

# SUMMARY *of* PROCEEDINGS



## JOINT TRANSPORTATION, HIGHWAYS AND MILITARY AFFAIRS COMMITTEE

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### COMMITTEE MEETING INFORMATION

June 8-9

Thermopolis and Worland, Wyoming

### COMMITTEE MEMBERS PRESENT

Senator John Schiffer, Co-Chairman  
Representative Lorraine Quarberg, Co-Chairman  
Senator Stan Cooper  
Senator Wayne Johnson  
Senator Bill Landen  
Senator Leslie Nutting  
Representative Stan Blake  
Representative David Bonner  
Representative Jon Botten  
Representative Richard Cannady  
Representative Robert McKim  
Representative Clarence Vranish  
Representative Dave Zwonitzer

### COMMITTEE MEMBERS NOT PRESENT

Representative Owen Petersen  
Representative Stan Blake (June 9<sup>th</sup> only)  
Senator Stan Cooper (June 9<sup>th</sup> only)  
Senator Bill Landen (June 9<sup>th</sup> only)

### LEGISLATIVE SERVICE OFFICE STAFF

Ian D. Shaw, Staff Attorney

### OTHERS PRESENT AT MEETING

See Appendix 1, Attendance Sign-In Sheet

*The Committee Meeting Summary of Proceedings (meeting minutes) is prepared by the Legislative Service Office (LSO) and is the official record of the proceedings of a legislative committee meeting. This document does not represent a transcript of the meeting; it is a digest of the meeting and provides a record of official actions taken by the Committee. All meeting materials and handouts provided to the Committee by the Legislative Service Office, public officials, lobbyists, and the public are on file at the Legislative Service Office and are part of the official record of the meeting. An index of these materials is provided at the end of this document and these materials are on file at the Legislative Service Office. For more information or to review meeting materials, please contact the Legislative Service Office at (307) 777-7881 or by e-mail at [lso@state.wy.us](mailto:lso@state.wy.us). The Summary of Proceedings for each legislative committee meeting can be found on the Wyoming Legislature's website at <http://legisweb.state.wy.us>.*

## EXECUTIVE SUMMARY

This meeting was held on June 8, 2011 in Thermopolis, Wyoming and on June 9, 2011 in Worland, Wyoming. The committee received an extensive report about efforts to control flooding damages in Wyoming and the expenses of such efforts. The committee received information from the Wyoming Department of Transportation (WyDOT) about highway funding and potential sources of revenue. WyDOT's Aeronautics Division described its organization and operation. The committee took a tour of the Worland National Guard Armory and received information about the condition and needs of Wyoming's armories. The next committee meeting will be held on August 30-31, 2011 at Camp Guernsey, Wyoming.

## CALL TO ORDER – JUNE 8TH

Cochair Schiffer called the meeting to order at 8:30a.m. at the Big Horn Federal Building in Thermopolis, Wyoming. The following sections summarize the Committee proceedings by topic. Please refer to **Appendix 2** to review the Committee Meeting Agenda.

## ADOPTION OF SPECIAL COMMITTEE RULES

Upon motion by Senator Landen, seconded by Representative Blake, the committee voted to adopt a new rule for this interim. The rule requires that the committee sponsor only legislation which has received an affirmative vote from a majority of the committee's membership from each house of the Legislature. A roll call vote was taken and all attending members voted in favor of the motion.

## FLOOD UPDATE

Kari Gray, Governor Mead's Chief of Staff, provided an update on efforts to control flooding in Wyoming. Early in the spring, the Governor's office recognized that many significant problems were developing as a result of excess snowpack. As a result, the Governor's Office began working with the National Guard, the Department of Homeland Security and the Wyoming Department of Transportation ("WyDOT") to develop a proactive plan. This spring, the Governor deployed 6 national guard teams all over the state to help counties assess risks and to begin preparing. To date, proactive efforts have helped to prevented significant damages around the state, particularly in Baggs and Saratoga. Ms. Gray provided a packet of information to the Committee and reviewed the information and maps in the packet. The packet is included as **Exhibit 3**. Ms. Gray discussed information about current snow pack and the counties which are exposed to significant flooding risk. Ms. Gray also discussed the current costs of the flood control efforts.

Adjutant General Luke Reiner continued the discussion on flooding in Wyoming and discussed the information contained in **Appendix 4**. General Reiner discussed current snow packs and the decision process that was used to address identified risks. Gen. Reiner reviewed the decision to predeploy the National Guard, which had never been done in Wyoming. General Reiner discussed in detail the overall state plan, how it was implemented and the estimated costs. Gen. Reiner then reviewed the information in **Appendix 4** addressing emergency and major disaster declarations and described when federal funding (FEMA) is available to help in disaster and predisaster relief.

