

49th LEGISLATURE - SPECIAL SESSION 11
MINUTES OF THE MEETING
APPROPRIATIONS COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

March 24, 1986

The meeting of the Appropriations Committee was called to order by Chairman Bardanouve on Monday, March 24, 1986 at 1:30 p.m. in Room 104 of the State Capitol.

ROLL CALL: All members were present.

HOUSE BILLS 1, 2, 5, and 8 were heard. EXECUTIVE ACTION was taken on HOUSE BILLS 1 and 5.

HOUSE BILL 1: "AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE SPECIAL SESSION..."

Sharole Connelly, Legislative Council, presented the bill (EXHIBIT A). She explained that money was budgeted for eight days of special session. An extra round trip was provided for in case the session went beyond Easter. Overtime was provided for Legislative Council staff. She pointed out that all telephone expenses had been consolidated under the Council.

Representative Quilici said he spoke to the President of the Senate and the Senate Minority Leader, and they said they inadvertently didn't put the per diem expenses for March 23 for the Senate in the bill. They requested that the House add \$5,000 into the Senate's portion of the bill to compensate them for that day. Ms. Connelly said that there was \$10,000 in the bill to cover the corresponding expenses in the House.

Opponents: None

EXECUTIVE ACTION :

HOUSE BILL 1: Representative Thoft proposed that the bill be amended to delete line 22. He felt that the Finance Committee members would be able to deal with the issues satisfactorily, and the process would be complicated if a subcommittee was utilized. Representative Moore seconded the motion.

Representative Donaldson rose in support of the motion. He said that at this point trying to expand the Committee and do all that needed to be done would not be advisable. Representative Nathe asked Representative Donaldson if

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the goals for the Finance Committee were the same as the Subcommittee's and Rep. Donaldson replied that they were. He added that they had been successful in getting the plaintiffs to delay the suit until the next regular Legislative session. He stressed that he felt it was a Legislative responsibility to define basic education, and within the time framework they had he felt they could make some progress but going to the subcommittee would be going back to square one. Representative Peck rose in support of the motion, stating that going back to an eight-member committee would be reploting ground that had already been plowed. In light of the upcoming Special Session III he felt it would be difficult to accomplish very much. In response to Representative Quilici, Representative Donaldson stated he felt good steps could be made towards resolving the problem by the Finance Committee although the ultimate solution probably couldn't be reached. The question was called for on the motion; motion carried unanimously.

Representative Peck moved to delete line 23 of HOUSE BILL 1. Representative Thoft seconded the motion; the question was called for and the motion carried unanimously.

Representative Quilici moved to amend HB 1 on line 16 by adding \$5,000 to the Senate appropriation. The motion was seconded. Representative Moore wanted to know if the money was to be used to pay for the caucuses on the 23rd. Rep. Quilici said he felt it was only fair to cover these expenses for the Senate since they were being covered for the House. Discussion followed regarding why the appropriation was being made for either House. Diana Dowling, Legislative Council, explained that the \$10,000 for the House had been included in the bill at the request of the House Leadership. The question was called for; motion failed 9 to 11; see Roll Call Vote.

Representative Lory moved to subtract \$10,000 from the House appropriation contained on line 15. The motion was seconded; discussion followed. The question was called for and the motion carried 14 to 6; see Roll Call Vote.

Representative Rehberg moved to strike Section 2 of HB 1 in its entirety and renumber Section 3. The motion was seconded; the question was called for and the motion carried with Representative Fritz opposed.

It was then moved and seconded that HOUSE BILL 1 DO PASS

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AS AMENDED; motion carried unanimously.

HOUSE BILL 5 was then heard. Representative Manuel presented the bill (EXHIBIT B). He stated that many farmers and grain growers had provided money from their own pockets to help resolve the McCarty Farms/Staggers 229 case, in addition to those listed in the exhibit. He said that approval of the supplemental would help ensure that there would be enough money to close the case.

Proponents:

Bill Fogarty, Administrator of the Transportation Division, Department of Commerce, spoke up in support of HB 5 (EXHIBIT C). He submitted that they had a very good case before the ICC at present. He said that the railroad in Montana had no real competition, and that the revenue to variable cost for shipping grain out of Montana was higher than in other states, using BN's system-wide average. Regarding out-of-court settlement negotiations with BN, he said at this point they were probably miles apart, although BN did acknowledge that there were probably some reparations due and an index was proposed by them. He stressed the importance of proceeding on the rate reasonableness phase of the case due to the time factor, adding that if the State ever had a chance to equalize its rates or get a competitive rate, it was through this effort.

Terry Murphy, Montana Farmers Union, rose in support of the bill. The money appropriated by the State for this action likely would be repaid to the State after the matter was brought to a conclusion. He pointed out that the shippers didn't have quite the deep pocket that BN had and therefore the State's help was important, not only to the agricultural shippers, but to all shippers.

