



Revenue and Transportation Interim Committee

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57th Montana Legislature

SENATE MEMBERS

WM. E "BILL" GLASER, VICE - CHAIRMAN
VICKI COCCHIARELLA
BOB DePRATU
JON ELLINGSON
GLENN A. ROUSH
MIKE TAYLOR

HOUSE MEMBERS

RON ERICKSON, CHAIRMAN
RONALD R. DEVLIN
CHRISTINE KAUFMANN
JESSE LASLOVICH
ROGER SOMERVILLE
ROBERT R. STORY JR.

COMMITTEE STAFF

LEANNE KURTZ
RESEARCH ANALYST
LEE HEIMAN
STAFF ATTORNEY

SECRETARY

MINUTES

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of documents.**

Second Meeting of Interim
Room 102, State Capitol
September 13, and 14, 2001

COMMITTEE MEMBERS PRESENT

Rep. Ron Erickson, Chair
Sen. Sen. Wm. E. "Bill" Glaser, Vice Chair
Sen. Vicki Cocchiarella
Sen. Bob DePratu
Rep. Roger Somerville
Rep. Robert R. Story, Jr.
Rep. Ronald Devlin
Rep. Christine Kaufmann
Sen. Glenn Roush

COMMITTEE MEMBERS EXCUSED

Sen. Jon Ellingson
Sen. Mike Taylor
Rep. Jesse Laslovich

STAFF PRESENT

Leanne Kurtz, Research Analyst
Lee Heiman, Attorney
Lois O'Connor, Secretary

VISITORS

Visitors' list (ATTACHMENT #1)
Agenda (ATTACHMENT #2)

COMMITTEE ACTION

- Approved the minutes from the June 18, 2001, meeting

CALL TO ORDER AND ROLL CALL

The meeting was called to order by Rep. Erickson, Chair, at 1:30 p.m. Roll call was taken; Representative Laslovich and Senators Ellingson and Taylor were excused. (ATTACHMENT #3)

Rep. Somerville **moved** that the minutes of the June 18, 2001, meeting be approved. Motion passed unanimously.

DEPARTMENT OF TRANSPORTATION REPORTS

David Galt, Director, Montana Department of Transportation (MDOT), introduced his leadership team and provided an overview of the citation revenue generated by the motor carrier service officers. (EXHIBIT #1)

Sen. Cocchiarella asked what the difference was between the motor vehicle safety violations (those generating revenue of \$25,161.70 versus those generating revenue of \$257,760.00). Mr. Galt said that motor vehicle safety violations generating \$25,161.70 are in-state violations that fall under the Department's in-state authority. The remaining are violations that fall under federal regulation, such as hours of service, etc.

Rep. Story said that people in the industry were concerned that more fines would be seen on the safety side than what has historically been seen, partly because of new inspection facilities such as the facility in Billings. He asked what the trends have been. Mr. Galt said that most safety violations that the Department actually writes fines for are for driver and drivers' license violations, hours of service, improper medical certification, and improper drivers' certification. If an equipment inspection shows a violation, unless it is a reoccurring problem, drivers are just stopped and made to correct the problem. The Billings inspection facility will probably lead to more fines, but it will also lead to more around-the-clock, around-the-year inspections to correct violations.

Rep. Erickson asked if the amount of the fine was the actual amount of revenue collected. Mr. Galt said no, adding that judges have the ability to defer a sentence or to fine more. The Department has recommended a bond schedule that is approved by the Supreme Court. The bond schedule represents what the fine should be, but whether that amount is actually collected is up to judges. Rep. Erickson asked about the percentage collected. Mr. Galt said that 70% to 80% of the fines are collected. In the case of reoccurring problems, there is an additional fine.

HB 131 Implementation (Inspection of Diesel-Powered Vehicles)

Director Galt stated the following:

- In the 2001 Session, three bills were enacted that affected the MDOT's dyed-fuel program.
- HB 131 provided clarification in the law, specifically stating that MDOT has the ability to stop and check any diesel-powered vehicle regardless of size, weight, or commercial status. However, vehicles under 14,000 pounds that are not commercial are not to be stopped unless probable cause is first established.
 - The Department has interpreted "probable cause" to be: (1) if a motor carrier service officer personally witnesses a driver filling a vehicle with dyed fuel; (2) if signed statements from witnesses who have identified themselves are received; and (3) if the vehicle is already within the officer's jurisdiction (size and weight).

