

MINUTES OF THE MEETING
HIGHWAYS AND TRANSPORTATION COMMITTEE
MONTANA STATE SENATE

April 5, 1977

The meeting of the Highways and Transportation Committee was called to order by Chairman Manning on the above date in Room 404 of the State Capitol Building at 9:30 a.m.

ROLL CALL: Senator Hager was absent, all other members were present.

Chairman Manning stated that the purpose of this meeting was to discuss the bills that are now coming out of the Taxation Committee concerning highways and transportation. These bills include HB 769, HB 340, and HB 635.

Chairman Manning noted that there didn't seem to be too much opposition to the 1/4 cent raise in the gasoline tax except from Senators Turnage and Norman. Mr. Jim Beck, legal counsel of the Department of Highways, stated that this would raise about \$104,000.

Mr. Beck stated that the fiscal note on HB 340 was based on the original bill which would have increased the snowmobile gas tax 6/10 of 1 cent and that had been cut to 3/10 of 1 cent. So the actual fiscal note should be either 1/2 of the amount in HB 340 or the amount from HB 635. This would raise approximately \$105,000 in fiscal 78 and \$108,000 to \$109,000 in fiscal 1979.

Mr. Beck commented that the snowmobile bill had been submitted to provide trailheads and maintenance. The money would go to the Fish and Game and 10% would be earmarked for the safety inspection program. The snowmobiles consume more than enough gas to offset these costs.

HB 635 is basically the same bill as HB 340, but deals instead with the boat gas tax, testified Mr. Beck. This is part of the Governor's package to finance the parks. Boats use more than 9/10 of 1% of all the gas in Montana.

Senator Lockrem asked if this wasn't considered to be a diversion of funds and therefore require a 3/5 vote of the legislature. Mr. Beck responded that in his opinion this was not a diversion of funds. The legislature has used this device of legislative funding in the past. This is an off-highway use of gas and therefore is not subject to tax or can be used for non-highway purposes. A Supreme Court case has confirmed this interpretation. Senator Lockrem commented that the Rules Committee would probably have to make a ruling on this. Chairman Manning stated that he also felt this should be put into

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the Rules Committee.

Senator Lockrem stated that if this was the case with these bills, the same should hold true with all highway contracts which are an off-highway use of gasoline. If some off-highway groups are able to get refunds for the gas used in off-highway vehicles, then other off-highway groups should also be able to receive these refunds. For contractors, this would amount to quite a little money.

Senator Smith stated that only 6/10 of 1% of all gas used in the state was used in boats. He stated that technically this is not a diversion of funds. Senator Lockrem stated that he felt this could only be decided by the Rules Committee.

Chairman Manning commented that Senator Turnage's point, on which he got the bill back to committee, was that we may not need the 1/4 cent raise in gas tax if the other two bills are killed. He noted that the opposing point of view was that the bills only require \$104,000, while the 1/4 cent raise would generate \$2.5 million.

Senator Smith noted that 1 cent gas tax raises \$1,220,000. 1 cent diesel tax raises \$800,000. So 1/4 of 5 million dollars comes to \$1 1/4 million. Mr. Beck commented that \$1 1/4 million would be raised each year which comes to \$2.5 million for the biennium. In the near future the 1/4 cent tax would raise \$1.1 or \$1.2 million, and if the other two bills are killed it would save \$216,000 which is still \$1 million short of the amount raised by the 1/4 cent tax.

