

MINUTES OF THE MEETING OF THE HOUSE APPROPRIATIONS COMMITTEE
APRIL 3, 1981

The meeting was called to order by CHAIRMAN LUND at 8:00 a.m. in Room 104, State Capitol, with all members of the Committee present.

EXECUTIVE SESSION.

HB 854.

REP. HEMSTAD reported to the Committee, the findings of the subcommittee on HB 854. She stated that the Transportation Assistance Bureau in the Department of Commerce has 4 FTE funded in HB 500. She added that the Bureau takes care of Transit Districts.

REP. HEMSTAD stated that subcommittee recommended that positions of Traffic Inspector and Draftsman III be eliminated from the Planning and Implementation Bureau request. (EXHIBIT 1)

REP. HEMSTAD stated that the subcommittee recommended that positions of Analysis Section Supervisor and Transportation Economist II be consolidated into one FTE and that the position of Para Legal also be deleted, leaving 2 new FTE in the Bureau.

REP. HEMSTAD advised the Committee that the total number of new FTE in the Division would be five and that the total number of FTE for the Division would be 14. She added that the estimated savings for the biennium in deleting the requested FTE would be \$150,000.

REP. THOFT stated that the bottom line figure for the biennium, excluding funds in HB 500, would be \$324,626. He stated that the appropriation in HB 500 was \$540,000 for the biennium.

CHAIRMAN LUND stated that the Committee needed a complete breakdown of funds in HB 500.

MR. LARRY FASBENDER, Executive Liaison to Legislature for Governor, stated that \$100,000 of the HB 500 appropriation was for wheat research, and that \$120,000 annually in HB 500 was general funding.

Mr. Fasbender, stated that the general fund appropriation in HB 854 would be \$102,000 in FY 82 and \$222,000 in FY 83 for a total of \$324,626 for the biennium. He stated that the Transportation Division would work with the Consumer Council, the Public Service Commission, Department of Highways and the Department of Agriculture.

REP. QUILICI stated that the Transportation Division will enhance the ability of the Consumer Council and the PSC to litigate on abandonment cases (railroad).

MR. TERRY WHITESIDE, Transportation Unit, Department of Agriculture, stated that the Department of Agriculture can only deal with branch lines in regard to agricultural problems and that the Department does not have the back-up material, (cost-wise), to refute arguments of the railroads.

REP. QUILICI stated that the Transportation Division would look at abandonment of roads and added that he feels the establishment of the Division is long overdue.

REP. HURWITZ stated that he feels there is a problem, in that a bureaucracy is being set up and that, in the past, when railroads have been abandoned the situation has been handled via trucking.

Mr. Whiteside stated that with rail lines, some branch lines are profitable, but some are abandoned. He stated that traffic then grows to the mainline, with the cost growing to persons who must transport products to the mainline.

REP. HURWITZ stated that he feels, that if public dollars are used to fund abandoned lines, they would be built upon a false base.

Mr. Whiteside stated that the Transportation Unit was not designed to retain unprofitable lines.

REP. WALDRON stated that he feels that BN has a railroad monopoly in the State, that free enterprise as a system does not work so well.

REP. THOFT stated that if the Bitterroot Line is lost, a good part of the tax base in Ravalli County will also be lost, as the County already has a low tax base.

REP. BARDANOUVE stated that he feels BN may have had a conspiracy to put the Milwaukee Railroad out of business in Montana.

REP. BENGTSON stated that with the Staggers Act, she wondered if there was a realistic chance of fighting the Act in court.

Mr. Whiteside stated that three other states have filed constitutionality suits in addition to Montana and that four Eastern power companies have also filed suits. (EXHIBIT 2)

Mr. Whiteside stated that Congress intended to maintain protection against market dominance in areas of railroad monopoly. He stated that since there were no cost mechanisms to prove market dominance, the rates set by the railroads can't be challenged, resulting in the suit filed by the State of Montana, Department of Agriculture, and Wheat Research and Marketing Committee.

Mr. Whiteside stated that the major challenge is to be able to litigate rates in the past for future benefit.

REP. QUILICI stated that, in essence, the shipper has to prove his case and that the Transportation Division would assist shippers in Montana in this endeavor.

Mr. Whiteside stated that Antitrust action had been filed against Burlington Northern, in regard to taking business from the Milwaukee Railroad, which is pending before the U.S. Department of Justice.

REP. MANUEL stated that he feels that to save energy in Montana, products must be shipped by rail and out by truck.

REP. BARDANOUE stated that the fuel tax paid by truckers is not in accordance with damage done to Montana highways.

REP. THOFT stated that many of these trucks are licensed out of state and pay no license tax in Montana.

