

MINUTES

MONTANA SENATE  
51st LEGISLATURE - SPECIAL SESSION

JOINT SENATE COMMITTEE ON FINANCE AND CLAIMS  
HOUSE COMMITTEE ON APPROPRIATIONS

Call to Order: By Co-Chairman Francis Bardanouve, on June 26, 1989, at 1:00 p.m., Capitol, Room 312-2

ROLL CALL

House Members Present: Representative Gary Spaeth, Representative Ray Peck, Representative Dennis Iverson, Representative Bernie Swift, Representative Joe Quilici, Representative Mary Lou Peterson, Representative Mary Ellen Connelly, Representative William Menahan, Representative Bob Thoft, Representative Mike Kadas, Representative Chuck Swysgood, Representative Berv Kimberley, Representative Jerry Nisbet, Representative John Cobb, Representative Larry Hall Grinde, Representative Dorothy Cody, Representative Ed Grady, Representative Francis Bardanouve

Senate Members Present: Senator Gary Aklestad, Senator Loren Jenkins, Senator Esther Bengtson, Senator Matt Himsl, Senator Paul Boylan, Senator Tom Keating, Senator Judy Jacobson, Senator Swede Hammond, Senator Pat Regan, Senator Larry Tveit, Senator Fred Van Valkenburg, Senator Dennis Nathe, Senator Greg Jergeson, Senator Gerry Devlin, Senator Richard Manning, Senator Sam Hofman, Senator Lawrence Stimatz, Senator Ethel Harding

House Members Excused: Representative Dorothy Bradley,  
Representative Bob Marks

Senate Members Excused: Senator Pete Story

Members Absent: None

Staff Present: Keith Wolcott, Senior Fiscal Analyst

HEARING ON HB 46

Presentation and Opening Statement by Sponsor:

Representative Ted Schye stated that he is listed as the chief sponsor on HB46, that he has done a lot of work, in past sessions, with the McCarty Farms bill, is a grain farmer, and, when the petitions came up to look into this legislation, he signed it, which is one of the reasons he is the first signer on the bill. He further stated that he believes strongly in the bill, that the state, in the past few years, has spent over \$1 million in litigation with Burlington Northern, and the grain farmers, noting a lot of them are his constituents, have spent \$350,000 to \$400,000 of their money, adding that there are other amounts of money the state has invested in this litigation.

He reported that, one day, when he came in off the fields in the tractor, he got a call from a lady at the Bozeman paper, he thinks it was, who asked him what was going on with the McCarty Farm bill, that it was being dropped. He indicated he responded that he had not heard that, and did not think that was what had happened, but is what a lot of the people perceived that happened, that they dropped the ball in the court case. He further indicated it has come a long way, that they have spent a lot of money, and that, now, the ICC has ruled pretty much in the favor of the grain producers in the state, that Judge Hatfield has said to settle it out of court, so they are in the last inning of the ball game with Burlington Northern. He stated that he feels it is very wrong for the state, now, to back off, noting a statement was made that, to have a litigation bureau in the Department of Commerce, is bad business, and indicated he, maybe, does not disagree with that, that he, maybe, thinks the statement is probably right. He further indicated that litigation bureau should not be in the Department of Commerce, and this bill does not do that, noting he does think they do need it, because he thinks it sends a tone out to the business people he represents, who are grain farmers, that they are being left out in the cold, but they will go along with the big business in this state.

Representative Schye indicated that quite a few other people will testify on this bill, and he will reserve the right to close, noting that he thinks they have to look at this very carefully, that this will have a lot to do with future grain rates in the State of Montana. He added that he ships all of his grain from Glasgow, Montana, at probably some of the highest freight rates in the United States, and this has a lot

to do with what happens to his grain rates, and for all of the farmers on the highline.

List of Testifying Proponents and What Group they Represent:

Senator Greg Jergeson

Terry Murphy, President, Montana Farmers Union

Mary Nielsen, State and National Transportation Chairman, WIFE

Randy Johnson, Executive Vice President, Montana Grain Growers  
Association

Representative Francis Bardanouve, representing himself

Testimony:

Senator Jergeson stated that he rises in support of this bill, and as second sponsor of the bill. He reported that, early in June, his phone started ringing off the hook, that grain producers throughout his district, and outside of it, started calling, and asking what is going on in Helena. what are they doing to the McCarty Farms case. He indicated he responded that he has been on the tractor, did not know, and would have to see, so he started checking into it. He further indicated that he noticed, in newspaper accounts, that some reorganization had taken place, noting that, often times, an agency will reorganize, and a person has to really find out whether or not that reorganization will have any effect. He stated that, when reorganizing an agency, there are some basic questions which have to be asked and, since this bureau is set up to handle this case on behalf of the plaintiffs, the grain farmers in the State of Montana, the basic question that should be asked is "Were the grain farmers in the State of Montana complaining about the operation of the bureau?", noting he thinks they would get a big resounding "no", that he suspects every grain farmer, who has any kind of interest or knowledge of the case, is very satisfied with the work that was being done in the Litigation and Analysis Bureau. He then asked "Has, anywhere, there been stated any criticism of the work product of the bureau personnel who are now there, or who were previously there?", and noted that, so far, in none of the press releases, or any of the letters which have circulated around, have there been any criticisms of the work product of the people who have been working in that bureau. He further asked "Have there been any complaints from the defendants, Burlington Northern?", and indicated that he is not sure Burlington Northern has complained about it, that, apparently, the director of the department was concerned that having a bureau named the "litigation bureau" is sending bad

business signals. He noted that he suspects the people who run Burlington Northern are grown up boys and girls, now, and, whether the name of the bureau is the litigation bureau, or anything else, he suspects the fact that they are being sued is what they are concerned about and, if they do not like the suit, changing the name or eliminating the bureau with that name is not going to make any difference with the defendants, adding that he suspects, perhaps, even the defendants had not complained about it.

Senator Jergeson indicated that the question the farmers are asking him is, "Does this reorganization represent a weakening of state support for the McCarty Farms case?", and that, at this point, he would ask that the committee members take a look at an organizational chart of the Division of Transportation of the Department of Commerce, showing what the division looked like, prior to the reorganization, and then following the reorganization. He distributed copies of the organization chart, a copy of which is attached as Exhibit 1. He pointed out that the first page shows how the division was constituted, prior to the reorganization plan, indicating that the Transportation Division was headed by an administrator and that, under that administrator, there were three bureaus; the Litigation and Analysis Bureau, the Intermodal Commodities Bureau, and the Passenger Bureau. He stated that everybody involved in the McCarty Farms case was able to look at this organizational chart, and know where the work was being done, with respect to the McCarty Farms case, that it was being handled in the Litigation and Analysis Bureau. He indicated he thinks that everybody, for the last ten years, has been relatively satisfied with that set-up. He then pointed out that, on the second page, which is the proposed structure, they still have the administrator of the Transportation Division, but have lost an entire bureau, so that what was, prior to this, a three-bureau division, has now become a two-bureau division, and nowhere has he been able to find that any responsibility has been specifically assigned to specific personnel within either of the two remaining bureaus. He noted that, apparently, it was indicated the work would be done in the Intermodal Bureau but, as yet, he has seen no assignment of responsibility for the work, so that causes some concern there. He indicated that, in the press releases, the director of the department indicated he is the first, and only, director of the department to become involved in the actual negotiations in the case, noting it appears to him that responsibility for McCarty Farms has, somehow, been shifted to a direct responsibility of the director of the department. He stated that he thinks, noting he does not care who is the

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director of the Department of Commerce, there is a basic, fundamental problem with that situation happening.