- The Department developed a method of testing dyed diesel fuel samples in conjunction with a Department of Public Health and Human Services' laboratory.
- SB 58 changed the penalty for the first offense of improper use of dyed fuel on public roads from a criminal offense to a civil citation. The fine associated with this citation is \$100. Any and all subsequent offenses are criminal and are handled in the same manner as they have been handled previously.
- SB 150 added penalties to a law passed in the 1999 Session which required all retail pumps dispensing dyed diesel fuel to be marked with a decal designed by the MDOT. Previous law did not address any penalty for noncompliance. The penalty for failure to mark these pumps is now a civil penalty of \$100 per pump per offense.
 - The Department has been running an ad campaign both on television and radio aimed at the consequences of non-taxed fuel use on Montana's highways.
 - Enforcement for noncompliance will be from October 2001 through January 2002. A survey will then be conducted, analyzed, and reviewed by the Fuel Tax Advisory Council.
- One implementation team was formed to handle the three bills related to dyed fuel. The team consists of personnel from Fuel Tax Management and Analysis (FTMA), Motor Carrier Services (MCS), legal, Accounting Services Bureau (ASB), and the Information Services Bureau (ISB).

Sen. Roush asked if the Department was policing diesel fuel that was marketed to agricultural people or any person who stores diesel at their home residences. Mr. Galt said that this was a loophole and a problem in the implementation of HB 131. The Department must have "probable cause" to pull vehicles over. The fact that a vehicle is commercial has eliminated, for the purposes of registration, fuel, and safety, the need for probable cause. However, it has not eliminated the need for probable cause for personal- owned, personal-used light vehicles. Sen. Roush asked what capabilities did the Department have to monitor the amount of sales at the wholesale level. Mr. Galt said that the Department does monitor the sale of taxable and nontaxable gallons of fuel.

Sen. Glaser asked when a vehicle is discovered to have a dyed substance in its tank, is the sample tested or is a citation issued simply because the color of the fuel is red. Mr. Galt said that if a tank is found to have a dyed substance in its tank, a citation is written and a sample is sent to the DPHHS laboratory for testing. If the sample is not dyed fuel and is found to have some other substance in it, such as transmission fluid, or if it does not meet the level of dye that would be necessary to make a violation, the citation is dismissed.

Rep. Story said that if he hooks a trailer behind his diesel pickup and heads to town, he would have to cross a scale. He asked if the fuel in his pickup could be inspected at that point. Mr. Galt said that HB 131 does not address the issue. The problem goes back many years to the state's practices regarding weigh stations and how vehicles were licensed. In the past, people were required to license both their pickup and trailer; and if they were over 14,000 pounds, they had to pull into a scale. During the 1995 Session, the Legislature created a category of vehicles that included one-half ton, three-quarter ton, and one-ton vehicles, but it did not attach gross vehicle weight (GVW) fees to the category. It is impossible to enforce the law because of the way the vehicle and trailer are registered. However, if the pickup and trailer pull into a weigh station, the fuel can be checked.

Rep. Erickson asked if more information on the dyed fuel noncompliance survey would be available for the Committee's February meeting. Mr. Galt said that information on the survey would be available in March or April after being reviewed by the Fuel Tax Advisory Council. An update will be given at the Committee's April meeting.

SB 3 and Highway 2

Mr. Galt provided an overview of the Department's draft guidance for the interpretation of SB 3-- Sen. Kitzenberg's legislation directing the MDOT to construct a 4-lane highway generally along the present route of U.S. Highway 2. (EXHIBIT #2) Mr. Galt believed that the MDOT is directed to build a 4-lane highway along Highway 2 if it receives federal funds in addition to the state's federal highway allocation that does not require a state match and if the additional federal money does not impact any other highway project. In addition, if the additional federal funds are obtained, the MDOT is not responsible for the overrun of the project costs beyond the amount of the earmark. For example, if the Department receives \$1 million that is earmarked for the Highway 2 project and if the project costs \$9 million, the Department is not responsible for the \$8 million difference.