Mr. Whiteside stated that 160% of the variable cost is considered to be a full return on an investment and that the branch line cost is allocated versus total movement on the rail line. He stated that a railroad will plow all costs of a trip into a branch line to prove that a branch line is not profitable.

Mr. Whiteside stated that he feels the private companies should not operate at a loss, however, although some branch lines are profitable. He stated that the issue gets down to minimum costs: railroads versus highways.

Mr. Whiteside stated that rail lines in Montana are extremely profitable. He stated that barley is shipped to Wisconsin by rail as it will not be accepted in trucks, because it bruises easily. He added that a large amount of barley is shipped from Montana to Wisconsin by rail.

CHAIRMAN LUND asked if the proof of burden were on the shipper?

Mr. Whiteside stated that this was correct. He added that studies indicate that truckers are not paying their fair share

Montana's roads, and the burden falls back on the shipper

WZZENS asked if rates have decreased since deregulation.

teside stated that the restrictions have resulted in rates, but that the impact would be on the producer in more to get his product to the rail line.

RWITZ asked how railroads could be forced to continue on and at reduced rates.

teside stated that if it can continually be proved market dominance has taken place, the ICC has the power for rates or set ceilings. (Interstate Commerce Com-). He stated that Montana's rail freight rates are the best in the nation, as there is little competition.

ONTZ stated that, historically, railroads in Montana are subsidized by the government. He stated that there are branch lines in Sidney which the railroad intends to abandon except for the mineral rights with the lines. He stated that there are goods which cannot be hauled by

ON LUND stated that the Northern Pacific was the only main line railroad in Montana.

ONTZ stated that the Great Northern and Milwaukee would not have been started without land grants.

teside stated that under the land grants, the railroad paid for the land received, but that the minerals have increased in value and that the railroads are milking the profits from the right-of-ways.

WUEL stated that the Transportation Division would be involved in air lines, bussing, etc.

ELICI moved that the Committee amend HB 854, in accordance with the subcommittee recommendation.

ROY stated that he feels the Milwaukee has been in a process of abandonment for the past 10 years. He asked Montana could legally do to demand that this no longer take place.

teside stated that the Antitrust suit brought in regard to the matter, would resolve the problem, if funds were available to the Department of Justice to follow up the suit.

REP. SHONTZ stated that BN created a minerals and energy division and that there is a rumor that BN will not haul minerals from any source in which it does not have an interest. He stated that he feels there is a need to work with the ICC on this matter.

REP. QUILICI's motion to strike \$594,626 in line 11, page 4 and insert, \$324,626, to strike \$297,313 in line 13, page 4 and insert, \$102,313, and to strike \$297,313 in line 13 and insert \$222,313, passed with 15 members voting aye and 2 voting no.

REP. COZZENS made a motion that the Committee pass on HB 854 for the day. The motion failed with 11 members voting no and 6 members voting aye.

REP. QUILICI moved that HB 854 do pass as amended. The motion passed, with 14 members voting aye and 3 members voting no.

HB 567.

REP. HEMSTAD moved that the Committee reconsider its motion to table HB 567.

The motion made by REP. HEMSTAD failed, with 10 members voting no and 6 members voting aye.

REP. HEMSTAD stated that she would have amended the bill to request \$151,533 in general funds to be paid back by 6-30-83.

REP. THOFT stated that the Washington litter tax was found to be not good by the interim study committee.

HB 851.

REP. BARDANOUE stated that this bill was contingent upon enabling legislation in SB 409.

REP. THOFT stated that he feels the bill has merit and that the subcommittee to review water bills, of which he is a member feels the bill needs some revision.

REP. SHONTZ moved that HB 851 to pass to the floor of the House.

REP. BARDANOUE moved to amend the motion, to state that the bill be moved to the floor of the House with a recommendation that it be referred to the Water Committee.

REP. MOORE made a substitute motion for all motions pending, that the bill be transferred from the Appropriations Committee

to the Select Water Committee on order of business #6 this date. The motion was unanimously approved.

HB 676.

REP. COZZENS stated that the subcommittee recommended a compromise in the bill and presented the Committee with a copy of the amended version of the bill. (EXHIBITS 3 and 4).

REP. COZZENS stated that the program has increased significantly due to public awareness and that it could increase as much as 70% in FY81. He stated that if funding were continued one more year, under the current basis, there would be enough funds to last through FY83.

REP. COZZENS stated that the Department of Labor could then have the time from FY82 to FY83 to find alternative funding sources.

REP. QUILICI stated that the subcommittee recommended that the 18% of Highway Patrol fines be struck from the bill and that current funding be used for this purpose.