Senator Jergeson reported that the letter, which has been shown to many people, discusses the matter of the gag order under which the various people doing negotiation are subject to, and indicated that, if the director is to include himself in the negotiations, he, then, is also subject to that gag order, and is not able to discuss the case with any other parties in the case, except before the magistrate in Billings. He stated that, however, in looking at the other responsibilities of the director of the department, there are many occasions on which they could argue, legitimately, that the director has contact with people from Burlington Northern, be it a transloading facility at Shelby or Butte, or be it the sale of a branch line to a private party, that the director has legitimate contacts, within his other functions, with the defendants in the McCarty Farms case. He indicated that he is afraid what they are going to have, noting it could be very much inadvertent, is a problem that there will be suspicion, or occasion when that gag order may be violated, and the McCarty Farms case could be prejudiced. He added that he thinks that is the real risk they have, here, that it does not make any difference whether it is this director, or any other, that the same basic problem exists. He further indicated he thinks they have to have their director working as hard as ever on all of those other issues, as well.

Senator Jergeson indicated that one of the remarks the committee members will hear, today, is that, perhaps, the logic of putting this bureau within the Department of Justice is not entirely tight, noting he thinks there are some things they will have to look at and, as they actually make the transfer, those kinds of things will have to be worked out. He then pointed out that there are at least two divisions, within the Department of Justice, which do not necessarily have to be there, but were put there because it was felt the administration within that department was up to the job, noting he speaks, in this case, about the Motor Vehicle Division, which could be at either Revenue or Highways, and the Traffic Safety Division, which could be at Highways. He stated that, somewhere along the line, a policy decision was made that these particular divisions should be in the Department of Justice, and he thinks, in this case, they have a situation where a policy decision has to be made that the Department of Justice would be the place to handle this. He pointed out that the attorneys who have been working on this case for the plaintiffs are from Denver, and one is either a Deputy or Assistant Attorney General for the State of Montana,

for the duration of the case, noting there is, already, some connection with the Justice Department, in that respect. He noted that, if they make this transfer, the agencies will have to make some accommodation, and work out some method of making sure that all functions are properly handled. He indicated he hopes the committees will give this bill a do pass, noting he believes it is an important issue for grain farmers in the State of Montana, and that he thinks they are so very close to a final, positive resolution of this issue, that, let's get it done right.

Testimony:

Mr. Murphy stated they feel it is absolutely not acceptable, at this time, for the state to, in fact, or by perception, lessen its involvement and commitment to the resolution of the McCarty Farms case, in any way, and that, certainly, the downgrading or elimination of the litigation bureau would appear to send a strong negative signal in that regard. He further stated they feel it is crucial to maintain the bureau, through the duration of the resolution of the case, and feel that the Justice Department is a very logical place for it.

Testimony:

Ms. Nielsen reported that she lives at Plentywood, Montana, that their farm is at Medicine Lake, and she agrees that they have high freight rates; they are in northeast Montana, and have some of the highest in the nation. She stated that WIFE is strictly a bi-partisan organization, but they are supporting HB46, and would like to share their concern over the situation which has made this bill necessary.

She reported that, as Transportation Officer for WIFE, she has had a great deal of contact with the Transportation Division within the Department of Commerce, and has worked with various departments for many years. She indicated they supported moving the office to the Department of Commerce, from the Department of Agriculture, in 1981, and that move proved to be wise. She stated she has attended many transportation meetings, all over the nation, at the invitation of the Department of Transportation, and the USDA, and that other transportation officials from other states have a great deal of regard for the transportation work done in Montana, noting that Montana has a really good reputation in the field of transportation, and that, in Washington, D.C., the work on the McCarty Farms suit is well-known. She then reported that

WIFE was very instrumental in raising funds for the original class-action suit, which was the forerunner of the McCarty Farms suit, and has been interested in watching the maneuverings which have gone on, over the years, which is why they were so concerned about the announcement of the dispersing of the Litigation and Analysis Division, right before the meeting in Billings, at which both sides were trying to reach an agreement. She stated that, like everyone else, they want to see this suit settled, but, with the loss of the former transportation administrator, and the ICC practitioner, they became even more concerned when they were told that the remaining two people, who had been so involved with the suit, were to be moved to different positions in the Department of Transportation. She indicated the L&A Bureau has worked so closely with the others, all through this whole thing, that it has been a real interaction, and they are reluctant to support moving them to the Department of Justice, but feel this is probably the only solution to this problem, as it is now, in order to continue with the work of that division. She indicated the bureau has done much work on the McCarty Farms suit, but it has also done a lot more work for other entities, other business, and that the Department of Commerce, after all, supports all the businesses in this state. She further indicated that they are reluctant to criticize the actions of the new director, but feel they were rather precipitous, under the circumstances.

Ms. Nielsen reported that their lobbyist was told that they should not try to interfere with the interactions of any department, but their eleven years of experience in working with the office of the Transportation Division indicates that real problems could develop, if those who have worked for the attorneys for the suit, and know all the problems of the suit, should no longer be available, noting she is afraid this might happen. She stated that WIFE wants to get those millions in freight over-charges, which have been ruled illegal, back into the state, just as everybody else does, and this bureau has brought the suit to the point where they can actually see the light at the end of the tunnel, with any luck.

Ms. Nielsen stated that, with due respect to Mr. Letson, in his efforts to cut back some of the departments in the Department of Commerce, they hope he is not throwing out the baby with the bath water. She reported that, in a letter to her, Mr. Letson was proud that he was the only director of the Department of Commerce who had ever attended a McCarty Farms suit meeting, but indicated they are concerned that a person of his stature, and in his office, should involve himself in the mechanics of the suit, since he represents all

of the businesses of Montana and, in that capacity, has to maintain good relations with the BN, as well as agricultural producers, and others. She noted this is their concern, and is why they feel this bill was necessary, to remove the Litigation and Analysis Bureau staff from the Department of Commerce, in order that they may continue to assist all of the state's businesses with their legal transportation issues. She added that, hopefully, the staff can continue to network with the other transportation departments left in the Department of Commerce, that the working relationship has been such a good one, it needs to continue.

Ms. Nielsen added, on a personal level, that she has never worked with more people who have shown such great integrity, and such concern for the farmers of this state, and other businesses of this state.

Testimony:

Mr. Johnson stated that he comes before the committee as neither a proponent or opponent, but because they are one of the primary players in the McCarty Farms case. He added that their organization originated the suit, and, because this piece of legislation, obviously, centers around the state's role in McCarty Farms, they want their position made perfectly clear.

He indicated that HB46 is a reaction to Mr. Letson's decision to reorganize the Transportation Division of the Department of Commerce, and they do not take issue with his decision. He reported that the Montana Grain Growers Association is a non-partisan commodity organization representing the best interests of grain growers in the State of Montana, and they do not play political games. He stated that they support and work with the administration which is in power, and believe it not only has the right, but the obligation, to organize and run the state, in the manner it chooses. He noted that, if that leadership does not bring the results his organization is seeking, then, and only then, do they complain.

He reported they were concerned, early on, about the support that a new administration would give to the McCarty Farms case, that they met with Governor Stephens, in January, and asked him exactly what his administration's intentions were. He noted they were pleased with his knowledge of the case, and his commitment to bring the suit to successful conclusion. He added that they were, again, concerned, when Mr. Letson announced the reorganization of the litigation bureau, and

that their initial reaction to the removal of the bureau from the Transportation Division was somewhat skeptical. He indicated that they feared, as everyone else, that Mr. Letson might be reducing the department's role in this suit, and met with Mr. Letson, recently, who personally assured them that is not the case. Mr. Johnson added that Mr. Letson has promised this administration will continue to support the case, and represent the interests of the Montana grain shippers, noting that Mr. Letson is further aware that their organization, and others, the plaintiffs, and certainly their attorneys, are going to be watching, very closely, and will not tolerate any mistakes in this case.

Mr. Johnson indicated the committee has a decision to make, noting he suspects there are valid arguments for both sides. He stated that grain shippers in Montana ask that they remember only two things; first, the McCarty Farms suit is extremely important, not only to shippers, but to the entire state, that rail rates for the state's largest industry affect everyone, and this suit is their chance to assure that those rates are reasonable in the future. Secondly, they ask that the committee members remember that the State of Montana has played a very, very important role in the McCarty Farms case, that, without the support and coordination of the Department of Commerce, and the financial support of this body, they would not have made the progress they have in the past eight years. He indicated that, whether this case is resolved through negotiation with Burlington Northern, or through the courts, whether the state's role is carried out in the Department of Commerce, or in the Justice Department, he hopes that support will continue.

