

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION

Call to Order: By CHAIR LINDA NELSON, on January 11, 1991, at 2:30 p.m.

ROLL CALL

Members Present: All present
Linda Nelson, Chair (D)
Don Steppler, Vice-Chair (D)
Bob Bachini (D)
Joe Barnett (R)
Gary Beck (D)
Jane DeBruycker (D)
Roger DeBruycker (R)
Jim Elliott (D)
Marian Hanson (R)
Harriet Hayne (R)
Vernon Keller (R)
Don Larson (D)
Jim Madison (D)
Ed McCaffree (D)
John Phillips (R)
John Scott (D)

Staff Present: Connie Erickson Legislative Council
Claudia Johnson, Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

CHAIR LINDA NELSON informed the committee they would be working on HB 90 today. She said **REP. COBB** informed her after the last Agriculture hearing that he thought the money involved could be moved into the Agriculture Act to control it better. **CHAIR LINDA NELSON** said the committee they could do executive action on it now, but thought it would be best to place it in a subcommittee.

INFORMATIONAL HEARING ON HB 90

Mike Murphy, Department of Agriculture, thought the major concern with HB 90 was retaining the ability to use the bonding allocation authority for agriculture and its needs. The bonds are not a real dollar, but an allocation of the amount of bonding authority which

the State has been provided by the federal government from the federal tax reform. The allocation given the State for agriculture is 2% overall for State programs. To receive a bond for a program, the State would issue the loans but the banks still have to back them. Mr. Murphy commented that to receive bonding authority a person would have to go through Karen Munro, Department of Administration. Mr. Murphy stated that Tim Meloy, staff attorney for the Dept. of Agriculture, is on his way to the committee hearing to explain the feasibility of bonding and the direct appropriation used through the Department of Commerce.

Mr. Murphy said the Montana Growth Through Agriculture Program was established in 1987. It provides assistance in agriculture to: 1) facilitate monies to help participate in funding persons in the trade offices of the Pacific rim; 2) facilitate monies to be involved in market development for the state of Montana; 3) to be tied into incubators for towns of 15,000 or less; 4) give trade escort assistance; and 5) capitol seed loans.

Connie Erickson, Legislative Counsel, said she has looked into the Tax Reform Law after it went into effect in 1986 to see why and how this all came about. When the Montana Agriculture Loan Authority (MALA) was enacted in 1983, it made use of tax exempt bonds. In 1986, the Federal Tax Reform Act restricted the use of tax exempts bonds and only private activity bonds were to be used for certain types of farms, which is the \$150 million for Montana per calendar year. There are small issue bonds that could be used for first time farmers, but those bonds were sunset in 1989. The Montana Unified Volume Cap Bond Allocation Plan was enacted in 1987 in response to the Tax Reform Act, and that is when it was decided how it was to be allocated. The \$2.1 million allocation that is sitting in MALA could be used elsewhere but is still subject to tax exempt bond restrictions.

CHAIR LINDA NELSON asked the if this bill was worth pursuing the committee unanimously agreed it was and placed HB 90 in a subcommittee with REP. STEPLER, REP. HANSON and REP. J. DEBRUYCKER.

Questions From Committee Members:

REP. BACHINI requested the Department of Agriculture furnish the committee with a full report on the Growth Through Agriculture program since 1987. CHAIR LINDA NELSON asked Mr. Murphy to furnish this information.

Rep. Phillips asked Mr. Murphy if these tax exempt bonds have to be paid back. Mr. Murphy replied there is an obligation to the state and it is revenue generated. Once a bond is issued by the state, the bank still has to back it up. When a bond is transferred to the Growth Through Ag. program it is still subjected to the restrictions that are tied to the use of the bonds, i.e. federal government.

MCCARTY FARMS

Chuck Brooke, Director, Department of Commerce, spoke on the McCarty Farms/State of Montana-vs-Burlington Northern Railroad. The McCarty Farm Case and the Montana Grain Shippers filed a suit in 1980 against Burlington Northern for unfair freight rates from 1978 to 1980. Mr. Brooke said that Pat Flaherty would give a chronological report of the events that have happened since the suit was filed.

Pat Flaherty distributed copies of the report and gave a synopsis of the case. EXHIBIT 1

Mr. Brooke said the Department of Commerce was appropriated \$180,000 last session for legal fees etc. Only \$60,000 was expended because the case was on hold for the last year, but stated another \$180,000 is needed for expert witnesses, etc., because they anticipate more activity this biennium.