REP. LORY stated that language needed to be added to the bill regarding the availability of Federal Funds and matching funds.

MR. NORM ROSTOCKI, Legislative Fiscal Analyst, stated that if Federal funds became available, the match could be done via budget amendment. He added that Section 2, needed to be added to the amendment.

REP. COZZENS moved that HB 676, be amended as stated in the attached exhibit. The motion was unanimously approved by the members of the subcommittee.

REP. COZZENS moved that HB 676, do pass as amended. The motion was unanimously approved by the members of the subcommittee.

The meeting was adjourned at 10:00 a.m.



REP. ART LUND, CHAIRMAN

House Bill 854 - Proposed Transportation Division in the Department of Commerce

Montana's economic base is primarily built upon extractive-type industries. This means that the industrial base of Montana's economy produces commodities which are bulk in nature and because of our lack of population base, these bulk commodities require movement to destinations outside the boundaries of the state in order to be of economic benefit to our citizens. We produce large quantities of coal, grain, lumber, livestock and products of the mine. To these industries efficient and economical transportation is not just a necessity, it is survival.

If we are to remain competitive with other states, our Montana industries must secure adequate transportation at reasonable transportation rates. Our transportation problems are not just railroad oriented but we have problems with truck service, passenger service, urban transportation service, rural transportation service, transportation of people - livestock - bulk commodities and manufactured commodities.

It is in the best interest of the state to consolidate the transportation service bureaus within state government. It is also in the best interest of the state to elevate those functions so that they can become more efficient in dealing with our massive transportation problems.

The proposed transportation division will consist of three bureaus: (1) a litigation and analysis bureau; (2) a planning and implementation bureau; and (3) a transportation assistance bureau.

Litigation and Analysis Bureau

The litigation and analysis bureau would be beefed up and provide the necessary transportation economic costing necessary to carry the required burden of proof in transportation litigation matters. This bureau accounts for the main increase in funding. Activities currently residing in the transportation portion of the Marketing and Transportation Unit at the Department of Agriculture would be moved to this bureau.

The need for an increased litigation section is because that under the new Staggers Rail Act, the burden of proof for rate increases now rests with shippers. Unless market dominance determinations are successfully litigated, the shippers may have an impossible burden to fulfill. The data required to litigate rate matters is unavailable to shippers due to the expense and complexities.

In the past the carriers had to show the ICC that they needed the increase before it could be granted. Now the shipper must prove that the carriers don't need the increase.

Planning and Implementation Bureau

The planning and implementation bureau will carry out planning and project implementation under Title 803 utilizing 20/80 federal matches. The program will deal in planning predominantly of the rail networks within the state and also coordinate planning and projects with other transportation planning agencies within state government. The initial state rail processes are complete and the bureau is starting to implement projects. They will be involved in rail reconstruction, ties, facilities, etc. The addition of the traffic inspector is needed just like highway inspectors are needed for inspection of projects.

Transportation Assistance Bureau

This bureau deals primarily in people transportation and will provide assistance to people and groups with special transportation needs. This bureau is being transferred intact from the Department of Community Affairs. The transportation Assistance Bureau will deal in specialized transportation problems, urban transportation problems and rural transportation problems dealing with people.

H.B. 854
TRANSPORTATION DIVISION

A-1 Position: Administrator

Duties: Performs complex professional and administrative duties in identifying and analyzing the transportation problems and solutions potentially existing in the State of Montana.

Examples: Performs analyses to develop and administer a short-range, intermediate and a long-range plan for transportation development in Montana; develops and coordinates transportation planning and transportation assistance to develop effective programs to deal with transportation problems; coordinates efforts with various local, state and federal agencies, and all other relevant individual, organization, and institutions on state, national and international levels; develops technical assistance for communities; represents the Transportation Division in litigation matters; makes recommendations pertaining to transportation developments; performs related work as required.

A-2 Position: Administrative Assistant II

Duties: Performs a variety of technical administrative functions of average difficulty.

Examples: Assists with a variety of functions such as budgeting, inventory, purchasing; employment and counseling; assists in scheduling and participating in meetings; in the development of policies and procedures and programs; preparing reports; answers correspondence concerning agency policies; composes and signs correspondence; researches and writes editorials and news releases; draft grant applications; may assume responsibility of supervisor in his absence; may require typing; performs related work as required.

Litigation and Analysis Bureau

The Litigation and Analysis Section will be designed to (1) perform various litigation efforts; (2) develop analytical expertise to allow analysis of transportation problems and development of solutions; (3) develop the in-house expertise to produce cost and rate data which will provide the basis for litigation; and (4) assist the Planning and Implementation Bureau and the Transportation Assistance Bureau in development of their coordinated programs.