He thanked the committee for their attention, and for their support in the past.

Testimony:

Representative Bardanouve stated that he has never been involved in the McCarty Farms case, however, through the Appropriations Committee, the Department of Agriculture and Department of Commerce, he has worked very closely with the people who are pursuing this case. He indicated that he knows they have had difficult financial times, the last few years in the budgeting process, but reported that he has been asked for cooperation so that the McCarty Farms case could receive financial support from Montana. He reported that, early on, he was told that, if they did not get help, the case would probably collapse, that the farmers were not able to raise the

large amount of legal fees necessary to pursue the case to a successful conclusion and, therefore, despite the shortfall in revenue, he has encouraged the Appropriations Committee, and the Legislature, to provide additional money to pursue the case.

He reported that, apparently, they have been successful, noting that, indirectly, he is involved because he is a grain farmer and cattleman, and raises a couple of thousand acres of wheat and barley, which will be affected, down the road, by whatever rates are set. He added that, therefore, people in the farm organizations have asked him to help in providing money for this case, and stated that it does concern him that there has been a radical change, in the final hours of this case. He further indicated that it seems to him they have a very fine professional football team, playing a very important game, that they have had a very successful quarterback, who has the ball on the one yard line, with only a few inches to go and, all at once, the coach says "Well, quarterback, you have done a pretty good job, but I'm going to trade you to the minor leagues". He continued that the quarterback is then sent to the minor league, and the team members are sent elsewhere, while the ball lies on the one yard line, which is what concerns him. He pointed out that they have dismantled, at a crucial hour, the team that has, for all purposes, practically won the case, and now they have to face a final resolution of the amount due farmers for past charges, and maybe even more important, how they set the rates for years to come. He added that the amount of money which may be returned to the farmers, in the long run, may be the least important, and that probably more important is the amount of freight rates which will be reduced, or credit given, over the years to come and that, therefore, he would support HB46.

List of Testifying Opponents and What Group They Represent:

Michael Letson, Director, Montana Department of Commerce  
Everett Snortland, Director, Montana Department of Agriculture  
Marc Racicot, Attorney General; Administrator, Montana  
Department of Justice  
Mike Micone, Commissioner, Department of Labor  
John Craig, Chief, Intermodal Commodities Bureau,  
Division of Transportation, Department of Commerce

Testimony:

Mr. Letson informed the committee that the Litigation and Analysis Bureau handles cost analysis of railroads, rate structure analysis, abandonments, coal research, exparte proceedings, tariff maintenance, and most of the railroad properties owned by the State of Montana. He noted that he does not think it would be improper to characterize this, today, as a trial of McCarty Farms, rather than a discussion of the Litigation and Analysis Bureau, and indicated that all of the functions he mentioned will continue, that there are no functions, including the prosecution of the McCarty Farms case, which will be discontinued. He then stated that the ICC practitioner position, which was characterized as being deleted, is not being deleted, that it is on the organization chart, and that the rate specialist position will not be deleted, it is being transferred to the Intermodal Commodities Bureau, under the Transportation Bureau, administered by John Craig.

Mr. Letson stated that, under the current plan, they will maintain their ability to analyze rates and rate structures, and present cases to the ICC, just as they did in the McCarty Farms case, and that it should be noted there has not been an attorney on the staff of the Litigation and Analysis Bureau for many years. He indicated this consolidation, which is being discussed today, had nothing to do with McCarty Farms, that it had to do with saving money, reducing staff, and that it allowed them to better allocate, and better allowed the Transportation Division to conduct its planning and economic development functions, and provide a more positive image for the State of Montana.

Mr. Letson then pointed out that they have all heard the significant discussion regarding the McCarty Farms case, indicating that his position on the McCarty Farms case has been clear, on this matter, and he has never wavered from it. He stated that he is 100% behind the farmers, that he is 100% behind the shippers, and made that fact known, before the time of reorganization, and during the press releases of reorganization; and that he has made it known to the named plaintiffs in the McCarty Farms case, to the attorneys in the McCarty Farms case, and made it known to most of the legislators before the session started, noting that he has made it known to some legislators during this special session.

Mr. Letson distributed copies of a letter he received from the plaintiff's attorney, Mike Ogborn, a copy of which is attached as Exhibit 2. He indicated the first two paragraphs of the

letter are important, if someone questions the state's position, or the Department of Commerce's position on their handling of the McCarty Farms case, and then read the first two paragraphs of the letter to the committee. He stated that the gag order, which was referred to earlier, does not gag him from discussing anything but the settlement negotiations, that he can discuss anything regarding anything, except the numbers and concerns discussed, at that time, in Billings, on June 12th and 13th.

He indicated he thinks it is important for everyone to know that the Litigation and Analysis Bureau does very little work on the McCarty Farms case, and that this is a misconception a lot of people have. He stated that all representation of the state is handled by the law firm of Heron, Burchette, Ruckert and Rothwell, through Attorney Mike Ogborn, adding that, as the committee members know, they hire expert witnesses, at great expense to the state, to pursue the economic recovery of reparations on behalf of the named plaintiffs. He indicated that they hire expert witnesses to determine cost over-charges, and to present their case before the ICC in Washington, D.C., that staff personnel at the Department of Commerce do not present their case before the ICC, even though they have an ICC practitioner, and that they review only segments of the data submitted to the ICC. He stated that what this really means is that the Litigation and Analysis Bureau has only a modest participation in the legal or litigation aspects of any case, again noting that they have no attorney.

Mr. Letson indicated that, during the regular session, he asked the Legislature to approve a \$50,000 supplemental request for expert witnesses, to help with the presentation of their case before the ICC in May, and that request was granted, noting they were very appreciative. He added that, unfortunately, most of that data has been moved to strike by the Burlington Northern in the June hearing before the ICC. He stated they are in support of this case, that they are doing, at the Department of Commerce, whatever is necessary to move it forward, and indicated he wishes he could tell the committee it was in the ninth inning, as it was characterized earlier today, but that, unfortunately, with things moving in the direction they did at the settlement conference, it appears they are going to have to pursue reparations and rate fixings in the court, which could take another seven years. He noted that this case has been on Judge Hatfield's calendar for nine years.

He indicated that the necessity for rail planning functions being recognized to continue, the need for the Litigation and Analysis Bureau being transferred to the Department of Justice is hastily conceived, and, he thinks, impractical. He noted it is also important to remember that the Attorney General maintains the unilateral right to interfere and intervene, at any time, in any case involving the state, should he believe it is not being properly handled. He then indicated he would like to re-state his position on the McCarty Farms case, which has been so distorted over the last few days. He stated that he is behind the state 100%, he is behind the farmers 100%, and always have been. He further stated he is behind the grain shippers, that he is behind the people who can benefit the most by shipping their grain to market, and will continue to pursue this case, until both the state and the farmers are satisfied with an outcome. He asked that the committee members remember that the state can not settle this case, that only the named plaintiffs can settle this case, and so, therefore, it is important that they understand the named plaintiffs have the greatest stake, and can not be injured by this movement of reorganization in the Department of Commerce.

Testimony:

Mr. Snortland's written testimony is attached as Exhibit 3.

Testimony:

Mr. Racicot stated that he is not involved, in any way, in discussing the merits of McCarty Farms, nor of this particular movement, moving the bureau from one place to another, noting that he is lead to understand, after listening to the testimony here, that the guts of that bureau are going to remain assigned to the Department of Commerce in other units, particularly in the Intermodal Commodities unit. He indicated his only point to the committee is that, as Representative Bardanouve mentioned, regarding a quarterback being taken out of the game, his only concern is moving a quarterback to a basketball team, rather than to a football team.