Representative Ernst rose in support of the bill.

Representative Nathe stressed that the individual farmers had raised much money for the case: \$25,000 had been raised in Daniels County, and about \$40,000 in Sheridan County, from contributions to special bank accounts.

Senator Ed Smith rose in support of the bill.

Representative Ted Schye rose in support of the bill as a grain producer.

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Senator Larry Tveit wished to go on record as a proponent of the bill, as a producer and also as Director of the Montana Grain Growers Association.

(Tape 1:B:000)

Opponents: None

Representative Manuel closed.

Committee Discussion:

Representative Moore asked Mr. Fogarty how much longer it would take the ICC to make a ruling, would it be in the State's favor, and if so, would BN then pursue the case through the federal system. Mr. Fogarty replied that they thought the decision would be very soon and they were cautiously optimistic that it would be favorable for the State. Also, BN would probably fight it. Representative Spaeth wanted to know if there was an estimate of the additional cost to the State if the case went to federal court. Mr. Fogarty said they had made their best estimate of what it would cost to get through the rate reasonableness portion of the case, but they didn't anticipate any great additional cost because there would be no new evidence allowed. Representative Nathe pointed out that the 4R's Act hadn't been working in cases where the railroad had a monopoly, and there was pressure on the BN to come to some settlement in Montana by the National Association of Railroads. In response to Representative Hand, Representative Manuel said that money for the case was like a loan and would be returned to the State at 10% interest.

The hearing on HOUSE BILL 5 was closed.

E X E C U T I V E A C T I O N :

HOUSE BILL 5: Representative Manuel moved that HOUSE BILL 5 DO PASS. Representative Peck seconded the motion; motion carried unanimously.

HOUSE BILL 2 was then heard. Chairman Bardanouve pointed out that HOUSE BILL 8 had the exact same language as HOUSE BILL 2 did regarding fire suppression, and therefore when testimony was heard regarding this portion of HOUSE BILL 2 it would also be applied to HOUSE BILL 8. Representative Moore, sponsor of HOUSE BILL 8, explained that the reason he introduced HB 8 was because HB 2 lumped together two different monies and he felt that the State Lands money should be considered entirely separate from the General Assistance money.

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The hearing was then opened on the fire suppression portion of HOUSE BILLS 2 and 8.

Proponents:

Dennis Hemmer, Department of State Lands, spoke up. The money being requested is for the suppression of fires from Fiscal Years 1985 and 1986 (EXHIBIT D). He said that the Department did not have enough funds to make it through the 1987 fire season and possibly not even enough to make it through 1986. The money was spent primarily on six large fires - \$2.5 million - and 293 additional fires.

Opponents: None.

Committee Discussion:

In response to Representative Moore, Mr. Hemmer said that the BLM bill had not yet been audited, and any savings made from this action would be reverted to the General Fund. In response to Representative Rehberg, Mr. Hemmer explained that BLM's bill was audited by the Department of Lands to ensure that there were no portions of it that the Department felt should not be included. He explained that they had joint finance people on the fires and that the accounting was quite good. In response to Representative Moore, Mr. Hemmer said that no fires had qualified for FEMA reimbursement in the past fiscal year.

Proponents, General Assistance portion of HOUSE BILL 2,
were then heard:

Dave Lewis, Director of the Department of Social and Rehabilitation Services (SRS), spoke. The bill projects the anticipated General Assistance case loads through the biennium, which are now higher than was anticipated when the budget was set. Regarding the Transient Assistance portion of the request, the program in the past has run at about \$30,000 per year. This year a local program for transients is billing the Department for providing the lodging to the transients. They have the right to bill the county welfare office for this and at present about \$17,000 in bills this year has been incurred. This was not anticipated when the budget was put together. They have the authority to move the FY 1987 budget to 1986 to cover these costs; however, Mr. Lewis felt they should bring the issue to the Appropriations Committee.

Louise Kuntz, Montana Low Income Coalition, rose in support of the supplemental.

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Opponents: None.