Rep. Somerville asked if Montana's Congressional Delegation acquires the additional federal funds to conduct an environmental impact statement (EIS) for the Highway 2 demonstration project, will it affect other Highway 93 construction projects. Mr. Galt was unsure whether it would effect other Highway 93 projects. He said that demonstration or high priority project funds come out of the Department's normal highway allocation funds. The state receives a \$300 million normal allocation, for example, and from what he understands, the EIS project on Highway 2 will cost an estimated \$26 million. The rest of the state gets \$274 million instead of the \$300 million and it will be money that requires the state match. If it reduces the money that Montana receives in its normal allocation and if it requires a state match, he believed that it would be in violation of SB 3.

Rep. Devlin said that according to testimony by Sen. Kitzenberg in the House Transportation Committee, it was not his intention to have the whole of Highway 2 become a 4-lane. He wanted some areas a 4-lane and others a 2-lane or 3-lane. Rep. Devlin said his interpretation of SB 3 was that construction would go on as planned unless something unforeseen came up with the federal money not requiring a match. To turn around and say that the Legislature directed the MDOT to construct a 4-lane highway along the route of Highway 2 was not a consideration of the House Transportation Committee.

Lee Heiman, Staff Attorney, Legislative Services Division, said that his letter to Sen. Kitzenberg (contained in Exhibit #2) refers to testimony by Director Galt to the Senate and House Committees on Transportation that stated that the Department felt that Highway 2 should be rebuilt to a 2-lane, 40-foot standard highway with 8-foot shoulders rather a 4-lane highway. The Committees chose to support the 4-lane concept and not the Department's position. It was his opinion that if the state receives specific federal money that does not require a state match, the MDOT must build a 4-lane road.

Mr. Galt said that although he has asked for additional funds beyond Montana's normal allocation, it is very hard to come by. However, Montana's Congressional Delegation has said that Montana will receive \$2 million above its normal allocation and \$2 million will not cover the cost of an 80-mile EIS. The Department's preliminary analysis of the 10-mile section on Havre

East which is a very complicated section of highway because of the mainline railroad, because of the irrigation systems, and because of private property and access of homes and businesses, it will cost \$9 million more to build. In addition, the Department cannot buy additional right of way without conducting an EIS and having a plan in place. He said that the Committee must keep in mind what is going to happen if it has a vision in mind, if funds are received, and if the funds received are not enough to cover the project.

Rep. Story said that it is clear that the Department is not going to build a major highway without conducting an EIS. He asked if the law presupposes the outcome of the EIS, is the law defensible. Mr. Galt was unsure, because much of his concern over the 4-lane concept was proving purpose and need. The Department proves purpose and need based on a safe and efficient transportation system, accident records, congestion indexes, and traffic volume. The Department has never lost a purpose and need or necessity hearing when it has a right-of-way condemnation. Mr. Galt said that he did not think that he could prove purpose and need on any section of 4-lane highway in eastern Montana. The question then becomes whether the Department is presupposing and violating the need for process. It would argue very diligently that its purpose is to create economic development but he was unsure whether the argument would stand up in Court. He added that he is looking to North Dakota for some solution because it is pioneering new territory surrounding this issue.

Rep. Story asked if Montana receives the \$2 million, would it come from some other projects such as Highway 419. Mr. Galt said that the Department sought Highway 419 funding from the Public Lands Highway (PLH) funds out of the Community Service Transportation Program. In the policy that he offered for consideration to the Transportation Commission was a section that dealt with the PLH issue. The current Commission policy on PLH money is that if it requests PLH money for highway purposes, it is not usually used for interstate roads or National Highway System roads because their funding categories and levels in Montana are higher. The funds are usually used for primary, secondary, and other roads. If the Department requests \$1 million out of the PLH funds, it competes with Highway 419 projects for the funding. He added that the Committee could send a letter to Senator Baucus reminding him that the 4-lane highway on Highway 2 is to be built with extra federal highway money that does not require a state match and does not affect Montana's highway allocation.

Rep. Kaufmann asked about the estimated cost to build a 4-lane highway across the state. Mr. Galt said \$1.2 billion. Rep. Kaufmann felt that the discussion was backwards because it insinuates that the best way to provide economic development across the High Line was to build a 4-lane highway. Mr. Galt said that many people across the High Line are quite concerned about the passage of SB 3 because they want the 4-lane highway built.