In this section the following positions are justified:

B-1 Position: Chief - Litigation and Analysis Bureau

Duties: Develops litigation and analysis under broad policy guidance and direction, performs administrative, supervisory and professional work, represents through litigation and implements litigation and analysis backup for the Transportation Division of the Department of Commerce.

Examples: Evaluates transportation conditions as they may effect Montana transportation users; analyzes and sets priorities for participation in litigation cases; develops Montana's case-in-chief before the Interstate Commerce Commission, the Montana Public Service Commission and Courts; represents Montana transportation users at hearings; practices administrative law before the Interstate Commerce Commission and Courts; oversees development of transportation economic data and evidence for proceedings; performs related work as required.

B-2 Position: Transportation Specialist III

Duties: Under broad guidance and direction performs administrative developmental and professional work in implementing the surface transportation program of the Department of Commerce. This class exercises supervision over unit personnel directly or through subordinate personnel.

Examples: Evaluates transportation conditions as they may effect Montana transportation users; analyzes freight rate proceedings; develops Montana's cases-in-chief before the Interstate Commerce Commission and the Montana Public Service Commission; represents Montana transportation users at hearings, and testifies as an expert witness; practices administrative law before the I.C.C.; responds to new or proposed legislation on behalf of Montana transportation users; develops transportation data and evidence for proceedings; advises Montana transportation users on transportation matters; assists in implementation of a state transportation program; performs related work as required.

B-3 Position: Paralegal

Duties: Under the close supervision of lawyer(s) performs research, investigative and administrative work in assisting lawyers in various legal and administrative activities. May exercise supervision over clerical and secretarial personnel.

Examples: Researches and analyzes sources such as statutes, judicial decision, articles, depositions, treaties, legal codes, land titles and abstracts and regulations; prepares abstracts and reports of research findings; compiles citations and references. Assembles exhibits, affidavits and other documents; checks citation, quotations, footnotes and references for accuracy; explains previously interpreted laws, rules and regulations to others; may assist in the preparation of various legal and administrative documents. Arranges interviews and depositions and may assist lawyer to conduct, record or summarize interview; delivers or directs delivery of subpoenas to witnesses and parties to action; files pleadings with court clerk; may coordinate and direct activities of office staff; performs related work as required.

B-4 **Position:** Secretary III

Duties: Performs a variety of secretarial and clerical duties of considerable difficulty and some routine administrative duties for the chief of the Litigation and Analysis Bureau.

Examples: Composes correspondence on a variety of subjects requiring routine knowledge of policies, procedures, and functions of the agency; types correspondence, reports, legal documents, and a variety of other material; arranges appointments, meetings and travel schedules for the supervisor; handles clerical and administrative details of projects and events for the supervisor; maintains confidential and administrative files; prepares and maintains expense, payroll and statistical records and reports; arranges correspondence for supervisor's reply in order of priority; may take and transcribe dictation; performs related work as required.

B-5 **Position:** Analysis Section Supervisor

Duties: Under broad guidance and direction, performs administrative, supervisory and professional work in development of a transportation economic analysis section for the transportation program at the Department of Commerce. This position exercises supervision over personnel directly.

Examples: Evaluates transportation conditions as they may effect Montana transportation users; analyzes rates and economic costing; develops evidence for Montana's cases-in-chief before the Interstate Commerce Commission, the Montana Public Service Commission and the Courts; performs complex costing on various transportation modes and identifies and analyzes the economic framework and rate bases existing in the transportation system in the State of Montana; assists in statistical analyzing of changing transportation conditions; advises and provides technical assistance to litigation chief; plans, introduces, reviews and adopts statistical procedures and

costing methods; prepares and reviews as well as edits reports, studies, and evidence; coordinates activities with other sections, testifies as an expert witness; performs related work as required.

B-6 Position: Transportation Economist II

Duties: Under broad guidance and direction performs data accumulation and analysis at a professional level, implementing the surface transportation program of the Department of Commerce. This position exercises supervision over unit personnel directly or through subordinate personnel.

Examples: Evaluates transportation costs as they may effect Montana transportation users; analyzes freight rate filings, tariffs and proceedings; provides the statistical and analytical support data to the Transportation and Litigation Bureau necessary for its activities; testifies as an expert witness in various proceedings as required, before the Montana Public Service Commission, the Interstate Commerce Commission, state and federal courts. Compiles data and prepares analytical studies and reports such as Rail Form A and such subsequent reports as may be developed by the I.C.C. as a formula for use in determining rail freight rate service costs, to refute or support proposed tariff changes as may be appropriate to protect the interest of Montana transportation users; to assist in responding to new or proposed transportation and to assist in proposed legislation on behalf of Montana transportation users; assist in implementation of a state transportation plan program; performs related work as required.

