledalen if the MDT opened the lines of communication, would that be acceptable to Billings? Mr. Ulledalen said that is what they were looking for and the audit report basically provided options for the MDT and the various municipalities to negotiate.

05:36:42 Rep. Morgan asked Mr. Lynch about local certification. Mr. Lynch said that two things were discussed. One is city certification. Cities with a population of 50,000 people or more are classified as Metropolitan Planning Organizations. They have certain limitations on what they can do as a responsible party to the federal funding. The funding mechanism is really the responsibility of the state. The other is Transportation Management Area and that takes a lot of the state's responsibility to administer federal funds for that city. Whatever agreement that MDT has with a city, if something goes wrong, the state is responsible to the federal government.

05:42:28 Sen. Elliott asked Mr. Lynch if the Department loses anything but the use of that money to generate interest? Mr. Lynch said that based on the conditions of the state special revenue fund that is primarily the exposure. Depending on our cash position, it could have other ramifications but primarily that is what we are looking at, the lost time of that money.

05:46:06 Rep. Hollenbaugh asked about the delays on the Russell Street project and Mr. Bender's comments that the delays are the Department's responsibility. Mr. Lynch said that he was surprised about that because the Russell Street project is

being administered by Missoula. It hired the consultant, moving forward with the environmental documents, and is moving that project. The Montana Department of Transportation has given Missoula the oversight of the project.

05:47:13 Sen. Gillan asked Mr. Lynch about the delays in the Airport Road Project and the role the state has played in the possible delay. Mr. Lynch distributed a handout on that project (**EXHIBIT 10**) and said that there are slides in the handout that show the progression of the Airport Road and what happened to that project.

Sen. Peterson said that there are three options that the committee can consider: paying in part, putting money in escrow, or paying in phases. He asked Mr. Lynch if he is willing to work with the cities and discuss any of the three options on a project by project basis and begin, particularly with the two concerns that were raised by Billings and Missoula. Mr. Lynch said that it is what the Montana Department of Transportation has been doing.

Public Comment

05:52:00 Bruce Bender responded to some of the questions regarding the Russell Street project. He said that Russell Street is completely administered by Missoula but is constrained by the MDT process. The city is required to initiate an EIS over MDT's protest. An EIS for a simple road expansion seemed extremely laborious and unnecessary. The city hired a consultant at the recommendation of MDT but the consultant did not perform. Now MDT is conducting a review process. The EIS is in a draft form but it will be two years before it will be adopted. He said that the city has successfully managed a multi-million dollar project in Missoula. A second project had problems, but the project went well. His problem with MDT's attitude is, well this is a risk for you and you could do it wrong and we will whack you. He said that MDT is not very supportive. The city looked to MDT for expertise for managing federal regulations. The process can work if the personnel is there.

05:54:37 Rep. Hollenbaugh said that the Russell Street project also includes a bridge over the Clark Fork River. There are cleanup issues of the Clark Fork River and the state is concerned about the river. He said that an EIS is not inconsequential when it comes to crossing a river like the Clark Fork. He said that he wanted the committee to understand that that EIS process should take a long time with an opportunity to comment on and to review it.

Mr. Bender said that the city worked on the Orange Street Bridge and there was no EIS with it. He said that he doesn't feel that they impaired the Clark Fork River. An EIS was never generated based upon the river portion of it.

05:56:21 Ed Ulledalen said that Billings has a great staff of engineers and they understand the two-tiered process of the local certification. Part of what they are trying to do is to try to get control of part of that process. Mr. Lynch cited the right-of-way issues for the completion of the Airport Road and that is a very valid point. The problem is that the major landowner in this process is the city of Billings and they have not been contacted. The land that they own specifically is airport property that they have to gift to the state as a part of right-of-way acquisition.

Montana Department of Transportation Reports - Jim Lynch, Director

05:58:10 Mr. Lynch gave an update on the ethanol production plants. He said that four plants have submitted business plans. Three plans were submitted in 2002 with a production date of 2010. One plan was submitted in 2005 without any estimate of production date. The three plants that had submitted business plans, only one has shown any work at all.

06:00:46 Sen. Peterson asked if there was an ethanol plant that was supposed to be under construction. Mr. Lynch said that he was not aware of one that has submitted a business plan to MDT for the purpose of claiming the tax incentive.

06:01:46 Mr. Lynch talked about prioritization of highway projects in 2008. He explained what happened in 2007 (**EXHIBIT 11**) and plans for 2008.

Questions

06:09:10 Sen. Story said that in looking at the 2007 budget, the budget was around \$303 million federal. He asked if that is a combination of federal money and state. Mr. Lynch said he believes that is just a federal portion.

Sen. Story asked if the state construction program was all state money, or is it part federal money. Mr. Lynch said they have a 100% state-funded construction program and they have to maintain a certain level of that program to maintain the 13% match that they get with the federal government.

Sen. Story asked how the Department of Transportation came up with money to match the \$350 million federal money when there was a shortfall with the \$303

million of federal money. Mr. Lynch said that they match the federal dollars and what dollars are left, are put into a state-funded construction program.

Sen. Peterson talked about a map that shows the Congressional High Priority Corridors developed by the Federal Highway Administration. He wanted to have a discussion at the next meeting about how the federal highway priorities coming through Montana, matches Montana's highway priorities.

Sen. Story said that he would like a report on what the construction programs are rather than looking at the size of the revenue source, where the projects are located. Mr. Lynch distributed a map of Montana (**EXHIBIT 12**) that gave an update of adjustments to the project plan.

06:16:37 Mr. Lynch gave an update on US Highway 2 (**EXHIBIT 13**), the portion of highway from Culbertson east to North Dakota. The Department of Transportation conducted a feasibility study on building a four-lane highway, which came back with positive standpoints on congestion, safety, and regional connectivity.

Questions

Sen. Story asked if the Bainville-Culbertson portion of Highway 2 connects Port Raymond and runs along the western side of North Dakota to move freight south? Mr. Lynch said that was correct. Sen. Story talked about the truck route from Glendive to Sidney and asked if it was really a trade route to bring tourists into Montana as opposed to freight passing through and if four lane was more of a freight highway than a tourist highway? Mr. Lynch said that what is driving that particular roadway is the need for the roadway which involves a lot of truck traffic as well as economic development, oil well development, and an increase capacity on that particular roadway.

Public Comment

None at this time.

Committee Discussion

06:37:51 Sen. Peterson requested that the issue of obtaining overwidth or overheight permits in the state be an agenda item for the next meeting.

Adjournment

06:40:15 Sen. Peterson adjourned the meeting at 3:14 p.m.

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