Committee Discussion:

In response to Representative Winslow, Mr. Lewis explained that \$32,000 in costs for the Transient Assistance fund had been incurred thus far this year, with about \$17,000 of that originating from the God's Love Shelter in Helena. The remainder had been spent Statewide. None of the other transient shelters were billing, although they could. Representative Winslow wanted to know how many groups there would be that would qualify under the present situation, and Mr. Lewis was aware of four others in the State. Chairman Bardanouve wanted to know how claims were verified, and was told that the billings were made under the name of the transient receiving the services. Representative Winslow wanted to know what made Mr. Lewis think that \$41,000 would cover their costs if the word got out that other shelters could be taking advantage of the funding. Mr. Lewis said they had no way of knowing if the other groups would start to bill. If this did come to pass, they wouldn't be able to provide any assistance to transients as far as transportation. The \$32,000 figure had been budgeted based on historical need. Mr. Lewis explained that the billing included three days' lodging at \$20 per day, and the welfare office gave out the transportation money directly. Mr. Lewis pointed out that the God's Love Shelter had been billing the welfare office since its inception. In response to Representative Donaldson, Mr. Lewis said there was a limitation of three days' lodging but no way of controlling the number of times a transient returned and took advantage of the provision again.

In response to Representative Peck, Mr. Lewis said one of the reasons for line-iteming the money was to prevent using money from other programs because this would force SRS to make decisions on where money should go and he felt this should be up to the Legislature.

Representative Rehberg questioned whether the issue couldn't be addressed by the Interim Finance Committee before Special Session III in June, with the Department in the meantime transferring funds to cover the expenses. Representative Winslow didn't think this would be possible.

Representative Winslow wanted to know, if the Department ran out of money, did it have an obligation to ask for a supplemental, and Mr. Lewis said he hadn't looked at the

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ramifications of this. Representative Lory pointed out that if transients didn't get sent home, they would then be eligible for General Assistance, which would ultimately be more costly to the State.

The hearing was closed on HOUSE BILL 2.

(Tape 2:A:000)

E X E C U T I V E A C T I O N :

Chairman Bardanouve stated that in order to treat both HOUSE BILL 2 and HOUSE BILL 8 fairly, they should both not be acted on for the present time. Possibly a final decision could be made later in the week. Representative Moore said this was agreeable to him.

Representative Donaldson said that in view of the possibility of a special session of the Legislature being held in June to deal with the budget shortfall, he was concerned about the timelines regarding the Legislative staff reviewing the Governor's budget recommendations. He suggested that the Appropriations and Taxation Committees of the House work with the Legislative Fiscal Analyst to formulate a time schedule question for the Legislature on how the thing would be coming together; he felt this should be done now. Chairman Bardanouve entertained the possibility of appointing a subcommittee to consider this. This met with general approval and the following members were appointed by the Chairman: Representative Donaldson, Representative Peck, Representative Miller, and Representative Spaeth. Representative Lory requested that the Subcommittee also ask the Governor to set up a date for the Special Session as soon as possible.

The meeting was adjourned.



Representative Francis Bardanouve - Chairman

DAILY ROLL CALL

HOUSE APPROPRIATIONS COMMITTEE

SPECIAL SESSION II
49th LEGISLATIVE SESSION -- 1986Date March 24

NAME	PRESENT	ABSENT	EXCUSED
BARDANOUE, FRANCIS - Chairman	✓		
DONALDSON, GENE - Vice Chairman	✓		
BRADLEY, DOROTHY	✓		
CONNELLY, MARY ELLEN	✓		
ERNST, GENE	✓		
FRITZ, HARRY	✓		
HAND, BILL	✓		
LORY, EARL	✓		
MANUEL, REX	✓		
MENAHAN, WILLIAM	✓		
MILLER, RON	✓		
MOORE, JACK	✓		
NATHE, DENNIS	✓		
PECK, RAY	✓		
QUILICI, JOE	✓		
REHBERG, DENNIS	✓		
SPAETH, GARY	✓		
SWIFT, BERNIE	✓		
THOFT, BOB	✓		
WINSLOW, CAL	✓		

ROLL CALL VOTE

HOUSE APPROPRIATIONS

COMMITTEE

DATE 3/21

BILL NO. HC

NUMBER 1

NAME	AYE	NAY
BARDANOUVE, FRANCIS		✓
DONALDSON, GENE		✓
BRADLEY, DOROTHY	✓	
CONNELLY, MARY ELLEN	✓	
ERNST, GENE		✓
FRITZ, HARRY	✓	
HAND, BILL	✓	
LORY, EARL		✓
MANUEL, REX	✓	
MENAHAN, WILLIAM	✓	
MILLER, RON		✓
MOORE, JACK		✓
NATHE, DENNIS		✓
PECK, RAY		✓
QUILICI, JOE	✓	
REHBERG, DENNIS		✓
SPAETH, GARY	✓	
SWIFT, BERNIE		✓
THOFT, BOB	✓	
WINSLOW, CAL		✓

TALLY

9 11

Secretary

Chairman

MOTION:

Add \$5,000 to figure on
Line 16, HB 1.