Annie Bartos, Chief Legal Council, Dept. of Commerce, said there is a companion case similar to the McCarty case. If the ICC decides the companion case has the correct formula it would help solve this case; but if it isn't the correct formula the ICC would be required to find the right formula that could be applied towards both cases. This would require additional attorney fees, expert witness payments, etc.

Rep. Bachini asked Mr. Brooke why did they need the extra \$180,000 when they only spent \$60,000 out of the \$180,000 they received from the last legislative session. Mr. Brooke replied they are expecting more activity in finding a solution to this case, added attorney fees, etc., but felt they will be able to recover most of these funds that have been spent when the suit is settled. Rep. Bachini asked Mr. Brooke if there has been consideration of payment to the people involved in this case. Will they receive interest on top of the monies they have lost plus interest because they could not invest the money elsewhere. Mr. Flaherty answered for Mr. Brooke. He said the current interest rates at the time of settlement will be attached to those repayments.

CHAIR NELSON asked Mr. Flaherty how the people involved will receive their payment. Mr. Flaherty replied: 1) each person involved in filing the lawsuit would receive payment plus interest; 2) the State would receive its share along with ten percent (10%) interest that was agreed on several years ago; and 3) the rest of the money would be placed in a fund to pay back any persons involved with the unfair rates.

NOTE: CHAIR LINDA NELSON announced there are no bills in committee at this time and there would not be a committee hearing on Monday, January 14, 1991.


HOUSE AGRICULTURE, LIVESTOCK, & IRRIGATION COMMITTEE

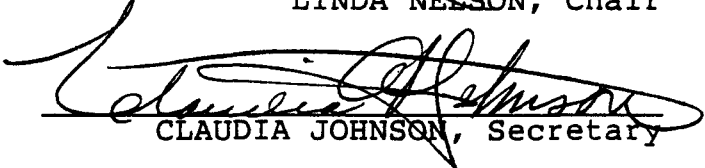
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ADJOURNMENT

Adjournment: 4:45 p.m.


LINDA NELSON, Chair


CLAUDIA JOHNSON, Secretary

LN/cj

HOUSE OF REPRESENTATIVES

AGRICULTURE, LIVESTOCK AND IRRIGATION COMMITTEE

ROLL CALL

DATE 1-11-91

NAME PRESENT ABSENT EXCUSED

REP. LINDA NELSON, CHAIR	✓		
REP. DON STEPPLER, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. JOE BARNETT	✓		
REP. GARY BECK	✓		
REP. JANE DEBRUYCKER	✓		
REP. ROGER DEBRUYCKER	✓		
REP. JIM ELLIOTT	✓		
REP. MARIAN HANSON	✓		
REP. HARRIET HAYNE			✓
REP. VERNON KELLER	✓		
REP. DON LARSON	✓		
REP. JIM MADISON	✓		
REP. ED MCCAFFREE	✓		
REP. JOHN PHILLIPS	✓		
REP. JOHN SCOTT	✓		

January 10, 1991

McCARTY FARMS/STATE OF MONTANA - VS - BNRR

CHRONOLOGY OF EVENTS

(For House Agriculture Committee
of the 52nd Montana Legislature)

- September 11, 1980 - Plaintiffs commenced court action invoking jurisdiction of Court under 49 U.S.C. Section 11705(c)(1) and 28 U.S.C. Section 1337 alleging that BN, during the period from September 12, 1978 to September 12, 1980, charged unjust and unreasonable rates for the shipment of wheat in violation of 49 U.S.C. Section 10701(a).
- March 16, 1981 - Parties stipulated Class Certification and Order of Court entered certifying class and referring matter of reasonableness of rates to ICC.
- March 27, 1981 - Plaintiffs filed Complaint with ICC alleging they have been subjected to payment of rates that were and are unreasonably high in violation of 49 U.S.C. Section 10701(a).
- December 14, 1981 - ICC issued Initial Decision finding: (1) defendant has market dominance over the involved wheat and barley traffic; (2) the present and past rates complained of are and were when assessed and collected unreasonable insofar as they exceed 200 percent of the variable cost of service; and (3) a revenue to variable cost ratio of 200 percent is found to be the maximum reasonable rate. Defendant also ordered to cancel schedules containing assailed rates.