B-7 Position: Rate Analyst

Duties: Performs professional work analyzing transportation within the state.

Examples: Responsible for analyzing freight rate structures to maintain current freight rate information on shipments of products; assembles rate evidence for hearings; provides technical rate expertise for the State of Montana shippers; checks tariffs for compliance with rules and terms of statutes; studies proposed rate changes and the effects of such changes; participates in activities relating to transportation trends, policies, services and rates; performs related work as required.

Transportation Assistance Bureau

The Transportation Assistance Bureau deals with Urban Mass Transit Administration (UMTA), and Federal Highway Administration (FHWA) funding for various program dealing with the transportation of people. The program administers various funds which provide capabilities of conducting special transit-related studies, planning assistance, special assistance - the elderly and handicapped, and maintains a statewide transit inventory.

The bureau administers a program for the transportation of elderly and handicapped people (8% of the total budget), a program which provides assistance for communities less than 50,000 population (15% of the total budget). The bureau also has the responsibility for preparing transit-related studies, providing transit planning assistance to localities, assists in the administrative costs of the elderly and handicapped transportation program and providing conferences to educate transit providers and operators in the technical aspects of transit movements. The bureau also maintains a current statewide transit inventory, coordinates transit agency needs relative to legislation, maintains coordination of transit systems within the state, and has a transit library for access by interested persons.

In this section the following positions are justified:

C-1 Position: Chief - Transportation Assistance Bureau

Duties: Performs administrative supervisory and complex professional planning and research for a particular state agency.

Examples: Assigns work and supervises other planners in the collection of research data, etc.; provides coordination to and from the Planning and Implementation Bureau and the Litigation and Analysis Bureau within the division.

C-2,3 Position: Program Manager (2)

Duties: Performs administrative, supervisory and complex professional planning and research activities for a particular state agency.

Examples: Assigns work and supervises other planners in the collection of research data; supervises documentation and analysis of data; attends public meetings and departmental conferences; meets and confers with a variety of federal, state and local officials; coordinates activities among local and state agencies; reviews special studies conducted by consultants; makes comprehensive recommendations that the local and state governments fulfill policy and objectives; assists and encourages the development of local and regional planning programs; assists in developing agency budget and general policies, guidelines and objectives of agency planning programs.

C - 4 Position: Secretary III (½)

Duties: Performs a variety of secretarial and clerical duties of considerable difficulty and some routine administrative duties for the chief of the Transportation Assistance Bureau.

Examples: Composes correspondence on a variety of subjects requiring routine knowledge of policies, procedures, and functions of the agency; types correspondence, reports, legal documents, and a variety of other material; arranges appointments, meetings and travel schedules for the supervisor; handles clerical and administrative details of projects and events for the supervisor; maintains confidential and administrative files; prepares and maintains expense, payroll and statistical records and reports; arranges correspondence for supervisor's reply in order of priority; may take and transcribe dictation; performs related work as required.

The Planning and Implementation Bureau of the proposed Division of Transportation will be assigned the following responsibility:

1. Maintain State Rail Planning.
2. Catalize the development of an overall Transportation Needs Study.
3. Implement Rail Facilities and Rolling Stock Loan Programs.

As a result the following staff assignment is justified:

D-1

Chief - Planning and Implementation Bureau

General Duties - Performs administrative and supervisory duties in coordinating bureau activities and responsibilities.

Example of Duties - Directs bonding and loan activities; prepares budgets; engages consultants; negotiates contracts; reviews planning programs; participates in planning detail; serves as liaison within the department, between agencies (state and federal); general public relations; related work as required.

D-2

Secretary III

General Duties - Office support.

Example of Duties - Clerical; filing, typing, related assignments.

D-3

Supervisor - Intermodal Planning Section

General Duties - Performs supervisory and professional duties in state transportation planning.

Example of Duties - Designs and implements planning studies by identifying objectives, area and scope of study, type and amount of data required, required analysis techniques, and developing procedures and priorities; maintains liaison with other agencies, groups, and officials to coordinate studies, gain cooperation, provide information and to explain analyses and recommendations; directs and participates in planning studies by researching, gathering, and analyzing data and developing recommendations; prepares planning reports, legislation, grant applications and presentations; compiles data, analyses, recommendations and explanations into written narratives, graphs, charts, and other formats. May arrange public involvement programs to gain input and explains plans to the public; may monitor existing programs and projects to ensure compliance with rules and regulations and to suggest improvements in operations; may participate in the development and analysis of budgetary and program plans, goals and priorities for the planning function; performs related work as required.