Mr. Racicot indicated that the kinds of issues which come before the Transportation Division of the Department of Commerce are things which are totally unfamiliar to people within the Department of Justice. He further indicated there are logical connections between the Motor Vehicle Division and the Highway Traffic Safety Division, having to do with regulation of traffic on the highways, safety on the highways,

and registration of data retrievable by law enforcement, and utilized throughout the State of Montana, which make it a natural to reside within the Department of Justice, adding that he can not offer the committee any kind of insight into whether or not the merits of their discussion strike for the creation and maintenance of the Litigation and Analysis Bureau, or against it, but that he can offer the comment, from his perspective, that he does believe it is an inappropriate transfer of function to remove whatever the guts of that organization are from the Department of Commerce, and transfer them to the Department of Justice.

Mr. Racicot noted that the authority rests with this body, as he is profoundly aware, and, regardless of what they choose, they will, obviously, carry out the mission given them, but that he believes, under these circumstances, it is not an appropriate transfer of missions for the Department of Justice.

Testimony:

Mr. Micone stated that he is not here to talk on the merits of the litigation bureau, per se, or the case, but only to speak on the idea of the Montana Legislature involving themselves in making a determination of the structure of the agencies. He indicated he thinks it is important that they, as administration, or agency directors, take the mandates the Legislature gives them, by the passage of laws, and put them into their operations, structurally, as they best can do, both economically and efficiently. He noted he is presently in the process of a reorganization effort, himself, and has had a draft study handed to him, recently. He reported that they could very well, in his department, move from seven divisions to five divisions, which is one of the proposals before him, and he would guess that the Legislature could very well look at that reorganization to determine that his agency should not have five divisions, but a number more or less, adding that he would hope the Legislature would look at the functions they want the departments to perform, and not involve themselves in the organizational structure.

Testimony:

Mr. Craig reported he would like to express the regrets of their division administrator, Pat Saindon, for being unable to be here today, that it was necessary for her to honor an out-of-state commitment made several weeks ago. He indicated

he is here, today, on her behalf to present the Transportation Division's position in opposition to HB46.

He reported that the Department of Commerce has been going through an organizational review process for the past two months, that each administrator was asked to look at the statutory requirements and functions of their division, and make recommendations on how to most efficiently carry out the responsibilities of the division. He further reported that the Transportation Division completed its review, resulting in reorganization of the division, with consolidation of two of its bureaus. He indicated that the Litigation and Analysis Bureau, and the Intermodal Commodities Bureau dealt, on a daily basis, with many of the same constituency groups, and that both had a responsibility to Montana shippers, who move products by rail or truck. He further indicated that the Intermodal Commodities Bureau's major function was intermodal transportation planning, transportation coordination for economic development products, and property management for the operations, and that the Litigation and Analysis Bureau had two basic functions; one, to litigate, and the other, to provide analysis of rates, transportation policy, constituent action and reaction, and a host of statistical gathering and data-base development. He reported that the division has no attorney on staff, that, over the past nine years, the major litigation focus has been on the McCarty Farms case, and noted that the attorney for this case is Michael Ogborn, who is with a Denver firm.

Mr. Craig reported that, in the past, the Litigation and Analysis Bureau has provided statistical data as basis for evidence in the case, and has also provided an important liaison and focus point between the litigants and constituents who could have been impacted by the outcome. He indicated this important work can, and will continue on, in a reorganized division, and that financial and personal resources necessary for consultant services, technical analysis, and expert witnesses can also be administered by contract of the division with state general funds currently appropriated, adding that the analysis function of the Litigation and Analysis Bureau needs to be maintained in the division, in support of the planning and development activities of the Intermodal Commodities Bureau.

Mr. Craig further reported that the two positions, the transportation costing specialist and the ICC practitioner, have been retained, which will allow the Intermodal Commodities Bureau the ability to complete a more complex and specialized planning activity, as well as honor existing

commitments to their constituent base. He indicated that the chief of this bureau will provide job assignments, which will allow these work programs to be completed with greater coordination and less interruption, and that the individuals in the two positions moved to the Intermodal Commodities Bureau are both very familiar with the McCarty Farms case. He added that, more importantly, the records and the history will be retained where they originated, and were created.

Mr. Craig stated that the division reorganization does not affect the Transportation Division's commitment to the McCarty Farms, that there is work left to be done, and they have retained the two positions necessary to handle any future work associated with the case. He added that they have further increased the potential to provide more efficient and effective service to the shippers of this state. He indicated that moving this function, as proposed in HB46, will not increase the state's commitment of resources towards resolving the case, that the function should be left in the reorganized Transportation Division of the Department of Commerce.

Questions From Committee Members:

- Q. Senator Keating indicated the bureau is called the litigation bureau, that it is assumed they would get involved in litigation and, therefore, would have an attorney to actually go to court, noting that is what litigation means to him. He pointed out that they say they have no attorney in the bureau, and asked why the word "litigation" bureau, what do they mean by litigation services, is it just evidence gathering, and why do they not have an attorney to litigate.
- A. Mr. Craig responded that they did have an ICC practitioner, who could file cases and become involved in transportation cases, but that, in the McCarty Farms situation, the attorneys came from outside, that they come from Michael Ogborn and the Denver firm. He noted they were involved, primarily, in the McCarty Farms case, in the collection of evidence.
- Q. Senator Keating asked if the Intermodal Commodities Bureau and the Litigation and Analysis Bureau are both statistical gathering bureaus in the Department of Commerce, with regard to rail transportation.

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- A. Mr. Craig responded yes, that they both maintain data bases, for somewhat different purposes, but they are related.
- Q. Senator Keating asked if the people in the Litigation and Analysis Bureau working on the McCarty Farms case have gathered information useful for the Intermodal Commodities Bureau, with regard to how they make recommendations for the transportation of other goods in the state, to other people in the state.
- A. Mr. Craig responded most definitely.
- Q. Senator Jergeson asked Mr. Craig if he said that they maintain the data base for, perhaps, two different purposes.
- A. Mr. Craig responded that is possible, yes.
- Q. Senator Jergeson asked Mr. Craig to define how the purpose of the data base in the Intermodal Commodities Bureau is different from the purpose of the data base maintained in the litigation bureau.
- A. Mr. Craig responded that, under reorganization, the data bases would be the same, that, in other words, they would continue on with the litigation's effort, and continue on with the planning effort, within the same bureau. He indicated that, prior to this time, the data bases were maintained for exactly those same two purposes, that the data bases maintained by the Litigation and Analysis Bureau had a primary purpose for litigation cases, transportation cases, litigation being the bad word, here. He added that the files maintained by the Intermodal Commodities Bureau were used in the development of the state rail plan, and were used in analysis of state rail planning activities and policy generation.
- Q. Senator Jergeson indicated that the development of state rail plans is not an adversarial type of relationship with any railroad, that it is more of a cooperative relationship. He further indicated that, clearly, litigation, and support for the attorneys in Denver and the expert witnesses in Washington, D.C., is an adversarial relationship with Burlington Northern, that the McCarty Farms case is an adversarial relationship, as compared to the other being a cooperative relationship. He asked Mr. Craig if that is a fair characterization of those.

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- A. Mr. Craig responded this would be a fair characterization.
- Q. Senator Jergeson asked if what they are proposing, now, is that they would have both the cooperative relationship as a function, and the adversarial relationship as a function within the same bureau.
- A. Mr. Craig responded yes, within the bureau, as it was within the same division, before this.
- Q. Senator Jergeson asked Mr. Craig how they are going to keep those functions separate. He indicated he guesses the question is, how does one person say "We're working on a rail plan project, or a transloading facility", one day, in a cooperative relationship with Burlington Northern, and then, as they are leaving that evening, say "Well, we'll see you in court in Billings, tomorrow." He asked Mr. Craig how that will work, within that bureau.
- A. Mr. Craig responded that it will be an interesting challenge.
- Q. Representative Spaeth indicated that he understands the main functions of this bureau have been the data base gathering and the planning part of this bureau, and asked Mr. Letson if they are still going to maintain those two functions.
- A. Mr. Letson responded that is correct.
- Q. Representative Spaeth indicated they hire a great deal of expert witnesses to do the work Mr. Craig was talking about, to the tune of about \$1 million, that the Litigation and Analysis Bureau does very little work on that case, and that data base and planning are the two main functions, which will be maintained. He noted they indicated they would save money, and asked, in what way, how much will they save, what will they do with what they save, and will they see that as a reversion, at the end of this biennium.
- A. Mr. Letson responded absolutely.
- Q. Representative Spaeth asked Mr. Letson to go through, step by step, what positions have been eliminated.