ROLL CALL VOTE

HOUSE APPROPRIATIONS

COMMITTEE

DATE 3/24 BILL NO. HB NUMBER 1

NAME	AYE	NAY
BARDANOUVE, FRANCIS	✓	
DONALDSON, GENE	✓	
BRADLEY, DOROTHY	✓	
CONNELLY, MARY ELLEN	✓	
ERNST, GENE	✓	
FRITZ, HARRY		✓
HAND, BILL	✓	
LORY, EARL	✓	
MANUEL, REX		✓
MENAHAN, WILLIAM		✓
MILLER, RON	✓	
MOORE, JACK	✓	
NATHE, DENNIS	✓	
PECK, RAY	✓	
QUILICI, JOE		✓
REHBERG, DENNIS	✓	
SPAETH, GARY		✓
SWIFT, BERNIE	✓	
THOFT, BOB		✓
WINSLOW, CAL	✓	

TALLY

14 6

Secretary

Chairman

MOTION:

deduct \$10,000 from line 16, HB

STANDING COMMITTEE REPORT

March 24,

19 86

Mr. Speaker: We, the committee on APPROPRIATIONS

report HOUSE BILL 5

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

Chairman

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STANDING COMMITTEE REPORT

March 24,

19 80

Mr. Speaker: We, the committee on APPROPRIATIONS

report HOUSE BILL 1

☒ do pass

☐ do not pass

☐ be concurred in

☐ be not concurred in

☒ as amended

☐ statement of intent attached

Chairman

BE AMENDED AS FOLLOWS:

1. Title, lines 6 and 7.

Following: "1986"

Strike: ", AND FOR THE FUNDING OF TWO STUDY COMMITTEES"

2. Page 1, line 15.

Strike: "161,891"

Insert: "151,891"

3. Page 1, line 18 through line 23.

Strike: Section 2 in its entirety

Renummer: subsequent section

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VISITORS' REGISTER

HOUSE APPROPRIATIONS

COMMITTEE

HOUSE BILL NO. 1

DATE March 24, 1986

SPONSOR Bardanouve

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

EXH. A
3/24/86
Appropriations

SPECIAL SESSIONS BUDGET COMPARISON

	Nov. 1981 Expended 47th #1	June 1982 Expended 47th #2	Dec. 1983 Expended 48th #1	June 1985 Expended 49th #1	March 1986 Budget 49th #2
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HOUSE

Pre-Session					
Legislators & Staff	\$39,504	\$20,015	\$7,423	\$1,600	\$11,500
Session					
Salaries & Benefits-Staff	19,889	19,921	15,651	5,181	43,600
Salaries & Benefits-Legisl.	37,627	27,716	31,879	5,552	44,255
Legislators Expense	45,000	26,460	27,000	4,320	45,000
Printing	1,330	17	372	0	500
Supplies	1,099	651	1,210	515	600
Telephone & Postage	9,410	3,856	2,745	0	200
Round-trip Mileage	15,740	10,768	7,102	7,747	15,836
Rent	992	680	1,808	0	400
Other	566	0	0	0	0
Total House	\$171,157	\$110,084	\$95,190	\$24,915	\$161,891

SENATE

Pre-Session					
Legislators & Staff	26,510	9,895	5,676	907	1,500
Session					
Salaries & Benefits-Staff	16,643	17,014	16,398	4,372	43,600
Salaries & Benefits-Legisl.	18,854	14,213	15,946	2,701	22,153
Legislators Expense	22,500	13,500	13,500	2,115	22,500
Printing	542	145	5	0	500
Supplies	192	386	449	144	500
Telephone & Postage	5,011	1,880	1,539	0	100
Round-trip Mileage	10,470	4,577	3,790	3,505	7,834
Rent	3,091	1,250	1,611	0	1,000
Maint.-Roll Call System	0	0	2,563	0	400
Other	497	0	0	0	0
Total Senate	\$104,310	\$62,860	\$61,477	\$13,744	\$100,087

COUNCIL

Salaries & Benefits	1,229	1,127	1,334	202	7,516
Printing	13,909	8,791	5,232	488	10,000
Computer Costs	0	0	0	0	2,780
Supplies	465	52	535	0	1,255
Telephone & Postage	576	0	948	0	12,893
Travel-Consultant	0	1,027	0	0	0
Contingency	0	0	22	0	0
Total Council	\$16,179	\$10,997	\$8,071	\$690	\$34,444

GRAND TOTAL

	10 days	6 days	6 days	1 day	8 days
	\$291,646	\$183,941	\$164,738	\$39,349	\$296,422

HOUSE APPROPRIATIONS COMMITTEE

DATE March 24, 1986

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



JUDY RIPPINGALE
LEGISLATIVE FISCAL ANALYST

STATE OF MONTANA

Office of the Legislative Fiscal Analyst

STATE CAPITOL
HELENA, MONTANA 59620
406/449-2986

EXH B HB 5
3/24/86
Appropriations Comm.