D-4

Planner IV

General Duties - Performs complex professional research and analysis in conducting and directing program and project planning activities.

Example of Duties - Participates in the design and development of planning studies by identifying areas of study, type and amount of data required and required analysis techniques; researches and gathers data through such methods as literature and document review, field observations, questionnaire surveys and personal interviews; analyzes and evaluates data by statistical, financial, classification and other more difficult administrative, empirical and scientific techniques to draw conclusions and interpretations and to develop recommendations; prepares planning reports, grant applications and presentations; compiles data, analyses recommendations and explanations into written narratives, news releases, graphs, charts and other formats; maintains liaison with other agencies, groups and officials to gain cooperation, provide information and to explain analyses and recommendations; performs related work as required.

D-5

Draftsman III or Planning Tech I

General Duties - Drafting and mapping layouts; complex technical research.

Example of Duties - Prepares state transportation mapping, maintains statistical and inventory data and records; assists in inventory updating; updates routine reports and projections by adding new research findings.

D-6

Civil Engineer V - Traffic Inspector and Inventory and Project Manager

General Duties - Performs supervisory, inspection and professional data collection activities relating to specialized programs and projects.

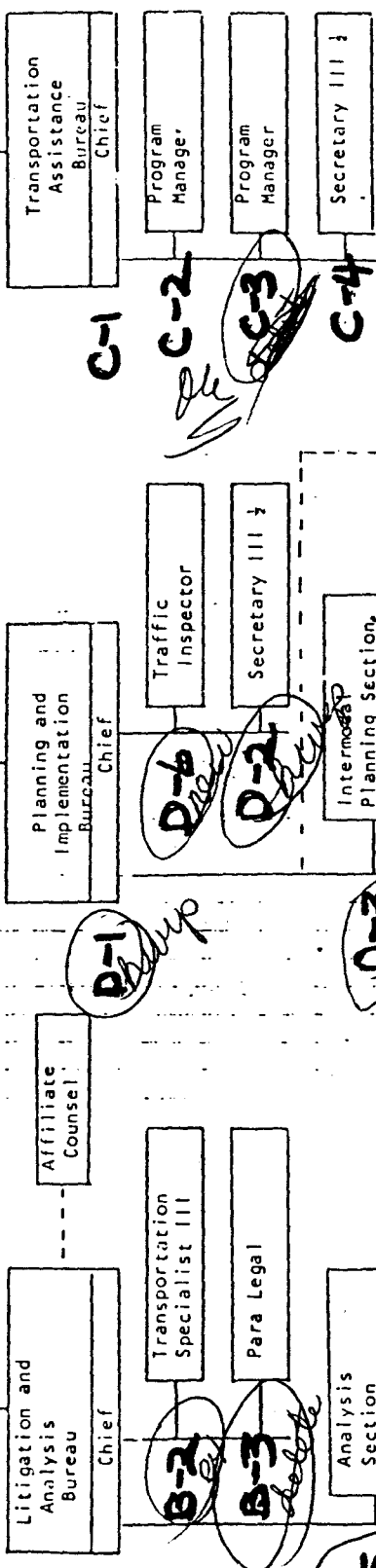
Example of Duties - Provides professional engineering expertise in specialized data collection; prepares engineering estimates for planning implementation; reviews and/or prepares basic transportation project designs; provides required monitoring and inspection of construction activity (specifically railroad improvement projects).

Transportation Division
Administrator

Administrative Assistant

PERSONAL SERVICES

\$ 143,277 plus \$ 46,095 plus 104,353 66,079 \$ 361,604



Total Estimated Budget

Personal Services	135,000
Contracted Services	17,000
Supplies	4,000
Communications	9,000
Travel	13,500
Rent	500
Repair and Main	1,500
Other Expenses	1,500
Total	180,500
Equipment - Office for 9	13,000
Word Proc. Unit	12,000
Total	25,000
Total	\$ 567,104