- A. Mr. Letson responded that the only position which will be eliminated is the bureau chief position, and that all travel money, all salary money, all benefit money, etc., associated with that position, will revert to the general fund.
- Q. Representative Spaeth asked Mr. Letson approximately how much that is.
- A. Mr. Letson responded that the salary and benefit position is about \$41,000, that the travel and other expenses, he has no estimate of.
- Q. Representative Spaeth asked Mr. Letson if, next biennium, there will be a reversion in their budget of approximately \$85,000 to \$95,000, as a result of this saving.
- A. Mr. Letson responded it is entirely possible that it would be more than that.
- Q. Representative Spaeth asked in what way it would be more.
- A. Mr. Letson responded that it would depend on the amount of travel, and the amount of other benefits associated with that position.
- Q. Representative Spaeth asked Mr. Letson if he has the budget for that, if his agency can provide the budget, as to what will actually be saved by eliminating that position, noting he would assume, if they have done any analysis, that would be available, and further asked Mr. Letson to provide that later on.
- A. Mr. Letson responded yes, he can, but that the problem is they do not know what travel or benefits, other than salary, will be eliminated, because of certain other duties being picked up on behalf of that bureau chief. He noted that, in other words, there will be some, that it is very difficult to say, but he can tell Representative Spaeth how much is budgeted.
- Q. Representative Spaeth then asked if there will be a minimum of \$82,000 saved, as a result of this, and potentially more than that.
- A. Mr. Letson responded that is correct.

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- Q. Representative Spaeth asked Mr. Letson when they first did an analysis to determine this would be a good idea to undertake.
- A. Mr. Letson responded that he asked all of the division administrators, in the Department of Commerce, in either late March or early April, to start thinking about how they could more efficiently produce, how they could more efficiently create a better working environment, and how they could save money, if possible, and that many of the divisions have responded with reorganization plans, or differing ideas on how to consolidate functions.
- Q. Representative Spaeth asked Mr. Letson where this idea came from.
- A. Mr. Letson responded that it came from the Transportation Division.
- Q. Representative Spaeth asked who, in the Transportation Division, proposed this idea.
- A. Mr. Letson responded Mrs. Saindon.
- Q. Representative Spaeth indicated one of the concerns he thinks most everyone has is that they are not necessarily operating in a vacuum, that the administration is having some difficulty, at least with its public relations involving Burlington Northern, in such places as Livingston, and other sites, and their toxic clean-up around the state, noting that some people, at least, perceive it as a sell-out to Burlington Northern, and others strongly disagree with that position. He further indicated that, along comes Mr. Letson's idea, in the context of that previous setting, that those people are very concerned about the position of his administration towards Burlington Northern, and that this might be also impacted by that previous position. He asked Mr. Letson if he thinks this might have been poorly timed.
- A. Mr. Letson responded that the sell-out can certainly be addressed by that letter from the plaintiff's attorney. He stated that there is no sell-out, no contemplated sell-out, and no wavering from their position.
- Q. Representative Spaeth indicated he is not, necessarily, accusing Mr. Letson of that sell-out, that he is just saying some people have felt there has been, and he is

wondering, in the context of all that, if this maybe was not very properly timed.

- A. Mr. Letson responded that reorganization, consolidation, or the re-shuffling of positions is an on-going process, that there is always a reason to do it, and always a reason not to do it. He stated he is confident there are days that could possibly have been better, and is sure there are days that could possibly have been worse, but he thinks it is important that, as soon as a decision is made to reorganize, the employees who are affected know about it, which is one of the purposes of a candid and open relationship with employees.
- Q. Representative Spaeth again asked Mr. Letson if it was properly timed, or poorly timed.
- A. Mr. Letson responded he can not answer that question, that it may have been properly timed for half of the panel, and improperly timed for half of the panel. He added that he can not answer how Representative Spaeth should feel about that.

Senator Devlin stated that he can not see where this line of questioning is pertaining to the bill, the actual transfer of the duties to another department, that he just does not follow that line of questioning.

- Q. Chairman Bardanouve commended Mr. Letson, and any department head, for consolidating bureaus, and reducing expenses, but indicated it is hard for him to understand that, when a person has done a fine job, an outstanding job, for several years, he should be rewarded by a demotion and a cut in salary. He asked Mr. Letson if the philosophy of state government, of his department and this administration, is, when a bureau chief, bureaucrat, or whatever you wish to call them, does an outstanding job, a job which has benefited the agricultural interests in Montana, that they demote him and cut his salary.
- A. Mr. Letson responded certainly not, that this is not the case, at all, adding that he does not believe a person signs off their life-time contract with state government, either. He stated that jobs change, funding amounts change, and, certainly, government responsibilities change, and that they have to be prepared to meet the change through reorganization, continual reorganization, so they can better serve the constituency who pays the bill. He indicated he knows Chairman Bardanouve would

like to have a bureau which really is uninvolved with a major case they worked on for years, and did a good job in, noting there is no question about that, and, that, now, it is time to move forward and meet new challenges, and new responsibilities.

Q. Chairman Bardanouve noted that it appears to him that Mr. Letson is moving backwards, and indicated he has one concern. He reported it is his understanding that Mr. Letson has done considerable lobbying against potential witnesses for this bill, that one very good source indicates Mr. Letson put a lot of pressure on one person not to appear here, today.

A. Mr. Letson asked Chairman Bardanouve to give him that name.

Q. Chairman Bardanouve indicated Mr. Letson would know, yes or no, if he has been lobbying people.

A. Mr. Letson responded that Ms. Kay Norenburg came into his office, and is the only person he knows of that he has talked to about this bill. He reported he asked her if she was going to be coming, and encouraged her to do so. He noted that, if she told Chairman Bardanouve something else, he would like to have her come forward and say so.

Mr. Letson then reported that he called Randy Johnson and asked him to come, because he has a very great stake in this. He added it is also interesting, to him, that not one of the named plaintiffs is here, because not one of the named plaintiffs knows he is against their position, noting he thinks it is very, very important to mention that not one of the named plaintiffs is here.

Q. Senator Nathe reported he has been involved in this, from the time they started raising money in March and April of 1981, noting he has raised money from farmers in Sheridan and Daniels counties on the basis that they were going to try to get something done. He indicated he is, naturally, really concerned, and that he got involved in the funding, when he came back to the Legislature in the 1985 session. He asked Mr. Letson, if settlement negotiations break down, and the case goes before the ICC, which makes a ruling to come along with reparations somewhat in the area of what the plaintiffs have suggested, and if Burlington Northern decides this is an administrative arm of government, and they have the right to appeal in federal court, and are successful, where in

state government, or the Department of Commerce, is there a place which will provide the data and information to them regarding legislation to appropriate money to continue this, and will his department, or what is left of it, carry forward, if they have to go to federal court.