March 20, 1986

TO: Legislative Finance Committee

FROM: Carl Schweitzer
Senior Analyst *Carl Schweitzer*

SUBJECT: Rail Litigation Supplemental

The Department of Commerce is requesting a supplemental of \$144,314 of general fund for the continuing litigation of the McCarty Farm/Staggers 229 Case. Complimenting this supplemental request is a request by the Department to transfer general fund of \$70,000 which is appropriated for fiscal 1987 to fiscal 1986. The \$214,314 of funds would be used to pay expert witness costs for the "rate unreasonableness" portion of the case.

HISTORY OF THE McCARTY FARMS/STAGGERS 229 CASE

The McCarty Farms Case (filed in March 1981) is a class action suit that was filed by the Ag Coalition (Farmer Union, Farm Bureau, Women Involved in Farm Economics, The National Farmers Organization, Montana Grain Growers Association, etc.) charging Burlington Northern with unreasonableness of rates for the period of 1978 through 1980. The State's Staggers 229 Case was filed in March 1981 under the provisions of the Staggers Act. The Staggers Act gave all interested parties the opportunity to protest rail freight rates in effect as of December 1980. The December 1980 rates were designated to be the basis for all future rates and if they weren't protested by March 1981, they were forever unprotestable.

In 1982, an Interstate Commerce Commission (ICC) Administrative Law Judge found that in the case of McCarty Farms, the Burlington Northern possessed market dominance and determined that their rates were unreasonable. The Burlington Northern then appealed this decision to the full ICC.

Late in 1982, the ICC determined there were enough similarities between the McCarty Farms and the State's Staggers 229 Cases that the cases were combined. In 1984, after waiting nearly two years for an ICC decision, the McCarty Farms attorneys filed a motion in Federal District Court in Great Falls to force the ICC to proceed with the case. The ICC decided to reopen the entire case and to proceed under the rules and regulations currently in effect. This meant that both "market dominance" and "rate unreasonableness" would both have to be re-proven. The ICC decided to first make a ruling on the "market dominance" portion of the case before proceeding with the "rate unreasonableness" portion. By July 1985 all parties had filed their briefs on the "market dominance" portion of the case.

The amount of time and financial resources necessary to resolve this issue has taken longer than the Department of Commerce estimated. In December 1984 the Department had estimated that by early spring 1985 the ICC would have to make a ruling on the "market dominance" portion of the case. They also estimated that by fall 1985 or spring 1986 the "rate unreasonableness" portion would be decided. As of March 1986 the ICC has yet to rule on the "market dominance" portion of the case.

To date the state has spent \$334,497 on the "market dominance" portion of the case. Table 1 details the expenditures on "market dominance." In April 1985 the legislature approved a \$253,144 general fund

supplemental entitled Burlington Northern legal costs. Part of that supplemental was \$110,600 for expert witness testimony in the "market dominance" portion of the case. The remainder of the supplemental was for other cases being litigated with the Burlington Northern. The legislature also appropriated \$200,000 for the 1987 biennium for the expert witness costs of the case. With the proposed supplemental of \$144,344 the total cost for the 1987 biennium would be \$344,144.

Table 1
McCarty Farms/Staggers 229 Case
Expenditure History

<u>Fiscal Year</u>	<u>Amount Expended</u>
1982	\$ 9,614
1983	46,251
1984	16,431
1985	137,075
1986 (through Feb.)	<u>125,026</u>
Total Expended on Market Dominance	\$334,497
Remaining 1987 Biennium Appropriation	74,974
Supplemental Request	<u>144,344</u>
Total Expenses Anticipated	<u><u>\$553,815</u></u>

The Department expects an ICC ruling on the "market dominance" portion of the case any day now. From the date of the ruling on market dominance, the department will have 60 days to submit its briefs on rate unreasonableness.

If the supplemental is approved and the \$70,000 is transferred from fiscal 1987 to 1986 the Department will have \$30,000 available in fiscal 1987 to complete the case. The department has verbally stated that the remaining \$30,000 should be sufficient to complete the case.

There are two objectives the state is pursuing in continuing litigation of this case. First and foremost the state is trying to get the Burlington Northern to lower its shipping rates on wheat and barley by approximately 20 percent. Second the reparation cost to date that the state is contending the Burlington Northern has overcharged rail users and the cost of litigation to date is \$188 million. Language was included in House Bill 500 which stated: "The department shall seek to recover the general fund expenditures plus interest at a rate of 10 percent from any settlement in this case."

The big unknowns on the cost side are: (1) How much longer will it take the ICC to make a ruling in the case? (2) Will the ruling be in the states favor? and (3) If the ruling is in the states favor will the Burlington Northern pursue the case through the federal court system? The supplemental is based on the assumption the ICC rules quickly and there is no further appeal of the action.