General Reiner explained that funding for flooding operations is coming entirely from a \$750,000 contingency fund within the Department of Homeland Security. This fund is meant to fund disaster relief. Ms. Gray described other sources of funding, including the B11 process and a \$1 million emergency fund within the Governor's office.

Upon the request of the committee, General Reiner and Ms. Gray agreed to review the Wyoming statutes to determine if any statutory changes need to be made to facilitate predeployment and emergency response efforts.

WyDOT then reported on its activities this spring. Director John Cox and Chief Engineer, Delbert McOmie, reported. They reviewed the information contained in **Appendix 5**. Landslides are the main issue for WyDOT. Director Cox discussed the various slides that have happened and the damage that has been done. Director Cox discussed the remarkable coordination between federal agencies that occurred during the Double Draw slide in Teton County. The threshold for federal reimbursement for the work that was required at Double Draw is \$700,000. WyDOT will work to get federal reimbursement.

Mr. McOmie introduced Ken Schultz, WyDOT's new Assistant Chief Engineer for Operations.

Mr. McOmie provided additional testimony about landslides and about snow removal efforts in Wyoming, as indicated in **Appendix 5**. He discussed the allocation of funds during emergencies and how up to \$1 million can be dedicated. He also discussed how FEMA funding compares to Federal Highway Administration emergency funding. WyDOT Chief Budget Officer, Kevin Hibbard, explained the costs of snow removal and the overruns in the snow removal budget.

The committee then discussed the issues raised during the discussion of flooding. Senator Cooper encouraged permanent, long-term infrastructure improvements to protect against flooding and to decrease the need for emergency efforts. Cochair Schiffer discussed the potential need to design a system to enhance preemptive efforts and facilitate in emergencies. He also discussed the need to empower local governments with ways to track their damages and expenses in order to better qualify for FEMA and/or Federal Highway Administration reimbursement. Cochair Quarberg suggested that the involved agencies review their activities and efforts this spring to critically evaluate what worked and what did not. Ms. Gray testified that such a review was already planned and agreed to report back to the committee.

## **WYDOT ASSET MANAGEMENT SYSTEM – PAVEMENT PRESERVATION PLAN**

WyDOT provided a notebook to the committee which contains all the materials relevant to WyDOT discussions at this committee meeting. The materials are divided by tabs which are numbered. This notebook is included as **Appendix 6**. WyDOT will add additional tabs and information to this notebook during subsequent committee meetings.

Chief Engineer McOmie discussed WyDOT's adoption of a new project funding approach. WyDOT no longer has the funding necessary to continue its highway improvement program and is switching its efforts to a comprehensive pavement preservation program. The emphasis of the program is to try to maintain Wyoming's highway system in its current condition. Mr. McOmie reviewed the information contained in **Tab 1 of Appendix 6**. The asset management program that has been adopted is very unique and is on the leading edge of highway funding and planning. Mr. McOmie provided the committee with a review of Wyoming's highway system and its condition, as outline in **Tab 1**. Mr. McOmie discussed how the allocation of assets between federal and state roadways, between roadways in various stages of deterioration and between different types of maintenance can have significantly different long-term impacts. McOmie introduced Rick Harvey, state materials engineer. He discussed the materials used in roads and how they impact the life of a road. McOmie said he is very concerned about the impact of the oil play in southeast Wyoming. WyDOT has found that heavy, industrial loads can destroy a road in a couple of weeks. They have had this experience with roads being used for wind energy development.

## HIGHWAY FUNDING – EXISTING REVENUES

Kevin Hibbard, WyDOT Budget Officer, discussed the information contained in **Tab 2 of Appendix 6**, including an addition to Tab 2 entitled WYDOT Operating Budget FY 2011. As described in **Tab 2**, Mr. Hibbard reviewed all existing sources of funding currently available to WyDOT. Mr. Hibbard explained that Wyoming dedicates less of its budget to surface transportation, including highway maintenance, than does Wyoming's neighbors. Director Cox explained that Wyoming will be lucky if it is able to maintain its current federal highway funding level under a new federal highway bill. The federal government is deemphasizing rural states in favor of providing funding to metropolitan areas and metropolitan transportation systems. Mr. Hibbard explained how WyDOT balances its budget and what cuts and reallocations have been necessary to maintain a balanced budget. Mr. Hibbard then discussed the fiscal impacts that have resulted from Wyoming's de-earmarking of severance taxes and royalties. Since de-earmarking, WyDOT has lost an estimated \$908 million dollars. However, WyDOT has received \$554 million of general fund appropriations since de-earmarking. Some of that \$554 appropriations has been for special purposes and not generally available for regular WyDOT expenditures. Director Cox and Mr. Hibbard explained the very significant impact of inflation over the past years. WyDOT is able to provide less today than at 1987 budget levels because of inflation. Mr. Hibbard also discussed the fact that Wyoming is significantly more reliant on federal funding than are many other states, including Wyoming's neighbors. WyDOT needs an additional \$134.5 million per year in funding to maintain Wyoming's highway system in its current condition.