Planning Consultant

Economic and Rate Consultants

House Bill 854 - Possible Areas of Questions

- Q. What is the consolidation going to do? How will it be better than what we have today?
- A. It will be a more financially efficient use of resources if located in the Department of Commerce. Transportation will work closely with economic development in that department.
- Q. What kind of personnel will be employed and what will be their function?
- A. The key is to hire technical and highly specialized people and not administrative personnel.
- Q. We have had transportation problems for years -- how are we going to solve these problems now when we haven't been able to for years?
- A. The State of Montana has never made a substantial commitment and has never spent the time and money necessary to solve the transportation problem. The Governor said problems won't be solved overnight, but we must start someplace.
- Q. Why do you need more money than you already have?
- A. With the type of work that we do, it is much cheaper to develop in-house expertise rather than heavy use of expensive consultants.
- Q. Speaking of increased litigation, why can't the Attorney General do this litigation function?
- A. The Attorney General doesn't have transportation expertise. The function of the Attorney General is to deal with general litigation and not specific, specialized litigation such as transportation.
- Q. If we approve this, but not at the \$297,000 level, how much money can be taken out of that appropriation and still accomplish the major purposes of the bill?
- A. This would be a policy answer.
- Q. Under deregulation, is there anything that can be done to help? With a railroad monopoly and deregulation, really what can be done other than spending money?
- A. The Staggers Rail Act is really reregulation and not deregulation. The Interstate Commerce Commission still has jurisdiction, but the shipper instead of the railroad now has the burden of proof.
- Q. The bill talks of planning, analysis and litigation for "all modes". Is it the intent to plan "highways" and "air systems" under the bill?
- A. The bill is designed to allow coordination with those agencies charged with highway and airline planning, but not to do their planning for them.

Q. What about the Consumer Counsel?

A. The laws of the Consumer Counsel restrict them to practice only before the Public Service Commission. They do not have the staff to increase this functional responsibility.

Q. What about the Public Service Commission?

A. The Public Service Commission has no authority to represent transportation shipping outside of their jurisdiction.

Q. What happens if we don't approve this bill?

A. It would increase the burden upon the shipper from the Staggers Rail Act and there would be a decided lack of transportation coordination. With no increased effort there would be greater hardships upon the shippers because of increasing complexities of transportation problems. Also, with a lack of increased coordination with economic development there would be a "transportation bound" limit to industrial development created.

Q. How will the Governor's proposed Transportation Task Force interface with this new Division of Transportation?

A. The new Division of Transportation will probably be the resource arm of this new task force.

Q. How is this going to have a beneficial effect on the producers?

A. The actions taken by the unit, for example: market dominance, etc., will make it possible for the producer to be able to pursue representation of their own interests. This action will allow individual producers to then bring their own actions if they feel they can benefit more.

Q. Are the producers able to handle transportation litigation on their own today?

A. Before the Staggers Rail Act and corresponding shifts in burden, shippers attempted in one case to pursue a complaint. This complaint required assistance from state government on several occasions. The action was an attempt to recoup past overcharges, after the damage had been done. It is unfair and impractical to expect producers to put up litigation on a continuing basis for broad litigation work in all areas of transportation and economic analysis. The only legal mechanism to invoke ICC jurisdiction to challenge rates under Staggers Rail Act is upon a finding of market dominance of a transportation mode. First, this action requires a complaint of market dominance and after determination of that issue, a rate may be challenged which involves a determination of variable and fully allocated cost of a particular railroad operation. Rail costing data is not available to individual producers to pursue a rate challenge under market dominance yet they have an affirmative burden of proof on both of these points to be successful.

- Q. Will Staggers Rail Act require continuing increased efforts or will the required effort diminish over time?
- A. A railroad under Staggers Rail Act may establish a rate at any time it chooses, without regulation by Montana PSC or the ICC. The only condition where economic regulation can be invoked is under market dominance provisions which are probably applicable in Montana. The Staggers Rail Act is one of the most far-reaching pieces of transportation law to be enacted by the Congress since the Act to Regulate Commerce of 1887. It is the experts opinion that Staggers Rail Act provisions will set the tone for regulation of transportation modes for the foreseeable future.

State challenges rail deregulation act as unconstitutional

AB 854 (4-3-81) Exhibit 1

Wednesday, April 1, 1981, Great Falls Tribune, 9A

By CARLA BECK
Tribune Staff Writer

The state, the Montana Department of Agriculture and the Montana Wheat Research and Marketing Committee have asked a federal judge to declare the Staggers Rail Act of 1980 unconstitutional.

The Staggers act is the railroad deregulation legislation approved by Congress last fall and signed by President Jimmy Carter.

The plaintiffs contend the act violates states' rights, due process and equal protection. The suit was filed in federal court in Great Falls.

They claim the act prevents the state from having any jurisdiction over intrastate rates charged by rail carriers under jurisdiction of the Interstate Commerce Commission by requiring the ICC to certify state regulatory bodies and then requiring these bodies to implement federal policy. This is a violation of state sovereignty, they claim.

The plaintiffs also contend the act allows unequal treatment of shippers. They explain that three sections of the act control the circumstances under which the Interstate Commerce Commission has jurisdiction over rail freight rates. These sections also control the level to which rates over which it has jurisdiction can be allowed to rise.