DEPARTMENT OF COMMERCE

EXH. C HB5
3/24/86
Appropriations Comm.



TED SCHWINDEN, GOVERNOR

1424 9TH AVENUE

STATE OF MONTANA

(406) 444-3494

HELENA, MONTANA 59620-0401

SUMMARY OF MONTANA DEPARTMENT OF COMMERCE AND MCCARTY FARMS, INC. ET AL SUIT AGAINST THE BURLINGTON NORTHERN

HISTORY OF THE CASE

In September, 1980, Richard McCarty initiated a proceeding in U.S. District Court in Montana (Great Falls) alleging exorbitant rates being charged by the Burlington Northern Railroad Company (BNRR) for Montana grain. The District Court certified the class then referred the case to the Interstate Commerce Commission (ICC) for determining rate reasonableness. On December 14, 1981, an ICC Administrative Law Judge found the BNRR had market dominance in Montana and that present and past rates were unreasonable and determined that a rate of 200 percent of revenue to variable cost was the maximum reasonable rate.

On March 25, 1981, the Montana Department of Agriculture and the Montana Wheat Research and Marketing Committee initiated a separate complaint proceeding before the ICC stating that the base rates in effect on October 1, 1980 were excessive.

The ICC, in July, 1982, reopened the McCarty case for taking additional evidence. At the same time, the ICC consolidated the separate complaints. Since the July 1982 consolidation, the ICC has reopened these proceedings on two additional occasions. The current consolidated complaints continue to be referred to as the McCarty Farms case.

ICC PROCEDURES

Although the ICC Administrative Law Judge found the BNRR market dominant in Montana, and their rates unreasonable, the reopenings by the Commission required both the plaintiffs and the BNRR to resubmit arguments. First, the ICC required evidence from both parties on market dominance. Upon the proof of market dominance, both parties will address the question of reasonableness of rates.

The latest reopening of the proceedings on September 11, 1984, was in response to a Writ of Mandamus filed by the complainants in U.S. District Court in June, 1984, seeking ICC action on the market dominance aspect of the case.

In their September, 1984, reopening order, the ICC directed the parties to submit additional evidence on new market dominance guidelines.

On November 9, 1984, the BNRR filed its market dominance evidence alleging competition is the overriding factor in setting its rail rates.

On July 19, 1985, in reply to the BNRR's evidence, complainants have prepared an exhaustive analysis which conclusively shows that in fact the BNRR is market dominant in the transportation of wheat and barley from Montana to the PNW.

NEED FOR SUPPLEMENTAL FUNDS

The Department of Commerce is requesting \$144,314 in supplemental funding for expert witnesses and data collection for the rate reasonableness phase of the case. An ICC decision on market dominance is expected soon and the Department would only have a limited time (30-90 days) to submit their rate reasonableness case.

As with all of the funds appropriated for McCarty Farms by the Legislature, the amount plus ten percent will be returned to the General Fund upon successful resolution of the case.

OUT-OF-COURT SETTLEMENT NEGOTIATIONS

In December, 1985, the plaintiffs at the request of BNRR, met to discuss a settlement prior to any ICC or court decision. Although the parties have considerable disagreement over a settlement at this time, the dialogue is continuing.

Rail Antitrust Bill Making Progress

By DAVID M. CAWTHORNE

Journal of Commerce Staff

WASHINGTON — Legislation permitting railroads to serve plants along a competing carrier's lines probably will go to the House Energy and Commerce Committee now that it has been approved by the House Judiciary Committee.

But it should be a couple of weeks before formal action is taken, despite the Judiciary Committee's vote at the weekend to report the bill out of committee.

Provisions of the bill permit shippers and competing railroads to file suits against carriers that refuse to negotiate trackage rights agreements permitting carriers to serve industries located on their lines.

Shippers also will be able to seek court injunctions requiring the carriers to provide such access as well as retaining the option to seek redress from the Interstate Commerce Commission.

Opponents contend that the plan could create major operating problems for the industry as well as creating a new regulatory scheme overseen by the courts rather than the Interstate Commerce Commission.

There are some indications that shippers would be required to choose either the court or the ICC route but not be permitted to use both.

This issue probably will come up again if the bill reaches the full House.

A case that could make the railroad industry subject to antitrust suits is awaiting Supreme Court review and action is likely to be postponed until a decision is handed down in the case.

The committee rejected the three contentions and members voted for the bill on grounds it would reduce rates and improve industry operating efficiencies while not creating major safety problems for the shippers.

Several members said the ICC's regulatory controls over the industry should be scrapped and responsibility for such cases given to the federal courts.

But this idea is not expected to get very far if the legislation ever gets to the floor of the House.