## HIGHWAY FUNDING – CURRENT FUNDING DIVERSIONS

Mr. Hibbard reviewed the current diversions from WyDOT's traditional budget. The information Mr. Hibbard discussed is contained under **Tab 3 in Appendix 6**. Mr. Hibbard specifically discussed the salary and medical benefit obligations of WyDOT, the expired capitol facilities tax and the gasohol tax credit. A substantial discussion occurred regarding the tax credits that are available to Wyoming's one ethanol producer and the income that is being taken from WyDOT and local governments as a result of the tax credit. Mr. Hibbard discussed the information contained in **Tab 4 of Appendix 6** related to ethanol tax credits. Wyoming has a \$.40 cent per gallon credit for ethanol production. The federal government offers a \$.45 per gallon credit and small producers, like Wyoming's producer, can enjoy an additional \$.10 credit. Approximately \$30 million has been diverted as a result of the credits available and an additional \$3 million will continue to be diverted each year. The committee then considered a research paper completed by LSO concerning ethanol credits. That paper is included within **Tab 4**. Representative Vranish testified that, according to his calculations, Wyoming's sole ethanol producer gains in excess of \$100,000 per employee in tax benefits. Representative Zwonitzer said he sponsored a bill which would remove ethanol tax credits but said the bill failed based on an apparent promise by the Legislature to continue tax credits in order to allow Wyoming's ethanol producer to incur the expense of building an ethanol plant. Representative Zwonitzer also recalled testimony indicating that the owner of Wyoming's facility does not qualify for all or some of the federal tax credits.

Mr. Hibbard then testified about the \$.14 per gallon tax on motor fuel, \$.01 of which is the LUST tax (leaking underground storage tank). The LUST tax earns approximately \$12 mil per year and is used by the DEQ to remediate leaking underground storage tanks. However, Mr. Hibbard explained the system through which LUST monies are allocated and explained that altering this allocation system is very complicated and could result in WyDOT receiving less funds.

Mr. Hibbard provided testimony about the off-road use exemption for Wyoming's diesel fuel tax. Under Wyoming law, off-road consumption of diesel is exempt from diesel fuel tax. However, these users are

required to pay sales tax on the diesel fuel they purchase. Mr. Hibbard testified that the industries which qualify for the diesel fuel tax exemptions, but who pay sales tax, consume a large quantity of diesel fuel and pay significant sales taxes. While the Wyoming Constitution mandates that taxes collected for fuel consumed on Wyoming's roadways be used for the benefit of the roads, taxes paid by off-road fuel users are not similarly constrained. Cochair Schiffer questioned whether WyDOT should be allowed to have a portion of the sale tax revenues generated from these diesel fuel sales. Senator Landen noted that whatever is allocated to WyDOT, would then be excluded from distribution under the standard sales tax distribution formula. Mr. Hibbard then outlined other fuel tax exemptions which are less significant and, in the aggregate, total approximately \$992,000 per year.

Without a formal motion, Cochair Schiffer asked the committee to consider the merits of a bill that would distribute a portion of the sales tax revenues generated from the sale of off-road diesel to WyDOT. Cochair Schiffer suggested that only the 66% sales tax allocation that goes to the general fund be allocated to WyDOT. In that way, local governments would not shoulder the burden of the new sales tax allocation.

## **HIGHWAY FUNDING – NEW REVENUE SOURCES**

Tom Loftin, from WyDOT's Driver Services Division, provided information concerning drivers service fees in Wyoming. He covered in detail the fee summary included in **Tab 4 to Appendix 6**. Mr. Loftin did point to several categories where the fee charged is insufficient to pay for the associated cost of the service. The \$25 hearing fee is an example. The Committee had a brief discussion about whether some of these fees should be increased.

Kevin Hibbard then reviewed Wyoming's motor vehicle registration fees, as outlined in **Tab 4**. Mr. Hibbard included a break-out for each county indicating how much they collect in their vehicle property tax, i.e. the county portion of Wyoming's vehicle registration fee.