The sections also define "market dominance" and provide that where market dominance exists, the commission has the authority to determine whether the proposed rate is unreasonably high. The commission has no authority where market dominance does not exist.

The plaintiffs claim the act's definition of market dominance means substantial segments of rail traffic that will have to move on a monopoly railroad will not be considered to be "market dominant traffic." Therefore, they say, no regulatory agency will have jurisdiction to oversee the rates charged to such shippers. In addition, in instances where shippers are classified as subject to market dominance, the rate standards are such that they reflect the monopoly power of the railroad.

The plaintiffs blame the existence of these monopolies in certain regions on the federal government's past and present practices. The rates set for these "captive customers" by the railroads in these monopolistic situations are therefore "tantamount to the direct taking of property by the government" and provisions of the Staggers act which allow this are in violation of due process, the plaintiffs claim. These same practices constitute unequal treatment, they add.

The plaintiffs also attack the appeal procedures under the act. The act gives shippers 180 days from the date the act became effective (Oct. 1, 1980) to challenge freight rates. If the deadline isn't met, the shipper is prohibited from challenging either in the courts or before the ICC.

A shipper challenging the rates must also supply proof the rates are too high. The act provides the shipper can prove a case by providing direct and indirect costs involved in the shipping. However, the plaintiffs point out, there is no standardized cost accounting system used by railroads or the ICC.

They say no shipper in Montana will be able to supply such proof, so as a matter of law, the ICC will be required to rule against a shipper who is challenging freight rates. This makes the appeal sections of the act meaningless, the plaintiffs claim.

At the time the legislation was passed last September, it was said Congress cut through 100 years of federal control of railroads.

The act provides less regulation by



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CETA worker to hold jobs a little longer

While the national outlook for employment and training Act 1 not improved, some local CETA workers will keep their jobs longer than expected.

Budget-figuring by local CETA administrators shows there will be enough money to keep some CETA employees working until the end of June. Earlier, it had appeared CETA employees in the area would be out of their jobs by the end of April.

The new time schedules mean it will be less than half the local CETA workers who will be forced out of their jobs because of President Ronald Reagan's decision to end CETA public service jobs. Of almost 100 people working under the CETA programs in early March, 41 will not be able to complete their expected job terms. Some of those 41 are expected to leave early they find jobs elsewhere.

As of today, a total of 78 people still are working under the CETA programs on Reagan's choppy block. Out of that total, 33 are in through Title 6, which ends here April 30, but only 20 actually will be laid off by that date. The other 13 would have seen their jobs end this month anyway, and their one-year terms under CETA employment expire.

According to CETA accountants Linda Merriman, some of the 13 people who will be working two extra weeks because they are able to benefit under two job programs from the state Employment Security Division. The city, as CETA program operator is under federal order to help the displaced workers find new jobs. They will be eligible for unemployment insurance.

under Title 26 also will end their work.

VISITORS' REGISTER

HOUSE

COMMITTEE

BILL

HB - 854

Date

4/3/81

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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

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PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STANDING COMMITTEE REPORT

APRIL 4

19 81

MR. SPEAKER:

We, your committee on HOUSE APPROPRIATIONS

having had under consideration HOUSE Bill No. 851

A BILL FOR AN ACT ENTITLED: "AN ACT APPROPRIATING COAL SEVERANCE TAX TRUST PROCEEDS FOR DEBT SERVICE ON AND CREATING A STATE DEBT WITH A LIMIT OF \$500 MILLION FOR STATE OF MONTANA COAL SEVERANCE TAX BONDS; AND AUTHORIZING THE ISSUANCE OF AND CREATING A STATE DEBT FOR WATER DEVELOPMENT BONDS IN AN AMOUNT NOT TO EXCEED \$5 MILLION; AND PROVIDING A CONTINGENT EFFECTIVE DATE."

Respectfully report as follows: That HOUSE Bill No. 851

DO PASS

DO PASS

STANDING COMMITTEE REPORT

APRIL 4

19 81

3 or 6

MR. SPEAKER:

We, your committee on HOUSE APPROPRIATIONS

having had under consideration HOUSE Bill No. 866

A BILL FOR AN ACT ENTITLED: "AN ACT APPROPRIATING MONEY
FROM THE GENERAL FUND TO THE ATTORNEY GENERAL FOR EXPENSES
OF CERTAIN LITIGATION BETWEEN THE STATE OF MONTANA AND
BURLINGTON NORTEHRN, INC."

Respectfully report as follows: That HOUSE Bill No. 866

DO NOT PASS

XXGORSKY