Though the legislation now can go to the House Rules Committee and then the floor of the House, indications are it will be referred to the House Energy and Commerce Committee for consideration.

Indications are it will be referred to the House Energy and Commerce Committee for consideration.

specifically affecting the railroad industry and several Judiciary Committee members said the issue should be looked at.

But the House Energy and Commerce Committee chairman must formally ask for such referral within the next few weeks.

If such a referral is ordered, it will be for a specified period, usually ranging from 30 to 60 days.

After that time expires, the bill then can go to the Rules Committee.

Also awaiting Energy and Commerce Committee consideration is the Consumers Hall Equity Act, which addresses some of the same issues but proposes regulatory changes instead of lawsuits for shippers who believe they are being unfairly treated by rail carriers.

McGraw-Hill Unit, Numerax in Pact

Journal of Commerce Staff

NEW YORK — McGraw-Hill Inc. and Numerax Inc., a transportation data information service based in Maywood, N.J., announced the signing of a letter of intent for a merger between Numerax and a wholly owned McGraw-Hill subsidiary.

The letter of intent was approved unanimously by the boards of both companies. The letter stipulates that McGraw-Hill will pay \$12.62 per share in cash for all 3,459,858 outstanding shares of Numerax stock. The acquisition, which includes outstanding stock options, will cost McGraw-Hill approximately \$43 million.

Certain shareholders of Numerax owning approximately 23% of its shares have agreed with McGraw-Hill to vote their shares in favor of the merger and also have granted McGraw-Hill an option to purchase their shares at the merger price of \$12.62 per share.

Completion of the merger, however, is subject to a definitive merger agreement, approval of the agreement by Numerax's shareholders and satisfactory compliance with the requirements of the Hart-Scott-Rod-

TRAFFIC BRIEFS

ICC Sets Deadline For AAR Car Hire Filing

WASHINGTON — The Association of American Railroads has until April 15 to file its revised agreement covering car hire and car allowances, the Interstate Commerce Commission said.

The agency approved the association's agreement for the collective establishment of car hire charges and allowances earlier this year. The ICC, however, denied portions of the agreement that dealt with demurrage and storage charges.

The commission extended the deadline at the request of the association, which said it needed more time to obtain its members' approval of the revised agreement.

NY Task Force Urges Changes in Tax Laws

ALBANY, N.Y. — Correcting inequities in current tax laws governing trucking operations is among major recommendations of the New York State Joint Trucking Industry/Government Task Force on Taxation and Regulatory Reform.

The task force called for passage of an omnibus trucking tax and regulatory reform act that would exempt the sale of tractors and trailers with gross weights of over 26,000 pounds that are used in interstate or intrastate transportation from sales and use tax, as well as parts and charges for maintenance.

The study also recommends authorizing the state to join the international registration plan.

Plan to Tax Gasoline, Oil Imports Criticized

WASHINGTON — Taxing gasoline and imported oil to balance the federal budget are "bad ideas whose time, we would hope, is about gone," according to the Highway Users Federation.

Such taxes would mean higher priced gasoline and higher costs for delivering goods and services, Lester P. Lamm, the federation's president, told the Senate Energy and Natural Resources Committee.

A \$10 a barrel tax on imported oil would raise the cost of trucking farm and manufactured goods by \$11 billion, Mr. Lamm added.

1986. Mike Shuldo From: Rick
Bill Fugazy ✓
coal outlook

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Shamrock may sell coal unit

Diamond Shamrock Corp. last week said it will consider selling Diamond Shamrock Coal Co. but not because of the currently depressed coal market or the coal unit's 39% decline in operating profit in 1985.

The Dallas-based company wants to streamline its operations and focus the corporation's resources on the oil and gas business. Though "solidly profitable," the coal and chemical operations "are not consistent with the more focused emphasis on oil and gas and therefore will be considered for divestiture," the company said.

But the company's newest coal venture, Diamond Alaska Coal Co., is not on the block. Assuming contracts can be obtained with Pacific Rim utilities, the firm still plans to begin mining its Chuita reserves in Alaska's Beluga field by 1989.

Diamond Shamrock's production fell by more than 1 million tons to 5.86 million tons in the year ending Sept. 30, due in part to contract cutbacks by the Tennessee Valley Authority. Its major TVA contract, which expires in late 1988, accounts for 50% of company production.

W.Va. trackage rights bill signed

West Virginia Gov. Arlen Moots signed into law late last week what apparently is the nation's first trackage rights bill, which would in some cases give the state Public Service Commission power to set rail rates.

The law will likely be questioned in the courts, although no lawsuit has been filed yet by the state's rail carriers, Chessie, Norfolk & Western and Conrail. A spokesperson for Chessie parent CSX Corp. said, "We are disappointed in the law and fully intend to challenge its validity."