- A. Mr. Letson indicated Senator Nathe should rest assured that, if the ICC does find reparations due in an amount even half of what the plaintiffs have suggested, it will be in federal court, because Burlington Northern probably will not go along with a finding such as that. He reported that they have been incapable of providing the rate data, to any major extent, in their department, for a long time, and have been seeking special and regular appropriations from both houses, here on the hill, to finance these rate hearings, to the tune of close to \$1 million, noting this will continue. He indicated that, as he said in his testimony, he feels they are not in the ninth inning, that he thinks they have several innings yet to play, but they are not providing the data, anymore, that they are hiring the data because it is of a very complex nature. He further indicated that the Burlington Northern is also presenting very complex data, which facilitates the exacerbation of the problem.
- Q. Senator Nathe indicated he still wants to know what part of Mr. Letson's department, if it will still be the Transportation Division which will push forward in case they are in the federal courts, because he would assume that would be the way Burlington Northern might move. He asked Mr. Letson to also keep in mind that this is a non-coal commodity flagship case for the United States, and that, of all the coal commodity cases settled, some exceed this half-amount figure Mr. Letson just reiterated. He cited a case in Omaha, Nebraska, which was \$20 million, and a case in San Antonio, which was about \$35 million, noting he does not know what the settlement was in Arkansas, or the other southwestern utilities. He again indicated that Mr. Letson should keep in mind there are a lot of dollars, that the ICC developed their methodology for the coal commodities, and this is the flagship case for the non-coal commodities, adding that they would hate to see it go down the tubes.
- A. Mr. Letson responded that is why he thinks it will be in the Supreme Court, before it is anyplace, adding that he thinks it will go all the way through federal court. He indicated that, yes, the Transportation Division will

continue with what service it can give to the attorneys, who are working on a contingency. He further noted that the expert witnesses are not working on a contingency, that they are working on a straight cash fee. Mr. Letson again stated that their Transportation Division will provide every available piece of data, and access to computers to run data on, if necessary.

Q. Representative Swysgood asked Representative Schye if the appropriations contained in the bill, the reversion back to the general fund for the operating expense and personnel services for the Department of Commerce, if this bill passes, is exactly the same amount appropriated to them.

A. Representative Schye responded yes.

Q. Representative Swysgood indicated that it is a little unclear, in Section 2, subsection 3, regarding the appropriation in (1)(c) for the litigation amount of \$180,000, noting that it just says the department is to recover that, plus the interest, and asked Representative Schye if that money is also being transferred to the Department of Justice, or if it will stay in the Department of Commerce.

A. Representative Schye responded it would transfer with them.

Q. Representative Swysgood indicated the bill does not say that.

A. Representative Schye responded that maybe they need to change it.

Senator Jergeson pointed out that subsection 1 is an appropriation to the Department of Justice, including the McCarty Farms litigation approved during the regular session in HB100, and that subsection 2, then, removes that same amount of money from the Department of Commerce, which is how the transfer is accomplished.

Q. Representative Quilici indicated that, earlier, some questions were directed to Mr. Craig concerning the differences between the two bureaus. He noted that it would seem to him there are some differences between the bureaus, that one is the litigation bureau, which, in essence, noting if you look in the dictionary, is to litigate. He asked Mr. Letson what kind of cooperation

he had between the law groups and the litigation bureau, during the hearings on the McCarty Farms case.

- A. Mr. Letson responded that the law firm has worked with the people in the Transportation Division, not only the litigation bureau, throughout this entire proceeding. He indicated he thinks the cooperation with the Transportation Division has been outstanding.
- Q. Representative Quilici asked Mr. Letson if it would seem to him that there could be a conflict, if they combine these two, and how does he suppose to keep them separated.
- A. Mr. Letson responded that, since they do not have an attorney on staff, they do not do any litigating and their litigation bureau, now, is the Attorney General's office. He added that, if they get to a point where they want to litigate something, they will go to the Department of Administration, or to the Attorney General's office. He indicated they seem to have a burgeoning growth of attorneys throughout state government, and he probably would believe that many of them are necessary, but that he does not think every bureau should have an attorney in case they want to litigate.
- Q. Representative Quilici asked Mr. Letson if there was coordination between the bureaus and the Denver law firm, noting he asked that earlier.
- A. Mr. Letson responded yes, that there was coordination, an exchange of information, and that the people in the Litigation and Analysis Bureau continue to work on cases beyond the scope of litigation.
- Q. Representative Quilici asked Mr. Letson if they compiled that information, and if they have a data base.
- A. Mr. Letson responded that they have, in the past, compiled a great deal of data for the case, but, in recent years, the majority of data which has been compiled has been compiled by a firm in Washington, D.C., an expert witness firm, or a rate fact-finding firm, L.E. Peabody and Associates, for which they have been paying large sums of money.
- Q. Senator Jenkins indicated that, earlier, there was a statement that they used to have an ICC practitioner,

that they did not have a lawyer to litigate. He asked Mr. Letson if that person was a lawyer.

- A. Mr. Letson responded that they still have an ICC practitioner, and the position of ICC practitioner will still be in the Intermodal Commodities Bureau. He stated that an ICC practitioner can practice before the ICC on rate hearings and present evidence, but is not a lawyer, that he can not appear in court, can not file pleadings, and things like that, that he can practice only before the ICC on rate hearings.
- Q. Senator Jenkins asked Mr. Letson if they do, now, have one.
- A. Mr. Letson responded they do now, and will have one in the future.
- Q. Senator Jenkins asked if it is the same one, or a different one.
- A. Mr. Letson responded that, before the reorganization took place, the current ICC practitioner applied for another job in the Department of Commerce, and will be moving to a new job within the Department of Commerce, but that the position of ICC practitioner is still available, and will be handled by the current bureau chief whose position was eliminated.
- Q. Senator Jenkins indicated that, during testimony, he is hearing that they can provide data for the McCarty Farms, and then he is hearing that they are not, or can not provide data. He again indicated that Mr. Letson said, earlier, that they did provide data, but, now, they go to Peabody to provide all the data, and asked if that data is available in his bureau.
- A. Mr. Letson responded that, generally speaking, the difference between can and shall is at question here. He indicated that, given a sufficient amount of time, and an increase in personnel, they would be able to generate the majority of the data necessary for the ICC filings, but that, a number years ago, when the case became very complex, and they consolidated the McCarty Farms case and the state's case against Burlington Northern for market dominance and rate unreasonableness, it was determined that they would continue to provide expert testimony through these firms in Washington, D.C. He noted that, at that time, there were five firms being used by the

state, but it was consolidated to one for the sake of brevity and factual findings. Mr. Letson again stated that they can, if given an increase in staff and a great deal of time, find the data necessary, but that L.E. Peabody keeps most of the data necessary at hand, that they practice before the ICC consistently, on behalf of many, many cases, and his department does not.

- Q. Senator Jenkins asked Mr. Letson what, exactly, are they doing with the McCarty case. He noted they are not providing expert testimony, now, that they are hiring that done, and they are not using the data because they have hired that done, and again asked what, exactly, are they doing, in the McCarty Farms case.
- A. Mr. Letson responded that, after the expert testimony is prepared and submitted to the ICC, they often review it. He further indicated that they sometimes provide computer access, for running hypothetical cases through the state's computer.
- Q. Senator Jenkins pointed out that, in reviewing it, they do not have a lawyer review it, and asked Mr. Letson if they have a lay person review it.
- A. Mr. Letson responded yes, that is correct.

Senator Jenkins indicated he guesses he is lost, because he thought the state, with the money appropriated, was doing more for the farmers than it sounds like they are.

- Q. Chairman Bardanouve indicated he realizes that Mr. Snortland was not there, then, but asked if he could recall the names of the two people transferred from the Department of Agriculture to the Department of Commerce, in this case.
- A. Mr. Snortland responded that he believes they can provide that information, that Ralph Peck is here.
- Q. Chairman Bardanouve asked if anyone remembers the names of the people who were transferred from Agriculture to Commerce.
- A. Mr. Ralph Peck, Department of Agriculture, indicated that he believes it was individuals named Terry Whiteside and Vern Littell.

Q. Senator Hofman asked Mr. Racicot, if this bill passes and he gets this thrown into his lap, if he has any ideas how he will handle that.

A. Mr. Racicot responded no.

Q. Chairman Bardanouve indicated that Mr. Racicot disappoints him, that a person of his ability should be able to handle any case they give him.

A. Mr. Racicot responded that he guarantees, if they do it, they will get the best job they can get, but that he does not have any idea, at this point in time.