## **OTHER TOPICS**

Mr. Shultz from WyDOT briefed the committee on its current contracting efforts for the maintenance of snow fence and the use of contractors who use the discarded fencing material as a commercial product. He explained that Centennial Woods is currently doing this work. However, WyDOT has divided the state into three regions and is letting staggered contracts for each of these regions. Because the Attorney General's Office advised against longer term contracts, the contracts are for one or two year terms with extensions not exceeding a total contract term of three years. The contracts allow the contractors to replace wood on snow fences and also provide for maintenance on fences that need maintenance. The contractors pay the state for the privilege of taking weathered wood from the fence structures, but these payments are offset to the extent the contractors provide maintenance services. WyDOT has tried to promote competitive bidding through its contract provisions and Mr. Shultz notified the committee that Centennial Woods is not happy with some of the decisions of WyDOT.

## **PUBLIC COMMENT**

Converse County Commissioner Jim Willox testified about his experiences with fighting the floods in Wyoming and explained the impressive level of cooperation that occurred this year. He spoke on behalf of the County Commissioners' Association. He complimented the committee on its efforts to not take money from local and county governments when trying to fund highways. He discussed industry's

considerable impact on county roads. Cochair Quarberg stated that it would be helpful for counties to provide a report to the committee indicating the damages done to county roads by this year's floods.

Hot Springs County Commissioner Mike Baker testified that there is rampant abuse of oversized/overweight permits in Wyoming. He believes the fee structure and length of permitting needs to be changed to more adequately compensate the state for the damage of oversize/overweight loads. With regard to the discussion on vehicle registration fees, Mr. Baker pointed out that not all of the county's portion of vehicle registration fees goes to the county.

## **AERONAUTICS DIVISION REPORT**

Dennis Byrne and Christy Yaffa gave the committee a presentation describing the operation of WyDOT's Aeronautics Division. They covered the information contained in **Appendix 7 and the information contained in Tab 6 in Appendix 6**. The presentation followed the slides contained in **Appendix 7** and included discussions concerning the organization and funding of the Aeronautics Division as well as details about the programs being pursued within the Division. Mr. Byrne explained that the biggest challenge to the economic viability of Wyoming's air industry is leakage of customers across state lines. As outlined in the slide presentation, Mr. Byrne explained potential budget shortfalls, reviewed the contracts that have been approved in different Wyoming communities, explained the importance of continued federal funding and outlined the Division's flight operations. The Aeronautics Division will present additional information to the committee at the end of the interim.

The meeting was recessed for the day at 6:00p.m.

## **CALL TO ORDER – JUNE 9<sup>TH</sup>**

Cochair Schiffer called the meeting to order on June 9 at the National Guard Armory in Worland, Wyoming.

## **MILITARY AFFAIRS – ARMORY TOUR AND INFORMATION**

General Reiner welcomed the committee to the Worland Armory. He provided a handout to the committee which is included as **Appendix 8**. General Reiner presented the information contained in the handout. Considerable discussion focused around the modernization or replacement of various armories in the state and on the services which should be provided by armories. In August, the Military Department will provide specific information about each armory and the needs of each armory. General Reiner used the Worland Armory as an example. He discussed the specific ways in which the armory does not meet its purpose and the limitations of the armory based on its failure to meet all applicable codes. Considerable discussion was had regarding the location of armories both within their respective cities or towns and within the state. The Afton, Cody, Sheridan and Worland armories are the four armories in need of the most significant renovations or replacement. Representative Boner asked that the Military Department provide information regarding how communities use and benefit from armories. Cochair Quarberg and Representative Zwonitzer asked that the Military Department provide information on why the armories are located where they are throughout the state.

General Reiner then discussed the Camp Guernsey training facility and a potential expansion of the north and south training areas. Maps are provided within **Appendix 8** and more specific information will be provided during the committee's August meeting. General Reiner reviewed legislation from last year on

federally reimbursed state positions. In August, he will provide a prioritized list on what positions the Military Department would like to fill. Cochair Schiffer suggested that any request for positions be put into the Department's budget request with the Governor and that this committee be kept involved.

The committee discussed last year's efforts to pass a bill related to school admissions and educational credits for students in military families. LSO informed the committee that LSO is currently working on a draft of a similar bill and the committee asked that the effort be coordinated with this committee and with the Military Department. If available, the committee would like to see a draft of the bill at its August meeting.