The issue is emotional in West Virginia, and as a result state Senate President Dan Tonkovich, who pushed the trackage rights bill, plans a pow-wow of sorts in his office between the rail and coal industries later this month.

Essentially the law would allow a producer or shipper captive to one carrier to petition the PSC to set a reasonable rate if the carrier and a connecting carrier can't agree on a rate. The obvious examples are West Virginia coal mines served by Chessie, but aimed at Conrail-served utilities in the Northeast.

Since the carrier accused of not allowing a reasonable rate would have right of last refusal in private talks before a challenge is filed, the legislation obviously is designed to encourage private negotiations.

But the West Virginia Railroad Assn. has fought the legislation because it allows "somebody else other than the railroad" to run the tracks, according to a spokesperson.

Energy competition gets hotter

There is new evidence that coal may face intense short-term competition from oil and natural gas, but some observers caution that the coal industry need not push the panic button just yet.

Coal from the Powder River Basin may be displaced by natural gas in Oklahoma, while a "worst case scenario" for oil prices could have a marked effect on demand and prices for coal traded on the world market.

Oklahoma Gas & Electric has received word from some of its 2,700 in-state producers of natural gas that they are willing to match the spot price of Powder River Basin coal moving to the Muscogee No. 6 unit.

OG&E in late February announced that, pending regulatory approval, it would back off the unit, the only one supplied by spot coal, if its natural gas suppliers could match or beat the price. A spokesperson said last week that it had received "positive feedback" from its inquiry but he did not know how much gas had been offered.

Coal and natural gas each account for 50% of OG&E's installed generating capacity. Last year the average price of gas was \$3.11/mmBtu, compared to \$1.61/mmBtu for spot and contract coal. Mobil Coal Producing Co. supplied the spot coal for a price in the \$1.40/mmBtu range, and that is the price the gas suppliers must match, OG&E said.

Meanwhile, a study completed recently for Chase Econometrics indicates that a sustained low level of oil prices from 1987 through the early 1990's would affect price and demand for coal traded on the world market.

Michael Elliot-Jones, who conducts research in international coal markets for Chase, said the study compares the results of two oil price scenarios — termed "baseline" (BL) and "very low oil price" (VLOP) — on the international coal market.

VLOP is defined as crude oil declining to \$12-\$13/barrel in current dollars by 1987 and staying at that level until the early 1990's. At that point, prices in nominal terms begin to rise as depletion sets in, Elliot-Jones said. "In real terms, this means that crude prices fall to average levels last seen in 1974," he added.

(Continued on page 8)

Conrail tactics may divide rails

The railroad industry, long considered a formidable lobbying force, is facing a tactical headache if captive-shipper changes in the 1980 Staggers Rail Act are attached to legislation selling Conrail to Norfolk Southern Corp.

And increasingly it appears that a volatile combination of groups interested in changing or preserving Staggers — which substantially deregulated the rail industry — could wind up doing battle by way of the Conrail sale bill, now pending in the U.S. House of Representatives.

Although the impact of such a battle on coal is impossible to predict, so many coal-related problems are involved — rail rates, the

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COMMITTEE

HOUSE BILL NO. 2

DATE March 24, 1986

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Appropriations

DEPARTMENT OF STATE LANDS
FIRE SUPPRESSION SUPPLEMENTAL
FISCAL YEAR 1986

The following summary represents unbudgeted expenses incurred by the Department of State Lands to date for fire suppression during Fiscal Year 1986. The State-wide Budgeting and Accounting System (SBAS) has been utilized to record fire suppression expenditures as they occurred during the fire season.

The following information is taken from SBAS and reflects expenses incurred for emergency firefighters hired locally, overtime, contracting of manpower and equipment from other agencies, supplies, aircraft rental and other expenses typical of suppressing forest fires. The outstanding obligations are costs not yet posted to SBAS. The BLM billing is based on their cost estimate, and a bill is forthcoming. The USFS bill is in the process of being audited and will be paid in February along with the other outstanding obligations shown. Any adjustments to these bills resulting from the audit, or additional FY86/87 fire costs will be reflected in any supplemental presented as a result of the 1986 fire season at the 1987 Legislative Session.

Total Supplemental Cost Summary

<u>FY1986 EXPENSE</u>	<u>SUPPLEMENTAL REQUEST</u>
SBAS Fire Expense through January	\$ 1,173,141.86
OUTSTANDING OBLIGATIONS:	
U.S. Forest Service billing	1,857,449.93
Bureau of Land Management billing	50,747.40
Montana State Prison billing	7,692.42
Missoula Rural Fire Department billing	89,494.20
Bureau of Indian Affairs	6,946.48
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TOTAL	\$ 3,185,472.29