Mr. Beck continued that HB 769 was drafted in conjunction with the League of Cities and Towns and the County Commission Association. It is unique in scope because it addresses the problem that exists between the DOH and the counties and cities over who will maintain what roads. All of the roads were functionally reclassified as of July 1, 1976. That was a freeze date at which time all of the roads currently maintained by the DOH would continue to be maintained by the DOH and all of the roads currently maintained by the counties and cities would continue to be maintained by the counties and cities. Mr. Beck noted that this bill defines the system of road maintenance in section 1, establishes the freeze date in section 2, and in section 3 allows the DOH to pay the cities or counties to maintain roads assigned to the DOH and vice versa by mutual agreement. The need for the 1/4 cent tax is justified in sections 4 and 5. When the roads were reclassified, about 760 miles were upgraded from secondary roads to primary roads. About 334 miles of the new primary road were previously maintained by the counties and will now be maintained by the DOH. These roads are scattered and because they are now primary system roads, the federal government can force the DOH to maintain these roads. Comparing these new roads to the existing roads, the estimated cost to maintain them is indicated on the fiscal note. A 1/4 cent

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raise would be needed to raise \$1.3 million the first year, with the DOH spending \$1.9 million, but it would all balance out in the biennium.

Senator Lockrem suggested that the DOH did have financial problems already, even without the 1/4 cent raise. He stated that he served on the subcommittee of Finance and Claims that handles the DOH budget and that an overview of the Highway Trust Fund indicated \$7 million in overhead liabilities of which the Zook Brothers claim took up \$1.3 million. Senator Lockrem stated that if the DOH couldn't get the Zook settlement from federal funds, we would be throwing away \$8 million in matching funds if we didn't fund this from the general fund. We could use the 1/4 cent tax to help balance the liabilities the DOH faces.

Mr. Beck noted that according to the subcommittee the DOH would have an adequate cash balance. But if the DOH has to take over the additional 334 miles the 1/4 cent tax raise is needed.

Senator Healy asked if there was penalty and interest being charged on the Zook settlement. Mr. Beck answered that there was not. Senator Lockrem noted that this would not be a recurring expense in the budget.

Chairman Manning noted that in 1921 the first 1 cent gas tax was assessed. This went up to 5 cents by 1 cent increments in 1929. It stood then at 5 cents for twenty years until 1949. From 1949 to 1958, the tax stood at 6 cents. After ten years there was a 1/2 cent raise for city and county use. There has been no tax increase at all for highways in the last three increases and the tax is at 7 3/4 cents now. It is really almost a diversion of funds to give gas tax money to cities and counties. In 1967 the money was given to the cities on a 60-40 basis which was changed in 1969 to a definite amount of money. With the 7 3/4 cent tax about \$6.5 million goes to the cities and counties. If the DOH doesn't get the 1/4 cent raise, the 334 miles of roads now taken over by the state would have to be placed back on the counties.

Senator Lockrem commented that in the overview of the trust fund, even though there is a balance of \$7 million in contingency, with the liabilities the DOH couldn't handle maintenance of the extra miles. Mr. Beck noted that part of the maintenance contingency is predicated on the passage of HB 769. If it does not pass, the department would have to be budgeted the extra amount to maintain the extra miles.

Senator Lockrem noted that maintenance costs are hard to predict because it is somewhat dependent on the amount of snow and storms, etc.. This year we are at about 10% of what is normal, but next year that might be way up over normal.

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Senator Graham asked what the reason for the \$1.3 million settlement in the Zook case was. Mr. Beck responded that this settlement was reached because of right of way problems over some mining claims in the building of a portion of the interstate system. An injunction was filed because of the right of way problems and Zook subsequently took the DOH to court for the expenses caused in the delay of the project. District Court awarded Zook \$135,000. Upon appeal, the Montana Supreme Court awarded Zook \$1.3 million. Mr. Beck stated that he was shocked at the Supreme Court's rewrite for he felt that the \$135,000 award of the lower court was a gift. The Supreme Court originally affirmed the lower court decision 4 to 1, but one justice convinced the other four to agree to the \$1.3 million settlement.

Senator Lockrem stated that the state was obligated to the \$1.3 million. If this is taken out of trust funds, we'll lose about \$9 million in jobs, road construction and federal match.

Mr. Beck clarified that the problems with the right of way research did not happen under the present directorship and was before Harry Anderson came to the department. The claim was back in about 1965.