## **CENTENNIAL WOODS – SNOW FENCE CONTRACTING**

Scott Patton, General Manager of Centennial Woods, talked to the committee about WyDOT's contracts for snow fence replacement and repair. This discussion was a continuation of the discussion raised by WyDOT. Mr. Patton described what Centennial Woods does, their services to WyDOT and the benefit received by WyDOT as a result of their services. Mr. Patton expressed concern about the length of the contracts being let by WyDOT and some of the contracting terms. Centennial Woods believes the contract terms need to be longer (5 years), that the contracts need to require contractors who are capable of doing the necessary work and that the state should be divided into five contracting regions, rather than three. Mr. Patton also discussed the importance of having guaranteed access to snow fence areas, rather than allowing access at the discretion of WyDOT personnel. Without speaking to the merits of this specific case, Cochair Schiffer suggested that large state agencies should promote advantageous public/private partnerships through their contracting practices.

After discussion, the committee concluded that there likely is no appropriate statutory change necessary to address Centennial Wood's concerns. However, the committee agreed to appoint a sub-committee, consisting of Senator Johnson and Representative Zwonitzer, to bring the parties together and suggest an appropriate resolution. Senator Johnson and Representative Zwonitzer will organize the meeting and report to the committee.

## **BILL DRAFTS**

Senator Schiffer lead the committee in a discuss of topics discussed during this meeting and issues upon which the committee would like to have a bill draft completed by LSO for committee consideration. The following bill drafts were authorized by the committee:

- 1) Drivers Services / License Fees: Draft a bill which raises all fees to cover the costs of administration. Draft the bill so that all fees can be individually increased and the draft bill can be amended by the committee. The actual amount of the increase can be left blank. Even fees set by rule and regulation should be included.
- 2) State Vehicle Registration Fee: Draft legislation to raise it with the actual amount left blank. LSO will do research on the state fee portion charged in surrounding states and on what revenue would be raised by each \$2.50 incremental increase. LSO also will research the identity of those who are paying the fee. LSO also will draft a bill which changes the fee to one that is identical to the tax charged by the counties and which fluctuates with MSRP. The best way to do this might be to make the state fee a set percentage of the county fee.

- 3) Ethanol Subsidies and Credits: Draft a bill eliminating Wyoming's subsidies for ethanol production. LSO is to leave the title open and to leave the draft general. Representative Zwonitzer's prior bill on this issue shall act as a starting point.
- 4) Sales Tax Paid on Off-Road Diesel Fuel Purchases: Draft a bill which goes into the sales and use tax distribution formula and which assigns sales tax revenues from off -road diesel fuel purchases to WyDOT. Only include that portion of the revenue which would be part of the 66% distribution to the general fund. LSO should consider whether the statutory change should be put in the tax statutes or the off-road diesel fuel tax exemption statute. All amounts should be left blank. LSO will research the revenues that would be directed to WyDOT as a result of this change.
- 5) Within **Tab 4 to Appendix 6** is a memorandum from LSO regarding the constitutional requirement that general fines and penalties be applied for the benefit of Wyoming schools. Draft a bill that amends the Wyoming Constitution to reassign fine and penalty revenues to WyDOT. Limit the assignment so that fines can be applied only for the maintenance of Wyoming's roads and so that it does not provide a direct funding incentive for the Highway Patrol to issue more tickets.
- 6) Draft a bill which will set new fees for the administration of the ignition interlock program. The statute would require fees that are sufficient to pay the costs of the program. LSO will conduct research to determine the costs of administering the program.

The committee then took a tour of the Worland Armory facilities.

#### **MEETING ADJOURNMENT**

There being no further business, Co-Chairman Quarberg adjourned the meeting at 1:30p.m.

Respectfully submitted,

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Senator John Schiffer, Co-Chairman

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Representative Lorraine Quarberg, Co-Chairman

# Committee Meeting Materials Index

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Appendix	Agenda Item	Appendix Description	Appendix Provider
1	Committee Sign-In Sheet	Lists meeting attendees	Legislative Service Office
2	Committee Meeting Agenda	Provides an outline of the topics the Committee planned to address at meeting	Legislative Service Office
3	Flood Update	Governor's Office flood update materials	Kari Gray-Chief of Staff
4	Flood Update	Military Dept. flood update materials	Military Department
5	Flood Update	WyDOT flood update materials	WyDOT
6	ALL WyDOT SUBJECTS	Notebook containing all materials relevant to WyDOT subjects	WyDOT
7	Aeronautics Division Report	Presentation and report outline	WyDOT Aeronautics Division
8	Armory Tour and Information	Information on Wyoming armories	Military Department