- July 30, 1982 - ICC served Decision reopening case, instituting a separate proceeding regarding the reasonableness of barley rates, and consolidating these two cases with Docket No. 37815S Montana Dept. of Agriculture, et al. v. Burlington Northern, Inc. (The State of Montana's case was filed at the ICC on 3/26/81.)
- January 4, 1983 - ICC served Order in which, inter alia, the Managing ALJ asserted it must conclude case with administrative finality by the end of the third year (approximately 05/02/83) or automatically dismiss case by statutory decree 49 U.S.C. Section 11701(c).
- June 2, 1983 - ICC served Decision reopening case, repudiating ALJ Decision of 01/04/83 regarding three year rule, and indefinitely postponing any decision.
- September 11, 1984 - ICC orders the case reopened. Commission ordered both parties to submit additional evidence on all market dominance guidelines.
- December 19 - May 23, 1985 - Settlement talks commence by order of Judge Hatfield. Several proposals and counter proposals are submitted by both parties and are rejected.
- April 15, 1986 - ICC reopens case for additional submission of evidence on market dominance.
- August 1, 1986 - Parties meet to consider BN settlement proposal.
- August 26, 1986 - McCarty offers a counter proposal.
- May 27, 1987 - ICC Decision - BN found market dominant over wheat and barley shipments moving from Montana to Pacific Northwest ports.
- June 8, 1987 - BN filed Petition requesting ICC to Vacate its Order of 5/27/87.
- February 12, 1988 - ICC Decision - BN found to have rates that exceed a reasonable maximum and reparations are due.

- November 21-22, 1988 - Settlement discussions resume in Magistrate Shanstrom's Court in Billings. No agreement is reached.
- February 21, 1989 - ICC rules on calculations and costing procedures, correcting for costing problems and recomputing the R/VC benchmark ratios for determining rate reasonableness. ICC also provided additional guidance on the computation of reparations. BN is given 90 days to present their calculations on reparations and roll back rates if needed. McCarty will then have 30 days to respond.
- March 3, 1989 - Judge Hatfield orders parties to meet for settlement discussions before Magistrates Shanstrom and Holter in Billings on June 12, 1989.
- April, 1989 - BN files its reparations data in accord with ICC Order of February 21, 1989. McCarty has 30 days to reply.
- May 26, 1989 - McCarty files its report on reparations and proposed rate structures.
- June 1, 1989 - Named Plaintiffs, MGGA Board of Directors and other interested agricultural groups meet with MDOC and Mike Ogborn to discuss latest evidence and upcoming settlement talks. This is an example of the innumerable meetings like this over the past nine years.
- June 12, 1989 - Mike Letson, Dave Desch et al attend settlement conference in Billings. Judge Hatfield ordered this conference; no agreement is reached.
- June 15, 1989 - BN files Motion to Strike portions of Complainants' May 26, 1989 submission regarding reparations and proposed rate structure.
- June 21, 1989 - Supplemental submission of BN regarding reparations and proposed rate structure incorporating first quarter 1989 calculations.

- July 5, 1989 - Complainants' reply to BN Motion to Strike.
- July 14, 1989 - Complainants' reply to BN's Supplemental Submission incorporating first quarter 1989 calculations.
- November 27, 1989 - Second Supplemental Submission of BN regarding reparations and proposed rate structure incorporating 2nd Quarter 1989 Calculations.
- December 18, 1989 - Complainants Reply to BN's 2nd Supplemental Submission.
- January 8, 1990 - Motion of BN to Strike Complainants' 12/18/89 Reply to Supplemental Submission.
- January 29, 1990 - Complainants Reply to Motion to Strike.

NOTE: Setting aside all of the pending procedural ruling due by the ICC, the status of the case remains that the ICC should issue its decision based solely on what reparations BN must pay to the McCarty class and what interest calculation is to be applied to that figure.

McCarty plaintiffs and Burlington Northern have filed reparations evidence and rebuttals based on the current procedure for determining revenue to variable cost ratios. The parties await further ICC findings and directives.



STAN STEPHENS
GOVERNOR

STATE OF MONTANA
DEPARTMENT OF AGRICULTURE

OFFICE OF THE DIRECTOR
AGRICULTURE/LIVESTOCK BLDG.