Senator Lockrem commented that the DOH in its construction projects must issue a lot of change orders when conditions are met that were not anticipated. It was the opinion of the court and the legislative auditor that the DOH was doing a good job in its change orders.

Senator Aber asked if the 1/4 cent would not be allocated to the counties. Mr. Beck replied that these funds would be earmarked for maintenance. In cases where the DOH will be paying the counties to maintain DOH roads, the counties to maintain DOH roads, the counties are able to maintain the roads at less cost.

Chairman Manning noted that the county roads include those access roads immediately parallel to the interstate that are heavily traveled.

Mr. Beck stated that the important aspect of this bill is that it sets down the counties' responsibilities and the DOH's responsibilities. This will alleviate some of the sources of argument between the two. Mr. Beck continued that maintenance is the largest single item in the budget. Of the revenue from the state, almost 50% is used in maintenance. As other prices go up, the costs of repairs will also go up. If the roads are maintained, that's the best advertising.

Senator Etchart asked if there were enough funds to match federal funds. Mr. Beck answered yes, that the federal government allocates only so many dollars to each state. What happens is that other states don't match all of their federal money, making this extra money available. If we have the money to match

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the extra federal funds, we are able to get more federal funds than we are normally allocated.

Senator Etchart asked what per centage is administrative costs in the total road monies. Mr. Beck answered that there used to be a lid, but he wasn't sure this was still on. He said he would check on that.

Senator Smith commented that Representative Fagg's testimony on HB 635 indicated that highway parks are dumped on the Fish and Game with no funds to maintain them. The DOH seems to always have plenty of money to maintain the parks. With the 3/10, it will be a 50% increase in the present funds that are earmarked for water based parks. The dollar values of land donated to the state can be used for federal matching funds to purchase other kinds, as is the case with Wild Horse Island. If the state had long range programs, it would be probable that more land would be donated by corporations such as Champion. Boaters have two options, either they can get a refund for off-highway use of tax or this amount of money goes to boat parks. Snowmobilers do not have the option of applying for refund. The snowmobile money will go to the counties and state to widen road areas for snowmobiles, etc. and a per centage would go to the safety program similar to the hunters safety program. This would amount to \$104,000 from the 1 1/4 million dollars raised each year from the 1/4 cent gas tax raise.

Chairman Manning noted that Senator Turnage has his figures wrong in thinking that killing the other two bills would remove the need for the 1/4 cent tax raise.

Senator Smith commented that off-road vehicles are defined in the law. Senator Graham asked how refunds are applied for. Senator Smith responded that there are two different methods of keeping books for refunds. Senator Healy stated that the invoices are sent in to the state.

Senator Graham asked how many snowmobiles there were. Senator Smith stated there are 22,000 registered snowmobiles and a lot more that aren't registered. The average consumption for a snowmobile per season is 80.5 gallons according to a Snowmobile Association survey. These figures are conservative.

Senator Smith commented that it was really a piddling amount of money in each case. Senator Etchart responded that this set a precedent though, and we'd be refunding for construction next session. Senator Smith stated that he believed a snowmobile could get a refund now if they took the issue to court. Senator Etchart stated that we should amend to allow that and forget about the rest of the bill. Mr. Beck stated that could be done, but not in these bills.

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Senator Bergren asked if parking areas are established for snowmobiles could the DOH maintain these, not the Fish and Game. Mr. Beck stated that the DOH didn't want the responsibility of maintaining the snowmobile areas as they are far removed from the DOH's routine maintenance routes and that the costs would therefore be great.

Chairman Manning commented that the Highway boys are always the bad boys, but when you look back and see that the last three increases were not even for the DOH, they've done a good job.

ADJOURNMENT: There being no further discussion, the meeting was adjourned at 11:35 a.m.

Dave Manning
DAVE MANNING, CHAIRMAN

ROLL CALL

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