Rep. Story said that historically, highway money flowed to areas where the political powers lie. At some point in time, the Legislature created the present statute that apportioned the money around the state in districts and divisions. In the last interim, he tried to find a way to review that apportionment to see if it was valid, but it was hard to do because of the fear that the money would revert back to where the political powers lie. The question is if Montana spends its apportionment of highway money every year, should it all go into the formula that was set up years ago or should the expanding portion of the money be pulled out and put into a separate category where it can be used to enhance the economy of Montana, other than the economy it happens to get from the actual construction? Rep. Story said that he was opposed to SB 3

because he did not believe that it would enhance the economy in northern Montana to construct a 4-lane highway. It was his belief that a 4-lane highway on Highway 2 would never come to fruition because Montana will never receive the funding. He requested that the Committee support clarification of the record that projects will continue on the High Line in the areas of maintenance and building repair as the present plan dictates; and when the Department receives the funding that does not affect any other highway projects, it begin at the North Dakota border and build as much 4-lane highway as it can build with the money until it runs out.

Rep. Somerville requested that the Committee consider over the interim whether SB 3 should be repealed in the 2003 Session, but in the meantime, give guidance to the Department as to what the Committee feels should be its position on the bill.

Rep. Erickson asked for clarification about how much money is absolutely needed from the federal government, without strings, to be able to do something on the 4-lane highway project. Mr. Galt said that according to preliminary figures, it would cost approximately \$1.2 billion to build a 4-lane highway across Highway 2 but he was unsure whether that was an accurate figure. He added that a good use of any money received from the federal government, that would not interfere with any other highway projects, is to review what could be done to enhance the under-structure and decking for a 4-lane highway on the major bridges on Highway 2, such as the Two Medicine Bridge, so that a 4-lane highway could be built sometime in the future.

Senators DePratu and Roush and Rep. Somerville were appointed to work on a motion that would give the Department some direction on how to proceed, keeping in mind the sensitivities of Sen. Kitzenberg and the citizens living on the High Line. Action will be taken at the September 14 meeting.

Implementation of HJR 30 (Economic Development Criteria in Transportation Planning)

Mr. Galt provided an overview of the report House Joint Resolution 30: Transportation Planning and Economic Development. (EXHIBIT #3) He requested that two members of the Committee be appointed to the Economic Development Policy Committee.

Sen. Roush said according to comments he heard while attending the Highway 2 meetings, citizens on the High Line feel that they are "out of the picture" in the future on receiving economic development funds because the formula used is based upon population and they do not have the populous.

Rep. Story said that this is a very difficult issue because of the ideas of whether a road should be built and used to try to spur economic development or whether there is money available to direct to roads for the economic development that is already happening in areas. When there is billions of dollars worth of need in an area and million of dollars in money available, the state is already behind. His original purpose in asking for a study was that if Montana received \$260 million this year as a federal allocation for highways and it received \$280 million next year, he wanted to take part of the difference (\$20 million) and find a way to direct a portion of the money into other areas of Montana.

Sen. Cocchiarella said that a 1994 or 1996 study by the Montana Ambassadors stated that one of the top three most important issues for good business in Montana was roads and highways. She asked about the time commitment that would be involved in the Economic Development

Policy Committee. **Patricia Saindon, Administrator, Rail, Transit, and Planning Division, Department of Transportation**, said that the Economic Development Policy Committee will conduct approximately six meetings in 2002.

Update on TransPlan 21

Ms. Saindon provided an update on TranPlan 21. (EXHIBIT #4)

Sen. Cocchiarella asked if TranPlan 21 included a 1-year or 4-year planning process. Ms. Saindon said that the Department uses a 20-year planning horizon, the last plan being 5 years ago. Seventy percent of all objectives identified in that plan have been completed. The Department will not update the plan for 5 to 6 years.

The appointments of the two Committee members to the Economic Development Policy Committee was postponed until September 14.

Status of the Highway Special Revenue Account and the Relationship Between the Account and Letting of Contracts and Expenditures

Jim Currie, Deputy Director, Department of Transportation, provided an update on the highway special revenue account long-range planning document and the relationship between the account and the letting of contracts. (EXHIBIT #5)

Sen. Roush asked why road work was not completed after the bid has been let. Mr. Currie said that it is not that the road work is not getting done, it is a time factor--a short season and the amount of work that must be done in that season. Sen. Roush asked if there was a lack of highway building contractors in Montana. Mr. Currie said that the Department has no problem finding highway building contractors to bid on highway projects. The Department has also seen increased activity and interest from out-of-state contractors coming to Montana to bid on highway projects.