Q. Chairman Bardanouve asked if he will find a way.

A. Mr. Racicot responded you betcha.

Q. Senator Aklestad indicated that he is a grain producer, but does not really know what the Department of Commerce has done in the past, and has not kept track of this case as close as, possibly, some producers or other individuals, although he did contribute to the voluntary fund, which was brought forth a few years ago. He then indicated he has a concern, after hearing testimony today, that they would be taking the authority away from the Department of Commerce when it appears, through testimony, that all of the functions pertinent to this case would still be maintained in the Department of Commerce, possibly with different personnel involved, and under a different title. He further indicated that, under the bill that is proposed, this effort, at least monetarily, would be transferred to a new area, in this case, the Department of Justice, which would be receiving the monetary help, but there would be no one actually in that area with any expertise to carry on the functions of what has been analytically put together, whether by the Department of Commerce or in conjunction with the company hired by the Department of Commerce. He asked Representative Schye if it is a concern of his, as it is of his, that they would be putting this in an area which has no expertise, noting he is not saying, especially under the management of our Attorney General, that they would not try to, but that it does concern him.

A. Representative Schye responded that he can give the same kind of answer that Mr. Racicot gave, which is no. He added that there are concerns, and he feels they are giving some wrong signals out, noting that Senator

Aklestad's question was a long one, but, in reality, it was does he think the Department of Justice can do the job. He stated he has lots of faith in the Attorney General's office to do this job, and do it well.

Q. Senator Aklestad indicated he is being asked to do that with personnel who have not had any direct involvement, in the past. He further indicated that, if it remains within the Department of Commerce, he understands that at least two, and possibly three of the individuals are just being transferred, under another heading, who do have working knowledge of the case, and have been involved in the transformation of the data, noting the data could be transferred over there, but it would be like throwing a truck load of past cases on his desk, and would take a longer period of time to decipher that information, than it would for someone who was directly involved. He asked Representative Schye if he thinks that is a detriment to the farmers of the State of Montana.

A. Representative Schye responded no, that he thinks a lot of that information can be transferred over, noting that the departments do work with each other on an awful lot of things.

Senator Aklestad indicated that, as a producer, he has a concern, more so than as a Senator, until they vote, about throwing that much data to a new kid on the block, when the old kid has all the information.

Closing by Sponsor:

Representative Schye stated that he is also a grain producer, that this is what he does, in real life, and how he makes his living. He indicated he is concerned about the things that have happened the last couple of weeks over changing that, and he thinks the perception is there that it is bad timing, right now, to do this.

He pointed out that they have heard this put down like a football game, with the quarterback, and have heard talk about the ninth inning, but indicated that, if the Legislature fumbles, or the Department of Commerce fumbles, or if they throw a wild pitch, there will be an awful lot of angry grain farmers, noting that Randy Johnson said the same thing, that there is going to be lots and lots of eyes on this. He indicated he thinks it would be better for the Legislature to

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err on the side of being positive, in keeping the same that they have, and making sure the team stays intact, adding that he thinks there is some real question of what it is.

Representative Schye informed the committee he comes from a county that is a big grain producer, and that a one cent freight rate, in his county in a poor year, brings in \$100,000, which people could spend on the streets in businesses downtown, noting that goes all the way up to \$600,000 a year, on good crops. He further indicated they are talking about lots of money, that he reads the papers, and Burlington Northern has said they would settle for \$9 million, the plaintiffs said they would settle for \$84 million, so there is a long ways in-between. He noted that he thinks they are in the ninth inning, but that it might go into extra innings, and go a long time, and that he thinks it is important they stay in the ball game, and stay with an intact team.

ADJOURNMENT

Adjournment At: 2:35 p.m.



FRANCIS BARDANOUE, Co-Chairman



GARY C. AKLESTAD, Co-Chairman

FB:GCA/mhu  
JT-HB46.626

DAILY ROLL CALL

FINANCE AND CLAIMS

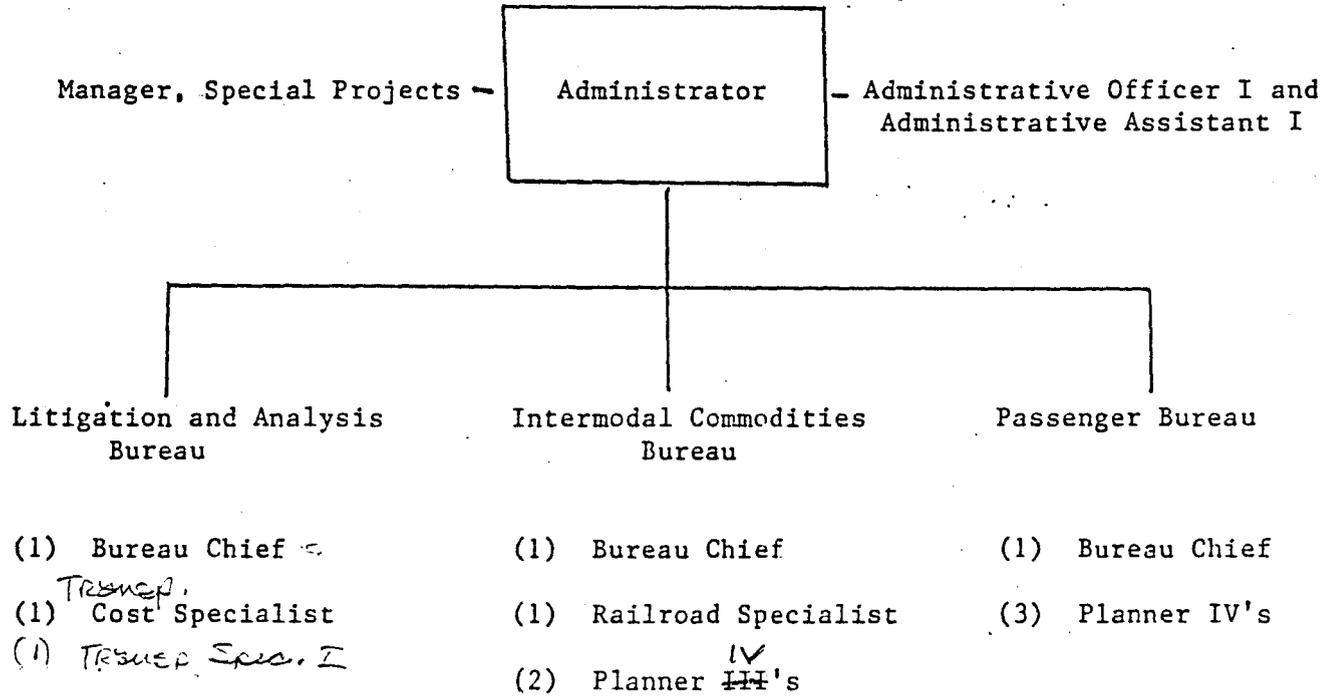
COMMITTEE - 1989

DATE July 26, 1989

NAME	PRESENT	ABSENT	EXCUSED
Senator Gary Aklestad	✓		
Senator Loren Jenkins	✓		
Senator Esther Bengtson	✓		
Senator Matt Himsl	✓		
Senator Paul Boylan	✓		
Senator Tom Keating	✓		
Senator Judy Jacobson	✓		
Senator H.W. "Swede" Hammond	✓		
Senator Pat Regan	✓		
Senator Larry Tveit	✓		
Senator Fred Van Valkenburg	✓		
Senator Dennis Nathe	✓		
Senator Greg Jergeson	✓		
Senator Gerry Devlin	✓		
Senator Richard Manning	✓		
Senator Sam Hofman	✓		
Senator Lawrence Stimatz	✓		
Senator Ethel Harding	✓		
Senator Pete Story			✓