CAPITOL STATION
HELENA, MONTANA 59620-0201

EXHIBIT 2
DATE 1-11-91
HB 90 TELEPHONE _____

AREA CODE 406
444-3144

FAX 406-444-5409

EVERETT M. SNORTLAND
DIRECTOR

January 16, 1991

MEMORANDUM

TO: Representative Linda Nelson
Representative Don Stepler
Representative John Cobb

FR: E. M. Snortland
Director

Handwritten signature of Everett M. Snortland in cursive.

RE: House Bill 90, Amendments

The Attached suggested amendment to House Bill 90 has been drafted in response to Committee concerns pertaining to agriculture's portion of the state federal tax-exempt bonding allocation authority.

As introduced, HB90 removes the Montana Agricultural Loan Authority (MALA) allocation authority and transfers that allocation to other state bonding programs. The attached suggested amendment would retain the bonding allocation authority for agriculture by replacing MALA with the Montana Department of Agriculture and generally provide bond issuing authority to the department.

Michael Murphy, Administrator of the Agricultural Development Division and Tim Meloy, staff Legal Counsel are available to assist the committee regarding this matter.

cc: Claudia Johnson

wordperf/market/dm/HB90AMEN

AMENDMENTS TO HOUSE BILL NO. 90

1. Title, line 8.

Strike: "AND"

Following: " 17-5-1312,"

Insert: " AND 80-1-102

2. Page 2, line 24, 25.

Strike: The interline through "(10)"

Following: "~~provided for in 2-15-3011~~"

Insert: " Montana Department of Agriculture" (MDOA) means the
Department provided for in 2-15-3001"

3. Page 3, lines 1 through 20, delete the interline through the
numbers, and strike the underlined numbers.

4. Page 4, line 12.

Following "~~MALA~~"

Insert: "MDOA"

Strike: the interlines through "40" and "2,100,000"

5. Page 4, line 13.

Strike: the interlines through ""40" and "42,000,000"

6. Page 4, line 14.

Strike "41" and "43,050,000"

7. Page 4, Line 16.

Strike: the interlines through "25" and "26,250,000"

8. Page 4, line 17.

Strike: "26" and "27,300,000"

9. Page 5, Line 6.

At Line beginning,

Insert: "NEW SECTION. Section 80-1-102 is amended to read:

80-1-102. Duties of department. The department shall:

(1) encourage and promote the interests of agriculture,
including horticulture and apiculture, and all other allied
industries;

(2) collect and publish statistics relating to the production
and marketing of crops and other agricultural products so far as
the information may be of value to the agricultural and allied
interests of the state;

(3) assist, encourage, and promote the organization of
farmers' institutes, horticultural and agricultural societies, the
holding of fairs, livestock shows, or other exhibits of the
products of agriculture;

(4) adopt standards for open and closed receptacles for farm
products and standards for the grade and other classification of
farm products;

(5) cooperate with producers and consumers in devising and maintaining economical and efficient systems of distribution and aid in the reduction of waste and expense incidental to marketing;

(6) have the authority to maintain a market news service, including information as to crops, freight rates, commission rates, and other matters as may be of service to producers and consumers, and act as a clearinghouse for information of value to producers and consumers;

(7) gather and diffuse information concerning the supply, demand, prevailing prices, and commercial movement of farm products;

(8) investigate the practices and methods of factors, commission merchants, and others who receive, solicit, buy, sell, handle on commission or otherwise, or deal in grain, vegetables, or other farm products, so that distribution of the commodities is accomplished efficiently, economically, and without hardship, waste, or fraud;

(9) cooperate with Montana state university, the agricultural experiment station, and the federal government for the betterment of the agricultural industries of the state, the improvement of rural life, and promotion of equality of opportunity for the farmers of the state;

(10) take and hold in the name of the state of Montana property, real and personal, acquired by gifts, subscriptions, donations, and bequests;

(11) sell and dispose of personal property owned by it in a manner the department may provide, when in the judgment of the department the sale or disposal best promotes the purposes for which the department is established;

(12) issue bonds in accordance with 17-5-1312 necessary to provide funds for implementing this title.

~~(12)~~(13) contract in respect to any matter within the scope of its authority;

~~(13)~~(14) enforce this title and all other laws for the protection and regulation of agriculture.

10. Page 5, line 6.
Following "Section"
Strike: 3.
Insert: 4.

11. Page 5, line 14.
Following "Section"
Strike: 4.
Insert: 5.

-End