Rep. Somerville asked if the expenditure going to the Department of Justice was used for paying the Highway Patrol Officers and if the expenditure going to local government was for the state secondary road system. Mr. Currie said that there is a small amount that also goes to the Department of Justice's Centralized Services. The local government expenditure is the statutory appropriation remitted to cities and counties from the state gas tax that goes toward their local road programs.

Rep. Erickson requested that in future updates of the highway state special revenue account that previous long-range planning documents be provided for comparison.

GENERAL FUND STATUS

Clayton Schenk, Legislative Fiscal Analyst, Legislative Fiscal Division provided an update of the LFD's session Fiscal Report versus its post session fiscal report. (EXHIBIT #6) He stated the following:

- The Department of Administration has compiled numbers and has given the LFD a current ending fund balance of \$173 million which is \$62 million more than the Legislature anticipated when the budget was established at the end of the 2001 Session.

- The questions are whether there is a \$62 million surplus to use, or if the balance is that much higher for one year, does it mean that the Legislature can expect the same kind of ongoing ending fund balances at the end of the 2003 biennium.
- The components related to the increase are: (1) a Shell Oil audit settlement; (2) an increase in individual income taxes; (3) an increase in corporate income taxes; and (4) expenditures for the 2001 biennium were less than anticipated.
- The state is expected to spend down the \$110 million to \$54 million which is spending a 1-time revenue source creating a structural imbalance of \$50 million.
- The 2003 Legislature will be dealing with a structural imbalance that it does not normally have. The \$62 million might be part of the solution to the problem.
- The LFD is currently preparing a report that will be mailed to the Committee in October.

Rep. Story said that in the four terms that he has been a legislator, Montana has been in a structural imbalance by having a larger beginning fund balance than it had ending fund balance. He requested background information on the fund balances from the past 10 years. Mr. Schenk will provide the information. He added that the Legislature has had slight structural imbalances for the last four or five bienniums due to supplementals. This is the first biennium that it has a significant structural imbalance. Rep. Story asked if the structural imbalance excluded 1-time money. Mr. Schenk said that the numbers are currently raw numbers and they do not take into consideration 1-time money.

Mr. Schenk will update the Committee at its December meeting.

OTHER BUSINESS

Lee Heiman, Staff Attorney, Legislative Services Division, provided an update of the Department of Revenue's rules as they relate to the small brewers and a copy of the Department's current administrative rule activity. (EXHIBITS #7 and #8 respectively) The Department has taken the proposed rule off the table and it is working with the brewers to solve the problem. The Department is also systematically updating all of its rules.

Ms. Kurtz provide an excerpt and overview of the EQC's HJR 42 study plan of fire suppression costs and funding the Department of Natural Resource and Conservation (DNRC) fire management program. (EXHIBIT #9) She will continue to keep the Committee informed of the progress of the study.

Ms. Kurtz said that the WEFA Group, formerly Whorten Econometrics, will be coming to Montana in December 2001 to talk about the possibilities of a recession. It will be added to the December meeting agenda. She also suggested that Committee members who were unfamiliar with the revenue estimating process may want to set aside time separate from December's agenda to meet with Terry Johnson, Principal Fiscal Analyst, Legislative Fiscal Division for a briefing on how the revenue estimating process works.

Ms. Kurtz provided a copy of an April, 2001, letter from the Senate Highways and Transportation Standing Committee requesting that the Revenue and Transportation Interim Committee set aside time on one of its agendas to hear from the appropriate state and federal agency personnel regarding the current procedures for transportation of hazardous material through Montana. (EXHIBIT #10)

The Committee discussed the issue of transportation of hazardous materials in general and decided to set aside some time on its agenda to hear from the appropriate personnel who can answer the following questions: What kind of material is shipped? How it is transported? Who ships hazardous material through the state? Who is notified when a shipment is sent? What safeguards are in place to ensure safe transport? How is Montana prepared to respond in the event of an accident? and Are there any needs that the Legislature could respond to?

Another issue discussed was economic development as it relates to rest areas or visitors' information booths along the Interstate highway system in Montana.

There being no further business, the meeting was held in recess at 5:15 p.m.

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