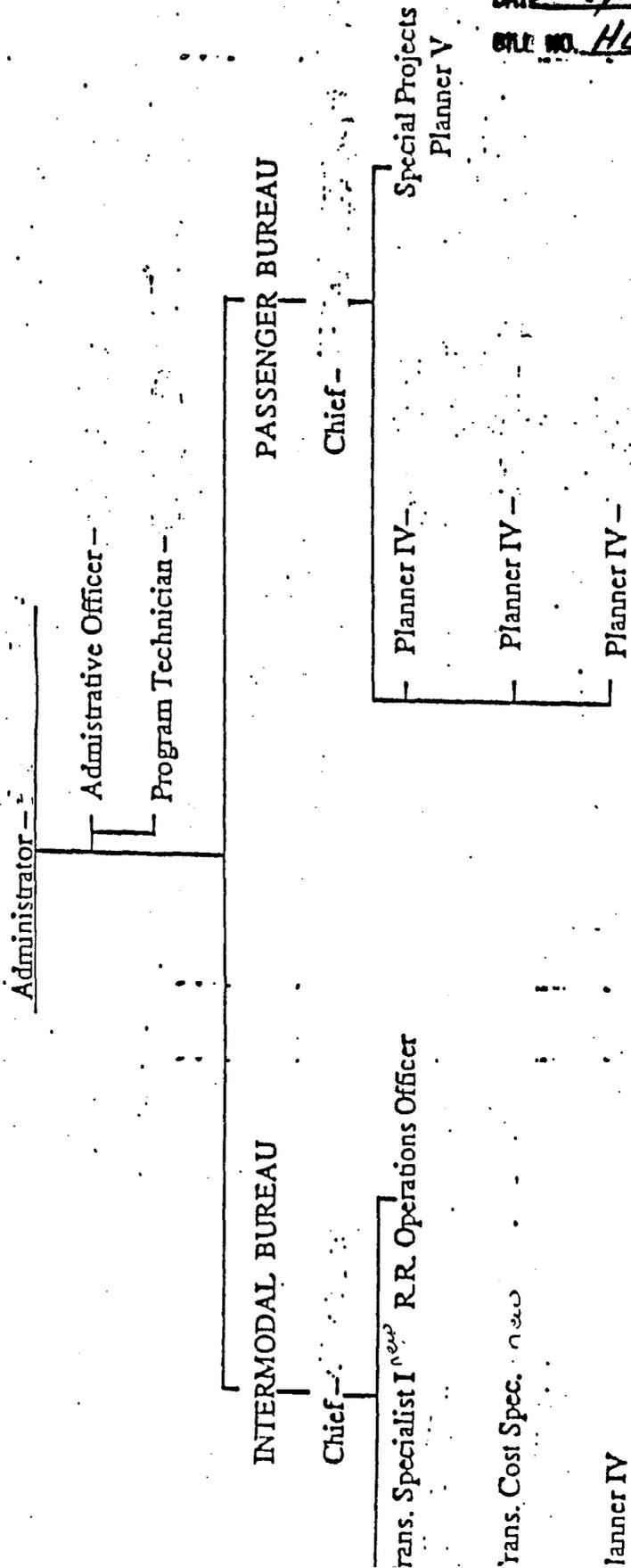
DEPARTMENT OF COMMERCE

TRANSPORTATION DIVISION



# TRANSPORTATION DIVISION

## PROPOSED STRUCTURE



SENATE FINANCE AND CLAIMS  
 EXHIBIT NO. 1  
 DATE 6/26/89  
 FILE NO. H646 192

Transferred from Litigation Bureau

Heron, Burchette, Ruckert & Rothwell FILE NO. HB 46 pg 1

Washington, D.C.  
Austin, Texas  
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Phoenix, Arizona  
Mesa, Arizona

2600 Manville Plaza  
717 Seventeenth Street  
Denver, Colorado 80202

(303) 298-7707  
FAX (303) 297-0260

Omaha, Nebraska  
Lincoln, Nebraska  
Colorado Springs, Colorado  
Rapid City, South Dakota  
Moscow, U.S.S.R.

June 15, 1989

Mr. Michael Letson  
Director  
Department of Commerce  
State of Montana  
1424 Ninth Avenue  
Capitol Station  
Helena, MT 59620-0430

Re: Case No. CV-80-103-GF-PGH, McCarty Farms, et al. v. Burlington Northern, Inc.

Dear Mike:

Thank you for your advice and assistance during the settlement conference held in Billings on June 12 and 13, 1989. We appreciated your suggestions and comments. Rest assured those suggestions and comments were very useful to us in the attempt to reach a settlement in this matter.

I know the Plaintiffs were also comforted by your remarks that the State is behind this case 100 percent and will not waiver from its support of the farmers' position. Just hearing from you that the money appropriated for the case by the legislature will be spent if necessary allayed many of the concerns of the Plaintiffs.

At the close of the settlement conference BN said its representatives thought it would be useful for the BN marketing people to speak directly to the Plaintiffs or the State about settlement ideas. The class action rules are very clear on this point: all communications between parties about a pending case must be channelled through counsel. BN is well aware of this requirement. In fact, BN tried to circumvent these rules in the past which caused us to ask for the "gag" order now in place. Accordingly, if anyone from BN contacts you or anyone in State government about the case, please let me know so that I can let the Court know.

SENATE FINANCE AND CLAIMS

EXHIBIT NO. 2

DATE 6/26/89

BILL NO. HB 46 pg 2

Mr. Michael Letson  
June 15, 1989  
Page 2

I will keep you informed of further developments in this case. In the meantime, if you have any questions concerning it or the settlement conference, or if I can provide any information to the Governor, please feel free to contact me.

Best regards.

Sincerely,



Michael J. Ogborn

MJO:pwl

cc: Named Plaintiffs  
Tim Engler

## MONTANA DEPARTMENT OF AGRICULTURE

TESTIMONY  
ON  
HOUSE BILL 46HOUSE APPROPRIATIONS COMMITTEE  
Monday June 26, 1989

Chairman, Representative Francis Bardanoue:

For the record I am Everett Snortland, Director of the Montana Department of Agriculture and a grain producer from Conrad. I am here today to speak both as the Director of the Department of Agriculture and as a grain farmer.

The Montana Department of Agriculture has been highly involved in transportation issues including the McCarty Farm Case, both prior to and since the transfer of the Transportation Division from the Department of Agriculture to the Department of Commerce on July 1, 1981. We have remained vitally interested in the actions of the Department of Commerce in relation to agricultural transportation issues and have worked in concert with Commerce to support them as we provide grain movement data and analysis that has been critical for the McCarty Case.

I oppose HB 46 as I believe the Department of Commerce has, and will, properly represent Montana agriculture on transportation issues. Department directors need the ability to organize and manage their department to achieve the most efficient utilization of your tax payer dollars. We as directors have committed to the Governor, and are committed to you as legislators and the people of Montana, to total accountability and proper administration of our departments. And we are rightfully held accountable for that administration. As Mr. Letson has stated, the ICC practitioner and the rate specialist positions will remain in the Transportation Division. These positions will maintain the states ability to analyze rates and rate structures for presentation to the ICC. I don't believe that transportation rate analysis functions should be performed by the Department of Justice but are transportation issues that should continue to reside in the Transportation Division. The administrative bureau level structure is well defined in Mr. Letson's testimony.

As a grain farmer, I am very interested not only in the McCarty case but in continued representation of my industry on transportation issues. On April 11, 1981, when HB 854 was heard it was stated that the intent was to combine the Department of Agriculture's Transportation Unit with the Department of Commerce Rail Planning Unit. This placed all transportation planning and transportation rate analysis in a single unit within state government\*. As a result of HB 854 the two positions of ICC practitioner and rate specialist were transferred from the Department of Agriculture to the Department of Commerce and they

have continued to provide the services we need as an industry. The objective was to provide consolidated transportation services to the state of Montana. I see no reason why these services will not continue to be properly provided by the Department of Commerce and in fact can not identify any reason to change your 1981 actions and again split transportation issues between agencies.

Mr. Chairman, members of the committee, we stand opposed to HB 46.

\* June 1981, Office of The Legislative Fiscal Analyst, "Appropriations Report 1983 Biennium", pg. 103

